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Business
Climate
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Reform

TANZANIA'S AGENDA FOR ACTION

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INTRODUCTION

Reform in Tanzania: Meeting the next generation of challenges

In just 15 years, Tanzania has emerged from the constraints of government control, centralization, and predominance of the state in all economic affairs, to a new emphasis on the free market and private sector-led growth. From the re-invention of agricultural cooperatives and other producer associations, to pro-investment law reform strategies, to proactive engagement of the private sector in updating its infrastructure, Tanzania has made a series of important choices that grant more freedoms and opportunities to actors throughout the economy. The results of this transformation amount, at least in part, to an East African success story: Tanzania's annual growth since 2000 has usually exceeded six percent, one of the strongest recent growth rates in the world.

Yet Tanzania remains one of the world's poorest countries. With the country's continuing dependence on agriculture – a sector that employs about 80 percent of the workforce and supplies nearly 45 percent of gross domestic product (GDP) – reforms have yet to make a broad-based impact because they do not adequately reach the rural areas. The process of building on the potential of Tanzania's agricultural resources, as well as strengthening other sectors, such as services, mining, and international trade, will take another generation of invested knowledge, diversification, and institutional reform.

This report examines the environment for doing business in Tanzania and identifies opportunities for targeted reform that can lead not only to continued growth, but also to reduced poverty.¹

¹The United Republic of Tanzania was formed by the union of Zanzibar and Tanganyika (mainland Tanzania) in 1964. While most laws and regulations in Tanzania apply to both Zanzibar and mainland Tanzania, certain "non-union" matters fall under the authority of the Revolutionary Government of Zanzibar. Such issues include investment, government procurement, privatization, competition, intellectual property, and sectoral strategies (e.g., agriculture or tourism). Based on the distinctiveness of Zanzibar's legal structure and business environment, this diagnostic focuses chiefly on

Tracking the 10 subject matter areas covered in the World Bank's annual Doing Business initiative (see accompanying box), along with two other critical areas, infrastructure and agriculture, this report reviews the legal framework, numerous public and private institutions, and social dynamics underlying conditions for reform. Based on the findings, a variety of recommendations are made.

World Bank "Doing Business" categories	2007	2006	Change
Doing Business overall (178 countries surveyed)	130	129	-1
Starting a Business	95	101	+6
Dealing with Licenses	170	168	-2
Employing Workers	151	150	-1
Registering Property	160	156	-4
Getting Credit	115	111	-4
Protecting Investors	83	81	-2
Paying Taxes	104	98	-6
Trading Across Borders	100	90	-10
Enforcing Contracts	35	34	-1
Closing a Business	109	107	-2

Note: The World Bank's 2007 survey covered 175 countries.

The BizCLIR diagnostic and indicators

This report is grounded in a comprehensive methodology, established through USAID's Economic Growth Office, which has been used in nearly 30 countries since 1998.² Incorporating lessons learned from its first-generation legal,

the conditions in mainland Tanzania, unless noted otherwise.

²Detailed information about USAID's Seldon Project, which implemented the first generation of the methodology, can be found at www.bizlawreform.com.

institutional, and trade diagnostic tool, USAID recently sponsored the development of an updated and redesigned set of indicators through its Business Climate Legal and Institutional Reform (BizCLIR) project. The indicators now substantially align with the structure of the World Bank's enormously influential Doing Business country reports.³

Since 2002, Doing Business has assisted countries in targeting where their regulatory environments may favor or interfere with economic growth. For each of the topics it examines, the World Bank considers a few key indicia of whether and how the environment for doing business is "working," measured by such means as the number of procedures involved in achieving a goal, the number of days it takes, and its cost in relation to per capita income. The World Bank now gathers data from 178 countries and ranks each, thus demonstrating how their respective regulatory environments compare to others throughout the world. In the most recent Doing Business report, issued in late September 2007, Tanzania is 130th out of the 178 countries surveyed.

USAID's BizCLIR indicators take each subject covered by Doing Business and delve deeper into each one's respective legal framework, implementing and supporting institutions, and social dynamics. The BizCLIR indicators consider each subject from a variety of perspectives, illuminating, for example, how certain business processes apply to rural communities, micro-enterprises, and small and medium-sized enterprises (SMEs).

The in-country portion of this diagnostic took place from August 9 to 23, 2007, when a team of consultants traveled to Tanzania to study the country's business environment, including the opportunities to grow businesses in rural communities and the agricultural sector. The team conducted interviews across the business environment, including with state and local officials, SME owners, agricultural enterprises, business associations, representatives from the banking and lending sector, and many others. Interviews and observations took place in and near Dar es Salaam, Arusha, Moshi, and Morogoro. The team's objective was to obtain the "whole picture" of Tanzania's enabling

environment for business and trade. Questions elicited a variety of perspectives and viewpoints, and sought explanations for how a certain subject works in all pertinent communities, whether urban, suburban, or rural. The diagnostic culminated in a roundtable presentation and discussion on August 23, attended by representatives from throughout Tanzania's community of public and private sector reformers. At the roundtable, team members introduced their preliminary observations, which were then subject to feedback and elaboration from 50+ participants.

This report is compiled from individual chapters written thereafter by team members. Each chapter is structured the same way. Specifically, each has four sections:

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Don Zimmerman, Independent Consultant	Employing Workers, Dealing with Licenses
Andrew White, Independent Consultant	Registering Property, Paying Taxes
Jamie Bowman, Independent Consultant	Getting Credit
Tom Jersild, Independent Consultant	Protecting Investors, Closing a Business
Peter Baish, Independent Consultant	Trading Across Borders (trade facilitation)
Russell Brott, Booz Allen Hamilton	Trading Across Borders (trade policy)
Susan Pologruto, USAID	Enforcing Contracts
Mark Zannoni, Booz Allen Hamilton	Infrastructure
Briera Dale, USAID	Agriculture

Legal Framework. The chapters first examine the laws and regulations that serve as the

³ See generally, www.DoingBusiness.org. BizCLIR indicators also cover infrastructure and agriculture.

structural basis for Tanzania's ability to achieve and sustain market-based development. They pose the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework? Occasionally discovered through this review are opportunities to make relatively small changes that may result in significant openings for business development and expansion.

Implementing Institutions. Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework and subsidiary laws, regulations, and policies. These institutions include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing certain areas of the commercial law. Customs, immigration, and other border authorities are the chief implementing institutions of international trade policies. Again, the indicators seek to uncover how these implementing institutions function not only within Dar es Salaam, but also in rural communities and among less empowered constituencies.

Supporting Institutions. The indicators and chapters then look closely at the organizations, individuals, or activities without which the legal framework or policy agenda in Tanzania cannot be fully developed, implemented, or enforced. Examples include lawyers, banks, business support organizations and private services, professional associations, universities, and the media. Questions and analyses examine relative awareness of law and practice on the part of each institution, and the specific ways in which institutions increase public and professional awareness, work to improve the business environment, and otherwise serve their constituencies. In certain instances, weaknesses in one or more supporting institutions are identified as critical areas for reform.

Social Dynamics. Finally, the indicators look to relevant, critical social issues. These questions

attempt to uncover roadblocks to reform, including entities that may have an interest in subverting change. These indicators also seek to identify significant opportunities for bolstering the business environment—such as champions of reform or regional initiatives—as well as matters of access to opportunity and formal institutions. Often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

With respect to each area of inquiry, the diagnostic used a process of reviewing and scoring key indicators to develop a thorough analysis. Once the team gathered as much relevant information as possible—from written sources, meetings and interviews, and consultation among colleagues—each of the **key indicators** was scored based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between five and 20 **supporting questions** accompanied each key indicator. These questions themselves were not scored, but were intended to guide the assessor toward a consistent, factually based judgment from which the key indicator score was then derived.

The score awarded key indicators aligns with the following conclusions:

- 1 = strong negative
- 2 = moderate negative
- 3 = neutral (or having some negative and some positive qualities)
- 4 = moderate positive
- 5 = strong positive

The scores are not intended to serve as a stand-alone, number-based pronouncement on the state of affairs in Tanzania. Rather, they should be read in conjunction with this report as a means of (1) understanding the status of certain key indicators of a healthy legal and institutional environment for business and trade, and (2) identifying priorities for reform.

Summary of Subject-Specific Findings

The findings of the 10 Doing Business-aligned subject-matter areas examined in this diagnostic, as well as the areas of infrastructure and agriculture, are summarized below.

Starting a Business. In recent years, Tanzania has streamlined its business formation process and improved its ability to meet the needs of investors. It similarly has made key reforms to the operation of cooperatives and producer associations, such that this collective approach to doing business can shake off its socialist history and, in the future, far more effectively serve the needs of farmers and agriculture-based industries. The country has further succeeded in privatizing much of its state-owned industry, thereby opening up opportunities for private sector growth. With the enactment of a new competition law in 2003, Tanzania's environment for free and fair competition among economic actors is slowly improving. Yet, notwithstanding these important steps forward, Tanzania's unduly burdensome licensing regime, particularly at the local level, continues to impose a debilitating effect on entrepreneurs. The regime drives up the costs of doing business and discourages enterprises from joining the formal economy. A vast portion of Tanzania's economy remains in the informal sector, and the country therefore is unable to elicit increased growth from its multitude of micro-enterprises.

Dealing with Licenses. Over the past five years, a number of sources have detailed the issue of Tanzania's exceptionally difficult licensing and regulatory environment. Recently, the government has taken steps to reform, most notably through the enactment of the Business Activities Licensing Act, which, when it is finally implemented, promises to significantly streamline the procedures businesses must follow to meet their legal obligations. Certain areas of Tanzania's business environment, such as foreign investment, have already simplified and streamlined regulations. Others, such as the registration of real and movable property for the purpose of accessing credit, remain mired in non-productive, unduly burdensome licensing and regulatory regimes. In some cases, such as the emergence of micro-enterprise lenders, there may not be enough regulation – that is, a lack of meaningful oversight over cooperative lending structures may be leading to a system wrought with poor or even abusive habits. In other instances – and perhaps most importantly – the central issue is of administrative capacity and competence. Public officials may have sound regulations to work with, worthy oversight objectives, or at least the will to do their best work, but they often simply lack the

skills and resources to fulfill these obligations as needed. This is particularly true at the local level.

Employing Workers. Legal and institutional labor reforms are underway with the aim, on one hand, of effectively protecting workers while, on the other, facilitating the greater labor force flexibility and skill levels needed to enable employers to compete successfully in the global economy. Tanzania's most recent labor and employment law reform – the Employment and Labour Relations Act – has a primary objective “to promote economic development through economic efficiency, productivity and social justice.” This law and its institutional reform counterpart, The Labour Institutions Act, are part of the government's long-term plan for economic liberalization. New laws on occupational health and safety, workers' compensation, social security, labor market policy and employment promotion, skills development, labor market information and statistics, and employment services are in the planning stage. The result is meant to be a rational labor and employment regulatory system that will advance economic development, bring more enterprises out of the unregulated and unprotected informal sector, and promote respectable work.

Registering Property.

Real property.⁴ Tanzania's debilitating problems in land use are attributable to the poor state of land registration in the country, particularly at the village level. The Village Land Act of 1999 sought to establish a self-contained system of registration and titling at the village level. Proper administration of this function, however, reportedly requires at least 50 different paper forms – an overwhelming amount, given the relatively primitive facilities to which the village councils have access. Moreover, district and national authorities can and do override village decisions, often with little transparency or accountability. Ultimately, administration of land is embedded in an overly complicated set of regulations that are perceived as secretive and non-accountable. Thus, while the Village Land Act sought to reform the previous system, which

⁴ As detailed in this report's chapter on Registering Property, examination of real property for this diagnostic took place only through review of the vast array of existing reports and diagnostic materials pertaining to the issue, rather than through the “360” degree interview process described earlier in this section.

maintained all control over lands at the national level, its implementation remains too complicated and fails to ensure full transparency in the administration of land.

Intellectual property. The legal framework governing the registration and use of intellectual property in Tanzania is sound. But expertise within the primary implementing institution for the administration of the law is weak, thus undermining the regulatory environment for intellectual property. The community of supporting institutions, including judges and lawyers, would benefit from strengthened opportunities to learn about trends in intellectual property that are relevant to Tanzania's long-term growth.

Getting Credit. Access to credit remains one of the greatest barriers to Tanzania's economic growth. Although the legal and regulatory framework governing commercial banks and financial institutions has improved with the implementation of the government's financial sector reforms, the huge demand for credit by Tanzania's businesses and households, particularly in rural communities, continues to go unmet. Semi-formal lending institutions, including Savings and Credit Cooperative Organizations (SACCOs) and Financial Non-Government Organizations, are not yet able to meet the demand. They are subject to minimal oversight by ministries that readily acknowledge their lack of capacity, both in staff and technology. Reform in the area of Getting Credit must be multi-faceted, and includes, among other initiatives, the need to provide substantially increased technical support to small borrowers; establish a unified and streamlined system of secured transactions; strengthen the court system's management of small commercial cases; bolster the burgeoning warehouse receipts program; and encourage increased formalization of enterprises, so that they can take advantage of credit opportunities that are available to them.

Protecting Investors. Tanzania's company law, which should be the bedrock upon which good investment conditions exist, lacks best-practice standards and is often unclear and cumbersome to use. The law suffers from having been drafted without extensive local consultation or comment. On the other hand, Tanzania's corporate governance code, enacted in 2002, sets forth many international best practices, and, while

applying directly to stock exchange-listed companies only, it is generally observed by other companies in Tanzania. The actual state of corporate governance "on the ground" is hard to measure, but a strengthened company law and expanded corporate governance code could clearly enhance it. Through the services of its Tanzania Investment Centre in particular, Tanzania exhibits a welcoming attitude to foreign investment. However, a major problem is that information on companies is harder to find in Tanzania than in comparable countries. This can only hurt potential investment, as investors may not be willing to invest in companies about which they cannot find information.

Paying Taxes. The legal framework for Tanzania's system of collecting taxes is relatively sound and reflects a commitment to fiscal reform on the part of the government. However, the Tanzanian Revenue Authority must cope with the country's very low rate of business formalization – when companies do not register, they do not pay taxes. The TRA also receives mixed reviews from stakeholders, who assert that it displays a strong bias against taxpayers' self-assessments and always insists on higher assessments when reviewing tax returns. Tax compliance is weak in Tanzania, particularly in rural areas. This likely reflects a feeling among rural Tanzanians that they are not a significant part of the government's overall program for economic growth.

Trading Across Borders.

Trade policy. Recently, Tanzania enhanced its trade potential by incorporating international and regional agreements into its legal and regulatory frameworks and by creating or strengthening a variety of institutions charged with implementing these agreements. The country is a founding member of the World Trade Organization (WTO), a member of the East African Community (EAC), and a member of the Southern African Development Community (SADC). In 2005, Tanzania took the significant step of establishing an EAC customs union with Kenya and Uganda. Notwithstanding these recent developments, a great number of reforms have yet to take place. With respect to trade in goods, a number of taxing schemes, bureaucratic delays, and other regulatory constraints continue to limit the competitiveness of Tanzanian exports. Similarly, trade in services is not reaching its potential, due in significant part to continuing restrictions on the free movement of labor.

Trade facilitation. Tanzania has also made important strides toward improving the facilitation of movement of goods at its borders. Initiatives are underway to ensure integrity, transparency, and consistency for the trade community, and the Customs and Excise Department (CED) in particular has been reform-oriented in recent years. However, the CED cannot solve by itself the profound issues of port congestion, transportation infrastructure weaknesses, and the disarray of antiquated processing methods, confusing and expensive fee structures, and conflicting jurisdictions. Top-level attention to these issues is needed at the Presidential level and by Parliament to coordinate actions that are necessary but may attract opposition. Not addressing these pressing issues will stunt the growth potential of the Tanzanian economy.

Enforcing Contracts. Tanzania ranks well with respect to Enforcing Contracts, placing 35th out of 178 countries the World Bank ranked in 2007. However, this ranking is unduly optimistic given the reality of commercial dispute resolution identified in this diagnostic – perhaps it reflects only the strides taken with respect to the commercial court, a resource for higher-value cases. In practice, small commercial actors in Tanzania rarely engage the formal mechanisms of the courts to resolve disputes. Reasons for avoiding the courts include high court fees, slow processes, and frequent delay tactics used by lawyers. It is rare for written contracts to be drafted and signed by the parties to a business transaction. Although informal dealings allow commerce to take place relatively unencumbered by the hassle and expenses of greater formality, it becomes much riskier when parties are strangers to one another. Strengthening Tanzania's system of dispute resolution for smaller enterprises – those that typically would not find themselves in the high-value Commercial Court – can diminish the risk of doing business with an unknown partner and promote more arms-length transactions. There is high demand for better legal education, more and better access to continuing legal education, and strengthened training for judges and magistrates.

Closing a Business. Tanzania has a new insolvency law, effective April 2006, which is not well known and which its few users have described as unclear and as not fulfilling best practice. Other factors also contribute to an

inefficient insolvency system in Tanzania: the laws and practices dealing with commercial credit are seen as inadequate by lenders, and the court system is perceived as slow, costly, and not conversant with business issues, especially complex financial and insolvency issues. Just as important, Tanzania has yet to develop an efficient registry for recording liens on collateral. There are also no specialized professional insolvency associations or other supporting institutions, such as workout and turnaround consultants experienced with the law's operation, or liquidating firms experienced in selling a business and monetizing its assets.

Infrastructure. While certain infrastructure sectors are healthier than others in Tanzania and are receiving investment – such as information and communications technology (ICT) with its booming cellular services – other sectors, such as water and wastewater, have yet to formulate modern laws. Still others are witnessing a resurgence of activity and interest, with notable improvements, but with much progress still needed, such as in the maritime, rail, and roadway sectors. One critical change in recent years is the engagement of the private sector to invest in infrastructure solutions, a practice that bodes well for the future. Improved infrastructure must be at the heart of Tanzania's economic growth considerations, as much of its agricultural production never reaches market, in great part due to poor infrastructure.

Agriculture. General macro-economic reform efforts to liberalize Tanzania's agriculture sector occurred predominantly between 1986 and 1997. However, in parallel with its withdrawal of control over the agriculture sector the government also withdrew much of its support. Thus, general agricultural know-how is weak in the country and services to the rural sector, particularly extension services, are poor. Additionally, there is a lack of communication between central government and local governments. The central government's passes down its extensive and growing policy regime for agriculture through the regional administration to the district level, but no clear process exists for districts to provide feedback on implementation issues. Moreover, despite liberalization and a slow increase in competition, cartels continue to dominate the input market to the detriment of the agriculture sector. Ultimately, the perennial issues of poor access to irrigation, inputs, credit,

and infrastructure, as well as poor taxation practices, impede farmers from entering and thriving within the formal market. Although many recent reforms have sought to address these problems, Tanzania must direct more attention to facilitating small farmer's entrance and active participation in the formal economy.

Crosscutting Themes

The instant diagnostic is organized so that 12 components of a healthy and prosperous economy are considered discretely and related to each other where appropriate. This format represents much of the Western construct about economics, civil society and the individual's relationship to the state and other institutions. However, certain issues and dynamics are so prevalent across this analytical framework that they warrant special mention. These can be thought of as crosscutting themes or topical "layers" falling over all areas of review. In this diagnostic, the layers include:

1. The need for all reforms to be conceived and applied with Tanzania's status as an agriculture-based economy in mind.

The importance of agriculture in Tanzania's economy cannot be understated. Agriculture is by far the dominant sector for employment and will necessarily continue to be Tanzania's major source of new jobs in the near and medium term. But subsistence farming continues to dominate the rural sector and is the primary source of livelihood for approximately 45% of the population. Both the government and donors must devise ways to make agriculture jobs ones that move far beyond subsistence and allow for growth from increased productivity, trade, and entrepreneurship.

Indeed, there is an emerging consensus that far more needs to be done by governments and donors to recognize the fundamental place of agriculture not only in Tanzania, but most African economies.⁵ In particular, laws and institutions relating not only to agricultural productivity, but also to the ability to seize opportunities in agriculture and access markets, need strengthening. Among other measures, agriculture-dependant African economies need

⁵ See World Bank Independent Evaluation Group, World Bank Assistance to Agriculture in Sub-Saharan Africa (October 11, 2007).

improved seeds, water, infrastructure, credit, and extension services.

Throughout nearly all of this report's chapters, the importance of agriculture and the special needs of rural communities in Tanzania are recurring themes. In addition to a chapter devoted to agriculture-specific issues – including access to seeds, fertilizer, pesticides, and know-how – the special interests of rural and agricultural communities are emphasized in discussions of Starting a Business (Cooperatives), Employing Workers, Registering Property, Getting Credit, Trading Across Borders, Infrastructure, and others.

2. The persistence of informality in the commercial environment.

According to one study, "approximately 98% of all businesses [in Tanzania] operate extra-legally because of the insurmountable regulatory and administrative obstacles they would have to overcome to register, incorporate and conduct their business activities legally."⁶ This number is somewhat speculative – in fact, this diagnostic identified insufficient understanding of the makeup of the informal sector.

Tanzanian enterprises that operate in the informal sector forego: (a) access to assistance programs normally only available to formal sector enterprises; (b) access to the mainstream credit system; (c) easier enforcement of contracts because the name, address, and other particulars of businesses are known; and (d) the ability to become part of the property-owner sector, which enables them to obtain collateral for loans. In addition, the state cannot collect taxes from informal enterprises and is unable to collect information that can be used as a basis for economic and other planning.

Thus, as Tanzania strengthens its legal regime in support of long-term economic growth, there is a particular need to increase the rate at which enterprises join the formal sector. As discussed in this report's chapters on Starting a Business and Dealing with Licenses, Tanzania has devoted considerable effort to streamlining certain registration and licensing requirements. But more action is needed. Additional steps include

⁶ Programme to Formalise the Assets of the Poor of Tanzania and Strengthen the Rule of Law: (MKURABITA) Final Diagnosis Report, VI, Institute for Liberty and Democracy (2005).

improving outreach and information provided to new and small entrepreneurs; reducing registration fees and costs; reducing and simplifying taxes; and generally abolishing all unnecessary or duplicative regulations, particularly at the local levels. Until the rate of formalization increases, Tanzania's "gray economy" will hold in check the increases in productivity that the country desperately needs.

3. The importance of strengthening the capacity of local and regional institutions.

Much of Tanzania's economic progress in recent years is attributable to the country's abandonment of socialism and reform of its heavy reliance on large national institutions to run the economy's affairs. Decentralization is a key part of this effort. Over the past generation, responsibility for administrative matters has devolved more and more to local and regional institutions.

But resources and knowledge have not kept up with this transformation. Throughout this report, there are examples of how local institutions are not functioning properly or are not being properly served. As a preliminary matter, access to Tanzania's quickly evolving regime of laws and regulations is poor. Possible sources of information – law libraries, book stores, electronic resources – do not yet meet the significant need for access to the new regimes, particularly outside of urban centers. Institutions that are charged with implementing the law are at a threshold disadvantage – they may not even know what the applicable authority is. In particular, local institutions that have little or not internet access suffer from a severe lack of access to information.

In addition, a great deal of authority is vested with village councils, but these councils often do not have the internal capacity or the resources they need to properly execute their functions. From adequate transportation to office supplies, village councils are lacking. They often are not in the position or habit of documenting their work, thus leading to a lack of transparency and guidance for the future. They are also vulnerable to arbitrary and non-transparent interference in their functions by nationally based institutions.

Moreover, with respect to agricultural development, knowledge that would greatly

benefit small farmers does not reach them through the nation's extension services. There are large national associations representing private sector interests, but they function far less effectively at the local level. Relatively strong universities and research institutions located in the nation's capital are unable to serve the interests of rural constituencies, and similar institutions at the local level are weak and lack resources.

There are numerous additional examples throughout this report of how key institutions at the local level are unable to meet their core missions. Future assistance initiatives must move substantially into rural environments to better understand and respond to local needs.

4. The demand for more accessible and more relevant information in all sectors.

In addition to the problem of access to laws and regulations, there is a dearth of reliable information sources in Tanzania. As discussed in this report's chapter on Getting Credit, access to credit information concerning potential borrowers is negligible, thus vastly increasing the risk of granting and the cost of receiving credit. Similarly, as discussed in the Enforcing Contracts chapter, court data is poorly maintained, another factor that heightens business risk. Investors also find a lack of company information when seeking to do business in Tanzania. Finally, as detailed in the Trading Across Borders chapter, collection of critical trade data also is weak, which makes it hard to document demand and promote the country as a destination for trade.

The absence of reliable information pertaining to both the private and public sectors undermines the entire economy and diminishes productivity and the potential for growth. Development and distribution of sound information sources should be an ongoing priority.

5. The growing significance of regionalism.

As evidenced by its membership in the EAC, including its participation in a regional customs union, Tanzania recognizes that its growth policies for the future implicate greater reliance on its neighbors. The country borders five landlocked countries and offers the port of choice for eastern Congo. Tanzania's neighbors depend on its roads, rails, ports, and other infrastructure. Tanzania's place in Eastern Africa also presents

enormous opportunities for trade in services – including professional services, franchised businesses, and trade facilitation services. Although harmonization of country practices and regionalism generally is beyond the scope of this report, they are important themes that should be taken into account as Tanzania plans for its future growth.

TANZANIA SWOT (STRENGTHS, WEAKNESSES, OPPORTUNITIES, THREATS) TABLE

Strengths	Weaknesses	Opportunities	Threats
Overall			
Emergence as a country with new emphasis on the free market and private sector-led growth. Annual growth since 2000 usually in excess of 6%.	One of the world's poorest countries. Continued dependence on agriculture. Reforms do not reach rural areas.	Both the government and donors must devise ways to make agriculture jobs ones that move far beyond subsistence and allow for growth from increased productivity, trade, and entrepreneurship. Support programs to seize opportunities in agriculture and access markets. Future assistance initiatives must move substantially into rural environments to better understand and respond to local needs.	Many enterprises operate in the informal sector foregoing: (a) access to assistance programs; (b) access to the mainstream credit system; (c) easier enforcement of contracts, and (d) the ability to become part of the property-owner sector. The state cannot collect taxes from informal enterprises and is unable to collect information that can be used for economic and other planning. The absence of reliable information pertaining to both the private and public sectors undermines the entire economy.
Starting a Business			
Streamlined business formation processes. Improved ability to meet the needs of investors. Key reforms to the operation of cooperatives and producer associations. Privatization of state-owned industry. Enactment of the Competition Law.	Unduly burdensome licensing regime, particularly at the local level. High costs of procedures to start a business. Vast portion of the economy remains in the informal sector.	Many reforms have been initiated in this area, new programs need to support these ongoing efforts, to make sure initiatives are taken to completion.	Delays in the drafting of implementing regulations will stall the benefits of legislative and institutional reforms in this area.
Dealing with Licenses			
Enactment of the Business Activities Licensing Act. Simplified and streamlined regulations in the area of foreign investment.	Difficult and complex licensing and regulatory environment. Burdensome licensing and regulatory registration of real and movable property. Lack of meaningful oversight over cooperative lending structures. Poor administrative capacity and competence.	Potential for significantly streamlining the procedures businesses must follow to meet their legal obligations.	Public officials often lack skills and resources to fulfill obligations, particularly at the local level.
Employing Workers			

Legal and institutional labor reforms are underway to effectively protect workers. Enactment of the Employment and Labour Relations Act and The Labour Institutions Act.	Uneducated workforce cannot compete in the global economy.	New laws on occupational health and safety, workers' compensation, social security, labor market policy and employment promotion, skills development, labor market information and statistics, and employment services.	Lack of programs to provide workforce training and development of new skills will leave Tanzania behind, no matter the efforts to increase competitiveness.
Registering Property			
Real Property			
Enactment of the Village Land Act of 1999.	Deficient land registration, particularly at the village level. 50 different paper forms required for registering property and titling. Primitive facilities. District and national authorities override village decisions. Little transparency or accountability.	Interest in the government to address land titling and registration problems needs to be supported with directed programs to reform this sector.	Implementation of the Village Land Act remains too complicated and fails to ensure full transparency in the administration of land.
Intellectual Property			
Sound legal framework governing the registration and use of intellectual property.	Weak expertise within the primary implementing institution for the administration of the law.	The community of supporting institutions, including judges and lawyers, would benefit from strengthened opportunities to learn about trends in intellectual property.	A weak implementing institution annuls the positive effects of improved legislation.
Getting Credit			
Recent improvements in the legal and regulatory framework governing commercial banks and financial institutions.	Lack of a sound access to credit system. Lack of modern laws. Large informal sector without access to credit.	Reform must include: increased technical support to small borrowers; a unified and streamlined system of secured transactions; strengthened court system's management of small commercial cases.	Semi-formal lending institutions, are subject to minimal oversight by ministries that readily acknowledge their lack of capacity, both in staff and technology. Unmet demand for credit by Tanzania's businesses and households.
Protecting Investors			
The 2002 corporate governance code based on international best practices. Welcoming attitude to foreign investment through the Tanzania Investment Centre.	Tanzania's company law lacks best-practice standards and is unclear and cumbersome to use. The law was drafted without extensive local consultation or comment. Lack of information on companies.	A strengthened company law and expanded corporate governance code could enhance corporate governance.	Lack of information on companies could hurt potential investment, as investors may not be willing to invest in companies about which they cannot find information.
Paying Taxes			
The legal framework for Tanzania's system of collecting taxes is relatively sound and reflects a commitment to fiscal reform on the part of the government.	Tax compliance is weak, particularly in rural areas. Lack of a clearly defined tax-policy. Large informal sector, resulting in a narrow tax base.	Tax compliance would likely increase if Tanzanians could see a fair and tangible value in return –in the form of improved infrastructure and overall quality of life.	Narrow tax base could get even narrower without a clear tax policy. The lack of a clear and non-arbitrary policy, could shake investor confidence more than would be likely from any restructuring of

			the overall VAT exemption and relief regime.
Trade Across Borders			
Trade Policy			
Enhanced trade potential with the incorporation of international and regional agreements. Establishment of an EAC customs union with Kenya and Uganda.	The system of standards and technical regulations is severely deficient. The media consistently misinform about facts related to international trade. Tariff bindings and modal tariff rate are arguably too high. EPZs with little knowledge.	As a member of various trade organizations, the country has access to laws and institutions that comply with international standards and could serve as model for reform in this area.	Limited exports due to numerous taxing schemes, bureaucratic delays, and other regulatory constraints. Continuing restrictions on the free movement of labor.
Facilitating Trade			
Tanzania has also made important strides toward improving the facilitation of movement of goods at its borders.	Port congestion, transportation infrastructure weaknesses, and antiquated processing methods, confusing and expensive fee structures, and conflicting jurisdictions.	Initiatives are underway to ensure integrity, transparency, and consistency for the trade community, and the Customs and Excise Department in particular has been reform-oriented in recent years.	Not addressing these pressing issues will stunt the growth potential of the Tanzanian economy.
Enforcing Contracts			
Tanzania ranks well with respect to Enforcing Contracts, placing 35th out of 178 countries the World Bank ranked in 2007.	High court fees, slow processes, and frequent delay tactics used by lawyers. Rare use of written contracts.	Strengthening the system of dispute resolution for smaller enterprises can diminish the risk of doing business and promote arms-length transactions. There is high demand for better legal education, and strengthened training for judges and magistrates.	Small commercial actors rarely engage the formal mechanisms of the courts to resolve disputes.
Closing a Business			
Tanzania has a new insolvency law.	The new insolvency law is not well known and unclear. Court system is slow, costly, and not conversant with business issues. Inefficient registry for recording liens. Lack of specialized professional insolvency associations.	The Ministry of Justice is still working on the current draft of the Regulations to the law. Support is needed to ensure consistency with international standards of both the law and regulations.	An unreliable system prevents the redistribution of income-producing assets and employees. Lenders will not extend credit freely unless their rights as creditors are respected when their borrowers cannot or do not pay.
Infrastructure			
Strong and booming information and communications technology. Engagement of the private sector to invest in infrastructure solutions.	Lack of modern laws in the water and wastewater, sectors. Support lacking for progress in the maritime, rail, and roadway sectors.	Support to formulate modern laws. Support for the ongoing efforts in the maritime, rail, and roadway sectors.	Improved infrastructure must be at the heart of Tanzania's economic growth considerations, as much of its agricultural production never reaches market, in great part due to poor infrastructure.
Agriculture			
General macro-economic reform efforts	Weak general agricultural know-how.	Although many recent reforms have sought	The perennial issues of poor access to

<p>between 1986-1997 to liberalize the agriculture sector. Many ongoing donor funded programs to support agriculture sector.</p>	<p>Poor services to the rural sector, particularly extension services. Lack of communication between central government and local governments. Cartels continue to dominate the input market to the detriment of the agriculture sector.</p>	<p>to address these problems, Tanzania must direct more attention to facilitating small farmer's entrance and active participation in the formal economy.</p>	<p>irrigation, inputs, credit, and infrastructure, as well as poor taxation practices, impede farmers from entering and thriving within the formal market.</p>
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STARTING A BUSINESS

THE DOING BUSINESS REPORT (2007) Starting a Business	
Tanzania / World	127 out of 175
Tanzania / Sub-Saharan Africa Region	22 out of 45

Introduction

The ability to launch and build one's own enterprise that provides income, stability, and opportunity for growth is a dream the world over. Particularly in poor or remote areas where industry is weak and full-time jobs are few, there is enormous promise in the idea that one's own enterprise, or an enterprise formed as a cooperative, can be the source of a livelihood and perhaps also provide work for others.

Yet even for entrepreneurs with a sound concept and a viable market, the forces against launching a successful business can be fierce. The act of registering with the state, thereby joining the formal economy, can be cumbersome, confusing, and expensive, particularly for small entrepreneurs with limited education and few resources. The licensing and regulatory environment can be so thick that enterprises opt to stay out of the formal sector, thus sacrificing the many opportunities for growth that accompany formalization. The path toward forming a cooperative or producers association, a business model that assists small farmers and rural constituencies in particular, may be blocked by bureaucratic interference. Foreigners who wish to launch or invest in a business may also find that they are on hostile ground. In some instances, the state can be so invested in its economy through the operation of its own enterprises that it is nearly impossible for private companies to compete in certain sectors. The influence of large private players can also make entry into certain markets wholly unviable.

The purpose of this chapter is to build upon the World Bank's general examination of what it takes to start a business in Tanzania – how many steps to register, how much time registration takes, and so forth – and examine the legal,

institutional and social backdrops against which new private enterprises can be launched and take root. This analysis is directed toward enterprises across the business environment, including micro-enterprises,⁷ small and medium-sized enterprises (SMEs),⁸ cooperatives, large domestic firms, and regional and international investors. The findings indicate that such conditions in Tanzania are far from ideal, but not without promise.

Company Startup

The procedures for registering a business name, registering a company, and obtaining a general business license in Tanzania – at least at the national level – are relatively straightforward and can be accomplished in a few weeks. In contrast, Tanzania's licensing regime is fraught with confusing requirements and other administrative headaches, thereby discouraging the entry of new businesses into the formal sector. The recently passed Business Activities Registration Act establishes the framework for a single main registry that is to link with all other registries, including those of local authorities. If properly implemented the Act should eliminate some of the burden and confusion of the current system.

Legal Framework

Doing Business in 2008 places Tanzania 95th out of 178 economies surveyed in terms of the ease of starting a business. According to the World Bank, it takes 12 procedures and 29 days to start a business in Tanzania. The average for the region is 10.8 procedures and 56.3 days, respectively.⁹

⁷ The term "micro-enterprise" does not have a universal definition, but for the purpose of this report will refer to businesses that employ fewer than 4 people and are valued at less than \$5,000. See Tanzania Ministry of Industry and Trade, Small and Medium Enterprise Development Policy (2002), at 3.

⁸ For the purposes of this report, a small enterprise is one that has 5-49 employees and is valued at around \$5,000- 175,000 and a medium-sized enterprise has 50-99 employees and is valued at around \$175,000-\$750,000.

⁹ Concerning the Dealing with Licenses indicator, however, Tanzania ranks almost last in the world – 170th. The World Bank's figures

Starting a business in Tanzania begins with the business identification and name registration process, followed by the creation of a business entity (e.g., a corporation), and then the application for the relevant licenses, permits and approvals. The legal framework, prior studies, and interviews with a cross-section of stakeholders together show that the majority of undue delays in starting a business in Tanzania are related to either approvals at the local or municipal level and/or securing sector-specific permits, approvals, and licenses.

Registering a business name. In Tanzania, a business entity may take the form of a sole proprietorship, a partnership, or limited liability company. All businesses, regardless of their legal form, must first register their business name under the **Business Names (Registration) Ordinance** (Chapter 213). However, sole proprietorships and partnerships do not have to register their business names unless they adopt a name different from the name of the owner(s).¹⁰

The following information is required to register a business name:

- Business name
- General nature of the business
- Principal place of the business
- Names, nationality, age, sex, and residence of each of the individual partners, and the corporate names and principal offices of each of the corporate partners (in the case of a partnership)
- Name, nationality, age, sex, and residence of the individual (in the case of a sole proprietorship)
- Name of the corporation and its principal office (in the case of a corporation)
- Date of the commencement of the business
- In the case of a partnership, the names of the persons authorized to operate the partnership's bank account or to sign, draw or endorse any negotiable

show that it takes 21 procedures and 308 days to obtain all the necessary licenses and permits to legally build a warehouse in Tanzania (the regional average is 18.1 procedures and over 262 days).

¹⁰ Business Names (Registration) Act, Section 4.

instrument or holding general power of attorney.¹¹

The application form and accompanying information are filed directly with the Business Registration and Licensing Agency (BRELA), a semi-autonomous executive agency under the Ministry of Industry, Trade, and Marketing (MITM) responsible for business facilitation and registration.¹² Alternatively, registration can take place through the services of the Tanzania Investment Center (TIC), an agency under the supervision of the Ministry of Planning, Economy and Empowerment, whose mandate includes helping all investors (both foreign and domestic) obtain all necessary permits, licenses, approvals, consents, authorizations, registrations, and other matters required by law for a person to set up and operate an investment in Tanzania. (The TIC's role is discussed later in this chapter in connection with investment promotion and facilitation.)

The application fee to register a business name is TZS5,000 – about US\$5.

BRELA manually conducts a name clearance search to determine the availability and desirability of the name. BRELA can refuse to register a business name if it: (a) is likely to mislead the public as to nationality, race, or religion of the persons owning or controlling the business; (b) implies any connection with or recognition by the Government of Tanzania; (c) includes the words “building society” or “co-operative” or their equivalent; or (d) is similar or identical to that under which any other business is registered if it is likely to mislead the public.¹³ Once the business name is approved, BRELA usually issues a Certificate of Registration within one to three business days. Any individual, partnership, or corporation who is denied registration of a business name may, under Section 9(4) of the Business Names (Registration) Ordinance, appeal that decision to the High Court, whose decision is final.

Registering a company. Business entities in the form of a corporation are registered (i.e., incorporated) under the **Companies Act**,

¹¹ Business Names (Registration) Act, Section 6.

¹² BRELA was established under the Government Executive Agencies Act No. 30 of 1997.

¹³ Business Names (Registration) Act, Section 9.

2002 ("Companies Act").¹⁴ Four classes of companies exist for purposes of incorporation: (a) private companies; (b) public companies; (c) branches of foreign companies; and (d) parastatal or state-owned enterprises. Pursuant to Section 27 of the Companies Act, private companies must have a minimum of two and a maximum of 50 shareholders.¹⁵ They are restricted in terms of the transferability of their shares, and may not be listed on the stock exchange for purposes of trading in shares. Public companies, by comparison, can have an unlimited number of shareholders (although the minimum number is also two), have unrestricted transferability of their shares, and may be listed on the stock exchange for purposes of trading. An additional condition for registering public companies is the issuance of an offer document (i.e., prospectus) in which the objectives, proposed share capital, sources of finances, and general material information of the company are stated.¹⁶

Under the Companies Act, foreign companies are enterprises incorporated outside Tanzania that have established a place of business within Tanzania.¹⁷ It is the place of incorporation, not the nationality of the company's shareholders, that determines whether a company is a foreign company. Thus, a company wholly owned by nationals of the Republic of Tanzania, but incorporated in Delaware, would be considered a foreign company. Foreign companies register under Part XII of the Companies Act as branches of foreign companies.

¹⁴ The Companies Act was signed by the President on June 27, 2002, but did not come into effect until March 1, 2006. It replaced the Companies Ordinance 1932, which was based on the English Companies Act 1929.

¹⁵ Section 27 expressly limits the number of shareholders to a maximum of 50 in the case of a private company. The minimum requirement of two shareholders in the case of any company is set forth in Section 3(1).

¹⁶ See Companies Act, Section 46 et seq. A private company can be converted into a public company by amending its articles of association and issuing a prospectus. See Section 29(1).

¹⁷ Companies Act, Section 433(1). However, a foreign company is not deemed to have a place of business in Tanzania solely on account of its doing business through an agent in Tanzania at the place of business of the agent. Section 433(2).

Parastatal or State-Owned-Enterprises (SOEs) are companies in which the state has a more than 50 percent ownership interest. The **Public Corporations Act, 1992** governs SOEs. SOEs are discussed later in this chapter in connection with the issue of privatization.

Whether registering directly with BRELA or through the TIC, a company must submit the following documents and information: (a) certified copies of the company's Memorandum and Articles of Association, (b) notice of situation of the registered office in the country of domicile, (c) a list of the company's directors, (d) the names of the persons resident in Tanzania who are the representatives of the company, and (e) a copy of the company's most recent accounts and related reports. In addition, the company must file a prescribed form declaring compliance with all requirements relating to formation of the company.

In the case of a foreign company, the following documents and information must be submitted: (a) a certified copy of the company's Memorandum and Articles of Association (in English); (b) a list of the company's directors and its Secretary; (c) a statement of all subsisting charges created by the company; (d) the names and addresses of one or more persons residing in Tanzania and authorized to accept service of process and to represent the company; (e) the address of the principal office of the company and the address of its place of business in Tanzania; (f) a statutory statement made by a director or the Secretary stating the date on which the company's place of business in Tanzania was established, the name of the business, and the nature of the business; and (g) a copy of the company's most recent accounts and related reports (in English).¹⁸

The fees associated with registering a company include registration fees, filing fees, and a stamp duty. Currently, registration fees vary based on the share capital and the number of shareholders as stated in the company's Articles of Association. The registration fee for companies ranges from TZS50,000 to 300,000 (around US\$43-265), depending on the nominal share capital of the company. The registration fee for companies not having share capital and where the number of members are stated in the

¹⁸ Companies Act, Section 434.

Articles of Association ranges from TZS50,000 (where the company has fewer than 25 members) to TZS120,000 (where the company has unlimited members).

The filing fee for both domestic and foreign registration applications is TZS45,000 – about US\$40. The stamp duty is TZS5,000 (around US\$5) for each copy of the Memorandum and Articles of Association. Foreign companies incur certain additional fees, including: (a) registration of the certified copy of the Memorandum and Articles of Association (US\$500); (b) filing of a balance sheet (US\$150); and (c) filing any other document required under Part XII of the Companies Act other than a balance sheet (US\$150).

Upon completion of the registration process, Tanzanian companies are issued a Certificate of Incorporation. Foreign companies are issued a Certificate of Compliance. Both are generally issued within three to five business days after receipt of a completed application and all necessary documents.

Obtaining a general business license. All businesses in Tanzania, in addition to fulfilling any sector-specific permit and licensing requirements (see this Report's chapter on Dealing with Licenses), must obtain a general business license issued under the **Business Licensing Act, 1972** ("Licensing Act").¹⁹

¹⁹ Section 5 of the Licensing Act expressly exempts certain businesses from the requirements of the Act, including the business of farming or raising cattle, market gardening and dairy farming, retail selling of own farm produce, trophy dealers licensed under the Wildlife Conservation Act, selling of intoxicating liquors if licensed under the Intoxicating Liquors Act, persons holding mining licenses, and any business where no license fee is payable under the schedule to the Licensing Act. In addition, the Minister for Industry, Trade and Marketing may, by order published in the gazette, exempt from the Licensing Act any person, business or category of business. Notwithstanding the provisions of the Licensing Act, certain business activities require approval from other agencies before a general business license can be obtained. For example, a tourist agency license from the Ministry of Natural Resources and Tourism is required for persons applying for a license to carry out tourism promotion business, including hotels, travels agents, and tour operators. Similarly, a customs agency license issued by Tanzania Revenue Authority is required for persons applying for a license to carry out the business of clearing and

While the Licensing Act is the current law, the **Business Activities Registration Act, 2007** ("Business Activities Registration Act"), which was passed in early 2007 and assented to by the President on March 30, 2007, is set to repeal it. The Business Activities Registration Act will take effect only after implementing regulations are issued, which are not expected for at least another year.

General business licenses are classified either as Schedule A licenses or Schedule B licenses. The central government (Ministry of Industry, Trade and Marketing) issues Schedule A licenses to businesses with a national or international scope of operations, and not limited to a specific locality within Tanzania. Local Government – Urban and District authorities – issue Schedule B licenses to businesses that intend to operate solely within a local area. Under the current law, both Schedule A licenses and Schedule B licenses must be renewed annually, with the annual fee varying based on the category of business.²⁰

Although the same legislation regulates general business licenses at both the national and local level, the autonomy of local authorities in applying the law has resulted in variations in the requirements and procedures at the local level. These generally include variations in forms, inspections, and approvals that are beyond those stipulated by national legislation. As a result, the procedures, approvals, and time needed to register the same type of business can vary from one municipality to another. Moreover, stakeholders report that it is often difficult to know what documents, information, and approvals are required in each locality because the information is not readily available via the internet or other public sources.²¹ The lack of information and the inconsistency in requirements among local authorities increase

forwarding. At least 63 sector-specific statutes exist in Tanzania.

²⁰ Licensing Act, Section 7.

²¹ The diagnostic team was unable to interview any local authorities to gain their views and explanations during the diagnostic. Previous research confirms, however, that the lack of information and the inconsistency in requirements is a common problem, particularly at the local level. See, e.g., Consulting Services for the Introduction of a Regulatory Business Licensing System (Final Report), Bannock Consulting Ltd. (May 2006).

compliance cost and compliance problems for businesses, particularly small businesses that generally cannot afford to hire attorneys or others facilitators to usher them through the requirements and processes.

Subject to the understanding that there may be some variation among local authorities, an application for a general business licenses generally requires the following documents and information: (a) a copy of the Certificate of Incorporation or Certificate of Compliance (in the case of a domestic or foreign branch corporation) or Certificate of Registration (in the case of a sole proprietorship or partnership); (b) Memorandum and Articles of Association; (c) proof of Tanzania citizenship (in the case of a non-citizen, a resident permit Class A showing the holder to be the investor in that business); (d) in the case where the shareholders of the company are non-residents, a Power of Attorney to a citizen/resident to act on behalf of the non-residents; (e) proof of suitable business premises for the business (e.g., title deed, tenancy agreements, receipt of rent or property tax payment); and (f) a Tax Identification Number (TIN) issued by the Tanzanian Revenue Authority. In addition, Schedule B licenses generally require the signatures of three local officers: town planning officers, health officers, and trade officers.

The Ministry of Industry generally issues Schedule A business licenses are generally issued within seven to 14 days, Trade and Marketing. Schedule B licenses often take longer -- as much as 30 days and, in some instances, longer.

Obtaining an industrial license. An industrial license, like a general business license, is often required in addition to any sector-specific permit and licensing requirements. Any company engaging in any manufacturing is required to obtain an industrial license under the **National Industries (Licensing and Registration) Act, 1967**, as amended ("Industries Act"). Companies may apply for an industrial license directly with BRELA or through TIC. Applicants applying directly to BRELA must submit the appropriate application form together with an application letter, a feasibility study, and a copy of its Certificate of Registration. The application and other documents are forwarded to the Industrial Board. Generally, the Industrial Board meets only when it has more than six pending

applications. However there are measures to handle urgent applications by using a sub-committee of the board. Companies whose capital investment is above TZS100 million qualify for an Industrial License, while those whose capital investment is less than TZS100 million qualify for a Certificate of Registration. **The Business Activities Registration Act.** In early 2007, Tanzania passed the Business Activities Registration Act to replace the complex, duplicative, and burdensome licensing system the Licensing Act created. The Business Activities Registration Act will take effect after passage of implementing regulations, which are not expected for at least another year. However, the legal framework of the new law suggests that there will be improvements over the current system. For example, under the new law, there will be one main registry that will link with all the registries and databases, including the agencies that administer the Companies Act, the Business Names (Registration) Act, and sector-specific licensing acts.²² It is unclear whether local authorities responsible for Schedule B business licenses will be required to link their registries with the main registry, but it is recommended that they be required to do so.

The new law will create a one-off, non pre-approval centralized registration system, thereby eliminating a costly, time-consuming burden for businesses that, under the current system, must often deal separately with several agencies, particularly where sector-specific licenses are required. In addition, registration under the new law will be valid for the entire life of the business, whereas under the current system licenses must be renewed annually.²³ If a certificate of registration is suspended, revoked, or cancelled, the Business Activities Registration Act provides for notice and the opportunity to be heard, as well as the right to appeal to the Minister any adverse decision.²⁴

Implementing Institutions

BRELA is the principal implementing institution for registering business names, incorporating companies, and securing industrial licenses. MITM and the various local authorities are the implementing institutions for Schedule A and

²² *Business Activities Registration Act, Section 6.*

²³ *Compare Business Activities Registration Act, Section 15 to Licensing Act, Section 7.*

²⁴ *Business Activities Registration Act, Section 19-20, 22.*

Schedule B licenses, respectively. The TIC is also an option for investors, particularly large ones.

Stakeholders stated that BRELA has been seeking to improve the speed, efficiency, and accuracy of its services in recent years. They generally find BRELA's website (www.brela-tz.org) helpful for forms and information about various registration issues falling under BRELA's mandate. Most complaints about BRELA concern the fact that it has only one office location (in Dar es Salaam) and that it is not computerized. The single location makes it more difficult and costly for persons located outside of Dar es Salaam to register with BRELA, or to follow up if they need to provide additional documents or information. BRELA's manual method of receiving, storing, and researching business information also results in inefficiencies, including lost or misplaced documents and files and processing delays. Although stakeholders' experiences show that BRELA completes most name registration within three days and registers most companies within seven days, many stakeholders had personal (albeit isolated) experiences involving lost and misplaced documents and files that delayed registration and imposed added costs. Stakeholders therefore strongly favor a more computerized system to help eliminate these delays and inefficiencies. The need to restructure and computerize BRELA and has been noted in other recent studies, including an April 2006 needs assessment conducted by the Business Environment Strengthening for Tanzania Program.²⁵

Stakeholders are even more displeased with the registration process at the local level. Variations in the requirements, the lack of consistent information, and the time to obtain approvals from local authorities were the most common complaints. Even where an owner is registering the same type of business (e.g., a retail shop) in two different regions, the requirements for registration and the time it takes to receive approval can vary. Stakeholders attributed this in part to differences in the size, knowledge, and experience of the staff at the local level. In addition, while these variations are known to

exist, the specific requirements at each local authority level are often difficult to discern. Unlike BRELA, most local authorities do not maintain websites that list documents, information, and approvals required. Thus, search costs are often high, and can become disproportionately high for a small business operator who often cannot afford to hire an attorney or other facilitator to determine the legal requirements, but must instead invest his or her own time.

Courts or other dispute resolution bodies.

Attorneys and business groups expressed mixed views about the courts as institutions capable of resolving disputes that may arise under the country's business formation laws. On the one hand, most praised the **commercial court** (detailed in this report's chapter on Enforcing Contracts), stating that its staff is relatively well trained and the system for resolving larger commercial disputes generally works. In particular, the mandatory arbitration requirement often results in the quick settlement of disputes without the need for full litigation. Most attorneys further expressed satisfaction with the court's **mediation** process, although they were concerned about the fact that a mediator could also arbitrate, or decide, the same matter. On the other hand, these same stakeholders noted that the monetary threshold for bringing a case in the commercial court, along with expensive filing fees, effectively precludes small businesses from seeking relief there. Instead, these businesses must use the regular courts, which are seen as being inefficient, poorly staffed, and subject to corruption.

Finally, with respect to most implementing institutions, other than perhaps the regular courts, corruption is said to have decreased significantly. Some business groups and lawyers attribute this to the fact that the government has sought to eliminate unnecessary laws, thus reducing the opportunity to seek bribes. Others believe that the government has taken a more serious stance against corruption. However, both businesses and attorneys cited examples, albeit rare, where they paid to have their file processed more quickly.

Supporting Institutions

The Government of Tanzania, with the support of the Department for International Development,

²⁵ *Business Registration and Licensing Agency (BRELA): Needs Assessment for Restructuring and Modernizing BRELA (Final Report)*, April 2006. See also *Consulting Services for the Introduction of a Regulatory Business Licensing System (Final Report)*, by Bannock Consulting Ltd. (May 2006).

the Swedish International Development Cooperative Agency, the Danish International Development Agency, and the Royal Netherlands Embassy, implemented and supports an initiative called **Business Environment Strengthening for Tanzania (BEST)** Program. The BEST Program actively supports reform in, among other areas, business registration and licensing. The BEST Program is designed to identify and reduce the bureaucracy and paperwork that business persons encounter in investing in, starting, and operating a business in Tanzania, and to improve the overall effectiveness and efficiency of services delivered to businesses. BEST will also play an active role in drafting the implementing regulations for the new law. In addition, as noted above, in April 2006, BEST conducted a needs assessment of BRELA and recommended various restructuring and modernization suggestions with detailed cost estimates and implementation plans. Finally, as discussed in the chapter on Dealing with Licenses, BEST is involved in a closely related topic -- streamlining the sector-specific licensing regime under which at least 63 different laws and more than 52 implementing agencies regulate various types of business activities.

Committees within the BEST Program often comprise various stakeholders from both the government (e.g., Ministries, regulatory authorities,) and the private sector (businesses, business groups, lawyers, economists, etc.). In addition to taking part in the BEST Program, private sector stakeholders take an active role in working with the government to improve the business environment. For example, business groups, such as the major chambers of commerce, routinely meet with governmental officials on relevant issues. Similarly, the Tanganyika Law Society has a committee that often comments on draft legislation. Other stakeholders, including business groups, similarly file comments on proposed legislation and actively seek to improve the legal environment for business in Tanzania.

Various private sector and professional associations play a role in advising businesses about their options and in communicating with the government about the priorities of the private sector. For example, the **Tanzania Chamber of Commerce** is the largest association representing the private sector in Tanzania. The Chamber has offices in 21 regions

and 80 districts. Although membership is voluntary, there are a total of 13,000 members of which 8,000 are paying. The Chamber's members consist of representatives from the commercial, agricultural, and industrial sectors.

In recent years the relationship between the state and the private sector has improved significantly, and the Chamber has participated in the strengthening of these ties. The Chamber is developing its own business licensing center, which is planned for completion by 2009.

The **Tanzania Chamber of Commerce, Industry, and Agriculture (TCCIA)** also has a presence in each of the country's districts and lobbies both local and national public institutions. Some of the larger offices have established business training centers in an effort to address their members' demand for business educations. The Arusha TCCIA office is organizing a business resource center where members can access current information on business trends and trade shows. With its wide presence, the TCCIA is hoping to establish itself as a network for capacity-building programs and training sessions.²⁶

Observers of both chambers agreed that significant and sustained capacity-building is needed in order to help these organizations meet their goals of better assisting the business community.

The **Tanganyika Law Society** has recently offered some continuing legal education (CLE) programs, funded by the Canadian Bar Association, covering various areas of law but with an emphasis on new laws and regulations. However, CLE programs generally are offered only in Dar es Salaam, and it is not known how long the Canadian Bar Association will continue to fund the CLE program. While CLE is not mandatory in Tanzania, some consideration has been given to making it mandatory due to the perceived lack of skills among attorneys.

Social Dynamics

According to one study, "approximately 98% of all businesses [in Tanzania] operate extra-legally because of the insurmountable regulatory and administrative obstacles they would have to overcome to register, incorporate and conduct

²⁶ See <http://www.tccia.co.tz/>.

their business activities legally.”²⁷ Tanzanian businesses that operate in the informal sector forego considerable benefits, including: (a) access to government assistance programs normally only available to businesses in the formal sector; (b) access to the mainstream credit system; (c) easier enforcement of contracts because the name, address, and other particulars of businesses are known; and (d) the ability to become part of the property-owner sector, which enables them to obtain collateral for loans.²⁸ In addition, the state cannot collect taxes from informal enterprises, and it misses out on collecting information that can be used as the basis of economic and other planning.

The Government of Tanzania, along with various private sector stakeholders, clearly understands the need to improve the business environment by revising outdated laws to eliminate bureaucratic delays, redundancies, and inefficiencies. But most developing countries share this understanding, so there is pressure to not only to reform, but to reform with more speed and better effectiveness, as explained recently in the *Economist*:

“For all the . . . talk of economic and political reforms in Africa, the hard fact remains that in a whole host of global league tables--the World Bank's Doing Business Report, Transparency International's Corruption Perceptions Report, The World Bank's Governance Indicators, Indices of Global Political and Economic Freedom and the World Economic Forum's Global Competitiveness Index--African countries, with a handful of exceptions, cluster at or near the bottom. As the World Bank's Doing Business Report (2008) noted recently African countries are reforming but others are doing so more rapidly, meaning that the region is not improving its relative position.”²⁹

This observation holds especially true for Tanzania. Notwithstanding the efforts of the BEST Program, the reform process has been slow. In particular, there are long delays

between passage of a law and issuance of implementing regulations. The Companies Act, for example, was passed in June 2002, but more than three years passed before the government issued implementing regulations. Similarly, it took several years to pass the Business Activities Registration Act, and stakeholders are now concerned that it will take another year or more before implementing regulations are issued.

In addition, stakeholders, principally lawyers, expressed the view that while the government is quite willing to revise the business laws, its staff lacks the competence and expertise -- in terms of both law and business knowledge -- to properly draft the laws and regulations.

With respect to the country's smallest businesses, stakeholders, such as business groups, have been lobbying the government to do more, particularly in the area of providing better access to finance and land and reducing regulatory barriers. In response, the government established a guaranteed loan program from small businesses whereby the government provides a 50 percent loan guarantee; however, financial institutions remain reluctant to make loans to many small enterprises.

Recommendations

- Continue to assist in the timely development of implementing regulations for the new Business Activities Registration Act. Other donors should consult with the BEST Program to identify discrete areas where they may be able to provide assistance.
- Facilitate the restructuring and modernization of BRELA as reflected in an April 2006 needs assessment, including, but not limited to, computerization of the registration and record keeping systems, the establishment of regional offices, and use of electronic filing. All relevant laws, regulations, forms, and instructions (including sector-specific licensing and permit requirements not within the legal mandate of BRELA) should be posted on the BRELA and TIC websites to reduce search costs and uncertainty for businesses.

²⁷ Programme to Formalise the Assets of the Poor of Tanzania and Strengthen the Rule of Law: (MKURABITA) Final Diagnosis Report, VI, Institute for Liberty and Democracy (2005).

²⁸ See De Soto, H. *Mystery of Capital* (Black Swan, Great Britain, 2000).

²⁹ *The Economist*. Africa's Strong Growth (October 19, 2007).

- Establish regional BEST program offices at TIC's zonal offices in the Kilimanjaro and Mwanza regions, thereby making BRELA more accessible to persons outside Dar es Salaam. BRELA should plan to add additional regional offices as needs dictate and resources allow.
- Develop more uniform general business licensing and approval requirements at the local level (i.e., Schedule B licenses). Local authorities should post all necessary forms, a list of required document and information, and instructions on their websites. BRELA's and TIC's websites should reference and contain hyperlinks to the websites of local authorities and other relevant agencies, thereby improving users' access to necessary information and improving inter-agency coordination. Local authorities responsible for Schedule B business licenses should be required to link their registries with the main registry under the new Business Activities Registration Act.

Cooperatives

This section discusses the ability of Tanzania's farmers to "do business" through launching and building agricultural cooperatives or other types of producer associations. (Another type of widely used cooperative in Tanzania, Savings and Credit Cooperative Societies (SACCOs), are discussed in this report's chapter on Getting Credit.)

A cooperative is a business that is owned and controlled by the people who use its services. Users share services received and earnings allocations on the basis of use. Particularly in rural and agricultural settings, cooperatives have the potential to contribute to the development of productive, efficient and scientific-based systems. Without cooperatives, small producers have almost no form of collective organization and are at an immense disadvantage when taking their products or crops to the market.³⁰ Cooperatives strengthen market access and support competitive returns for independent farm operators. In addition, cooperatives can play an important role in rural communities, where they encourage democratic decision-

³⁰ Andrew Bibby, Tanzania's Cooperatives Look to the Future (January 2006) at 3.

making processes, leadership development, and education.³¹

The term "producer organization" includes cooperatives, but also refers in this report to any type of organization formed for the purpose of collectively processing or marketing agricultural products. In Tanzania, producer organizations may form under cooperative law or pursuant to general NGO, Non-Governmental Organization, law as associations. But they also often remain informal and unregistered. Unregistered producer organizations suffer from the same limitations as any informal enterprise, as detailed in the prior section.

Legal Framework

Agricultural cooperatives have long been viewed as indispensable to Tanzania's development, but over the past century they took a series of wrong turns that are only recently being corrected. Cooperatives first emerged in 1925 when coffee farmers formed the short-lived Kilimanjaro Native Planters Association.³² Seven years later, the country's first Co-operative Law was enacted and the Kilimanjaro Native Co-operative Union (KNCU) became the first to formally register under the law. By 2000, there were 3,111 audited and active co-operative societies and 1,669 dormant co-operative societies registered in Tanzania.³³ (As explained below, far more cooperatives formed under colonial times survived than those that were formed in the socialist era).

Throughout most of their history in Tanzania, cooperatives were formed not at the initiative of individual farmer members, but through government directive, both prior to and following independence in 1964. In 1976, the socialist government transformed most of the country's cooperatives to parastatal Regional Trading Companies, an experiment that proved unpopular and counterproductive. Although new legislation re-allowed the emergence of traditional, member-led cooperatives beginning

³¹ United States Department of Agriculture, Agricultural Cooperatives in the 21st Century (November 2002), at v.

³² See Tanzanian Federation of Co-operatives (TFC) Website (www.ushirika.coop).

³³ Thabbie Chilango, Tanzanian Agricultural Cooperatives: An Overview (2005), at v.

in 1984, the state continued to play a heavy hand in directing their affairs. In 1987, for example, the government directed all villages to function as cooperatives.

The 1991 Co-operative Act represents a turning point in Tanzania's cooperative structures. It transformed cooperatives from state-controlled institutions to potentially autonomous, member-controlled institutions. This reform, supplemented by additional changes in 1997,³⁴ provided the basis for the significantly improved **Cooperative Societies Act, 2003**. The purpose of this law is to encourage and support the development of cooperative societies, both agricultural and non-agricultural.

Notwithstanding these advances, there remains a great deal of ambivalence over the traditional "cooperative" form. Some farmer groups instead form as "associations" or simply work together informally, as discussed later in this section.

Cooperatives are formed according to a relatively straightforward process the Ministry of Agriculture's **Division of Cooperative Development** and its regional offices administer. The new law emphasizes sound governance of cooperatives: both new and established cooperatives are required to form Boards that are directly elected by their membership. A **Code of Conduct** for cooperative management, also established in 2003, limits cooperative board members to no more than three three-year terms. A member of an established cooperative must be an active member for at least three years before being eligible to run for the board. Board elections take place under the supervision an Election Supervising Officer, acting with powers given by the Registrar of Cooperatives, and an election Panel, composed of at least four people "of recognized integrity" appointed by the Election Supervising Officer. The officer and panel review applications for aspiring board members and disqualify those candidates who possess insufficient experience and skills (normally a secondary education is required), or who have been associated previously with maladministration or malfeasance. (Whether this

authority is useful or goes beyond best practice is worth further examination. That is, are qualified individuals being excluded from cooperative board membership due to artificial demands on their formal education?)

In addition to increased emphasis on corporate governance, cooperatives may now operate with more freedom than they had in the past. For example, primary cooperatives are no longer beholden to the actions of the secondary organization ("union") of which they are a member, which is in turn no longer answerable to the government's directives. Primary cooperatives may now choose their customers and may sell not only to the union, as in the past, but also to private buyers. This new freedom has increased the rate at which cooperatives sell to private buyers, which may pay their bills sooner or offer better prices.³⁵ The quantities larger associations of cooperatives handle have, in turn, decreased.³⁶

On the other hand, under the new legal regime, cooperatives no longer have the benefit of extensive government preferences and specialized treatment. Unlike in the past, the law does not require that a union return to the producer a fixed percentage of the price the union receives. Farmers now reportedly receive a smaller percentage of the export price of their goods than they received in the past. Similarly, cooperatives no longer receive preferential foreign exchange benefits from the government, and must now utilize financial markets like any other seeker of foreign exchange. They also no longer receive preferential terms on loans from government-run banks.

The likely long-term impact of liberalization of the cooperative law is that cooperatives, in order to survive, must function more efficiently and compete more effectively. They also must approach a host of other legislation, mainly pertaining to the means under which they may produce their goods, with the understanding that preferential treatment is no longer the order of the day. A general discussion of the regulatory environment for agricultural producers is in this report's chapter on Agriculture.

³⁴ For details on the 1991 and 1997 legislative changes, see USAID Economic Growth Office, *Assessment of Tanzania's Producer Organizations: Experience and Environment* (February 2004), at 8-11.

³⁵ *Tanzanian Agricultural Cooperatives: An Overview*, supra note 33 at 14.

³⁶ *Id.*

Implementing Institutions

State institutions. The Ministry of Agriculture, Food Security, and Cooperatives oversees a Division of Cooperative Development, which is headed by a Registrar. The Division is divided into four sections:

- Registration and Legal Services
- Inspection and Supervision services
- Financial Advisory Services
- Cooperative Promotion Services.

At the regional level, there are 21 **cooperative advisors** (based in Regional Secretariats) who act as Assistant Registrars. They are responsible for promoting the importance of cooperatives in rural communities, registering primary cooperatives, and supervising other cooperative-related activities in their regions.

There also remain around 395 **cooperative officers** based in districts, working under the authority of District Executive Directors. Cooperative officers do not report to the Registrar of Cooperatives, resulting in certain administrative and policy-related conflicts. Rather, these officers are a vestige of the old system of cooperatives, when the state played an influential role in their activities. In the future, cooperative officers may provide assistance in implementing new policy initiatives of the government – such as renewed efforts to improve the corporate governance of cooperatives and a new emphasis on facilitating access to credit.

The Division of Cooperative Development is charged with overseeing the **Cooperative Reform and Modernization Programme** (2005-2015), established in 2005 to further encourage the formation of cooperatives and facilitate implementation of the 2003 Act. Under that initiative, the state agreed to write off US\$23 billion of accumulated debts among the country's cooperatives. It also instituted a system of warehouse receipts, currently being piloted in eight regions of Tanzania (see this report's chapter on Getting Credit). The Cooperative Development Department is also engaged in a long-term effort to strengthen the environment through which agricultural cooperatives can access credit.

One question worth pursuing further is whether and to what extent the authority of these

institutions is bypassed through the decision of a group of farmers to form not as a cooperative but as an association or even simply an informal group. In other words, is the Ministry of Agriculture's regulatory authority helpful to the interests of farmers? Or is it perceived as a burden that is best avoided through the creation of alternative structures?

The Cooperative Structure. In practice, cooperatives in Tanzania are organized in a four-tier vertical system, consisting of primary societies, secondary societies, apex societies, and the federation. Primary co-operative societies are composed of farmers themselves. A collection of these primary societies forms secondary co-operatives, which are commonly referred to as cooperative "unions." An apex represents unions dealing with a particular crop or service, such as coffee, cotton, or insurance. The apexes in turn fall under the Tanzania Federation of Co-operatives (TFC).³⁷ Formally established producer associations tend to work according to a similar structure.

In general, each level of cooperative is charged with serving the interests of the group directly beneath it. That is, the federation directly serves the apexes, which in turn serve the unions, which are charged with serving the primary co-operatives. If a crop disease is identified in the primary co-operatives, for example, they will report it to the union, which in turn may report it to a relevant apex for action.

Some critics assert that the four-tier system has too many layers – "although impressive on paper," one observer says, "this structure has not been working well."³⁸ Moreover, the maintenance of huge cooperative structures is inefficient and expensive.

Appropriately, most efforts the Reform and Modernization Programme has undertaken are directed at the primary level. The Division of Cooperative Development aims to assist farmers to work in regionally based teams to increase their productivity, efficiency, and bargaining power at market. Yet capacity is weak, and the history of poor management in Tanzania's cooperatives is daunting.

³⁷ Id. at 9-10.

³⁸ Andrew Bibby, Tanzania's Cooperatives Look to the Future (January 2006) at 26.

Cooperative Management. In a sense, the institutions charged with implementing the law of cooperatives are the cooperatives themselves. The checkered history of cooperatives includes not only excessive government interference during the socialist era, but also mismanagement, self-dealing, and corruption throughout their history. A major emphasis of the Reform and Modernization Programme is to improve the quality of cooperative management so that these institutions can be more competitive with various private sector institutions and capable of seizing new market opportunities. This is an enormous challenge that the development community should not overlook: training in business planning, marketing, lobbying for legal and regulatory reform, and quantitative literacy are all in high demand.

Supporting Institutions

As a result of the recent changes in the environment for cooperatives in Tanzania, the long-established **Tanzania Federation of Cooperatives** has launched its own reform process. The TFC has endeavored to return to its central role, that of promoting and supporting its members and the cooperative movement generally. As part of this refocusing work, some former TFC-owned businesses have been restructured or sold. In addition, the TFC plans to coordinate the establishment of an effective management information system for cooperatives, and improve its lobbying efforts. All of these efforts warrant the support of outside communities, including international cooperative federations and donors that are in a position to help the TFC improve its own governance and capacity. One key role the TFC could play might be to help the government identify priorities for infrastructure development, representing the interests of its core rural and agriculture constituents.

The **Moshi University College of Cooperative and Business Studies**, an affiliate of **Sokoine University of Agriculture**, has led the training and research tasks identified under the Reform and Modernization Program. The University College has a network of about 20 regional centers across the country. As detailed in this report's chapter on Agriculture, however, university support for cooperatives does not come near to fulfilling its potential at this time.

In recent years, USAID has provided significant assistance to farmer groups working collectively. Generally eschewing the term "cooperative," its implementing project, the **DAI/Private Enterprise Support Activities (PESA)** initiative, tended to instead promote "producer organizations" or "associations". As noted, these groups may work informally, register as associations with the Ministry of Home Affairs, or continue to register as cooperatives with the Ministry of Agriculture. On the one hand, the notion of promoting a model that does not carry the baggage of cooperatives is understandable. Yet, with their focus on primary organizations, unions, and apexes, the associations PESA supports do fall into the traditional cooperative structure. Whether formed as a cooperative or association, the need for training and capacity building is the same.

Social Dynamics

In order to meet the needs of its members, cooperatives must be viable as commercial enterprises. However, Tanzania's history of heavy government involvement in commercial activity, distorted the commercial viability and potential of its cooperatives. Sheltered from the need to be truly competitive, cooperatives failed to keep pace with growing needs for effective and modern management, knowledge sharing, and collective productivity. Recent reform efforts are geared at correcting the mistakes of the past and encouraging Tanzania's cooperatives to improve their internal management and operate more effectively. But this diagnostic found, as others have, that small farmers remain substantially unorganized in Tanzania and thus are missing out on the opportunity to exploit a business model that might most effectively serve their needs.

Recommendations

- Through public education and information programs, continue to support the efforts of small farmers to understand the advantages of processing and selling their goods collectively through cooperatives.
- Endeavor to re-claim trust in the cooperative structure through continued support of improved governance of cooperatives.

- Through local supporting institutions, including universities and local chambers, provide skills training to improve cooperative management capacities and cooperative competitiveness.
- Work with cooperative advisors to identify where the process of cooperative formation and implementation can be streamlined and improved.
- Work with cooperative officers to identify how they can best promote the mission of the Cooperative Reform and Modernization Program.
- Work with the Tanzania Federation of Cooperatives to build lobbying and rural representation capacity.
- Analyze and develop a “map” of government licensing and regulation regimes affecting agricultural producers, and work with cooperatives to press for streamlining and simplification of these regimes.
- Support the warehouse receipts system. As discussed in this report's chapter on Getting Credit, the new warehouse receipts system has enjoyed initial success, particularly in the coffee industry. But its usefulness to the agricultural sector is diminished due to a current lack of accredited warehouses, as well as a lack of technical knowledge on how to organize and manage warehouses at the local level. Additional warehouses are necessary to meet the existing and the anticipated needs. Technical assistance pertaining to the management of an accredited warehouse is also needed. Cooperatives serve as a major facilitator of continuing development in this area.
- Encourage informal producer organizations to formalize under the cooperatives law or associations law so they will be able to take advantage of the various benefits that come with business formality.

Investment Facilitation and Promotion

Legal Framework

The **Tanzania Investment Act, 1997** (“Investment Act”) is the principal law guiding investment activities in Mainland Tanzania.³⁹ Section 4 of the Act creates the TIC, an agency under the supervision of the Ministry of Planning, Economy, and Empowerment. The TIC's mandate includes both investment facilitation and investment promotion.⁴⁰ The functions of the TIC include, but are not limited to, assisting all investors (both foreign and domestic, and regardless of the size of the investment) to obtain all necessary permits, licenses, approvals, consents, authorizations, registrations, and other matters required by law for a person to set up and operate an investment.⁴¹ In other words, as contemplated under Section 16 of the Investment Act, the TIC is intended to be a “one-stop center” for all investors.

Under the Investment Act, large investors are eligible to receive a Certificate of Incentives, which provide them with a package of tax, immigration, guarantee, and land advantages. The minimum investment to qualify for and obtain a Certificate of Incentives is US\$100,000 for projects that are wholly owned by Tanzanian citizens and US\$300,000 for projects that are wholly owned by foreign investors or if a joint venture.⁴² Other than this difference in financial thresholds, the Investment Act does not appear

³⁹ Investments in Zanzibar are administered under separate legislation, which is beyond the scope of this diagnostic.

⁴⁰ Investment Act, Section 5.

⁴¹ Investment Act, Section 6.

⁴² Investment Act, Section 2. “Foreign investor” in the case of a natural person means a person who is not a citizen of Tanzania. In the case of a company, “foreign investor” means a company incorporated under the laws of any country other than Tanzania in which more than fifty percent of the shares are held by a person who is not a citizen of Tanzania. In the case of partnerships, “foreign investor” means a partnership in which the partnership controlling interest is owned by a person who is not a citizen of Tanzania.

to discriminate against foreign investors and in favor of domestic investors.

The incentive guarantees available to holders of Certificates of Incentives – both foreign and domestic – include:

- Investments are protected against nationalization and expropriation. Tanzania is a member of both the Multilateral Investment Guarantees Agency (MIGA) and the International Center for Settlement of Investment Dispute (ICSID).
- Zero percent import duty on project capital goods, computers and computer accessories, raw materials and replacement parts for agriculture, animal husbandry and fishing, human and livestock pharmaceuticals and medicaments, motor vehicle in completely knocked down form, and inputs for manufacturing pharmaceutical products.
- Ten percent import duty for semi-processed inputs and spare parts other than for motor vehicles.
- Fifteen percent import duty for fully processed inputs and motor vehicle spares.
- Twenty-five percent import duty for final consumer goods.
- Abolition of the mandatory pre-shipment inspection on imported raw materials that have zero rate of import duty.
- Introduction of pay and refund scheme for excise duty paid on fuel purchased by eligible companies.
- Fifty percent expensing of capital expenditure for all classes of assets. In subsequent years, implement wear and tear allowances range from 12.5 percent to 37.5 percent, depending on the class of capital goods.
- Value-added tax (VAT) exemption on ground transport run by tour operators; milk packaging materials; computers, printers, and accessories; hospital

equipment; drugs used by victims of HIV, malaria and TB; and locally produced yarn.

- Deferment of VAT payment on project capital assets.
- Import duty drawback on raw materials used to produce goods for exports and deemed exports.⁴³
- Locally produced building materials are deemed to be capital and subject to VAT deferment.
- Zero-rate VAT on exports.
- Straight-line depreciation allowance on capital goods.
- Indefinite carry-forward losses against future profits.
- Corporate tax rate of 30 percent and withholding tax rates on dividends (10 percent) and loan interest (0 percent) in both priority and lead sectors.⁴⁴
- The right to transfer out of Tanzania 100 percent of foreign exchanged earned, profits, and capital.
- The ease of obtaining other permits such as resident/work permits, industrial licenses, and trading licenses.
- Automatic permit of employing five foreign nationals on the project. Additional

⁴³ Deemed exports cover locally produced or manufactured goods which are sold to foreign agencies or entities operating in Tanzania and which are exempt from payment of import duties.

⁴⁴ Investment opportunities in Tanzania are separated into two categories: Lead Sectors and Priority Sectors. Lead Sectors include agriculture and livestock, mining, and infrastructure (road construction, bridges, airports, railways, generation of electricity, telecommunications, water services and export processing zones). Priority Sectors include air aviation, commercial buildings, commercial development and micro finance banks, processing for export, geographical special development areas, human resource development, manufacturing, natural resources including fishing, rehabilitation and expansion, radio and television broadcasting, tourism and tour operation, and transport and construction.

persons above five are considered, taking into account the availability of qualified Tanzanians, complexity of the technology employed by the business enterprise, and agreements with the investors.

Although the Investment Act does not apply to the mining and oil exploration sectors,⁴⁵ Tanzania offers additional investment incentives these areas.⁴⁶

⁴⁵ See Investment Act, Section 2. Mining and oil explorations activities are covered under the Mining Act 1998 and the Petroleum (Exploration and Production) Act 1980, respectively.

⁴⁶ Persons investing in mining are eligible for the following incentives:

- Zero percent import duty and VAT for all capital goods, spare parts, explosives and other supplies, and fuels and oils.
- A corporate tax rate of 30 percent and a capital allowance of 50 percent on the first year of income. In subsequent years the rates range from 12.5 percent to 37.5 percent, depending on the class of capital goods.
- An additional 15 percent capital allowance on un-redeemed qualifying capital expenditure for those invested as of July 2001.
- Existing investors are allowed to defer payment of royalty or obtain a royalty refund when cash flow is below zero.
- Royalty of three percent (five percent in the case of diamonds).
- No tax, duty, fee, or other fiscal imposed on dividends.
- No capital gains tax.
- Indefinite carry over of losses against future profits.
- Five percent duty and VAT, but only after the first five years of commercial production.
- Yearly appreciation of un-recovered investment capital.

Persons investing in oil exploration are entitled to the following incentives:

- Long exploration period of four (initial), four (first extension), and three (second extension) years, totaling eleven years.
- Relatively large exploration areas.
- Fully negotiable work program and economic terms (cost oil recovery and profit oil split).
- Maximum TPDC participation capped at 20 percent (formerly 50 percent).
- Income tax and royalty paid for by TPDC on behalf of the concessionary company.
- No signature on production bonus payment.
- Full allowance for un-recovered exploration costs incurred under earlier PSA's in any contract area by the same companies that make a discovery in a subsequent PSA.
- No import taxes on all equipment used in petroleum exploration.
- No foreign exchange restrictions.
- Recourse to international arbitration.
- Economic basement interpretation allowed for determination of exploration well total depth.

Persons applying for a Certificate of Incentives must pay a US\$100 fee, complete a four page Application for Registration, and submit the following documents: (a) three copies of the project's business plan/feasibility study; (b) three duly filled copies of the Application for Registration; (c) a copy of the company's memorandum and articles of association; (d) a certified copy of the certificate of incorporation; (e) evidence of sufficient finance capital available to implement the project; (f) evidence of land ownership for the location of the project; (g) a company board resolution to register the project with the TIC; (h) a project implementation schedule; (i) a cover letter; and (j) in the case of an expansion or rehabilitation project, a copy of audited account for the past three years. Certificates of Incentives are usually granted within 14 days, at which time the applicant is required to pay an additional US\$750.

Under Section 20 of the Investment Act, "strategic or major" investors may be eligible for additional investment incentives. Currently, a strategic or major investor is one who satisfies the following criteria: (a) the investment is at least US\$20 million; (b) the investment creates employment; (c) the investment brings technology into Tanzania; (d) the investment has the potential to create exports; and (e) the investment is located in a disadvantaged region of Tanzania. Applications from strategic investors are reviewed on a case-by-case basis by the National Investment Steering Committee (NISC), which comprises Ministers responsible for Industry and Trade, Agriculture, Investments, Finance and Lands, the Attorney General, and the Governor of the Bank of Tanzania. The NISC has received about 15 such strategic investor applications and granted all but two or three.

As previously noted, other than the higher investment threshold for a Certificate of Incentives (US\$300,000 foreign versus US\$100,000 domestic), Tanzania does not discriminate against foreign investors. One hundred percent foreign ownership is allowed in almost every sector and type of business. Investors may also transfer out of Tanzania 100 percent of foreign exchanged earned, profits, and capital. The law does not require that local investors hold a certain percentage of a firm's equity or that the share of foreign equity be

reduced over time. Nor does it require investors to purchase from local sources, or require local content in exports. Similarly, investors are not subject to any "offset" requirements with respect to the approval of major procurement projects.

On the other hand, under Tanzanian law, non-citizens and foreign companies are prohibited from owning land, which can present a barrier to foreign investors. However, recent amendments to the Land Act of 1999 allow foreign investors to obtain long-term leases of up to 99 years for land in either of two ways. First, foreign investors may obtain subleases created out of the rights of occupancy granted by the Tanzanian who holds the rights to the land. Second, foreign investors may obtain derivative rights to land from TIC for the duration of their investment.

In order to enhance the efficient operation of the TIC as a "one-stop center" for investors, Section 16 of the Investment Act requires that all government agencies and other public authorities cooperate fully with the TIC in the performance of its functions. For example, if a license or approval from another authority is required by an investor, the TIC works with the relevant authority to secure the necessary license or approval. Under Section 16(3), the relevant authority must issue the required license or approval (or serve a written objection) within 14 days of receipt of the request. In addition, under Section 18, the TIC coordinates the establishment of all business enterprises to which the Act applies, including incorporation or registration of business enterprises, the filing of VAT forms, the filing of investment registration forms, facilitating the necessary licenses, approvals, facilities, or services, and the filing of immigration forms. Under Section 18(2), the requisite certificates for incorporation or registration must be issued within 14 days.

Implementing Institutions

TIC is the primary implementing institution for investment facilitation and promotion in Tanzania. Its principal office is located in Dar es Salaam, and it has two zonal offices in the Kilimanjaro and Mwanza regions. It plans to open an additional zonal office in the Mbeya region. A cross section of stakeholders stated that TIC is a well managed and efficiently operated agency that has successfully carried

out its mandates under the Investment Act. TIC maintains an active website with up-to-date information about investment facilitation and promotion, although stakeholders said that they would like to see more information on the website concerning local business licensing (Schedule B licenses) and sector-specific licensing.

In order to strengthen and expedite the facilitation of investment services and its image as a "one-stop center" for investors, the TIC also has permanently stationed at its Dar es Salaam offices staff from six other government agencies that are the most frequently involved in investment projects. The agencies that have permanently stationed staff at the TIC are: **Ministry of Lands, Housing, and Human Settlement Development** (which assists investors in obtaining rights to land); the **Tanzania Revenue Authority** (which assists investors with national tax issues, including obtaining a Tax Identification Number); the **Immigration Department** (which assists investors in obtaining work permits); the **Ministry of Labor, Employment, and Youth Development** (Class B work permits); the **Ministry of Industry, Trade and Marketing** (which assists investors in obtaining Schedule A business licenses); and **BRELA**.⁴⁷

TIC also promotes domestic investment projects and SMEs by identifying feasible projects from domestic investors seeking partnership, technology, equity financing, and loans throughout Tanzania. TIC's investment promotion efforts include both general and sector-specific programs at the regional, national, and international levels. The TIC also advocates the removal of costly legal and regulatory frameworks to facilitate easier company registration and business licensing, develops entrepreneurship capabilities, and assists SMEs in securing capital for their projects. For example, there have been discussions about allowing local investors to spread the US\$100,000 investment threshold required for a Certificate of Incentives over the first five years of the investment project (or US\$20,000 per year), thus making the package of investment incentives more accessible to

⁴⁷ Currently, the zonal offices in the Kilimanjaro and Mwanza regions do not have staff from these other agencies.

SMEs. The TIC's investment promotional efforts have not gone unrecognized. In 2007, the World Association of Investment Promotion Agencies (WAIPA), which is under the United Nations Conference on Trade and Development (UNCTAD), named TIC the world's best investment promotion agency for after-service care. More than 200 WAIPA members had competed for the award.

Investments In Tanzania by Economic Sector

Economic Sector	% of Total
Mining & Petroleum	23%
Manufacturing	19%
Telecommunications	17%
Construction	17%
Financial Institutions	5%
National Resources	5%
Agriculture	5%
Tourism	5%
Transportation	2%
Services	2%

(Source: Tanzania Investment Center)

Tanzania has also established NISC. NISC comprises Ministers responsible for Industry and Trade, Agriculture, Investments, Finance and Lands, the Attorney General, and the Governor of the Bank of Tanzania. The main function of NISC is to resolve critical cross-sectoral investment issues. NISC also considers applications from strategic and major investors under Section 20 of the Investment Act.

Total Foreign Direct Investment in Tanzania (in Millions US\$)

2001	2002	2003	2004	2005	2006
\$267	\$430	\$527	\$470	\$473	\$490

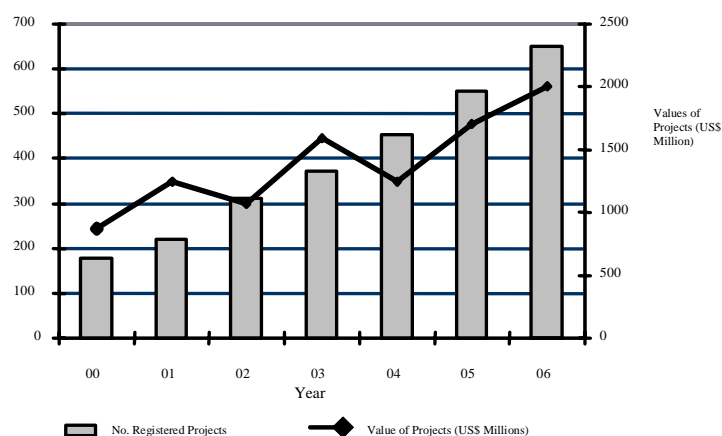
(Source: Tanzania Investment Center)

TIC's efforts have resulted in substantial growth in investment (including foreign investment) in Tanzania in recent years. Between September 1990 and December 2005, 3,531 investment projects (both domestic and foreign) were registered with the TIC, with a total worth of about US\$17.2 billion and employing 609,259

people. The number of projects registered with the TIC has increased from 111 projects (worth US\$650 million) in 1996 to 550 projects (worth US\$1.72 billion) in 2005. Between 2000 and 2006, the number of registered investment projects (both domestic and foreign) increased from 180 to 679, while the total value of projects increased from about US\$250 million to about \$2 billion. Between 2005 and 2006, the number of registered investment projects increased from 550 to 679, the number of investors increased from 8,948 to 11,229, and the total value of investments increased from about US\$1.72 billion to about US\$2 billion.

Investment Projects and Values 2000-2006

(Source: Tanzania Investment Center)



The structure of ownership of investments that registered with TIC between 1990 and 2006 include 45 percent owned by domestic investors, 25 percent owned by foreign investors, and 30 percent joint ventures (foreign and domestic investors). During that same period, although investments were spread across various economic sectors, they clustered primarily in four: mining and petroleum, manufacturing, telecommunications, and construction.

Foreign direct investment (FDI) has been successful in Tanzania, going from almost zero 20 years ago to an average of about US\$444 million per year for the years 2001-2005. During the 20-year socialist period, Tanzania did not welcome FDI, and even between 1986 and 1990, it averaged less than US\$300,000 per year. Between 2001 and 2006, however, FDI into

Tanzania grew significantly, averaging about US\$443 million per year.

Supporting Institutions

TIC has received support from at least six other **agencies** in the implementation of its mandate under the Investment Act. The six agencies that are the most frequently involved in investment projects (Lands, Revenue, Immigration, Labor, Industry and Trade, and BRELA) have placed staff at TIC offices in Dar es Salaam to strengthen and facilitate the provision of investment services. NISC provides support to TIC by working to resolve cross-sectoral critical investment issues.

In addition, the **United Nations Industrial Development Organization (UNIDO)** has worked with the TIC, the Ministry of Industry, Trade, and Marketing, and the Ministry of Planning, Economy and Empowerment in investment promotion. UNIDO assists the TIC in its Africa-Asia investment initiative, which is focused on encouraging Malaysian, Chinese, and Indian investment in Tanzania. Over the past several years, UNIDO has also worked with fifteen Sub-Saharan African countries, including Tanzania, to support their investment promotion agencies, to strengthen their capacity to target, inform, and service the categories of investors that can deliver the types of FDI that are desired, and to better link FDI to domestic industry. In 2003, UNIDO produced a survey to view FDI in Sub-Saharan Africa in terms of motivation, operations characteristics, perceptions, and future plans. The survey revealed the economic sectors that were growing, the countries and investment promotion agencies that were outperforming others, and the amount of new investment that existing foreign investors were prepared to make. From these findings, UNIDO made a number of conclusions and recommendations to the various investment promotion agencies, including the need to develop after-service care capabilities and a more coordinated approach among investment promotional agencies for regional investment promotion. As noted above, the WAIPA has since named TIC the world's best investment promotion agency for after-service care.

In 2005, UNIDO conducted another survey aimed at taking a more in-depth look at some of the issues that surfaced in 2003. In particular,

the 2005 survey developed detailed profiles of the different types of foreign investors that operate in the region and examined the variations in characteristics between and within the groups. The survey also investigated the impact that different types of FDI have on the host economies, and in particular, the effects on technology and know-how dissemination, skills development, exports, expenditures on local inputs, and employment growth. Both surveys provided empirical support to the investment promotion agencies in the region as they sharpen their strategies and strengthen their policy advocacy function.

Notwithstanding the high support and praise for TIC, most **business groups and lawyers** believe that most investors still need the assistance of various other persons (e.g., lawyers, accountants) to establish a business entity and investment in Tanzania. Depending on the level of need, these support services may or may not be readily available in Tanzania. Only a few medium- and large-sized **law firms** with international experience and clients operate in Tanzania. Similarly, the number of large and experienced **accounting and auditing firms** is limited. Such support services are expected to grow as the economy grows and demand increases. Some SMEs perceive the cost of legal and accounting services as prohibitively high.

Social Dynamics

Generally, stakeholders are pleased with the performance of TIC and the growth in investment, particularly FDI, in recent years. Most stakeholders believe that the top levels of government strongly advocate, support, and encourage investment, including FDI. But some stakeholders express the view that lower levels of government, particularly some ministries, often act in ways that are inconsistent with overall investment and growth. (These stakeholders could not, however, provide concrete examples of where a particular act or policy of a Ministry may have stifled investment.) The more compelling explanations offered for the lack of even greater investment include the banking system's focus on short-term lending rather than long-term development, and the amount of money banks are putting into government bonds, thereby decreasing the funds available for investment and driving up interest rates. In addition, stakeholders identified Tanzania's infrastructure, particularly the

roadways and railways, and the shortage of skilled labor, including managerial and technical, as major factors impeding FDI.

Recommendations

- Expand TIC's efforts to assist SMEs. The financial threshold for a Certificate of Incentives for domestic investors should be revised to make the package of fiscal and non-fiscal benefits available to SMEs.
- Expand TIC's website to include all relevant laws, regulations, forms and instructions, including sector-specific licensing and permit requirements, and local authority licensing requirements. TIC should work more closely with local authorities to improve users' access to information and to improve inter-agency coordination.
- Add staff to TIC's zonal offices in the Kilimanjaro and Mwanza regions from other essential agencies (e.g., Ministry of Lands, Tanzania Revenue Authority, Immigration Department, Ministry of Labor, Ministry of Industry, and BRELA) to facilitate the investment process and to make these agencies more accessible to persons in areas outside of Dar es Salaam.
- Business groups such as the chambers of commerce should encourage the government to eliminate unnecessary and overly burdensome rules and regulations (e.g., licensing – see this report's chapter on Dealing with Licenses) that inhibit entry and expansion of businesses.

Privatization of Public Enterprises

Proponents of privatization believe that private market actors can more efficiently deliver many goods and services than the government due to free market competition. Free market competition over time leads to lower prices, improved quality, increased innovation, higher output, and more choices for consumers. Competition provides the impetus for firms to operate efficiently; firms that fail to compete in a free market eventually lose market share and go out of business. State-owned enterprises, on the other hand, generally are shielded from the rigors of competition. The failure of state-

owned enterprises to operate efficiently is not disciplined by the actions of other market participants (competitors) because there are no other participants. The goal of privatization is to create new opportunities for private investment, and, over time and with an effective competition law and policy, will lead to lower prices, higher output, improved quality, and greater choices for consumers.

Legal Framework

In 1993, Tanzania embarked on the privatization of its public enterprises. The **Public Corporations Act, 1992** ("Public Corporations Act") the Presidential Parastatal Sector Reform Commission (PPSRC), an independent agency, for this purpose. PPSRC consists of seven to nine members the President appoints upon the advice of the Minister. Pursuant to Section 24, members must have adequate knowledge and experience in business affairs, legal affairs, management of government and public affairs, and financial matters. PPSRC's principal functions include, but are not limited to: (a) prepare and maintain a list of all public corporations and make recommendations on which should be declared specific public corporations; (b) formulate and execute restructuring plans for specific public corporations; and (c) supervise, monitor, and enforce restructuring procedures and agreements.⁴⁸

PPSRC is responsible to the President for ensuring the implementation of reform of the public corporations sector.⁴⁹ However, PPSRC cannot sell or dispose of any public corporations shares or assets without written consultations with the Treasury, the responsible Minister, and the Attorney General.⁵⁰ Financial and other conflicts of interest by members are covered by Section 28(6); members with such conflicts cannot participate in any discussion or decision relating to matter related to the conflict. Funding for PPSRC is provided under Section 33 and includes fees paid to the PPSRC and money from the state (collectively the "General Fund"). There is also a Special Fund consisting of all proceeds from the sale or restructuring of public corporations. This Special Fund provides financial support to PPSRC for the sale or

⁴⁸ Public Corporations Act, Section 22(1).

⁴⁹ Public Corporations Act, Section 22(2).

⁵⁰ Public Corporations Act, Section 22(3).

restructuring of public corporations. Under Section 35, PPSRC must maintain a book of accounts and records that an independent auditor audits. The audited accounts and auditor's report are submitted to the responsible Minister, the Controller, and the Auditor General.

The privatization process begins when the Treasury Registrar declares a public enterprise to be a "specific public enterprise," thereby putting it under the authority of PPSRC for divestiture. A Divestiture Technical Team reviews the public enterprise and the recommended divestiture strategies and evaluates the bids. The initial preparation for privatization involves carrying out financial, commercial, technical, and organizational appraisals, a legal review both of the enterprise and the regulatory environment, and preparation of an initial valuation of the enterprise. The PPSRC next prepares a sales memorandum and prospectus. Strategies to market the offer include targeted advertisements to both local and international newspapers and industry and trade searches to identify potential buyers.

A simple and transparent divestiture process that follows international tender procedures is incorporated in PPSRC's **Privatization Procedures and Process Guidelines** (issued in November 1999). The operating procedures in the privatization process are based on a pre-qualification stage and a final selection stage. In the pre-qualification stage, firms are invited to express an interest in bidding, list their qualifications, and demonstrate their access to adequate financial resources. PPSRC evaluates each proposal on a pass or fail basis against a pre-determined benchmark. The firms that pass are "pre-qualified" and can take part in the final selection stage. A single pre-defined, quantifiable financial parameter determines the winner of the final stage. Generally, the winning bid is determined by price. In some transactions, however, the financial parameter may take a different form than price, such as a concession fee or tariff. All transaction bidding normally takes place in a public forum, with the presence of the media, where bids are opened in public.

Stakeholders generally believe that PPSRC's procedures have assured transparency in the tender process and obtaining fair market value

for public assets. Similarly, PPSRC's internal review both of the enterprise and the regulatory environment mitigates concerns among stakeholders that the privatization process merely converts public monopolies into private monopolies, creating highly concentrated industry sectors or otherwise creating market structures that deter new entry and expansion. In several instances, the government sold public companies in multiple units rather than as a single entity. In the instances where the state retained an ownership interest in the newly privatized company, it is most often a minority interest. In the sectors that raised competitive concerns in the connection with privatizations, the government created specific regulatory bodies to protect consumers and to ensure continued investment. Among these regulatory bodies are: the Energy and Water Regulatory Authority (EWRA), the Surface and Maritime Transport Regulatory Authority (SUMATRA), the Telecommunications Regulatory Authority (TCRA) and the Tanzania Civil Aviation Authority (TCAA).

Implementing Institutions

The implementing institution for privatization of public enterprises is **PPSRC**, which consists of seven to nine members the President appoints. Various staff members and a technical support team consisting of representatives from key ministries and the Attorney General's Chambers, who review the public enterprise and the recommended divestiture strategies and evaluate the bids, support the PPSRC.

From its inception in 1993 through June 30, 2006, PPSRC concluded 967 divestiture transactions, composed of 329 units (out of 366 units listed for divestiture) and 638 non-core assets.

The forms of privatization have ranged from the sale of the State's entire stake, partial sales, concessions, leases, and management contracts, to hiring off and sale of non-core business activities, to the opening of previously restricted sectors to the new private entrants. Units were divested to Tanzanians, foreign investors, and joint ventures of local and foreign investors. Tanzanians have purchased the majority of the privatized assets. As of June 30, 2006, Tanzanian investors had wholly acquired 121 companies (180 units) and foreign investors had wholly acquired; 27 companies (27 units). Where

privatization has involved both domestic and foreign investors, a large percentage of the shares in the newly privatized company are either owned by Tanzanians or held in the Government's Privatization Trust to be sold to Tanzanians as the country's capital market grows larger and stronger.

Although a few transactions raised some concerns, generally stakeholders believe that PPSRC and the privatization process have been open, transparent, and fair. Many of the newly privatized companies had been carrying huge

Performance Summary of the Parastatal Sector Reform Program (as of June 30, 2006)		
<i>Core Assets</i>		
<u>Description</u>	<u>Companies</u>	<u>Units</u>
Completed Divestitures at Sale Agreement Stage	188	244
Completed Divestitures at MOU Stage	17	20
Parastatals set for Liquidation	65	65
Total Divestitures	270	329
<i>Non-Core Assets</i>		
Description	Companies	Units
Non-Core Assets	62	638

(Source: PPSRC Annual Review 2005/2006)

debts and were heavily subsidized when the State operated them. Today, as privatized firms, the majority are turning profits and paying taxes. Sixteen of the newly privatized enterprises are now among the top 100 taxpayers in Tanzania, contributing to, rather than drawing from, the government's tax base. Three examples often cited by stakeholders include Tanzania Breweries Ltd., Williamson Diamonds Ltd., and Blankets & Textile Manufacturers Ltd. As public enterprises, these enterprises were incurring significant losses, received little or no infusion of investment capital, and were poorly managed. Since being privatized, all three earn profits, create employment opportunities, and pay taxes. In addition, as a result of privatization, several companies that ceased operating as

public companies have reopened for business as private companies, thus creating new jobs.⁵¹

The PPSRC's legal mandate is set to expire at the end of 2007, but it is seeking an extension so that it may complete the remaining divestiture work. About 35-40 transactions remain in the PPSRC's portfolio for divestiture, and mainly involve the major utility and infrastructure companies.

Supporting Institutions

Various stakeholders, including **attorneys** representing both winning and losing bidders, closely monitor the privatization process. In addition, the **media** is generally present at the public opening of all bids and routinely reports on all transactions.

Social Dynamics

The majority of privatization has already occurred in Tanzania; about 90 percent of units listed for divestiture have been privatized. The transactions that remain principally involve the major utility and infrastructure companies. Stakeholders understand the complexity of these companies and their importance to Tanzania's overall socioeconomic development. They further understand that the privatization of these enterprises will require their attention and likely will entail some political problems. Overall, however, stakeholders believe that privatization is necessary to encourage new investment in these important economic sectors.

Recommendation

- Extend PPSRC's mandate to allow it sufficient time and staff to properly complete the remaining divestiture work. Provide technical assistance with respect to the divestiture of the major public utility and infrastructure companies as needed.

⁵¹ The list of reopened companies is long, but included among them are The New Africa Hotel, Fireboards Africa, Kilimanjaro Hotel, Tanzania Tea Authority, Sabuni Industries Limited, and Tabora Textile Mill Ltd., to name a few.

Competition Law and Policy

An effective competition law and policy is an important tool for achieving and maintaining good economic performance, including enhancing efficiencies, innovation, and consumer welfare. Competition creates the incentive for firms to operate efficiently and keep prices low and the quality and choice of goods and services high. Firms that fail to compete eventually lose market share and go out of business.

However, free markets do not automatically create a competitive environment. Cartelization and monopolization often emerge in markets that are unregulated, resulting in inefficiencies, higher prices, lower output, and fewer choices for consumers. An effective competition law and enforcement agency is necessary to ensure that markets remain open and free so that consumers have access to quality goods and services and that businesses can compete on the merits of their work.

Legal Framework

The **Fair Competition Act** ("Competition Act"), which was passed in 2003 and took effect in May 2004, is the principal law regulating competition and consumer protection in Tanzania. The stated objectives of the Competition Act are to increase efficiencies in production and distribution, promote innovation, maximize resource allocation, and increase consumer welfare.⁵²

The Competition Act's substantive prohibitions relating to competition are contained in Section 8-11; they are fairly well written and thorough. Section 8 prohibits non-cartel agreements among competitors and vertical agreements that harm or are likely to harm competition. Agreements under Section 8 are analyzed under a rule of reason.⁵³ Section 9 declares all horizontal price-fixing, group boycotts, and bid-rigging agreements illegal *per se*. However, horizontal market allocation agreements

(customer and territory) are not included among the illegal *per se* agreements under Section 9. Under Section 10, abuses of dominance are subject to a rule of reason – the effect or likely effect of conduct must be harm to competition.⁵⁴ Section 11 subjects mergers and acquisitions to a rule of reason analysis and prohibits only those that "create or strengthen a position of dominance in the market" (i.e., create or strengthen market power). Any merger or acquisition exceeding a threshold of TZS800 million is subject to prior notification.

The Competition Act applies to mainland Tanzania, but not to Zanzibar.⁵⁵ State enterprises and local State bodies are subject to the Competition Act to the extent that they are engaged in trade.⁵⁶ Domestic and foreign companies are treated equally. The Competition Act contains a limited number of exemptions, which are listed in Section 14, and includes exports cartels and agreements relating to remuneration, conditions of employment, hours of work, and working conditions of employees. In addition, under Sections 12 and 13, the Competition Commission may grant exemptions to otherwise anticompetitive agreements and merger under specific and limited conditions that are substantially consistent with enhancing efficiency and consumer welfare.⁵⁷ In the case of the major utilities sectors (harbors, railways, telecoms, water and electricity), the government has established a number of sector-specific

⁵⁴ A "dominant position" requires both a relevant market share in excess of 35 percent and some market power (the ability to "profitably and materially restrain or reduce competition in [the relevant] market for a significant period of time"). See Competition Act, Section 5(6). Abuse of dominance also appears to be limited to exclusionary conduct; exploitive behavior (e.g., charging high prices) is not prohibited by Section 10 or any other part of the Competition Act.

⁵⁵ Competition Act, Section 6(1).

⁵⁶ Competition Act, Section 6(1).

⁵⁷ Generally, the Competition Commission may grant an exemption to an otherwise anticompetitive agreement or merger where it results or is likely to result in a net public benefit through greater efficiency and the harm to competition is no broader than is reasonably necessary to attain the benefit. In addition, an exemption may be granted in the case of an anticompetitive merger where one of the merging parties faces actual or imminent financial failure, and the merger offers the least anticompetitive use of the assets of the business.

⁵² Competition Act, Section 3.

⁵³ Under the Competition Act, there is a presumption that such an agreement is not anticompetitive if none of the parties to the agreement has a dominant position within the relevant market and either: (a) the combined relevant market share of the parties to the agreement does not exceed 35 percent; or (b) none of the parties to the agreement are competitors. See Competition Act, Section 8(3).

regulatory bodies to protect consumers from unjustified rate increases and to ensure continued investment in these sectors. The regulatory bodies established thus far include EWRA, SUMATRA, TCRA, and TCAA.

The Competition Act provides the Competition Commission with various investigative powers. The Competition Commission may open an investigation on its own initiative, in response to a public complaint, or at the request of a regulatory body.⁵⁸ Under Section 71, the Commission can compel written information, documents, and oral testimony. Section 71(5) authorizes the use of “dawn raids” upon application to the Competition Tribunal and subject to appropriate due process protections. The effectiveness of these investigative powers remains to be seen since the Competition Commission is just beginning to conduct investigations.

The Competition Act provides various remedies and sanctions to deter violations and restore competition. Section 58 empowers the Commission to issue compliance orders requiring a person to refrain from conduct in violation of the Act or to undertake actions to comply with the Act. Section 58(4) gives the Commission the power to issue interim compliance orders pending a proper consideration of a matter if there is imminent danger of substantial damage to a person if a threatened or likely offense is committed or if there is other good reason for making such an order. In the case of an anticompetitive acquisition, Section 58(5) authorizes the Commission to issue an order requiring the sale of shares or assets, or declaring the acquisition void. In addition, Section 58(8) authorizes the Commission to enter into voluntary compliance agreements whereby a person agrees to refrain from certain conduct or to sell certain shares or assets. Compensatory damages and fines of between five percent and 10 percent of the company's annual turnover are authorized under Sections 59 and 60, respectively. However, the Competition Act does not contain any criminal penalties. All Commission

⁵⁸ Competition Act, Sections 68-69. Additionally, the Commission must conduct an inquiry where the Minister directs such inquiry. Competition Act, Section 68(3).

orders are enforceable as order of the High Court.⁵⁹

Implementing Institutions

The principal implementing institutions under the Competition Act are the **Fair Competition Commission (FCC)** and the **Fair Competition Tribunal (FCT)**. FCC is an independent body composed of five members serving staggered terms. The President appoints the Chair and the Minister of Industry, Trade, and Marketing appoints the other members. Members must have knowledge of, or experience in, industry, commerce, economics, law, public administration, or other related fields. Members may only be removed for cause.⁶⁰

FCC's functions are enumerated in Section 65 and include: investigating policies of regulatory authorities to determine their effects on competition and consumer welfare; participating in deliberations and proceedings related to competition and consumer welfare; making representations to governmental and other bodies in relation to competition and consumer welfare; and consulting with consumer bodies, regulatory authorities, business persons, and other interested persons.

Funding for FCC is provided for under Section 78(2) of the Competition Act and is comprised among other sources, fees not exceeding 2.5 percent of business licenses. At the time the Competition Act was passed, businesses paid an annual licensing fee. Under a new law, the Business Activities Registration Act of 2007, businesses will pay a one-time licensing fee rather than a recurring annual fee. Stakeholders are concerned that this may result in underfunding of FCC.

Until May 2007, FCC had a staff of three. A recent hiring effort has expanded the staff to

⁵⁹ Voluntary compliance agreements under Section 58(8) of the Competition Act are not enforceable as an order of the High Court.

⁶⁰ Specifically, a member may be removed for (a) bankruptcy; (b) conviction of a crime; (c) resignation because of a conflict of interest; (d) ill health or physical or mental impairment; (e) failure to attend at least two-third of Commission meetings in a 12 month period; or (f) material breach of the code of conduct. Competition Act, Section 64(1).

about 40, including a professional staff of 26 lawyers and economists spread among both the competition and consumer protection missions. TFCC's lawyers are not formally trained in competition law and economics: competition law is new to Tanzania and is not offered in schools. Most of the staff economists have undergraduate degrees in economics, and a few have post-graduate degrees. Recently, the technical staff participated in a two-week training program sponsored by the Institute for Public Private Partnership. The program focused on the substantive competition laws of the European Union and the United States. Beyond the Indigenous Peoples Partnership Program, individual staff members have received limited training relating to investigative techniques and mergers, including programs sponsored by UNCTAD (Investigative Techniques, Zambia, October 2004) and USAID (Investigating Mergers, South Africa, June 2007). In addition to lacking training in both substantive law and investigative techniques, FCC lacks necessary infrastructure, including a law and economics library, a written operating manual with internal rules, and a website.⁶¹

FCT is the second principal implementing institution under the Competition Act. Under Section 61 of the Competition Act, any person that has a pecuniary or material grievance arising from an FCC decision may appeal such decision to FCT. FCT consists of a chair and six other members. The Chair must be a person holding the office of a Judge of the High Court. All other members must be qualified based on their knowledge of, or experience in, industry, commerce, economics, law, or public administration.⁶² FCT has all the powers of the High Court in respect to (1) enforcing the attendance of witnesses and examining them; (2) compelling the production of documents; and (3) examining witnesses abroad.⁶³ The Competition Tribunal's decisions are final.

FCT members were appointed in 2005, and in November 2006 FCT issued its Rules. Two advisors, one economic advisor, and one legal advisor support the members. FCT has not

received any training in competition law and economics. In addition, like FCC, FCT lacks the necessary infrastructure of a law and economics library and website.

Supporting Institutions

A **cross-section of stakeholders**, including business, public actors, and academia, actively participated in drafting the Competition Act. However, since then stakeholders have done little to publicize the new law and to train and educate others about the role of competition law and policy in a market economy. Common to all these stakeholders is the understanding that there is a limited amount of expertise and experience in competition law and policy within Tanzania and that substantial support is needed from foreign experts.

Stakeholders believe that there is a strong understanding and support for the economic efficiency and consumer welfare goals of competition law and policy at the top of government (i.e., the President) and at the PPSRC, but voiced concern about whether Parliament and the various Ministries have a similar understanding and appreciation for competition. Most stakeholders believe that this gap is due to a lack of training and education about the role of competition rather than an entrenched resistance to a liberalized economy.

Non-government trade and industry associations are aware of the Competition Act, but have done little to educate and train their members about the role of competition law and the mandate of the Competition Commission. There are no publications and training programs about the new law.

Educational institutions recognize the need to provide training and education on the Competition Act. Currently law schools do not offer a competition law course, although they are considering offering such a course

For **practicing attorneys**, there is no continuing legal education requirement and the few CLE programs that have been offered have not included a program on competition law. The **Tanganyika Law Society** plans to offer a one-day CLE program on competition law in Dar es Salaam in February 2008. The Tanganyika Law Society and other stakeholders recognize the

⁶¹ Notwithstanding, the Competition Act does provide for the treatment of confidential information. See Competition Act, Section 76.

⁶² Competition Act, Section 83.

⁶³ Competition Act, Section 85(5).

need for such programs both in Dar es Salaam and other major cities in Tanzania.

Social Dynamics

The PPSRC, FCC, FCT, business groups such as the Tanzania Chamber of Commerce and the Confederation of Tanzania Industries, the Tanganyika Law Society, lawyers, and economists all generally believe that the President supports a culture of competition and that the State has successfully introduced competition into markets through the privatization of state-owned enterprises. Several of these stakeholders, however, most notably lawyers, expressed concern that the government, particularly Parliament and some Ministries, does not fully understand the role of competition law in a market economy and, more particularly, how other laws, regulations, and policies may affect a competitive market.

Both government and non-government stakeholders voiced concern that a weak competition law and enforcement policy would result in unchecked anticompetitive behavior inconsistent with economic efficiency and consumer welfare. At the same time, these stakeholders were equally concerned that an overly aggressive enforcement policy would stifle efficient and consumer welfare-enhancing conduct and new business investment. In raising these concerns, all stakeholders noted that an effective competition law and policy requires more than a well-trained and effective FCC. It also requires an understanding and commitment from the various levels of government. Most stakeholders do not believe that there is entrenched resistance within the government to a liberalized market economy, but do believe that most persons in higher positions within the government do not fully understand the role of competition law and policy in a market economy. Most are optimistic that this can be cured through proper training and education.

Recommendations

- Develop long-term internal training programs for FCC staff and FCT, including,

but not limited to, training in (a) substantive competition law; (b) antitrust economics; (c) investigative techniques (including interview techniques, drafting document requests, planning an investigation, etc.); (d) legal and economic analysis; (e) remedies; and (f) report writing.

- Develop internal operating and procedural manuals for FCC.
- Develop websites for FCC and FCT.
- Develop appropriate educational materials for industry and consumers.
- Place long-term (one-year) resident legal and economic advisors from foreign competition authorities at FCC to consult on all phases of investigations.
- Place FCC staff at foreign competition agencies for long-term training (three to six months).
- Develop a competition law curriculum for law schools, including both competition law and economics. Add competition law to the business school curriculum.
- Develop specific competition law training programs, materials, and brochures for other stakeholders, including (a) continuing legal education programs for practicing attorneys; (b) corporate compliance programs for businesses, trade associations, chambers of commerce, etc.; and (c) training for Ministers, Parliament, and other officials whose duties and responsibilities may affect competition. Training programs must be affordable and accessible to persons located throughout Tanzania.
- Develop training opportunities for members of the media.

DEALING WITH LICENSES

THE DOING BUSINESS RANKINGS (2006) Dealing with Licenses	
Tanzania / World	172 out of 175
Tanzania / Sub-Saharan Africa Region	42 out of 45

Introduction

It is a fact of civilized society that, where there are markets, there must also be some market regulation. National, regional, and local institutions of government are obliged to ensure that private enterprises play by a set of shared rules. Public institutions should require businesses to engage in lawful activity; to pay their employees wages; to observe general rules of health, environmental consciousness, and safety on behalf of their

employees, their customers, and their neighbors; and to contribute, by way of paying taxes, to the state's ability to provide core infrastructure, security, and social services. Indeed, some regulation by government is necessary, important, and good.

Too much regulation, though, is a problem, as the World Bank's Doing Business initiative has exhaustively exhibited in recent years. It is now well established that countries offering a business-friendly regulatory environment grow faster.⁶⁴ Such an environment consist of a relatively simple and clear set of rules for launching and operating a business that are easily accessed through such mechanisms as "one-stop shops." It also involves a willingness of government to refrain from regulating certain aspects of the market. For example, countries that do not bestow national and local authorities with duplicative or ultra-discretionary licensing powers, unduly restrict the right of employers to hire and fire at will, or perpetuate an unwieldy and complicated tax regime, are considered more business-friendly than those that do the opposite.

⁶⁴ Simeon Djankov, Caralee McLiesh, Rita Ramalho, Regulation and Growth (World Bank, March 17, 2006).

This chapter addresses the general licensing and regulatory environment in Tanzania as faced by many enterprises over the course of their operations. In short, conditions are poor. The World Bank ranks Tanzania among the worst in the world with respect to Dealing with Licenses – 170th out of 178 countries it surveyed in 2007. The details of the licensing regime have been substantially documented, most recently through a USAID-sponsored investor roadmap in 2004⁶⁵ and a government-sponsored business licensing review in 2006.⁶⁶ The government has identified licensing reform as a priority, as evidenced by the formation of a Better Regulation Unit within the Ministry of Planning, Economy, and Empowerment (MPEE) and the enactment in 2007 of the Business Activities Registration Act. But a great deal of work remains in order to reduce unnecessary government interference with private sector operations.

As detailed in this chapter, certain areas of Tanzania's business environment, such as foreign investment, have made considerable progress with respect to simplifying and streamlining regulations. Others, such as the registration of real and movable property for the purpose of accessing credit, remain mired in non-productive, unduly burdensome licensing and regulatory requirements. In some cases, such as the emergence of micro-enterprise lenders, there may not be *enough* regulation – that is, a lack of meaningful oversight may be leading to a system wrought with poor or even abusive habits.

Perhaps most importantly, as Tanzania continues its march toward an improved legal and regulatory structure, which substantially includes the decentralization of many state functions, the central issue is that of administrative *capacity* and *competence*. In other words, state, regional,

⁶⁵ USAID/Development Alternatives Inc., Tanzania Investor Roadmap: Primers on Regulations (2004).

⁶⁶ Bannock Consulting, Consulting Services for the Introduction of a Regulatory Business Licensing System (Final Report) (May 2006) An inventory of legislation relevant to business licensing is included in Annex 2 of the Bannock Report.

and local officials may have sound regulations to work with, worthy oversight objectives, or at least the will to do their best work, but lack the skills and resources to fulfill these obligations as needed.

Legal Framework and Implementing Institutions

In Tanzania, there are three licensing regimes for businesses, thus creating the potential for overlap, duplication, and multiplicity.

First, as discussed in the chapter on Starting a Business, all businesses in Tanzania must obtain a general business license issued under the **Business Licensing Act, 1972 (“Licensing Act”)**.⁶⁷ (In the future, once implementing regulations are in place, the authority for registration will fall under the **Business Activities Registration Act, 2007**).

Second, businesses may be subject to **licensing requirements** imposed under legislation that applies across economic sectors, including business activities involving manufacturing (the Industrial Licensing Act⁶⁸), food and drugs (the Tanzania Food and Drug Agency Act), health and safety (Occupational Health and Safety Act), standards (Bureau of Standards Act), and environmental issues (National Environmental Management Act).

Third, in addition to a general business license, businesses engaged in certain economic activities may be required to obtain **sector-based licenses** (e.g., the Banking and Financial Institution Act (banking license) and the Auctioneers Act (auctioneer license)). The most recent comprehensive study of sector-specific licensing laws in Tanzania identified at least 63 statutes, 37 more than had been identified in previous studies.⁶⁹ Moreover, these sector-specific laws are administered by 52 different implementing agencies at the national level *alone*. It is estimated that more than 1000 agencies administer permits and licenses at the various other levels of government.

⁶⁷ Section 5 of the Licensing Act expressly exempts certain businesses from the requirements of the Act. General business licenses are discussed in the chapter on Starting a Business.

⁶⁸ Industrial licenses are also discussed in the chapter on Starting a Business.

⁶⁹ See Bannock Report, *supra* note 66.

In addition, many licensing and regulatory functions, particularly those involving land, have been subject in recent years to an effort to decentralize state functions. The **Local Government (District Authorities) Act** was passed in the mid-1980s and delineates responsibilities at the central and local levels. Much of this law is based on Tanzania's history with local governance during colonial times, prior to its abolishment from 1972-1984, when legal authority entirely shifted to the central government. The **Regional Administration Act No. 19** of 1997 provides for the restructuring of the regional government to conform to the Local Government Act and eliminate overlapping functions between the regional and local governments. Oversight of the decentralization process generally falls under the Prime Minister's Office, Regional Administration and Local Government (PO-RALG).

Starting a Business

As detailed in the previous chapter, registering a business name, registering a company, and obtaining a general business license in Tanzania, at least at the national level, can be accomplished in a couple of weeks. But undue delays often arise within licensing regimes at the local or municipal levels and/or at the point of securing sector-specific permits, approvals, and licenses.

Starting a cooperative begins as a relatively simple process as well. Cooperatives register under the Cooperative Societies Act through the regional office of the Ministry of Agriculture's Division of Cooperative Development. However, members of the agricultural cooperative community face sector-specific requirements pertaining to fertilizer, livestock, and seed, as discussed in this report's chapter on Agriculture.

Tanzania's old licensing act is the current law, but it is set to be repealed by the **Business Activities Registration Act, 2007** which was passed in early 2007 and assented to by the President on March 30, 2007. The Act will take effect only after implementing regulations are issued, which are not expected for at least another year. When the law does take effect, it promises to improve the current system. For example, there will be one main registry that will link with all the registries and databases,

including the agencies that administer the Companies Act, the Business Names (Registration) Act, and sector-specific licensing acts.⁷⁰ It is unclear whether local authorities responsible for certain business licenses will be required to link their registries with the main registry.

The one-off, non pre-approval centralized registration system aims to eliminate a costly, time-consuming burden for businesses that, under the current system, must often deal separately with several agencies, particularly where sector-specific licenses are required. In addition, registration under the new law will be valid for the entire life of the business, whereas under the current system licenses must be renewed annually.⁷¹ If a certificate of registration is suspended, revoked, or cancelled, the Act provides for notice and the opportunity to be heard, as well as the right to appeal to the Minister any adverse decision.⁷²

Employing Workers

One of the strongest forces against an enterprise's decision to join the formal sector is the perception of the costs and regulatory hassles of participating in the nation's social security system. In Tanzania, there is great truth to this assumption.

The legal framework for Tanzania's social insurance system is fragmented into five separate social security plans. Each has different contribution and benefit structures and operational rules, reports to different government ministries, incurs excessive administrative costs, and together they lack any feasible method for portability of benefits from one plan to another. The largest, the National Social Security Fund (NSSF), covers workers in the private sector and some employees in the civil service and parastatal organizations. The Parastatal Pension Fund (PPF) initially covered only employees in parastatal organizations but now extends to anyone, including the self-employed. The Local Authority Pension Fund (LAPF), the Public Service Pension Fund (PSPF), and the Government Employees Provident Fund

(GEPF) cover different categories of public employees. The NSSF covers old-age retirement, death, sickness, work injury, maternity, and disability while the others cover only old age/retirement, death, and disability. Mandatory contributions are generally set at 20 percent of salary, but with differing employer/employee payment ratios. Medical care through the National Health Insurance Fund (NHIF) is available only to government workers. Of interest to investors, contributions to NSSF are not required for foreign employees covered by their own national social security plan, and there is legal authority for reciprocal agreements on credit transfers between Tanzania and foreign governments.⁷³

Social protection is one aspect of licensing and regulation that is considered necessary and good in a society, so long as it is not excessively burdensome to private enterprise. But the key is for social security obligations – along with other labor and employment requirements pertaining to minimum wage, worker safety, labor relations, conditions for dismissal, dispute resolution, etc. – to be coherent, clear, and fair. With such a low representation of companies working in the formal sector, formally registered companies in Tanzania are bearing more than their fair share. Accordingly, efforts to streamline the labor and employment regime should be accompanied by a well-publicized effort to bring more companies into the formal sector.

Registering Property

This section discusses the licensing and regulation of three types of property that can be used to access credit or otherwise build wealth in Tanzania: real property, movable property, and intellectual property.⁷⁴

⁷³ Additional details about Tanzania's labor and employment licensing regime are set forth at USAID/Development Alternatives Inc., Tanzania Investor Roadmap: Primers on Regulations (2004) at 53-60.

⁷⁴ The structure of this discussion diverges somewhat from the organization of the rest of this diagnostic. In more general terms, movable property is found in the Getting Credit section, whereas real property is discussed in both Registering Property and Getting Credit, and intellectual property is discussed in Registering Property alone.

⁷⁰ Business Activities Registration Act, Section 6.

⁷¹ Compare Business Activities Registration Act, Section 15 to Licensing Act, Section 7.

⁷² Business Activities Registration Act, Section 19-20, 22.

Real property. In its Dealing with Licenses analysis, the World Bank focuses exclusively on the ability of enterprises to use their real property as they see fit. Specifically, Doing Business records all procedures required for a business in the construction industry to build a standardized warehouse. These procedures include submitting all relevant project-specific documents (for example, building plans and site maps) to the authorities; obtaining all necessary clearances, licenses, permits, and certificates; completing all required notifications; and receiving all necessary inspections. In addition, Doing Business records procedures for obtaining all utility connections. The report also counts procedures necessary to register the property so that it can be used as collateral or transferred.⁷⁵

With respect to these factors, the World Bank ranks Tanzania nearly last in the world. Problems in land use are substantially attributable to the poor state of land registration in the country, particularly at the village level, which encompasses 70 percent of real property. As discussed generally in this report's chapter on Registering Property and more specifically in the various studies cited therein, the **Village Land Act, 1999** establishes a self-contained system of registration and titling at the village level. Village Councils are charged with issuing Certificates of Customary Rights of Occupancy (CCROs). However, proper administration of this function currently requires at least 50 different paper forms – a requirement that overwhelms the basic facilities to which the councils have access. Moreover, district and national authorities can and do override village decisions, often with little transparency or accountability. Ultimately, administration of land is embedded in an overly complicated set of regulations that are perceived as secretive and non-accountable. Thus, while the Village Land Act may be seen as an improvement over the previous system, which maintained all control over lands at the national level, it is still too complicated and does not ensure full transparency in the administration of land at village level.

Movable property. As detailed in this report's chapter on Getting Credit, the regulatory

environment pertaining to the use of movable property to secure debt is cumbersome and flawed. Specifically, the process of taking a security interest on movable property to secure a debt (or a "charge") is woefully out-of-date, unnecessarily complex, limited in scope, and incompatible with modern business and banking practices.

Under the existing laws, if the security provider is a company, the creation of a "charge" is governed by the **Companies Act, 2002**, and registered in the Company's Registry, which is operated by the Business Registration and Licensing Agency (BRELA). On the other hand, if the security provider is an individual or group of individuals, the same type of security interest is governed by the **Chattel Transfer Ordinance, CAP 334**, and registered in the Registry of Titles under the Land Registry. The historical basis for treating these interests differently, if there ever was one, is no longer valid, and the continuation of this bifurcated approach is unnecessary.

Further, instead of providing a cohesive group of rules that serve to facilitate the system of secured transactions of movable property, the laws contain obsolete provisions that can be used to defeat the interest of the lender. For example, the applicable provisions of the Companies Act, 2002 require registration of all charges as a condition to their validity. In fact, registration should *not* be a condition to validity, only a means for establishing priority of claims with respect to other claimant. Another concern arises from the rules on priorities – that is, the order in which creditors may seek to redeem the secured property to collect on their debts. These rules are vague and unclear.

Most troubling is the fact that there is a 42-day period within which the charge may be registered without giving up the priority position. This allowance creates difficulties where the same property is used twice or more to secure a loan. The clearest, most effective rule would be to allow the first party to register to be the one awarded first priority, and so forth.

The Chattel Transfer Ordinance contains different but equally unacceptable provisions that limit its usefulness. Specifically, it is unnecessarily limited in scope; requires the filing

⁷⁵ See World Bank discussion of Dealing with Licenses methodology, <http://www.doingbusiness.org/MethodologySurveys/DealingLicenses.aspx>.

of unnecessary information that can quickly become outdated; contains “renewal” provisions that can be used to defeat valid liens; fails to state rules governing default and enforcement; and requires the attestation of filings.

Tanzania needs a comprehensive system of collateral lending that is open to all potential lenders and borrowers at low cost. The system must include rapid, out-of-court enforcement capacity to ensure success. Such a system will open access to credit to those who are not interested in land, as well as those that have limited credit history.

Intellectual property. Licensing and regulation of intellectual property in Tanzania would benefit from increased capacity of those charged with doing so. As discussed in this report’s chapter on Registering Property, the legal framework governing the registration and use of intellectual property in Tanzania is sound. But expertise within the primary implementing institution for the administration of the law is weak, thus undermining the regulatory environment for intellectual property.

BRELA’s Intellectual Property Division was officially inaugurated in December 1999 as a Government Executive Agency⁷⁶ and is charged with, among other functions, promoting “scientific and technological inventiveness and innovation and encourage technology transfer” and protecting the “development of creativity in artistic, literary works, and expression of folklore by protecting such work in conjunction with rights owners.”⁷⁷ Toward these ends, BRELA administers both the Patents Office and the Trade and Service Marks Office. Within each, the Registrar of Patents and the Registrar of Trade and Service Marks each maintain separate registers. These registers contain the details of all patents granted and registrations of trade and service marks, and they are available to the public for review.

Notably, BRELA lacks technical expertise sufficient to substantively examine patents and marks. None of the staff charged with overseeing intellectual property have technical backgrounds, which is a clear drawback. BRELA only reviews the sufficiency of the application on

its face, as to compliance with the formalities of the **Patents (Registration) Act**, the **Trade and Service Marks Act**, and implementing regulations.⁷⁸ In the case of trade and service marks, the application for registration is published in the monthly *Tanzania Patents, Trade and Service Marks Journal*, and any opposition to the ultimate registration may be lodged with the Registrar of Trade and Service Marks, who will then hear and decide on the opposition. In the case of patent applications, the patent ordinarily is granted by the Registrar, registered with the Patent Office, and published in the *BRELA Journal*. Once it has been published, the burden is then on the true patent holder to bring a claim for patent infringement in court.

Thus, the issue with respect to the licensing and regulation of intellectual property tends to be one of administrative competence and technical capacity. This is an area that will benefit over the next generation from greater access to training and education in technical subjects. Additional details pertaining to Tanzania’s licensing and regulatory regime for intellectual property are set forth in this report’s chapter on Registering Property.

Getting Credit

The issue of bank licensing and regulation is generally beyond the scope of this diagnostic. Nonetheless, examination of the environment for getting credit in Tanzania unveiled some key points about the relationship between government regulation of financial institutions and the ability of enterprises in Tanzania to borrow money on reasonable terms. In short, improved capacity of government agencies charged with overseeing lending institutions will likely result in a sounder, more stable credit environment.

Regulation of banks. In 2006, Tanzania enacted the **Banking and Financial Institutions Act** (BAFIA) for the purpose of addressing a number of weaknesses in the operation and regulation of the formal financial sector, as well as to improve the status of the Bank of Tanzania as the primary regulator. Known as “Basel II,” the

⁷⁶ Established under the Government Executive Agencies Act No. 30 of 1997.

⁷⁷ BRELA website at <http://brela-tz.org>.

⁷⁸ The Patents (Registration) Act does expressly provide for examination as to substance (s. 27), but this has never been done as a matter of practice and it does not appear that implementing regulations exist.

provisions found within BAFIA are more sophisticated than their predecessor regulations. Basel II takes a three-pillar approach to bank regulation, emphasizing: (i) the enactment of sound rules and regulations; (ii) the on-going monitoring and enforcement of regulations; and (iii) market discipline. Further, in support of the efforts to harmonize banking laws and practices within the EAC, the new law includes provisions that allow for sharing supervisory information with other appropriate supervisory authorities on a reciprocal basis.

These efforts are intended to support lending through the strengthening of the banking system. The officials and staff of the Bank of Tanzania are highly regarded by the donor agencies with which it collaborates, as well as the commercial banks that it supervises. The staff is viewed as being well trained and professional. Unfortunately, as in many countries, the Bank of Tanzania suffers from a "revolving door," through which the employees are frequently lured away by higher salaries from the private sector. More details about the regulatory capacity of the central bank are set forth in this report's chapter on Getting Credit.

Oversight of credit cooperatives and microfinance institutions. Tanzania harbors a semi-formal sector of lending institutions, made up of Savings and Credit Cooperative Organizations (SACCOs), similar grass-root entities such as Accumulated Savings and Credit Associations (ASCAs), and financial non-government organizations (NGOs). These institutions are expected to participate in the government's long-range development plans by providing the poorer population with the financial management experience they need to move up the "credit ladder." According to a 2005 survey sponsored by the Bank of Tanzania, there were 1260 SACCOs in operation; with the national government's recent push for more charters, the number is likely to be much higher now.

The ideology of these institutions and their lending practices are based on Tanzania's customary concept of *upatu*, whereby a local group, made up of like-citizens, joins to pool funds and extend credit. Once an individual has been a SACCO member for two to three months, he or she may apply for a small credit. The loan must be secured by the savings of the applicant member, and guaranteed by two

additional member savers, who pledge their deposits as collateral.

As cooperatives, SACCOs are, in theory, subject to a number of prudential guidelines and international best practices as set forth in **Tanzania's Cooperative Development Policy, 1997**, and its **Cooperative Development Policy, 2002**. As a practical matter, however, these steps have done little to improve the safety and soundness of these entities. Operational problems with respect to SACCOs include poor administrative systems and weak financial control within the societies, as well as a lack of effective supervision of SACCOs as financial intermediaries.⁷⁹ Further, there are inherent weaknesses in the structure of SACCOs. Most are funded exclusively by small, monthly contributions by members; accordingly, the failure of even one member to contribute can jeopardize the stability of the entity. In one situation, a SACCO became insolvent when two members were terminated from their positions with the national government.

In light of the important role these semi-formal credit cooperatives are expected to play in the government's strategies, their operations and structural soundness should be strengthened, both individually and as an industry. As a threshold matter, there should be an in-depth analysis of the regulation, industry structure, and capacity of SACCOs to determine how best to support these entities in meeting the government's goals.

Next, the financial NGOs in Tanzania operate exclusively as microfinance institutions and provide micro credit, savings facilities, and training to small and medium-sized enterprises (SMEs). Again, because of poor recordkeeping, it is difficult to secure accurate data, but according to a 2005 survey by the Bank of Tanzania, there were 63 financial NGOs operating in Tanzania. Both large and small microfinance lenders seek funds from commercial banks in the form of loans under "linkages" arrangements.

As is the case with SACCOs, financial NGOs are not subject to formal regulation until they meet the core capital threshold of TZS800,000. But since funding typically comes from donor

⁷⁹ National Microfinance Policy, May 2000.

contributions, there is a certain amount of oversight from the donor organization. Similarly, those entities that receive commercial bank loans usually receive training and assistance from the funding bank.

Paying Taxes

The primary legal framework for tax in Tanzania consists of **18 different national tax laws** that the Tanzania Revenue Authority, an executive agency under the Ministry of Finance, administers. This report's chapter on Paying Taxes examines the core set laws affecting taxpayers in Tanzania, including the **Income Tax Act, 2004**; the **Value Added Tax Act, 1997**; and the **Tax Revenue Appeals Act**. According to tax professionals interviewed for that chapter, the national tax laws of Tanzania are relatively straightforward and not overly complicated, especially for lawyers and accountants.

Local governments also have extensive authority under the **Local Government Finances Act** to raise certain revenues from taxes, levies, and fees. Local agencies set their own revenue policy within the limits set by central government. They retain all their revenues and use them as part of their own budgets – these revenues do not form part of central government revenue. The taxes, levies, fees, and revenue sources that local governments are authorized to raise include local property tax, tax on goods and services (including crop cess and forest produce cess, and tax on specific services such as a guest house levy), business and professional licences, motor vehicles tax and other equipment and ferry licences, entrepreneurial and property income tax, certain administrative fees and charges (such as meat inspection charges, land survey service fees, and building permit fees), and fines, penalties, and forfeitures (including a share of fines the Magistrates Court imposes). Local governments are not allowed to levy any taxes, levies, or fees that the Local Government Finances Act does not expressly authorize.

Protecting Investors

There is a strong consensus that Tanzania has a welcoming attitude toward foreign investment and that the government has taken considerable practical strides to encourage and protect it. The key law on foreign investment is the **Tanzania Investment Act, 1997** which,

among other things, names the Tanzanian Investment Center (TIC) as the primary agency to “coordinate, encourage, promote, and facilitate investment in Tanzania and to advise the government on investment policy and related matters.” The law further directs TIC to undertake a long list of investment-aiding activities, including, as one of its central activities, acting as a one-stop-shop for helping investors obtain necessary permits, authorizations, approvals, registrations, consents, licenses, and any other matter required by law for a person to set up and operate an investment. Many initial central government permits pose no problem. However, problems often arise, in the process of obtaining the numerous ministerial level and local licenses that are required. TIC's mission covers both domestic and foreign investment but as a practical matter most of its work is with foreign investors.

Three sectors are exempt from the Investment Act: mining, petroleum, and armaments and hazardous chemicals. Ministries that have jurisdiction over those areas handle these investments directly, but even in those cases TIC often works with the investors on ongoing issues. Also, the NISC helps with complex investments of large size, cross-sectoral nature, inter-ministry overlap, or other special circumstances.

Regulatory and landholding restrictions.

While there is no restriction on foreign ownership of a Tanzanian company, there are two practical restrictions on foreign investors. First, government licensing bodies in some sectors require partial local ownership as a condition for granting of a license to operate. The most-mentioned of these are insurance and telecommunications; in the latter at least 35 percent local ownership is required.

Second, special conditions pertain to land. Under Tanzanian land law foreigners may not hold land directly. TIC provides the most common practical means of dealing with this, which is that TIC can hold in trust the title to land for investment purposes; effectively, this makes the investor the owner of the land. There are other practical devices. One is structuring an investment taking account of the principle that a Tanzanian company is not subject to the landholding restriction so long as the company is

majority-owned by Tanzanians. Tanzanian lawyers are accustomed to handling and advising investors on such matters and their complications.

Supporting Institutions

The key institution charged with supporting across-the-board efforts to improve Tanzania's regulatory environment is the **Ministry of Planning, Economy and Empowerment (MPEE)**, which has established a **Better Regulation Unit**. Recently, the Ministry prepared a Framework Paper for Consultations for Developing a Policy for Business Licensing Reform. In June 2007, MPEE and stakeholders, including various governmental Ministries and agencies, business groups, and business actors met to present and obtain feedback on the Draft Framework Paper. In particular, recommendations were sought on the methodology and appropriate coordination mechanism for licensing reform. Stakeholders agreed to retain a consultant to draft an "Issues Paper," which would feed into the development of a national policy on sectoral licensing. The Issues Paper was to be presented to the stakeholders at a meeting in or about late September 2007. Using the Issues Paper, a Technical Working Group, comprising about 20 representatives from the State House, various Ministries, the Tanzania Investment Center, the Fair Competition Commission, and other authorities will then prepare a Draft Policy Paper on sectoral licensing to be circulated to all stakeholders, both governmental and private sector, by the end of 2007 for their review and approval. Once approved by the stakeholders, the Draft Policy Paper will be submitted to the MPEE for further action and eventual implementation into a new business licensing policy and law.

Various lawyers interviewed for this diagnostic expressed the view that while the government is willing to amend and revise outdated, conflicting, and burdensome business laws and regulations, public sector employees lack the competence and expertise to properly draft new laws and regulations. Consequently, comments and input from the private sector, including the private bar, are critical. Representatives of the private bar believe that it is too difficult, however, to get the government to listen to and understand the concerns of business and the legal communities. They hope that ongoing activity

will change this perception. **The Business Environment Strengthening (BEST) project**, detailed elsewhere in this report, provides support for the government's efforts.

The community of non-government institutions that might be involved in supporting the goal of reducing and streamlining Tanzania's licensing and regulatory regime are interested in this area, but, with only a few exceptions, are not particularly effective.

Chambers of Commerce, including the **Confederation of Tanzania Industries and other business groups**, lobby and work with the government for an improved regulatory environment for businesses. These groups report to their members on developments concerning regulatory and other business issues. However, among smaller businesses and stakeholders there is a shared feeling that they are not included in the policy, legal, and regulatory development process. **Small-scale farmers** in particular, notwithstanding their enormous importance in the Tanzanian economy, are almost entirely excluded from the process of policy formation and implementation.

Another common complaint is that the regulatory reform process is too slow, with long delays between passage of a law and issuance of implementing regulations. The Companies Act, for example, was passed in June 2002 but sat on the shelf for more than three years until implementing regulations were issued. It took several years to pass the Business Activities Registration Act. Similarly, Tanzania's business registration and licensing regime has been formally studied since at least 2003, but only recently (March 2007) were more affirmative steps taken toward development of a regulatory reform policy.

Social Dynamics

The regime for licensing and business regulation has been studied extensively in Tanzania. Tanzania has studied root causes, economic implications, specific roadblocks, and many other licensing-related issues. Although all the information gathered to date is enormously important, the challenge now is for Tanzania to use it.

In 2003, research commissioned by the Ministry of Industry, Trade, and Marketing (MITM)

concluded that the licensing system creates a barrier to business growth and investment and denies important revenues to the state.⁸⁰ In particular, the research found:

- Compliance costs associated with licensing are unnecessarily high, thus creating a strong incentive for businesses to operate in the informal sector
- Compliance costs disproportionately affected small businesses because they have less management capability with which to deal with them and less productivity over which to spread these costs
- The pre-approval system creates rent-seeking opportunities
- Implementation and enforcement costs are high, leading to an inefficient use of scarce resources and poor quality enforcement
- Poor quality enforcement leads to uncertainties for businesses and acts as a disincentive to investment.⁸¹

Based on the findings of the 2003 research, MITM produced a number of recommendations, including: (1) replacing the existing business licensing regime with a simplified system of universal business registration; (2) repealing the Business Licensing Act of 1972; (3) limiting sector-specific licensing to areas of necessity; and (4) discouraging the use of business licensing by local and district governments as a tool for revenue generation.⁸²

In 2004, USAID commissioned an "Investor Roadmap" study⁸³ that summarized the common licensing and regulatory practices faced by all investors and identified specific requirements in:

- Land acquisition
- Site development
- Agriculture, livestock, and food quality
- Product standards
- Forestry
- Mining
- Tourism
- Fisheries
- Industrial licensing
- Workplace safety
- Financial institutions
- Ground transportation
- Aviation
- Export processing zones.

The Investor Roadmap makes several highly specific in each of these areas and should be referenced in the future reform process. It also emphasizes a number of crosscutting findings, including the importance of tax policy as a means toward promoting economic growth and the need for better and more information.

In 2005, the Better Regulation Unit in the Ministry of Planning, Economy, and Empowerment retained Bannock Consulting, in association with two Tanzanian partners (the **Economic and Social Research Foundation** and **Maajar, Rwechungura, Nguluma, Makani Advocates**), to review and provide recommendations on how to streamline and harmonize Tanzania's business licensing regime. In May 2006, Bannock Consulting published its findings and recommendations in a report entitled *Consulting Services for the Introduction of a Regulatory Business Licensing System* ("Bannock Report"). The Bannock Report identifies several key constraints characterizing Tanzania's current business licensing regime, including:

Multiplicity and duplication of requirements and processes.

The current system is characterized by duplication, multiplicity, and overlap of registration and licensing processes within individual sectors, raising the cost of doing business and increasing the uncertainty and risks associated with it. First, there is no single national policy governing business registration and licensing in Tanzania. As a result, there is a lack of uniformity and some inconsistent approaches to licensing across sectors. Second, there is a lack of coordination and integration between the various regulatory agencies and other governmental institutions

⁸⁰ See Kiamnatisho (Ministry of Industry, Trade and Marketing, 2004).

⁸¹ Id.

⁸² Programme to Formalise the Assets of the Poor of Tanzania and Strengthen the Rule of Law: (MKURABITA) Final Diagnosis Report, VI, Institute for Liberty and Democracy (2005), at iii.

⁸³ DAI/PESA, Tanzania Investor Roadmap: Primer on Regulations (3rd Edition) (2004). Previous editions of the roadmap were published in 1996 and 1999.

involved in administering business start-up processes (e.g., BRELA) and relevant cross-cutting legislation (e.g., Occupational Health and Safety). The net result is to impose unnecessary administrative burdens and costs across both the government and private sectors and hamper the government's ability to obtain information on business start-up and operational activities.

The use of licensing as a revenue mechanism.

Licensing is an important means of revenue generation for both local authorities and regulatory authorities, which has led to a proliferation of licensing requirements and fees for businesses. This has also resulted in combining three competing objectives – gathering information, regulation and revenue generation – under one licensing system. For example, agencies that depend on licensing revenues to sustain themselves may place a greater emphasis on revenue generation at the expense of fair and consistent enforcement of public health, safety, and environmental regulations and standards. Similarly, business may become discouraged with the complex bureaucratic processes and elect not to register, thus depriving the government of both revenue and important statistical information. The *gathering information* function largely will be met under the new Business Activities Registration Act. The *regulatory function* is, under international best practices, appropriately addressed through licensing only where there are clearly identifiable risks to national security, economic strategic interests, maintenance of limited natural resources, public health and safety, and consumer protection. The *revenue function* is the job of taxation, not licensing.

Lack of information. The availability and consistency of information on licensing requirements and the licensing process varies across sectors. To the extent information is available, it is often confusing and limited, which leads to compliance problems. In many cases, users have no point of access to information as to what laws or regulations apply to their particular trade or business, or how they should comply with the requirements. The Bannock Report cites an extreme example where an association was unable to obtain supporting regulations relating to fees levied by the Customs Department of the Tanzania Revenue Authority. But the Report also notes that the consulting team had difficulty accessing information and found that the government

bookstore often did not have the relevant legislation or supporting regulations. The instant diagnostic experienced similarly difficulties in obtaining copies of relevant laws and regulations for many governmental agencies and the government bookstore. Stakeholders reported similar difficulties in obtaining copies of some laws and regulations.

Inconsistent enforcement of requirements and regulations. Stakeholders reported that licensing requirements and regulations are selectively and inconsistently enforced. The requirements, forms, and approval processes often are not standardized, particularly at the local or district levels. The time and duration for approving a license varies considerably across economic sectors. In some cases these differences are warranted by more complex requirements and procedures. However, in other cases it is left to the discretion of the individual regulator.

The lack of accountability. Stakeholders reported that some regulatory authorities lack sufficient technical staff familiar with the needs of the sector. Where regulatory agencies delegate inspection and monitoring responsibilities to local authorities, who often lack capacity, lack knowledge, and lack clear lines of accountability. The use of local authorities often has led to the application of old legislation as inspectors at the local level were not aware of new laws and regulations.

In early 2007, the first phase of legislative reform to Tanzania's business registration and licensing regime took place with the passage of the Business Activities Registration Act, previously discussed in this chapter.⁸⁴ The second phase of legislative reform involves streamlining Tanzania's complex and burdensome sector-specific licensing regime under which various types of business activities are subject to additional licensing requirements.

Recommendations

- Continue to move forward with broad-based licensing and regulation reform.
- In the course of reform, emphasize not only streamlining and reducing regulation,

⁸⁴ Business Activities Registration Act, Section 19-20, 22.

but also enhancing the capacity of implementers.

- Focus in particular on the institutional capacities of local and regional licensing authorities.
 - Increase opportunities for organizations representing less powerful constituencies, such as farmers and small businesses, to
- participate in public dialogue pertaining to licensing and regulatory reform.
 - Through outreach and training, increase the capacities of organizations representing less powerful constituencies, such as farmers and small businesses, to participate in public dialogue pertaining to licensing and regulatory reform.

EMPLOYING WORKERS

THE DOING BUSINESS RANKINGS (2006) Employing Workers	
Tanzania / World	143 out of 175
Tanzania / Sub-Saharan Africa Region	28 out of 45

Introduction

Tanzania's overarching goal of turning the private sector into an engine of economic growth and poverty reduction depends greatly on its ability to develop a functioning and efficient labor market. That, in turn, means transforming the laws and institutions that regulate and support the labor market from decades in service to a failed centralized socialist economic model to a reformed regulatory system in service to an expanding free-market economy.

A promising national effort, with substantial international support, has begun. Legal and institutional labor reforms are underway with the aim, on one hand, of effectively protecting workers while, on the other, facilitating the greater labor force flexibility and skill levels needed to enable employers to compete successfully in the global economy. As one signal of that national intent, Tanzania's most recent labor and employment law reform – the Employment and Labour Relations Act (ELRA) – states that its first objective is “to promote economic development through economic efficiency, productivity and social justice.”⁸⁵

By enacting this law along with its institutional reform counterpart, the Labour Institutions Act (LIA), the government has initiated significant labor market reforms designed to complement the economic liberalization that it began more than a decade earlier. And more is on the labor and employment law reform agenda: new laws on occupational health and safety, workers' compensation, social security, labor market policy and employment promotion, skills development, labor market information and statistics, and employment services are in the

planning stage. The result is meant to be a rational labor and employment regulatory system that will advance economic development, bring more business out of the unregulated and unprotected informal sector, and promote respectable work.

Labor market policy has thus become an important element in Tanzania's economic liberalization agenda that has concentrated on broad-based structural reforms to enhance the business environment and the government's financial management. Labor reforms are increasingly recognized as crucial to reaching the higher level of economic growth needed for sustained development. An efficient labor market is surely a crucial ingredient of that development strategy. Promoting job creation policies through widespread legal and regulatory change, more effective public and private institutions for skill training, and better protecting the wellbeing of workers will enhance economic development and spread the benefits of growth to broader segments of the labor force.

Over the past decade Tanzania has achieved strong overall economic performance, which has been grounded on a sound macroeconomic policy framework, progress on the structural reform agenda, and substantial donor assistance that now constitutes nearly one-half of the government budget. Since 2000, real GDP growth has averaged 6.3 percent per year, one of the highest in Sub-Sahara Africa, while inflation has held at single-digit levels. The mining, construction, retail/trade and manufacturing sectors have led this growth, which has enabled government spending to expand at a swift pace and an increase support for new initiatives, including important poverty reduction efforts.⁸⁶ Critical labor force goals of that strategy for 2010 are to create one million new jobs and to reduce the unemployment rate to 6.9 percent from 12.9 percent, as last measured in the 2000/2001 national survey.⁸⁷

⁸⁶ National Strategy for Growth and the Reduction of Poverty (NSGRP), launched in 2005, and also known by its Swahili acronym – MKUKUTA.

⁸⁷ A new labor force survey by the National Bureau of Statistics was conducted in 2006. However, the

⁸⁵ Section 3(a), Act No. 6, 2004

One notable example of the poverty reduction strategy's success, with important implications for the future labor market, has been a renewed national emphasis on education. By building more schools, reducing school fees, and initiating programs to ameliorate the worst forms of child labor, primary school enrollment has increased from less than 60 percent in 2000 to more than 95 percent in 2006. Over the same period there has been a lower dropout rates, and the pass rate for primary school students has more than doubled. The number of secondary schools also doubled from 2002 to 2006.⁸⁸

There are other noteworthy gains presaging labor market strengthening as well. Progress in structural diversification of the economy is reflected in the manufacturing sector, which sustained annual growth averaging seven percent between 2001 and 2005. During the same period, mining and quarrying output grew by more than 14 percent per year, and construction by more than 11 percent. Foreign investment doubled, to US\$325 million, from 1995 to 2005. The African Development Bank projects real GDP growth to pick up strongly to 6.8 percent in 2007 and to seven percent in 2008. If sustained, that would enable Tanzania to meet its goal of halving poverty by 2015.

Major challenges remain, however, including high unemployment and pervasive poverty, per capita GDP that is still too low, serious capacity constraints in the public sector, weak infrastructure, and insufficient human capital. Only five percent of adults have a secondary education, and meager vocational skills impede Tanzania's ability to compete in global markets.

Although labor market policy alone will not solve these problems, accelerating progress on Tanzania's fundamental development issues across the board will have an important positive impact on the labor market. For example, improved prevention and treatment of malaria and HIV/AIDS will bring about a healthier and more productive workforce. In addition, micro-credit reforms, in both the agriculture sector and small enterprises in the informal economy, can contribute to expanding those sectors, which will be necessary in order to absorb

official results were not released by the time of this writing.

⁸⁸ National Bureau of Statistics report, June, 2007.

Tanzania's labor force growth, which is estimated to be close to one million workers per year.

Much of that is addressed elsewhere in this report. The focus of this section is on Tanzania's labor market policies, laws and regulations, the institutions that administer and enforce them, the stakeholders that depend on them, and elements of civil society that advocate for legal and institutional reforms. Since 1995, national economic policy has centered on enabling private sector-led development. Therefore, this section primarily concerns how laws and institutions affect private sector employers and workers (including the remaining state-owned enterprises slated for privatization), on which the country depends for sustained economic growth and poverty alleviation.

Because the emphasis is on the fast-changing labor and employment regulatory scheme, much of the focus is further narrowed to the private *formal* sector of the economy. As in much of the developing world, the labor and employment laws and regulations, as a matter of practical application, essentially have no reach beyond the licensed, taxpaying private formal sector.

The majority of the workforce is employed elsewhere – mainly agriculture, the growing informal economy, and public agencies – so it should be noted that the actual effective reach of the labor market regulations and institutions discussed here extends to a small fraction of the economy. As one illustration, the formal sector absorbs only 40,000 among the 700,000 who graduate annually from primary, secondary, and tertiary schools. This point highlights how essential it is for Tanzania to shape and administer its labor and other regulatory reforms with the goal of minimizing barriers that keep micro-enterprises, and their workers, locked into the informal economy. It is those workers who need social protections at least as much as the workers in the formal sector.

Legal Framework

After several years of planning, Tanzania's efforts to reform its labor market regulatory system to stimulate and support the private sector as the engine for economic growth and poverty reduction have begun to produce results. Tanzania is replacing outdated and

burdensome laws and reshaping and building new implementing institutions. Tanzania's low ranking on the World Bank's rigidity of employment index can justifiably be raised a bit, looking forward to greater improvement once the labor reforms are in place and supported by additional professional staff, more training, and increased funding resources.

Parliament enacted the first two new labor and employment laws, **ELRA** and **LIA**, in 2004. However, their principal provisions only began to take effect upon promulgation of the implementing rules and regulations in 2007.⁸⁹ Therefore, while it is premature to draw definitive conclusions about their results, certain key points can be examined as to how they balance internationally recognized protections for workers and their representatives with the degree of labor force flexibility required for a dynamic labor market that can yield sustained economic growth in a competitive global economy.

There are a number of shortcomings that appear in the provisions of ELRA (as well as LIA, as discussed below under Implementing Institutions) that call for early attention – inconsistency with modern labor codes, dubious conformity with international labor standards, confusing and unclear requirements, and some self-contradictory provisions. Moreover, there are provisions that seem to perpetuate excessive and unnecessary government control of private sector labor relations. Instead, the goal should be to maximize voluntary dispute settlement and compliance with the laws and regulations by the parties themselves, with minimal governmental oversight and interference. Because the success of private sector industries is crucial to Tanzania's development goals, there is a need for a clear, consistent, and flexible regulatory system.

This section devotes particular attention to the subset of labor market regulations that govern

private sector labor relations practices because those rules often have a more chilling effect on the business climate than is readily apparent. Moreover, if carefully crafted and effectively enforced, the industrial relations rules can foster industrial democracy and thereby strengthen civil society.

Though rarely voiced in public, both foreign and domestic private sector employers are generally more wary of the rules for dealing with trade unions at their business establishments than they are of other labor law requirements such as the minimum wage, paid leave entitlements, or severance pay for dismissed workers. The latter type of rules are commonly viewed as more acceptable because they entail fairly predictable business costs, whereas trade union representation of the workforce is more commonly feared for the risk of unpredictable results – such as unaffordable wage and benefit demands, inordinate and burdensome worker grievances, and disputes leading to prolonged work stoppages and property damage. As such, some employers, and potential investors, hold the view that returns on investment will be greater where labor unions are weak.⁹⁰ Negative expectations can become a self-prophecy unless countered by a rational labor regulatory system that is administered with consistency and fairness. Such a system must also provide incentives for adopting productive workplace rules and procedures for resolving the inevitable workplace disputes without resort to disabling work stoppages.

There is no consensus on an “ideal” labor market regulatory system. National labor codes present a great variety of systems. Nonetheless, although no detailed universal blueprint exists, some general hallmarks emerge from codes generally regarded as conforming to international standards and consistent with modern labor market regulatory systems.

⁸⁹ The new ELRA and LIA regulations consist of the Employment and Labour Relations (Code of Good Practice) Rules, 2007; the Labour Institutions (Mediation and Arbitration) Rules, 2007; the Employment and Labour Relations (Forms) Rules, 2007; the Labour Institutions and Code of Conduct (for Mediators and Arbitrators) Rules, 2007; and the Labour Institutions (Mediation and Arbitration Guidelines) Rules, 2007.

⁹⁰ This may be the case to the extent that weak union representation correlates to relatively low labor costs, which are known to influence FDI flows. On the other hand, it fails to take into account the potential gains of having union representation and collective bargaining regulated and protected in a rational system of labor market rules – such as greater productivity, human capital investment, and social and political stability, factors that may be more determinative of investment decisions than relative labor costs alone.

Worker rights. Because of inherently unequal bargaining power, labor relations rules should not only permit, but effectively protect, the right of workers to form and join unions for the purpose of workplace representation, free from discrimination or retaliation by employers. Trade union representation at any enterprise is to be decided freely and democratically by the workers themselves. The rules should then call for good faith collective bargaining over wages, hours and other terms and conditions of employment, and provide incentives for trade unions and employers to adopt written collective agreements. And, consistent with fundamental international standards, they should permit the reasonable exercise of economic action as a last resort by unions and employers.

Dispute settlement. The labor relations system for a market economy should promote and encourage primary reliance on the voluntary, private resolution of labor disputes by the parties themselves, with minimal governmental interference and control. This is especially the case, as in Tanzania, where the parties perceive government administration and enforcement of labor regulations to be ineffective and sometimes corrupt. Labor disputes, particularly those over economic issues, that the parties alone resolve are more likely to foster a dynamic labor market than settlements compelled by government administrators, arbitrators, or judges.

Administration and enforcement. A functional industrial relations system is characterized by governmental rules and procedures that establish clear parameters within which unions and employers can develop a productive relationship suited to the particular circumstances of each industry and enterprise. These rules and procedures also constrain unprincipled employers or unions from taking unfair advantage of workers. The system should be one in which the rules are devised, administered, and enforced so that stakeholders see the system as being fair, independent, transparent, clear, consistent, fast, final, and accountable.

Mutuality. While labor-employer cooperation in promoting improved working conditions and productivity is the goal of a modern labor relations regulatory system, there is an inherent potential for conflict. Thus, both sides have an

equal need for clear rules of conduct and a mutual commitment to follow them. That, in turn, depends largely on whether the system is one that unions and employers perceive to be in their long-term, mutual benefit. Their sense of having an important stake in the system will significantly affect the system's success. Greater attention is usually paid to the gains for unions, especially in having effective protections for worker representation, collective bargaining and the right to strike. But the potential benefits for employers are equally important, particularly in competitive, labor-intensive enterprises. These include workforce stability and flexibility, the ability to predict labor costs, and a level playing field where law breaking employers are denied a competitive advantage.

An important initial consideration is Tanzania's status with respect to international labor protective standards.

ILO conventions. The International Labor Organization (ILO), originally organized in 1919, became a specialized United Nations agency in 1946 devoted to promoting social justice and internationally recognized human and labor rights. It is the principal internationally recognized source for labor standards,⁹¹ to which Tanzania is committed by virtue of its ILO membership since 1962 and by having ratified 35 ILO Conventions.

International labor standards as set forth in ILO conventions are generally expressed more as principles than as explicit prescriptions. Because they are meant to provide a worker protection

⁹¹ From the standpoint of multinational corporate investors in Tanzania, the area of Corporate Social Responsibility has emerged as an important concern. For them, relevant additional international sources of labor standards also include the OECD, the Caux Round Table, the Fair Labor Association Guidelines, the Global Sullivan Principles of Social Responsibility, the UN Global Compact, and Social Accountability 8000. They contain standards similar to the ILO core conventions and beyond, generally including labor standards with respect to freedom of association (trade union organizing and collective bargaining rights), nondiscrimination in employment, prohibitions against child labor and forced labor, occupational safety and health, consultation with workers' groups before making major workplace changes such as labor force retrenchments and plant closures, dispute resolution procedures, and employment practice audits by internal or external monitors.

foundation for all labor regulatory systems, from the most to the least developed nations, the result is a wide range of diverse laws and regulations, monitored from time to time by ILO expert bodies. As to how these conventions relate to economic development, as long as a nation's labor code generally adheres to the framework of principles called for in the ILO conventions, the manner and extent to which a national labor code is crafted to promote productivity, efficiency and other national economic objectives is largely left for member countries to decide for themselves.

Tanzania has ratified all of the Conventions encompassed by the 1998 ILO Declaration on Fundamental Principles and Rights at Work, commonly referred to as the ILO "Core" Conventions.⁹² These are encompassed in Tanzania's new Employment and Labor Relations Act, and fall into four groups:

- Freedom of Association and the Right to Organize (Conventions 87 and 98)
- Prohibition of Discrimination (Conventions 100 and 111)
- Elimination of Child Labor (Conventions 138 and 182)
- Abolition of Forced Labor (Conventions 29 and 105)

These basic standards are covered in the context of the following regulatory issues considered in this section.

Union representation and collective bargaining.

Freedom of association is a core principle by which workers and employers have the right to establish and join organizations as they choose, to draw up rules and constitutions, to freely elect representatives, and decide on

⁹² The Conventions and their dates of ratification by Tanzania are: Forced Labor Convention, No. 29 (1962); Abolition of Forced Labor Convention, No. 105 (1962); Freedom of Association and Protection of the Right to Organize Convention, No. 87 (2000); Right to Organize and Collective Bargaining Convention, No. 98 (1962); Equal Remuneration Convention, No. 100 (2002); Discrimination (Employment and Occupation) Convention, No. 111 (2002); Minimum Age Convention, No. 138 (1998); and Worst Forms of Child Labor Convention, No. 182 (2001). For further information see the ILO Declarations at www.ilo.declarationweb.projectpublications. For reference, the U.S. has ratified a total of 12 ILO Conventions, only two of which are ILO Core Conventions.

the functions of the organizations. These rights are to be exercised without restrictive intervention by public authorities. Employers are prohibited from acts of anti-union discrimination, such as by making employment subject to the condition that the worker will not join or agree to quit a union, or by dismissing or otherwise disciplining a worker by reason of union membership or participation in union activities. Employers and employer organizations are further prohibited from facilitating the establishment of unions, or supporting unions by financial or other means, for the purpose of controlling them. Measures are to be taken to encourage and promote voluntary negotiation between employers and unions in order to reach collective labor agreements.

Most national labor codes, as well as the ILO and other international labor standards, contemplate some form of multiple union representation and, in some cases, multiple collective bargaining agreements, within the same enterprise.⁹³ ELRA's union organizational rules, on the other hand, while permitting employees in one establishment or enterprise to join multiple unions, are designed to encourage single-union exclusive representation of an employee bargaining unit (somewhat similar to the U.S. system of exclusive representation). That is, upon establishing that one trade union represents at least a bare majority of the unit employees,⁹⁴ the employer is required to

⁹³ Difficulties that employers may face under these circumstances include (i) multiple and conflicting bargaining demands from more than one union; (ii) inconsistent terms of employment for similarly situated categories of employees; and (iii) bargaining instability caused by multiple collective agreements with disparate termination dates, resulting in the potential for nearly constant bargaining demands and obligations.

⁹⁴ In the event that an employer challenges the majority status of a trade union, ELRA, Sec. 67 (7), vests jurisdiction of the dispute in the new Labour Court established by the LIA. However, by providing nothing more than that the court may decide the dispute "by arranging any appropriate person to conduct a ballot of the affected employees," ELRA provides no indication of the timing of such an election, the procedures to be followed, or what the qualifications of "any appropriate person" should be. The Regulations, Sec. 51 (8), together with Sec. 53 (4) add confusion by authorizing the court instead to direct the Commission on Mediation and Arbitration to "conduct a ballot" to resolve such a union representation dispute.

recognize that union as the exclusive collective bargaining representative of those workers and, moreover, of all the remaining unit workers who decline union membership.

Unfortunately, the law and regulations concerning union recognition and the exclusive representation requirements are confusing and contradictory.⁹⁵ On the one hand, both state that a union with majority status is "entitled" to employer recognition as the exclusive bargaining representative for all employees in a bargaining unit.⁹⁶ On the other hand, the regulations also state that a bargaining unit "may be restricted to the trade union's members,"⁹⁷ but fail to explain under what circumstances, or by what process or authority, such a bargaining unit limitation on exclusive representation may be permitted. Further confusion stems from another provision in the regulations stating that where two unions, which together represent a majority of employees, "seek recognition jointly as the exclusive bargaining agent, the exclusivity shall apply (sic) to both trade unions."⁹⁸ With no further explanation, basic questions are left unanswered, including whether such recognition is permissive or mandatory, and whether the two unions' bargaining status is for the entire bargaining unit, or may be limited to members only.

Another provision further compounds the confusion by stating that employers "may recognize a registered trade union without the union being a majority."⁹⁹ The implications of

⁹⁵ The status of the regulations is ambiguous as well. See, e.g., Regulations, Sec. 49 (2) and (3), which state that the "Rules do not impose any hard and fast obligations on any party, the legal obligation may be to justify a departure from the provisions of a Rule (sic)," and that mediators, arbitrators, judges, government officials and the private parties "shall take the Rules into account."

⁹⁶ ELRA, Sec. 67 (1) and regulations Sec. 49 (8). The regulations, Sec. 58 (1) further permit collective bargaining agreements that establish an "agency shop," meaning that nonunion members may be required to pay a fee to the trade union equivalent to the amount of members' union dues requirements. This is consistent with ILO standards.

⁹⁷ Regulations Sec. 50 (3).

⁹⁸ Regulations Sec. 50 (4).

⁹⁹ Regulations Sec. 50 (7), and 53 (3). See Regulations Sec. 51 (5) indicating that such recognition is permissive and not mandatory, and Sec. 53 (1) and (2), mandating employer withdrawal of recognition as the

such minority union recognition, for either the union or the employer, are nowhere explained. Perhaps this provision is meant to conform to findings by the ILO that limiting employees' representational rights to a single union is contrary to freedom of association principles, as the ILO found in the case of Kenya, which had limited teachers' representation to a single union.¹⁰⁰ The purpose of minority union representation requires clarification. For example, the labor code could make clear that while one or more minority unions have no collective bargaining rights, they may engage in other important representational roles, such as representing employees who join the union in dismissal or other disciplinary proceedings before the employer, and, as well, before the new Commission on Mediation and Conciliation.¹⁰¹

There is similar confusion over multiple employer bargaining status. Modern labor codes may permit various forms of multi-employer bargaining, such as by certain employers, or even all employers, in a single industry. Such arrangements often become complex, such as in the need for internal rules governing formation of the multi-employer group, including the question of whether trade union assent is required and, if so, by what terms, and so forth. Regrettably, if ELRA is meant to permit or foster such arrangements, the regulations are insufficient.¹⁰²

Discrimination based on union activity. ELRA properly makes unlawful any discrimination against an employee for union membership or for participating in lawful union activity.¹⁰³ This comes under the ILO freedom of association principles because, if not prohibited through effective enforcement, basic worker rights can be undermined. However, the regulations should be strengthened in several ways. The

exclusive bargaining representative where the union "does not acquire a majority", after being given three months to reacquire majority status.

¹⁰⁰ Training Manual on ILO Fundamental Standards and Principles of Freedom of Association, ILO Office for Tanzania, Kenya, Uganda & Somalia, 2004, p. 8.

¹⁰¹ See, e.g., Regulations Sec. 50 (2)(a).

¹⁰² The only relevant provision, Regulations Sec. 49 (7), states that collective bargaining "may involve one employer, a number of employers or an employers' association."

¹⁰³ ELRA, Sec. 9 (3).

prohibition against such discrimination should be clarified so as also to encompass *union* discrimination against employees based on their freedom of association right to refrain from union membership. It should also be explained that such discrimination includes a wide variety of practices, such as changing wages, benefits, or hours of work; any disciplinary action involving suspension, demotion, job reassignment, or transfer; and, job termination. Finally, the prohibition should include not only discriminatory actions, but also threats of such actions.

Privatization, successorship and worker retrenchment. When there is a transfer of an enterprise from one employer to another in which all or some of the employees have been represented by a recognized and established trade union, there is a need for rules setting out the rights and responsibilities of the parties. This is the case with privately owned enterprises as well as the remaining parastatal enterprises to be privatized through PSRC. No such specific provisions are found in either ELRA or the Public Corporations Act that governs PSRC. Trade union interviewees reported that in previous privatization actions involving unionized enterprises, they had effectively been denied their representational status in the process and, moreover, following the transfer had been prevented for several months from attempts to recruit employees of the privatized enterprise.

The suggestion here is to devise rules for such successorship cases, in collaboration with the stakeholders, in order to promote representational and collective bargaining stability. For example, consideration could be given to rules that initially consider whether, after the business transfer, there is continuity in the nature of the business and the means of production. If so, the next inquiry would be on whether the basic employee component of the successor enterprise consists of a majority of workers who had been represented by a trade union, or trade union coalition, at the predecessor enterprise. If so, it should be feasible to permit that trade union or unions to retain their legitimate representational status, either automatically, or by a showing of continuing employee majority support.

Another essential question involves the status of the previous collective agreement. It could be allowed to continue through its original duration (typically two years), or only for a brief set period during which there would be a requirement for good faith bargaining over the terms of a replacement collective agreement. From the standpoint of labor market flexibility, a new agreement may better take into account the changed management practices of the new successor enterprise. It may be that under new ownership the enterprise will expand or contract, will require a different number and skill mix of employees, will change production and distribution methods, or will make other business changes with which the old labor agreement may no longer be compatible.

Scope of bargaining and employee retrenchment. In addition to mandating good faith bargaining between the employer and one or more trade unions representing a majority of employees at an enterprise over the terms of a collective agreement,¹⁰⁴ ELRA regulations properly include a definition of mandatory bargaining subjects.¹⁰⁵ This is important so that the parties have realistic expectations of what is, and what is not, required at the bargaining table.

In a departure from labor codes elsewhere that merely define the scope of bargaining as including "terms and conditions of employment," ELRA regulations appear intended to preserve a significant degree of management control and discretion over the manner and means of production. Again, however, the regulations contain confusing and seemingly contradictory provisions. On the one hand, by narrowly defining "terms and conditions of employment" to include such matters as hours of work and workplace behavior, such decisions as the outsourcing of bargaining unit work, at least by implication, are left to management prerogative and the bargaining requirement is confined to matters involving the "employment related consequences" of the decision (emphasis added).¹⁰⁶ From the employer's standpoint, workforce flexibility is enhanced by confining bargaining obligations to measures for mitigating the effects of terminations due to changing operational requirements.

¹⁰⁴ ELRA, Sec. 68.

¹⁰⁵ Regulations, Sec. 55.

¹⁰⁶ Regulations, Sec 55 (4).

On the other hand, the same regulations elsewhere appear to contradict this grant of entrepreneurial prerogative over operations in any case where a change in operational requirements affecting bargaining unit work entails employment termination, commonly known as worker retrenchment.¹⁰⁷ Here, the management prerogative to decide whether to make operational changes based on such factors as new technological requirements, adding new products, or fluctuating customer demand is effectively denied by subjecting the decision itself to mandatory consultations and government review. That is, no retrenchment action is permitted unless the employer has first consulted with the employees and their representatives over the *reasons* for the decision, and, if challenged, has proved the *fairness* of decision to retrench employees due to operational requirements through arbitration before the new Commission on Mediation and Arbitration and, if appealed, the new Labour Court.¹⁰⁸

Although the drafters of the regulations seem to recognize that business failure could be the result of undue requirements for consultations and governmental reviews, those requirements remain poorly defined and subject to excessive delays. An employer is permitted to proceed unilaterally with a proposed operational change and retrenchment after 30 days of mediation. However, such unilateral implementation carries the risk of major penalties if either a government arbitrator or the Labour Court deems it unfair. In that event, the employer would have to reinstate all the retrenched employees with full back pay, and, if not reinstated, with an additional payment of twelve months wages (more than quadruple the amount of normal severance pay).¹⁰⁹ Whatever little operational flexibility this 30-day "escape" provision permits is further negated because neither the law nor the regulations place any meaningful time limits on the mandatory consultation obligations that come *before* the mediation process.

¹⁰⁷ Regulations, Sec. 23. See also, ELRA, Sec. 38 - 40.

¹⁰⁸ For example, the "fairness" of the action is subject to arbitration, and the courts are directed to "scrutinize" such decisions "to ensure that the employer has considered all possible alternatives." Regulations Sec. 23 (3) and (9).

¹⁰⁹ ELRA, Sec. 40 (3).

The requirement for "consultation" is stated as having "the purpose of reaching agreement . . . on possible alternative solutions,"¹¹⁰ but is otherwise neither defined nor distinguished from collective bargaining. Further, the consultation obligation extends not only to the trade union that is exclusive bargaining representative, but also to (a) any number of other trade unions having any members among the employees of the affected workplace, and (b) any employees who are not represented by a trade union. The requirement for consulting with unrepresented workers is confusing for employers who are given no guidance on how that process is meant to operate, such as whether and how a representative for such employees is to be selected. Concerned employees would be equally confused.

The absence of a definite time limit on any of these three mandatory consultation requirements compounds the problem. If unable to implement a timely retrenchment in the face of cyclical or otherwise slack customer demand, the viability of some enterprises could be severely threatened. The suggestion here is to correct this problem consistent with the rule's permission for unilateral employer implementation of the retrenchment after 30 days of mediation. That is, the regulations should state a time limit for consultations, beyond which unilateral implementation is then permitted. Alternatively, in order to foster greater operational flexibility, the consultation requirements of the regulations could be made consistent by limiting the subject matter to the *effects* of the retrenchment, such as providing severance pay beyond minimum legal requirements, retraining opportunities, and preferential consideration for rehiring in the event of improved or changing business operations.

Economic action and dispute settlement.

Trade union strikes and employer lockouts are generally regarded as economic weapons of last resort when either party is unable to find other means of persuading the other to accept its terms for resolving a labor dispute. The right to strike is covered under ILO and other international standards protecting a collective work stoppage for the purpose of securing

¹¹⁰ ELRA, Sec. 38; Regulations Sec. 23 (6).

compliance with economic or other demands concerning wages, benefits, or other terms and conditions of work that the employer has refused. However, strikes are less likely to occur if the labor market regulatory system provides a peaceful means for channeling worker discontent through a rational labor dispute resolution mechanism, such as the new Commission for Mediation and Arbitration (CMA) established under LIA (discussed further in the Implementing Institutions section).

The right to strike is not absolute under international standards, and, as is regulated by ELRA, may impose certain prerequisite conditions, including authorization by a majority of the bargaining unit workers, exhaustion of mediation procedures for up to 30 days, and 48 hours advance notice to the employer.¹¹¹ And, as is a common feature of national labor codes, and permitted by international standards, ELRA prohibits strikes that could have the effect of paralyzing essential public services, such as water, electric and telephone utilities, hospitals, and air traffic control. The Act makes such disputes involving essential services subject to arbitration at the request of any party to the dispute.¹¹² The LIA establishes a new Essential Services Committee for the purpose of designating essential services and determining whether a particular labor dispute involves such essential services. The Committee also is to “determine disputes about whether or not an employee or employer is engaged in a designated essential service.” This states an adjudicative function for which ELRA and LIA provide no rules for the Committee’s procedures or for appeals from its decisions. Consideration should therefore be given to keeping the Committee’s functions as advisory, and transferring the adjudications to CMA.

It is essential that limitations on the permissible purposes of a strike be clear and consistent. But ELRA and the implementing regulations seem confusing and inconsistent in this regard. ELRA appears to intend that an “*interest*” dispute (meaning essentially a dispute over a new or

successor collective agreement to establish terms and conditions of employment) be subject to strike or lockout action after the mediation, advance notice, and other conditions are met. However, such economic action over a “*rights*” disputes (or “complaint,” as defined under ELRA, such as over the application or interpretation of an existing collective or individual employment agreement) is unlawful and to be resolved instead solely through mandatory mediation and, if unsuccessful, then by resolution through binding arbitration of CMA or by decision of the Labour Court.

One of the most important employer incentives for bargaining and entering into collective agreements with trade unions is that there will be labor peace for the duration of the agreement (typically two years in Tanzania). This is a matter of substantial interest and concern to potential investors. The expected labor peace period after the signing of a collective agreement is most likely to occur if the labor regulatory system requires that conflicts over “complaint” disputes be settled through mediation and arbitration, and that strikes of such disputes are declared unlawful. The applicable ILO conventions clearly permit such restrictions on union strike activity. That the new ELRA and LIA are designed to assure speedy resolution of such disputes is a significant improvement over the now-repealed predecessor statutes by which the resolution of such disputes often took two years or more, and which too frequently led to wildcat (unlawful) strikes by disgruntled workers.

Institutional jurisdiction over complaint disputes are regulated by conflicting ELRA provisions. On the one hand, ELRA prohibits strikes over complaint disputes, while on the other hand it permits strikes over a dispute that “relates to the unilateral alteration of terms and conditions of employment.”¹¹³ A “unilateral alteration of terms” taken by an employer during the term of an existing collective agreement is presumably not subject to union strike action. Since such a unilateral action could involve a dispute over the interpretation of the existing agreement, ELRA requires correction to make plain that such a dispute should be subsumed under the provisions requiring resolution only by

¹¹¹ ELRA, Sec. 80.

¹¹² ELRA, Sec. 77 and 78. The ILO consistently stresses that such limitations on essential services be strictly defined as meaning protection from the interruption of services that would endanger the life, personal safety or health of the whole or part of the population.

¹¹³ Compare Sec. 74 and 76 with Sec. 80 (2) and (3).

mediation and arbitration and not by a work stoppage.

Child labor, forced labor, and trafficking in persons. The persistence of child labor has defied tremendous international efforts to control it, particularly in Sub-Saharan African countries, including Tanzania. Its worst forms, as when girls are forced into urban commercial sex or abusive household domestic work, are frequently the result of unlawful trafficking by exploitive employers and even by poverty-stricken families. HIV/AIDS (discussed further below), chronic poverty, poor educational opportunities, inadequate skill training, cultural prejudices, and inadequate enforcement of laws against child labor, slavery, and trafficking in persons conspire to frustrate the best efforts to eradicate child labor. It is found overwhelmingly in the informal sector and rural areas where protective laws and regulations do not reach.

The relevant legal framework is clear, though not consistently well known, understood, or enforced throughout the country. Consistent with the applicable ILO Core Conventions,¹¹⁴ as well as others ratified by Tanzania, including the UN Convention on the Rights of the Child (CRC),¹¹⁵ Tanzania considers child labor to be work performed by children under 18 years of age that is exploitative, hazardous, or inappropriate for their age, and which is detrimental to their schooling, or social, mental, spiritual, and moral development.¹¹⁶ Also consistent are the provisions of ELRA, which prohibit employment of children below the

¹¹⁴ Child Labor Conventions 138 and 182; Forced Labor Conventions 29 and 105.

¹¹⁵ The CRC contains the most universally recognized and comprehensive articulation of civil, political, economic, social and cultural children's rights, and has been ratified by every country in the world (except Somalia and the U.S., but note that a 2005 U.S. law, the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005, calls for comprehensive, multisector assistance programs to ensure the well-being of orphans and other vulnerable children in developing countries, and emphasizes the needs of children affected by HIV/AIDS). Tanzania has also ratified the African Charter on the Rights and Welfare of the Child.

¹¹⁶ As regarded by the National Bureau of Statistics for such purposes as the periodic national labor force surveys, which in the last official version, for 2000/2001, reported 1.2 million children involved in child labor.

minimum working age of 14; permits the employment of children age 14 only in light work that is neither harmful nor interferes with school attendance; and provides that children under 18 years may not be employed in a mine, factory, as crew of a ship, or any other work setting determined to be hazardous under regulations promulgated by the Labor Minister.¹¹⁷ Tanzania's poverty reduction goal is to reduce child labor by more than half by 2010.

The worst forms of child labor are reported to involve agriculture (including tea, tobacco, coffee, and sisal plantations), mining and quarrying, unregulated piecework manufacturing, domestic service, and commercial sex. Sometimes these sectors overlap, as where many young girls who are abused and unpaid in household domestic work find themselves with no other alternative than engaging in prostitution.¹¹⁸ In addition, small unregulated gemstone mines are a particular problem, often located in areas without schools, and where "snake boys" work underground with mining equipment and explosives. In urban informal sector areas, children are found engaged in various activities such as scavenging for metal, courier work, and car washing.

As recognized by the Ministry of Labour, Employment and Youth Development (MOL), "[p]rovision of affordable education of good quality and which is relevant to the needs of pupils and their families is the most effective measure in eliminating child labor . . ."¹¹⁹ and is one of the important reasons for emphasizing primary and secondary school strengthening in the national poverty reduction strategy.

¹¹⁷ ELRA Sec. 5. It also provides, however, that such regulations may permit employment of a child in mines, factories or ships as part of the child's training, and in other types of work places on the condition that the health, safety and morals of the child are fully protected. Sec. 5 (5). Section 6 of ELRA (Forced Labor) also prohibits any person from procuring, demanding or imposing labor, including bonded labor, that is "exacted from a person under the threat of a penalty and to which that person has not consented." Violations of either Sec. 5 or Sec. 6 are subject to penalties of up to TZ\$5 million (about US\$ 4,000) and up to one year imprisonment. There appear to have been no such penalties imposed in 2006.

¹¹⁸ See, e.g., Tanzania - Children in Prostitution, International Labor Organization, 2001.

¹¹⁹ Strategies for Elimination of Child Labour in Tanzania, MOL (no stated date) p. 16.

Teachers have been provided incentives to work in remote areas, including housing, and have received training and materials to improve their skills. The ILO, with assistance from the US Department of Labor, has implemented several child labor reduction programs in 16 districts, including work related to the identification, withdrawal, and rehabilitation of children from the worst forms of child labor, and providing educational and economic alternatives. Poor families have received information, training, and grants to start small income-generating projects.

Employment discrimination and gender equality. The unequal role of women in the workplace and gender mainstreaming have received considerable attention from the ILO, NGOs, and donor countries. Women in Tanzania now have protections against discrimination, as well as certain minimum maternity benefits, specified in ELRA.¹²⁰ But conditions constraining equal labor market participation by women persist, including lower levels of educational attainment and skill training, cultural attitudes and practices, as well as early pregnancies and marriages. The adult male illiteracy rate is about 23 percent, but the adult female rate is nearly 38 percent. Not surprisingly then, women are under-represented in the formal sector but over-represented in the unprotected informal sector, and suffer higher rates of unemployment.¹²¹

ELRA, in addition to prohibiting discrimination in employment based on gender (and on the related grounds of pregnancy, marital status, or

¹²⁰ ELRA, Sec. 7, and 33-34. Although the Act specifies gender, sex, pregnancy, marital status, and family responsibility as prohibited employment discrimination grounds, consideration should be given to modifying the regulations to clarify that such grounds also include the principle of "equal pay for equal work." Specific equal pay requirements are absent in both the Act and the regulations. The legal framework also includes an amendment to the Constitution adopted in 2000 that bars discrimination on the basis of sex, and the Village and Land Act of 1999, which provides for co-ownership of land by spouses and equal representation of women in village land institutions.

¹²¹ The 2000/2001 labor force survey showed that in urban areas female unemployment was 38.5 percent as compared to the male rate of 24.4 percent, and in Dar es Salaam was 58.1 percent as compared to 36.0 percent.

family responsibility), also includes wide categories of other protected grounds, including color, nationality, tribe or place of origin, race, national extraction, social origin, political opinion or religion, disability, HIV/AIDS, station of life, or age.¹²² The Act also contains two related requirements that many employers regard as unnecessarily onerous. In one, employers are required to establish a committee to foster nondiscrimination, and in the other they are required to develop and register with the government a detailed nondiscrimination plan covering 18 specified management employment practices.¹²³ In the face of such limited enforcement resources, consideration should be given to requiring workplaces instead to post notices in plain view of employees informing them of their essential labor protective rights, including the grounds on which employment discrimination is prohibited by the Act, and to deleting the vague "committee" requirement.

Social security system. The legal framework for Tanzania's social insurance system is fragmented into five separate social security plans. Each has different contribution and benefit structures and operational rules, reports to different government ministries, incurs excessive administrative costs, and together they lack any feasible method for portability of benefits from one plan to another. The largest, the National Social Security Fund (NSSF) covers workers in the private sector and some employees in the civil service and parastatal organizations. The Parastatal Pension Fund (PPF) initially covered only employees in parastatal organizations but is now extended to anyone, including the self-employed. The Local Authority Pension Fund (LAPF), the Public Service Pension Fund (PSPF), and the Government Employees Provident Fund (GEPF) cover different categories of public employees.

¹²² ELRA, Sec. 5 (4). Lack of understanding among employers and workers, together with weak government enforcement, continue to undermine such protections, as evidenced by paid newspaper advertising for positions openly stating gender and age requirements. For example, an executive search company advertisement for a payroll accountant position in the Daily News (August 15, 2007, p.9), specified that applicants "must be of age between 30-45 years."

¹²³ ELRA, Sec. 7 (2); Regulations, Sec. 30.

Private sector coverage extends to only about 70 percent of the formal sector, due largely to ineffective administration and enforcement, with the result that the social security funds cover just 5.4 percent of the national workforce. The government has recognized the need for fundamental reforms, adopting its National Social Security Policy in 2003, and forming a technical committee of experts which issued a detailed report and recommendations in 2005.¹²⁴ The most sweeping reform the committee recommended, and which the National Social Security Policy embraced, is to extend coverage to those employed and self-employed in the informal sector. Because mandating wage-based contributions from the informal sector is unrealistic, devising a public financing system for such coverage is a formidable challenge. The technical committee simply called for further research, and, in the absence of a feasible plan for covering the informal sector, reform of the social security system remains in the planning stage.

Nevertheless, consideration should be given to instituting a number of other reforms for which there is a general consensus, and which are long overdue, for the benefit of employers and workers in the formal sector. These should include harmonizing the separate social security funds, preferably through a new overarching scheme with consistent contribution and eligibility requirements that meet ILO minimum standards;¹²⁵ having responsibility centralized through an independent, tripartite board of trustees to a single ministry; assuring transparency and accountability through an independent, specialized regulatory authority; instituting a reliable database of employer and beneficiary information; and adopting consistent policies on the permissible instruments for fund investments.

Implementing Institutions

Whether the sweeping labor and employment law reforms discussed above will be effective depends on the important reforms of the institutions that administer and enforce them.

¹²⁴ Tanzania Employment-Based Social Security Reform Proposals, prepared by Professor Marius Olivier and Professor Edwin Kaseke, April, 2005.

¹²⁵ These are Convention 102 on Minimum Standards in Social Security, and Convention 128 on Invalidity, Old-Age and Survivors' Benefits, neither of which have been ratified by Tanzania.

By enacting the Labour Institutions Act along with ELRA in 2004, the government has taken a major step in bringing employers, trade unions, and workers into compliance with the new rules. The new rules include employment standards and dismissals, trade union rights and collective bargaining, discrimination and child labor, mediation and arbitration, and judicial enforcement. As the implementing regulations for these two laws were not promulgated until March, 2007, and are not widely available, little can be known at this stage of their practical impact.

Nonetheless, an early review of some important elements of the institutional changes can provide an indication of where further change and clarification in the applicable laws and regulations would enhance understanding and compliance. Without clear and pragmatic rules, those who depend on them – employers, labor organizations, workers and public agencies – will not have a code of workplace conduct that provides the degree of certainty and stability necessary for either private sector-led economic growth or essential worker protections.

Ministry of Labour, Employment and Youth Development. Within the MOL, the Department of Labor (DOL), headed by the Labour Commissioner, is divided into three sections – Industrial Relations, including a Child Labour Unit; Dispute Prevention and Resolution; and Social Security. DOL is the lead agency for administering and enforcing ELRA and LIA, and for developing the legislation for the several other labor market reforms that are still in the planning and drafting stage.

Interviews and research confirm widespread reports that the Labor Ministry faces major challenges in meeting its tremendous responsibilities for administering and enforcing ELRA and LIA, along with the several other existing labor and employment laws for which it is responsible, and, moreover, for playing the key government role in the formulation of labor market policy. Labor regulatory reforms meant to better protect workers within a new flexible framework that fosters efficient business operations and stimulates greater foreign and domestic investment will mean little without MOL management reforms.

The Ministry's internal weaknesses include severe shortages of well-trained and competent staff both at headquarters and regional offices, inadequate offices and equipment, low standing within the government, and the mistrust of stakeholders who perceive that there is too little transparency and accountability. Stakeholders also perceive that the mindset of too many MOL staff seems more attuned to lingering socialist sentiment and coercive enforcement against the private sector than to positive and flexible administrative practices that are conducive to a growing market economy. The trade union and employer social partners need a well-functioning industrial relations system that requires assistance beyond the current capacity of MOL.

Strengthening the capacity of the Labor Ministry has received considerable attention and support from donors, with Danida having provided substantial support for several years, along with the important labor market reform component of the Ministry of Planning, Economy and Empowerment's BEST program. There is a need at this critical juncture in the labor market reform process to coordinate additional support with these ongoing efforts.

Commission on Mediation and Arbitration.

Both ELRA and LIA tackle one of the most difficult yet critical goals of a well-functioning labor and employment regulatory system: resolving workplace disputes quickly and definitively. Without it, festering worker dissatisfaction with a seemingly endless dispute resolution process can lead to a host of problems ranging from absenteeism to unlawful wildcat strikes. Perhaps the most crucial reform in this regard is the transition of the old Industrial Court, long known for interminable delays to CMA that is just getting underway.

Alternative dispute resolution is meant to become the paramount means of resolving labor disputes, with judicial intervention and adjudication – through a new Labour Court also created by LIA – kept to a minimum. For the first time, labor dispute resolution has been made subject to a specific timetable. The LIA rules require that disputes concerning employee termination be referred to CMA within 30 days of the termination decision, and that all other disputes be referred within 60 days of the start of the dispute. Then, following the referral to

mediation, the mediator is required to conclude the mediation within 30 days, unless extended by agreement of the parties.

For disputes that are unresolved through mediation or otherwise referred to arbitration, the arbitrator, following a hearing, is required to issue an award within 30 days thereafter. Any challenges to the award must be brought to the Labour Court within 14 days of the arbitration award, and, similar to appeals of labor arbitration awards in the US, ELRA permits the court to set aside such awards only if it finds that the arbitrator engaged in misconduct or failed to follow proper procedures. That sharp limitation on court jurisdiction should cause appeals of arbitration awards to be filed infrequently.

As with the ELRA provisions, a detailed analysis of the entire body of institutional laws and regulations is beyond the scope of this report. However, they contain a number of anomalous and questionable provisions that should be addressed as the labor market reform process moves forward..

Among the more serious issues are provisions that confuse what properly should be the separate and distinct roles of mediators and arbitrators. Mediators attempt to bring about a voluntary settlement of disputes by determining the parties' essential interests and what resolution they might accept to avoid further litigation. Mediation presupposes that any lawful terms of settlement counts as a success, whether or not it accords with the mediator's view of the merits of the dispute. Confidentiality is key. The parties often provide confidential information to the mediator with the understanding that, should mediation fail, such information cannot be introduced at any subsequent arbitration or judicial proceeding.

That protection is obviously in jeopardy if the CMA process permits a mediator, unable to broker a voluntary settlement, to then move the dispute to the arbitration phase and, at the same time, be the arbitrator. But the LIA (Section 19 (7)), states that nothing in the law precludes "a person being appointed as both a mediator and an arbitrator," nor "being assigned to perform both capacities in respect of a dispute." The mediator/arbitrator dual role is also confirmed in the LIA rules (Part II, Section 15 (2)), and Part

IV, Section 30 (2)). An anomaly is found in the same rules (Part IV, Section 18 (5)) that provide “[n]othing said during the mediation phase shall in any way be used as evidence in the arbitration proceedings, unless it is agreed between the parties in writing.” As there appears to be nothing in the laws or regulations to bar CMA from exercising its discretion to decline to utilize the dual role provisions, it should do so on its own authority, pending reconsideration of the current contrary regulatory provisions. The only exception should be for cases where the parties have jointly agreed that the same mediator may proceed to the arbitration stage.

Essential Services Committee. As mentioned in the Legal Framework section, LIA establishes this new institution with authority to designate specific essential public services against which work stoppages are prohibited, per the terms of ELRA. The Committee is also authorized to “determine disputes about whether or not an employee or employer is engaged in a designated essential service.”¹²⁶ It seems anomalous that such a dispute resolution function would be assigned to the Essential Services Committee when the resolution of virtually all other types of labor disputes is assigned to CMA and the Labour Court. The respective roles and responsibilities of these institutions as to essential services should be reviewed and clarified. Neither the law nor the regulations address what procedures and timetable are meant to apply to the Committee's determinations, how they are to be enforced, or what form of judicial review is applicable.¹²⁷ These matters require clarification as well.

Supporting Institutions

Law Reform Commission and the Labour, Economic and Social Council (LESCO). The Commission has been in operation since 1983, when Parliament created it upon the recommendation of an earlier Judicial System

Review Commission. That commission had reported on the “need to establish an independent body which will maintain a constant monitor over the administration and operation of the law with a view to the maintenance of its relevance to changing times and conditions and to report on any breakdown or threatened breakdown so that remedial measures can be timely applied.”

That need is equally compelling today, as evidenced by the Commission's current evaluation of the civil justice system that seeks to reduce delays, costs and complexities in civil cases, with ongoing support of the BEST program. It seems equally compelling that the Commission, highly regarded by many for its competence, independence, and key role in the legislative process, also engage in the labor and employment law reforms now underway. This would be a reprise of its role more than 20 years ago when it issued a major report, now outdated, on making the labor laws relevant to changing economic and political circumstances.

The Commission could review the newly implemented ELRA and LIA, plus the several labor and employment laws still in the planning stage. Input from the Ministry of Labor and the labor market reform stakeholders could be provided through collaboration with LESCO, the new tripartite advisory body created by LIA. Experts at the University of Dar es Salaam Law School have indicated their interest in assisting in such a role. The agenda should include the reforms planned for Occupational Safety and Health, Workers' Compensation, Social Security, and others. A more rigorous legislative process, taking advantage of the Commission's important role with the Attorney General and Parliament, should lead to more consistent and effective labor statutes and less need to correct the types of mistakes explained in the examples described under Legal Framework and Implementing Institutions.

Education and skill training. The low level of educational attainment and vocational skills in Tanzania imposes a major constraint on worker productivity and economic growth. As noted by the World Bank, Tanzania's 1.3 percent participation rate in higher and technical education is one of the lowest in Sub-Saharan Africa, where the average is below 5 percent; in many high-income countries it exceeds 60

¹²⁶ LIA Sec. 29 - 33. (Section 29 mistakenly cites Sec. 76(3) of ELRA instead of Sec. 77, which concerns essential services.)

¹²⁷ By comparison, the labor laws of South Africa also establish such an Essential Services Committee for the purpose of determining which services should be classified as essential (Labour Relations Act, Sec. 70), but disputes are to be dealt with through a conciliation-arbitration procedure, subject to review by the Labour Court.

percent.¹²⁸ The proportion of the labor force with secondary or vocational education experience is more than 50 percent higher in neighboring Uganda and Kenya. Tanzanian firms with formal training programs provide less training than their counterparts in comparator countries, which is inconsistent with findings that total factor productivity is 11 percent higher in Tanzanian enterprises with such programs.¹²⁹

The central institution that provides and supports vocational training, the Vocational Education and Training Authority (VETA), was established by the Vocational Education and Training Act of 1994 as an autonomous agency. It operates 21 vocational training centers located in 18 regions, as well as a Vocational Instructors Training College. VETA also oversees the hundreds of private vocational training institutions, which are operated by for-profit centers, NGOs, and religious institutions, that provide most vocational education and training. These institutions are required to register and to operate under VETA's continuous certification and testing system, which also provides direct support to them in capacity building, equipment, and tools. VETA also conducts labor market surveys meant to keep its training demand-driven and up to date with industry requirements.

The main source of VETA funding derives from the Skills and Development Levy based on six percent of payroll on all employers with four or more employees. However, VETA itself receives only one-third of that revenue. Interviewees with professional interest in vocational training

¹²⁸ See

http://siteresources.worldbank.org/INTWBISFP/Resources/0_Prof_Msolla.pdf.

¹²⁹ Investment Climate Assessment: Improving Enterprise Performance and Growth in Tanzania, World Bank and the Economic and Social Research Foundation, 2004. The report also notes that while 25 percent of Tanzanian firms reported that worker education and skill levels pose a major or very severe obstacle, workers in Tanzanian enterprises with formal training programs receive only about three weeks of annual training, compared to 15 weeks in India and 17 weeks in China. In comparison, however, another survey reported that about one-half of large enterprises in Tanzania either provided training for workers or paid for their training. See *Confronting Economic Insecurity in Africa*, International Labor Organization, 2004, p. 259.

expressed considerable concern that none of the other two-thirds of the levy revenue is available for VETA or for any other support for vocational education, pointing to a potential issue of transparency and accountability that should be investigated. At the same time, there have been a number of reform proposals suggesting that the government should consider ending VETA's control of the third of the levy funds it receives.¹³⁰ For example, it could be required to pass on a certain share of it to other institutions on a competitive basis. VETA has submitted requests to receive a greater share of the training levy, but thus far there have been no reports of any government decision. Alternatively, Tanzania could consider offering credits on the training levy for employers who provide worker training and apprenticeship programs that meet appropriate standards. On this point, employers generally seem unaware that such a scheme is already in place for exemptions of up to 50 percent of the training levy for firms operating in export processing zones, which may indicate that it has not been implemented.¹³¹

Finally, despite the widespread investor concern about low educational and skill levels in Tanzania, there is virtually no coordination of occupational skill requirements between VETA and potential incoming investors. Investors should be better informed about available local skills and existing or planned skill training opportunities. This information would also allow VETA to better fulfill its demand-driven training mission. This coordination could be established on a regular basis through the Tanzanian Investment Center (TIC), which is meant to provide a "one-stop shop" interface between investors and the relevant government ministries.

Immigration and work permits. Tanzania's serious occupational skill shortages are directly related in two ways to attracting export-oriented foreign industries. First, as it improves the quality and output of vocational training, Tanzania needs to create more jobs to capitalize on its expanding human resources. Second, that goal is thwarted by immigration policies that operate as an arbitrary barrier to foreign

¹³⁰ See, for example, Tanzania Human Development Report, UNDP, 2000.

¹³¹ The Export Processing Zones Act, 2002, Part V (Investment Incentive).

investors who need to bring in foreign workers, whom they know to have the requisite skills, when local workers with such skills are unavailable.

Under the Immigration Act, the Immigration Department of the Ministry of Home Affairs is authorized to issue Class B residence permits for expatriate employees of foreign or domestic employers.¹³² Foreign investor applicants registered with the TIC are automatically granted up to five Class B permits. Before the Department may issue any more than five, however, the application has to be referred for a recommendation from the Labor Ministry, where a work permit committee processes applications.¹³³ That is because the Immigration Commissioner must be satisfied that the expatriate employee or employees in question “possesses the qualifications or skill necessary for that employment and that his employment will be of benefit to Tanzania.”¹³⁴ Moreover, the law further requires that (a) the Commissioner is satisfied “that all possible efforts have been explored to obtain a local expert but to no avail,” and that (b) the employer of an expatriate employee “establish effective training programmes to produce local experts to undertake the duties of the foreign expert.” This is not a minor matter for investors, as the law also makes anyone in violation of these requirements liable to a minimum fine of TZS1 million or imprisonment for a minimum term of six months, or both.¹³⁵

The IMF recently urged the government to address shortages of skilled labor. It reported that business and financial sector representatives noted “the lack of appropriate skills . . . as well as some difficulties in securing work permits for non-Tanzanian skilled workers,” and referred to strategies to promote private sector investment by “addressing human resource constraints through improved vocational training, and streamlining the procedures for granting work

permits to enhance availability of scarce skilled labour.”¹³⁶ Investors understandably consider these requirements as an example of excessive government control that stands as a barrier to foreign enterprises that are more productive than domestic firms, bring valuable management skills, invest more heavily in infrastructure and in the training and health of their workers, are more connected to global markets, and have positive spillover effects on local business through supply and distribution chains, trading, and outsourcing.¹³⁷ Moreover, from the Tanzanian side, interviews indicated that the requirement for training Tanzanian workers as a condition for granting a work permit was rarely, if ever, successful. It is also noteworthy that the five-expatriate employee quota is inapplicable to the mining and petroleum sectors.

Therefore, Tanzania should consider at least a temporary waiver of the quota, and then assess the results of that temporary waiver. For example, it might discover that to a large extent the specter of too many expatriate employees crowding out Tanzanians is self correcting. That is, it should be seen as in the foreign investor’s self interest to employ lower cost Tanzanian workers who are capable of performing the essential elements of a particular position over comparable foreign workers. The desirability of encouraging training for local workers is incentive to grant some credit for such training from the six-percent skill training levy on employers.

Trade Union Congress of Tanzania (TUCTA). Until about ten years ago, trade unions were essentially state controlled. With the 1998 Trade Union Act, independent trade unions began to emerge, and led in 2001 to the formation of the TUCTA union federation. But excessive government controls remained, and it has not been until the implementation of ELRA this year that the regulatory structure permitted union independence that ILO standards call for. As one consequence, interviews for this report revealed a widespread opinion that most of the union leaders continue to be unduly influenced by their socialist history, in which, as one interviewee put it, the right to strike was squelched by the notion that such action was

¹³² The Immigration Act, Part IV Conditions of Entry and Residence, Sec. 20.

¹³³ For the first six months of 2007, the committee had considered 172 applications involving 29 different nationalities, a process that takes a month or more to complete for approvals, whereas appeals of denials to the Minister may take considerably longer.

¹³⁴ The Immigration Act, Sec. 20 (1).

¹³⁵ The National Employment Service Act, Part VI, Sec. 27 (2), (6), and (7).

¹³⁶ IMF Country Report, April 2007.

¹³⁷ See Foreign Investment and Economic Development: Evidence from Private Firms in East Africa, Center for Global Development, 2005.

tantamount to the government calling a work stoppage against itself. Lacking the support of competent and effective labor law administration and enforcement, and facing considerable hostility from new private sector employers, trade unions are struggling to gain strength and influence in today's liberalized economic environment.

Reports of combined union membership in the range of 300,000 to 350,000 leave TUCTA as representing about the same number of members as reported ten years ago. Gains since then in the private sector and among some workers in the public sector, such as teachers, were outweighed by the retrenchment of large numbers of government workers and by losses stemming from the privatization of parastatal enterprises. Consequently, public sector worker representation constitutes about two-thirds of total membership. In the private formal sector, unions represent about one-quarter of paid workers.¹³⁸ Further unionization there is hindered by the unions' own lack of organizational and bargaining capacity. Many workers have concluded that there is too little benefit in paying two percent of wages for union membership, and for collective agreements typically containing little more than restatements of already mandated legal rights.

TUCTA is designated as the official workers representative in the ILO tripartite system, as well as in various government committees and other organizations. The federation, as well as some of the independent unions, attempts to pressure the government on policies affecting workers' interests. They stage demonstrations from time to time, including ones in 2007 supporting an increase in the minimum wage and another in support of International Women's Day and the protection of maternity rights,

¹³⁸ There is considerable variation in union membership by private sector industry and as compared to membership found in other African countries. In the textile industry, the Tanzania unionization rate is 12.5 percent (as compared to 81.3 percent in Kenya), jumping to 43.8 percent in food and beverage processing (though lower than the 66.3 percent rate in Mozambique). See Snapshot Africa - Tanzania, Benchmarking FDI Competitiveness, World Bank, 2006 (www.fdi.net/snapshot_africa). For a discussion of union representation issues, see Constraints/ Obstacles to Increased Trade Union Membership in Tanzania, ILO Office for Tanzania, Kenya, Uganda & Somalia, 2004.

including leave with pay and the workplace right to breast feed a child. Overall, however, the trade unions are generally considered to lack the ability to mount sustained campaigns and otherwise to play an active role in the development of labor and employment policies.

Association of Tanzania Employers (ATE). Like TUCTA on the labor side, ATE is designated as the official employer representative in the ILO tripartite system and in various MOL and other governmental advisory bodies.¹³⁹ It has about 850 registered employer members, with about 70 percent based in Dar es Salaam and 30 percent located in various mainland regions, organized into several divisions: Agriculture, Commerce, Industry, Mining, Banking and Finance, Oil Industry, and Utilities and Services.¹⁴⁰ ATE, although regarded as having competent leadership and staff and is the recipient of ongoing donor support, particularly by Danida, is also regarded as having insufficient capacity and membership base to effectively advocate for employers on labor and employment issues. Its needs for more effective advocacy include increasing its membership; expanding its presence in the regions; adding expert staff to inform its members in labor relations practices under the new laws and institutions; having the resources for analyzing and disseminating wage and other information essential to collective bargaining; and enhancing its capacity for representing its members before administrative and enforcement institutions such as the CMA and the Labour Court.

Media. The press routinely carries articles about governmental actions and decisions, much of it critical on a variety of issues, including corruption. The Millennium Challenge Corporation (MCC) has instituted the Tanzania Threshold Program on controlling corruption, which contains a program element for training journalists in investigative reporting. The MCC notes that about 130 corruption-related stories now appear in the press each month. Articles concerning advocacy of organizations' actions, such as TUCTA's one-day demonstration for

¹³⁹ Other national business organizations playing an advocacy role include the Confederation of Tanzanian Industries (CTI), and the Tanzania Chamber of Commerce, Industry and Agriculture (TCCIA).

¹⁴⁰ See further information at www.ate.org.tz.

increasing the minimum wage¹⁴¹, and criticism of the government by domestic and foreign NGOs regularly appear in the media.

These observations are consistent with the latest findings of Reporters Without Borders (RSF) in its 2006 Annual Report, which ranks Tanzania 55 out of 169 countries in its Press Freedom Index, an improvement over earlier findings. RSF reports that the media sector is large and mostly responsible, and concludes that "there is genuine press freedom in Tanzania, despite the extreme susceptibility of some politicians or businessmen with a weakness for litigation for defamation." In this regard, Reporters Without Borders issued a report in 2006 criticizing the Tanzanian government for threatening to deport an investigative journalist who appeared in a documentary film about fishing in Lake Victoria and the global arms trade, which government authorities say has damaged the country's economy and image. Reporters Without Borders said that it is "insulting and deplorable arbitrary revenge against a journalist who was simply exercising his constitutional right to free expression."¹⁴²

In addition, the ILO has expressed concern that although no Tanzania law specifically restricts freedom of expression by trade unions or others, it cautions that some laws could victimize outspoken critics of the government. It notes that the Newspapers Act, 1973, and the Penal Code, Cap 16, contain provisions that disallow words that may bring the government into hatred or disrespect or excite unfriendliness against it.¹⁴³

Civil society. NGOs played a significant advocacy role in the early 1990s supporting the public demand for changing the constitution to enable a democratic, multiparty political system. As the number of NGOs grew, legislation was enacted defining them as "a voluntary grouping

¹⁴¹ As of the end of 2007 the Government of Tanzania set minimum wages for the private sector by sector (i.e. agriculture, mining, ect.). This action could produce lay-offs, industrial actions and cost driven inflation. It is necessary to conduct an analysis to assess the potential implications to the economy.

¹⁴² See www.rsf.org.

¹⁴³ A Guide to Fundamental Standards and Principles of Freedom of Association in Tanzania, ILO Office Dar es Salaam, 2006, pp. 33-34.

of individuals or organizations, which is autonomous, non-political and not-for-profit sharing; organized locally at the grassroots level, nationally or internationally for the purpose of enhancing the legitimate economic, social and/or cultural development or lobbying or advocating on issues of public interest or interest of a group of individuals or organizations."¹⁴⁴ One study concludes that NGOs have made an effective contribution to social policies, but that they require greater assistance "to build their capacity in research skills...to be more effective in influencing policies."¹⁴⁵

There are some reports of government interference in NGOs' activities. NGOs that have engaged in labor market reform advocacy have experienced tension with the government over their activities. For example, the Legal and Human Rights Centre (LHRC), in 2004, as a member of the East African Human Rights Foundation, participated in the formation of a coalition, the Labour Rights Advocacy Team, that worked to raise awareness of and advocate for Tanzania's ratification of ILO conventions. The LHRC reported earlier this year that a fact-finding mission it had formed with one of its lawyers, a journalist, and others had been held for questioning by police on the claim that the mission had gone on a fact-finding mission without reporting to the government. LHRC was investigating complaints that 8,000 villagers had been evicted from their traditional land, which was turned into a Wildlife Management Area without their consent. After they were released, the LHRC issued a statement that the team should never have been detained because, "Last year a verdict was issued by the Commission for Human Rights and Good Governance which, among other things, said that no one is required by the law to report . . . before he/she performs any duty in the area."¹⁴⁶

Health care and HIV/AIDS. Tanzania's limited health care system is particularly strained by the persistent high incidence of HIV/AIDS in the population – seven percent of those aged 15 to

¹⁴⁴ The NGOs Act No. 24, 2002.

¹⁴⁵ Paper presented for "Policy Dialogue Seminar on: 'Is there a Gap between Policy Makers and CSOs,'" Economic and Social Research Foundation, Dr. Cosmas Mogella, UDSM, 2007, pp. 16-17.

¹⁴⁶ LHRC Newsletter, January, 2007 (www.humanrights.or.tz).

59¹⁴⁷ – which also has become a major development constraint. If it continues, the African Development Bank estimates that Tanzania's GDP would decline 15 percent by 2010,¹⁴⁸ and, by 2015, the labor force would suffer cumulative losses of nearly 11 percent, according to a recent ILO report.¹⁴⁹ Women bear greater risk and vulnerability, including responsibility for home-based care for orphans and infected family members. The stigma of HIV/AIDS affects orphaned children, who are unfairly presumed to be infected, denied access to schools and health care facilities, and forced to work under exploitive and abusive conditions.

In the workplace, HIV/AIDS has led to discriminatory dismissals and other labor practices. ELRA, in addition to specifying HIV/AIDS among the prohibited grounds for employment discrimination, has been supplemented by regulations providing that employers must follow certain guidelines concerning dismissal for incapacity before terminating an employee's services.¹⁵⁰ But most employers offer no prevention or treatment services. Less than one-third of employers promote HIV/AIDS prevention program by displaying prevention messages, and less than half of those offer counseling or free condom distribution. Far fewer offer anonymous HIV testing.¹⁵¹ With further assistance from donors, NGOs, and international labor and finance institutions, the government needs to provide greater encouragement and assistance to employers and health care providers to provide better prevention and treatment measures.

¹⁴⁷ HIV/AIDS Survey, National Bureau of Statistics, 2005.

¹⁴⁸ Tanzania Country Assistance Evaluation, African Development Bank, 2006.

¹⁴⁹ Report: Decent Work, Country Programme for the United Republic of Tanzania, ILO, 2006.

¹⁵⁰ Regulations, Sec 20 - 21. Consideration should be given to adding provisions protecting the privacy of infected employees by making disclosure of HIV/AIDS status, as well as any workplace testing for it, entirely voluntary.

¹⁵¹ Private Sector Competitiveness Project Appraisal Document for Tanzania, World Bank, 2005.

Social Dynamics

The social backdrop against which Tanzanians seek and earn their livelihoods is critical toward understanding the overall environment for labor and employment. Thus, this chapter begins with a discussion of Social Dynamics, followed by sections on Legal Framework, Implementing Institutions, and Supporting Institutions.

Tanzania's labor force, as last surveyed by the National Statistics Bureau in 2000/2001, was 16.9 million persons employed, with agriculture employing over 82 percent. The informal, non-agriculture sector reportedly employed 5.7 percent of the employed population, with new indications that by 2006 it grew to 9.3 percent.¹⁵² The following chart shows the distribution of workers by sector.

Employed Persons aged 10 and over by Industry (Standard Definition) Tanzania Mainland, 2000/01

	Both sexes	Male	Female
Total Employed Persons, aged 10 & over	100.0	49.4	50.6
Agriculture, Forestry and Fishing	82.1	39.6	42.5
Mining and Quarry	0.2	0.1	0.1
Manufacturing	1.5	1.0	0.5
Electricity and Gas	0.1	0.1	0.0
Construction	0.9	0.9	0.0
Trade	7.5	3.3	4.1
Transport and Communication	0.7	0.6	0.0
Finance	0.2	0.1	0.0
Personal Service	7.0	3.7	3.3

Tanzania suffers high unemployment, at 12.9 percent, as well as underemployment, at 11.2 percent. Unemployment is considerably higher in urban areas than in rural areas, particularly among urban youth, ages 15-24, at 27 percent. Young women, constituting 57 percent of unemployed youth, fare worse than young men,

¹⁵² News report of a preview of the 2006 labor force survey by the Minister for Planning, Economy and Empowerment (Daily News, July 14, 2007).

having lower education and skills and facing discrimination and negative cultural attitudes.

Agriculture, by far the dominant sector for employment (and nearly half of gross domestic product (GDP) and 85 percent of export earnings), will necessarily continue to be the major source of new jobs in the near- and medium-term. Consisting largely of subsistence farming, it is essentially beyond the reach of and unaffected by labor and employment laws and regulations, except for some of the larger operations such as plantations and agro-processing. In order to be able to absorb a majority of the growing number of new entrants to the labor force, reforms meant to improve the rural economy, especially those discussed in the other sections of this report on Agriculture, Getting Credit, and Infrastructure, will need attention.

Similarly, the fast-growing informal sector, characterized by unregistered and non-taxpaying micro-enterprises, must also constitute a major source for job creation in the near- and medium-term. Like most developing countries, historically Tanzania has tilted its employment laws toward rigid worker protection. However, its reform agenda recognizes that such rigidity is counterproductive and leads to keeping the self-employed and micro-enterprises in the informal sector, where workers typically receive no labor protections or social benefits and suffer poor working conditions and low wages, often below the minimum wage. More than 80 percent of persons in the informal sector are self-employed, and 75 percent have received no job training.¹⁵³ In addition to most informal sector workers being beyond the reach of labor and employment law protections, the informal sector receives little attention from labor unions and employer associations.

The goal of accelerating economic development and extending the reach of worker protections depends significantly on whether, by reducing regulatory and other barriers, these small enterprises can be induced into the formal sector. It is increasingly understood that greater workplace flexibility is likely to bring more small enterprises within the formal economy, and

thereby within the reach of labor and other regulations – and tax collection. They stand to benefit from becoming recognized property owners with access to the credit system and a better ability to enforce contracts. However, this transformation constitutes a major challenge and cannot be expected to produce major results in the near-term.

That recent labor market regulatory and institutional reforms are relevant only to the relatively small formal sector of the economy does not undercut their vital importance to national economic growth, job creation, and poverty reduction. The labor and employment regulatory system is of great consequence to that sector, more than any other, because of its superior potential for accelerating GDP, foreign direct investment, exports, productivity, and decent work. Instead of continuing to rely on an expanding informal sector, with no export capacity, low productivity, and poverty level wages, as has been the case with Tanzania and most African economies, expanding labor market opportunities in the formal sector is the clearest path to achieving Tanzania's economic and social goals.

Achieving sustained improvement in job growth and per capita income will be determined more than anything else by the rate of export-oriented growth in the industrial sector.¹⁵⁴ Future job creation will be inadequate if it is based on production geared only to domestic market demand. Developing and attracting larger manufacturing and other industrial enterprises is key. Low wage levels alone will not attract such enterprises. It is far more important to improve labor productivity, which is known to correlate to firm size. Large firms produce more per worker than smaller firms. Data for 2002 show that in Tanzania the median value added per worker ranged from US\$474 for micro-enterprises to US\$5,598 for very large firms (those with 250 or more employees).¹⁵⁵ Having a larger market size, enterprises that export are generally more

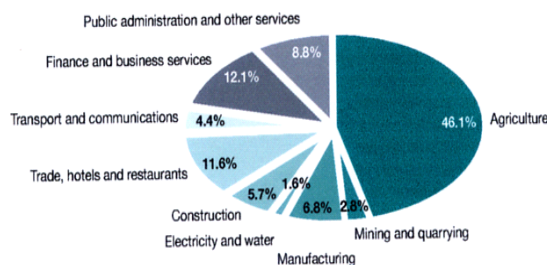
¹⁵³ Informal Sector Roadmap Study for Tanzania, by the UNDP, ILO, and UNIDO, September 2004.

¹⁵⁴ A useful discussion can be found in *Climate for Job Creation, Africa Region*, Centre for the Study of African Economies, University of Oxford, 2004.

¹⁵⁵ *Investment Climate Assessment: Improving Enterprise Performance and Growth in Tanzania*, World Bank and the Economic and Social Research Foundation, 2004.

efficient and have higher labor productivity than non-exporting firms.

The long-term success of Tanzania's new legal regime, as well as the additional labor market regulatory reforms still underway, will be measured by how well they facilitate Tanzania's transformation from a public sector-dominated economy toward the goal embodied in its National Vision 2025. The new legal regime's success will also depend on its contribution to the poverty-reduction strategy of becoming a semi-industrial, middle-income country through private sector-led growth. That goal depends on private industry (manufacturing, mining, construction, electricity, water, and gas) nearly doubling its present share of GDP, from that shown in the following chart, to 30 percent.¹⁵⁶



Tanzania's low levels of educational and job skills are a serious drag on worker productivity. The improvements in public educational and vocational training institutions are significant, but could be substantially augmented by developing and attracting larger firms, particularly foreign firms. Foreign firms are known to provide far more formal and on-the-job worker training than smaller domestic firms. Private sector firms, foreign and domestic, are also more likely to increase vocational training if provided with better incentives (as discussed further in the Supporting Institutions section). In addition to more training, foreign firms provide significantly better workforce benefits are provided, and are twice as likely as local firms to provide health benefits, including health insurance and on-site medical care.

Tanzania's labor market needs and expectations set a high bar for its regulatory and institutional reforms. Basic labor standards, trade union rights, and dispute resolution rules are now in place through the provisions of ELRA and LIA

¹⁵⁶ World Bank Project Information Document, Tanzania Private Sector/MSME Competitiveness, March 2005.

that are just being implemented. They are meant to assure potential new investors, as well as existing enterprises, that the labor regulatory reforms will be easier to comprehend and comply with than the outmoded laws being replaced.¹⁵⁷ In the past, few enterprises ranked labor laws among the most serious obstacles, despite having so many onerous requirements, primarily because those regulatory obligations have been so poorly and unevenly enforced.¹⁵⁸ The private sector's reaction to the enactment of a modern, comprehensive labor code — intended to be more clear, accessible, and flexible than the previous laws — is still to be determined. Trade unions, which early in the reform process complained that worker protections were being sacrificed on behalf of anti-union private sector enterprises, face the same uncertainty.

In general, Tanzania's transition from a centrally planned, state-controlled economic system to a free market economy has led to important progress in economic and social development, but remains a work in progress. Positive contributing factors range from having one of the most stable political systems in Sub-Saharan Africa to the continuing major role of the international financial institutions and bilateral donors. However, sustaining the higher rate of development needed for Tanzania's economic growth and poverty reduction goals will depend significantly on developing a more robust civil society with private sector advocacy organizations. These organizations will need to have the capacity to sustain the impetus for reforms, to play a watchdog role over the public sector, and to provide crucial services to the public that are beyond the capacity of the government. In the labor market context, key

¹⁵⁷ These are the Employment Ordinance of 1956, the Regulations of Wages and Terms of Employment Ordinance, the Wages and Salaries (General Revision) Act of 1974, the Trade Union Act of 1998, the Security of Employment Act of 1964, the Severance Allowances Act of 1962, and the Industrial Court of Tanzania Act of 1967.

¹⁵⁸ Because large enterprises in Tanzania are the most likely to face labor law inspections and enforcement, they are the most likely to rate labor laws as a major business obstacle (24 percent, as compared to small enterprises at 9 percent, and informal micro-enterprises at 4 percent). Investment Climate Assessment: Improving Enterprise Performance and Growth in Tanzania, Figure 3.21.

organizations include trade unions, employer associations, NGOs, and the media.

Recommendations

- **Improve public availability of labor and employment laws and regulations.** As noted in this report, it is difficult to obtain copies of the labor laws and regulations. Although ELRA and LIA are sometimes available at the official government bookstore, the regulations seem unavailable from any government source. The ATE privately printed sets of the new laws, but exhausted its supply and could not predict their availability. It is essential that stakeholders have easy access to the labor laws and regulations. That will require regular printing, seeing that they are distributed to stakeholders and others, and that they be made available on the internet.
- **Strengthen public awareness of basic labor market regulations.** MOL officials report that the new labor laws grant statutory authority to prepare and distribute posters to workplaces setting out the most important worker protections and employer requirements, but add that there is no plan or funding to implement it. As improved compliance with the new laws is a high priority, MOL should undertake such poster distribution as soon as practicable. MOL should consider including the posters information pertaining to: the sectoral minimum wage and overtime levels; rights to join and participate in trade unions; protections from discrimination in hiring, disciplinary actions and dismissals, especially on the basis of gender or HIV/AIDS; grounds for dismissal; severance pay protections; child labor prohibitions; and where to find assistance to vindicate these rights.
- **Re-work the current approach to mediation and arbitration of labor disputes.** As described in this chapter, because the law and regulations on CMA's alternative dispute resolution process conflict with international standards, such as with the mistaken merging of mediator and arbitrator roles, MOL should proceed with corrections, and, in the meantime, CMA should utilize its own discretion to separate these roles in its day-to-day operations.
- **Correct and clarify ELRA and LIA.** Because of the serious conflicts and confusing provisions in these new laws and the implementing regulations, MOL should plan, in collaboration with its employer and labor social partners, to systematically review the early experience with them and issue appropriate corrections and clarifications based on that review. Industrial relations issues should receive high priority in that process.
- **Strengthen and support the Law Reform Commission.** The Commission should be designated as an expert review agency, drawing on outside academic and other experts as needed, and responsible to the President, the Attorney General, and Parliament, for ensuring that the labor market regulatory reforms are consistent with the best international standards, the state of economic and social development, and the ongoing civil justice reforms under its purview. This should be developed in collaboration with the Labour, Economic and Social Council, on a tripartite basis.
- **Continue emphasis on privatization and worker retrenchment.** In cases of business transfers, including privatization of parastatal industries, where there is a business need to retrench unionized workers, rules should be developed to promote stability in trade union representation and collective agreements. The rules should turn on such factors as the degree of continuity, the proportion of carryover employees, and the need for increased flexibility in terms of employment in the successor enterprise. There should be set time limits on required advance consultation with trade unions and employees after which successor employers should be able to implement retrenchment plans in order to achieve viability of the successor enterprise.
- **Strengthen and expand opportunities for vocational education and training.** In light of the low levels of educational attainment and

vocational skills in the workforce, VETA should be authorized to receive a greater share of the skill training levy assessed on employer payroll, and employers should be encouraged to provide increased formal and on-the-job training by receiving either a portion of the levy fund from VETA, or a credit, up to 50 percent, on the amount of their payments otherwise owed to the fund. Information on available skills and on available skill training resources should be made known to new investors through coordination of VETA with TIC.

- **Reform system of immigration and work permits.** Investors unable to find workers with the skills they require should be allowed to employ foreign workers that meet the needed skills. This calls for eliminating the arbitrary limits on employing foreign employees, while at the same time providing more training to local employees to increase their skill sets.
- **Reform social security.** The fragmented and uncoordinated system should be harmonized, preferably with a new single agency, to establish consistent contribution, eligibility, and benefit standards. Short of that, rules should be adopted permitting portability of benefits across plans. There is an additional need for an independent regulatory authority to enforce transparency and accountability in fund administration.
- **Continue attacks on HIV/AIDS.** In light of the devastating impact of HIV/AIDS and the inadequacy of prevention and treatment available to workers and others, employers should be encouraged and assisted to carry out plans for educating workers and, within their capacity, for providing prevention and treatment measures. Employer, union, and employee education and enforcement should be improved in order to mitigate discriminatory treatment of workers based on their actual or perceived HIV/AIDS status.

REGISTERING PROPERTY

THE DOING BUSINESS RANKINGS (2006) Registering Property	
Tanzania / World	157 out of 175
Tanzania / Sub-Saharan Africa Region	37 out of 45

Introduction

The ability to freely own all types of property and to easily transfer and register property is a fundamental facet of business and economic growth in an emerging free-market economy such as Tanzania. For example, in most economies land and improvements to land account for most of the wealth of the country. Moreover, registration and protection of intellectual property rights is important with respect to encouraging foreign direct investment and marketing of needed consumer goods, as well as to supporting the innovative research and development of new domestic products. Thus, a strong legal and institutional framework is imperative in order for businesses to own, use, and sell all types of property; to manufacture and sell products and services; to raise capital; and to obtain credit.

This chapter is grounded in the World Bank's Doing Business indicators for Registering Property. Those indicators examine the legal, institutional, and social underpinnings of registering real property – land and fixtures on land – in a country. They first center on the right of various constituencies to buy, sell, inherit, and otherwise own real property and to use it with only limited constraints. They then examine the ability of individuals and companies to register property with the government, thus signaling legal ownership, which is a critical component of using the property to access credit.

While the World Bank's inquiry focuses exclusively on real property, this diagnostic builds on the importance of being able to register all types of property, including intellectual property. (The registration of so-called "movable" property – automobiles, equipment, inventory, livestock, and other

chattel that can be moved – is discussed in this report's chapter on Getting Credit). In light of the many reports and programs pertaining to real property the donor community has already carried out, this chapter addresses real property only generally. The discussion emphasizes in greater detail the legal underpinnings of intellectual property, including copyright, trademark, and patent rights. This inquiry then goes beyond the mechanics of registering intellectual property and examines Tanzania's commitment to allowing citizens to use that property to build greater wealth and economic opportunity. As with most other topics covered by this diagnostic, the role of supporting institutions, including professional associations, trade and industry groups, universities, and the media, is also assessed.

Real Property

Introduction

The World Bank, USAID, and other donor groups have evaluated the ease or difficult with which businesses can secure rights to real property. These studies and reports are comprehensive and readily available; accordingly, this chapter provides only a summary of the framework and other factors involved in registering real property in Tanzania, as updated by in-country analysis during this diagnostic. Specific reference is made to the following important studies:

- World Bank study, "Doing Business 2007: How to Reform"¹⁵⁹
- The comprehensive USAID-sponsored project analyzing land tenure and property rights themes in Tanzania, by a team of experts assembled by ARD, Inc., the Rural Development Institute (RDI), and the University of Wisconsin Land Tenure Center (LTC)¹⁶⁰

¹⁵⁹ Available at www.doingbusiness.org.

¹⁶⁰ Among other East African countries and USAID programming regions, pursuant to a task order for developing a land tenure and property rights framework and programming tools, entitled "Awareness Framework: Property Rights and Natural Resources Management," under

- The "Property and Business Formalisation Programme",¹⁶¹ begun in 2003 by the government of Tanzania and the Government of Norway in partnership with Hernando de Soto's Peruvian Institute of Liberal Democracy (ILD)
- The Ministry of Lands & Human Settlements Development Strategic Plan for the Implementation of the Land Laws (SPILL), dated April 2005,¹⁶² an ambitious plan for a strategic framework for the lands sector and implementation of land laws, developed with input from a demographically and geographically diverse group of stakeholders and "an extended literature review to learn from 'International Best Practices'"
- The 2006 report by Geir Sundet commissioned by the Norwegian Embassy entitled, "The formalisation process in Tanzania: Is it empowering the poor?"

In addition, the Tanzanian government has sponsored various activities involving land tenure and property rights in Tanzania, including an important study concluded in the mid-1990s by Issa G. Shivji entitled "Land Tenure Problems and Reforms in Tanzania," as a follow-up to the a study and recommendations presented by the earlier Presidential Commission of Enquiry into Land Matters.¹⁶³

The Business Environment Strengthening for Tanzania (BEST) program¹⁶⁴ has focused nearly

the Broadening Access and Strengthening Input Systems (BASIS) indefinite quantity contract.

¹⁶¹ Known by its Kiswahili acronym, MKURABITA, from "Mpango wa Kurasimisha Rasilimali na Biashara za Wanyonge Tanzania."

¹⁶² Also known as the SPILL Report. Consultants to this project were Dr. F.N. Lugoe, Prof. F.P. Mtatifikolo and Mr. T. Ostberg.

¹⁶³ Available at http://www.mekonginfo.org/mrc/html/oss/shl_inh.htm. This study by Shivji is particularly useful in providing a historical perspective on Tanzania's land tenure system, beginning with its colonial roots and continuing to the mid-1990s. It is not up-to-date, however, in that it was conducted and written prior to Tanzania's 1995 National Land Policy and comprehensive amendments to the land laws enacted subsequently.

¹⁶⁴ The BEST Programme is extensive in its scope and participation, and involves cooperative efforts among The Ministry of Industry, Trade & Marketing; The Ministry of Labour, Employment & Youth Development; The Ministry of Lands, Housing & Human Settlement Development; The Ministry of Home Affairs; The Ministry of Justice & Constitutional Affairs; the Judiciary and Law Reform Commission; the Tanganyika Law Society; the Labour Court; the Business Registration and Licensing Agency (BRELA); and

half of its resources on land reform initiatives. The land reform component provides support for updating legislation; improving the infrastructure for land surveying and mapping; modernization of land registries; and decentralization of land administration services to the district and village levels, based on a pilot scheme of 15 districts (although addressing only a sample of villages within each of those districts, and a sample of farmers within those villages). BEST program activities in land reform focus especially on strengthening the lands and housing dispute settlement mechanism, formalization of unplanned urban property, implementation of the Village Land Act No. 5 of 1999, and land reform management and capacity building. An Activity Leader in the Ministry of Land, Housing and Human Settlement Development (MLHSD) supervises each of these key land reform activity areas. Significant activities (current and projected) include support for developing an efficient, re-engineered registration process, as well as drafting new legislation and regulations to support the emergence of an efficient land market; improvement of surveying and mapping services, including aerial mapping; implementation of the Village Land Act No. 5 of 1999,¹⁶⁵ including decentralization of land administration services to the local authorities through district and village registries and a district-level adjudication system; surveying, mapping, and registration of housing plots in unplanned settlements in Dar es Salaam, Mwanza, and other priority urban centers¹⁶⁶; building capacity for better services in 33 District Lands and Housing Tribunals (currently there are 23 operational, with plans to establish 10 more tribunals) and reducing the backlog of cases; and short-term training programs and

the Tanzania Investment Centre (TIC). Programme co-ordination is provided by the Better Regulation Unit, Ministry of Planning, Economy and Empowerment. The program is governed by a Memorandum of Understanding (MOU) signed between the Government of the United Republic of Tanzania, the Tanzania Private Sector Foundation (TPSF) and five bilateral donors - the Department for International Development UK (DFID), Danish International Development Agency (DANIDA), Royal Netherlands Embassy (RNE), Swedish International Development Agency (SIDA), and the International Development Agency (IDA).

¹⁶⁵ This will be undertaken in the pilot districts initially, of course, as there are 121 districts and approximately 11,000 villages throughout the country.

¹⁶⁶ It is projected that as many as 75% of land occupants in Dar es Salaam are squatters. Thus far, 45,000 out of 400,000 land plots in Dar es Salaam have been completed and issued with residential licenses under the BEST pilot project.

support for the Ministry in project management, monitoring, and evaluation.

While the BEST program is ambitious, it also appears to be the most organized, well-staffed, and likely to succeed of any of the limited land reform efforts and studies currently underway in Tanzania. As noted in the recommendations section of this chapter, the various donors and non-governmental organizations (NGOs) operating in Tanzania should direct strong support to this program.

It is also important to note that efforts by the BEST program and others to increase the formalization of land tenure in Tanzania are among the most urgent. The *“Doing Business 2007: How to Reform”* study on Registering Property opens with an observation that Only 1 in 10 properties is officially registered in Tanzania. Rashid, a local entrepreneur, explains why: ‘The Lands Registry has archaic files and cannot cope with the mass of records and transactions. Property titles are not located in good time, and the whole transfer process gets inordinately delayed ... and in many instances the registrars are not available to execute documents.

One major concern this raises is that real property will remain in the informal sector as an alternative to the complexities and inconvenience of formal registration. In turn, property values tend to be compressed downward and investment in real property is stifled. Moreover, real property that is “extra-legal”¹⁶⁷ is not available as collateral for credit, further depressing investment and economic growth as this tremendous source of potential capital remains unavailable.

Legal Framework

Outside observers frequently state that all land in Tanzania belongs to the state, subject to long-term (usually 99-year) leases by the state to tenants. However, it is more accurate to say that, consistent with the colonial legacy from the Germans and British who assumed that

indigenous peoples had no land ownership rights, followed by the collectivist post-independence policies of *ujamaa*, the land actually belongs collectively to the people of Tanzania. Legal scholars generally agree that in Tanzania that land is, at most, vested in the president and held in trust for the country's citizens. Land in Tanzania is classified into three categories for administrative purposes:

- Reserve Lands (forests and wildlife areas constituting 28% percent of the land)
- Village Lands (lands falling under the jurisdiction of existing registered villages amounting to 70 percent of land)
- General Lands (mainly urban lands and lands already under granted titles).

Urban lands and lands under title are insignificant in scope, representing only about 2% of total lands in Tanzania. They are acquired by allocation, purchase, inheritance, squatting, and by mere occupation (under the current law occupation gives rise to rights of use). Reserve lands, generally forests and wildlife areas, comprise about 28 percent of the land, with village lands falling under the jurisdiction of existing registered villages amounting to 70 percent of land. The latter is usually passed through inheritance or allocation by village councils.

There are four primary laws, all published in English and publicly available, that govern the registration and title to real property and improvements to land in Tanzania: **The Land Act No. 4, 1999**; and **The Village Land Act No. 5, 1999**, which came into operation in 2001; **The Land (Amendment) Act, 2004**; and **The Courts (Land Disputes Settlements) Act, 2002** (generally referred to by its short title as the **Land Disputes Courts Act No. 2, 2002**). These four laws resulted from Tanzania's 1995 National Land Policy, which grew out of the work of a 1990 technical committee established in the Ministry of Lands and the Presidential Commission of Inquiry into Land Matters.¹⁶⁸ According to Salome Sijoana (Permanent Secretary, Ministry of Lands Tanzania) in a 2002 Tanzania Country Case Study included in the World Bank Africa Regional Workshop on Land Policy, the new land laws were intended to further land tenure

¹⁶⁷ Defined generally as property that “cannot be freely traded and that cannot be used as security for loans from established banks ... [including] properties that may have documented titles, such as Certificates of Customary Rights of Occupancy. See report by Geir Sundet (2006) “The formalisation process in Tanzania: Is it empowering the poor?” (referenced above).

¹⁶⁸ Generally known as the “Shivji Commission,” as it was chaired by Prof. Issa Shivji.

security and access to land, improve land-related dispute resolution, and provide better land administration. The Shivji Commission observed that the primary areas of concern were land-related conflicts and corruption (or at least a lack of transparency and poor checks and balances) in the allocation processes; inadequate security for land claimed under customary title; and an "administrative bias" that land was being managed by the state for the good of the people. Moreover, an area of considerable focus the Shivji Commission recommended for change was in the area of village land ownership. The Shivji Commission recommended vesting village lands directly and solely in the villages for perpetuity, with each village establishing a Village Land Registry. Through transparent and accountable processes, villagers could be issued Customary Land Certificates that could be traded or mortgaged within the village, but not traded to village outsiders.¹⁶⁹

While the Land Act No. 4 does not appear to encompass any major reforms, the Village Land Act No. 5 is generally acknowledged by relevant studies, as well as interviewees during this Diagnostic, as the primary vehicle of significant land reform in Tanzania. The following critique by Geir Sundet is worthy of restating in its entirety:

The Village Land Act, on the other hand, contains significant elements of change. It provides the parameter for what appears to be a self-contained system of registration and titling at village level. Village Councils are authorized to issue Certificates of Customary Rights of Occupancy (CCROs), which seem to be a significant step forward in formalization of property rights and the empowerment of the poor. However, the Act is unlikely to have the expected effect, because:

- *Although the Act seems to be breaking new ground by setting up new village land administration, there is not much new thinking evident in the detail. It is essentially the rather complicated and paper-oriented process of land allocation at the national level that has been replicated at the village level. The proper*

administration of village land requires 50 different paper forms. This is difficult because many villages do not have offices, let alone stationery or filing cabinets.

- *The Act does appear to devolve substantial authority over land matters to the village. However, the district and national level can override any decision a village makes. Land is registered at district level (which can be many days of travel from some villages). And there are five ways in which the President can forcefully and legally acquire land from the villages. It is also telling that the Land Act states that General Lands, the category of land that is administered by the Ministry of Lands, include "unoccupied or unused village land."*

What we see here is a token devolution of partial authority to village level. There is no effective diminution of the ability of local authorities or national authorities to interfere in the administration or control of land at village level. There are elements of innovative thinking and some good processes outlined for blanket demarcation of village land. The problem is that they are embedded in an overly complicated set of regulations and it is consequently unlikely that they will bring about the required shift from secretive and non-accountable allocations of village land to an open and transparent system, in which the rights of the poor have a better chance of being supported.

To summarize, while the Village Land Act may be seen as an improvement over the previous system that maintained all control over lands at the national level, it is still too complicated and does not ensure full transparency in the administration of land at the village level. Also, as Sundhet says, there are still "a number of ways in which district and national authorities can intervene," thus adding extra layers of uncertainty to the legislative provisions.

Finally, the Land Disputes Courts Act, 2002, while not directly related to land registration, provides clear lines of authority and jurisdiction for adjudication of land-related disputes. It precludes any jurisdiction by the Magistrates Courts to hear civil matters involving land disputes (although they might still hear criminal

¹⁶⁹ See report by Geir Sundet (2006) "The formalisation process in Tanzania: Is it empowering the poor?"

matters brought under the Land Act No. 4 and Village Land No. 5), and it establishes and defines the jurisdiction of the following courts to adjudicate matters arising under the Land Act No. 4 and the Village Land Act No. 5:

- Village Land Councils (established in accordance with the Village Land Act No. 5)
- Ward Tribunals (established in accordance with the Ward Tribunals Act, 1985)
- District Land and Housing Tribunals (established in accordance with the Land Disputes Courts Act, 2002, in each district, region, or zone of Tanzania)
- The High Court (Land Division), exercising both original and appellate jurisdiction in certain land disputes
- The Court of Appeal of Tanzania, with jurisdiction to hear appeals from the High Court (Land Division).

Implementing Institutions

The primary implementing institution for registration of land (broadly defined) in Tanzania is the **Ministry of Lands & Human Settlements Development**, generally referred to simply as the Ministry of Lands. Its stated goals are “to have excellent delivery of land development services and a multipurpose cadastral information system for sustainable economic development,” and the creation of an “enabling environment and Institutional framework to support human settlements development process.”¹⁷⁰ Toward that end, the Ministry of Lands coordinates and formulates the following activities, among others:

1. Land use and development policies throughout Tanzania, including a national housing policy, urban physical structure policy, town planning, regional physical planning, and human settlements development
2. Land surveying and valuation, including mapping; registration of land; and chattel transfer documents
3. Development of human resources in the Ministry
4. Extra-ministerial departments and parastatal organizations.

At the local level, the new land laws mandated decentralization of land services to lower levels in **local authorities** and **village councils**. This means that district and urban land allocation committees now handle the allocation of land. In addition, the District Land Registrar has authority for registration of land titles through Village and District Land Registries.

Supporting Institutions

The institutions that typically support real property registration are specialized courts; academic institutions and specialized training programs to create the skill sets needed; specialized lawyers, real estate agents, and brokers; and banks/mortgage lenders. In Tanzania, it appears that these institutions – with the exception of the specialized land courts and related tribunals discussed in the preceding section – have virtually no involvement in either supporting or improving the overall system. This diagnostic did not evaluate any of these institutions in-country, however, at the request of USAID.

The Ministry of Lands' 2005 SPILL report considers the professional needs of capacity building, in light specifically of an absence of sufficient professional and technical staff in the land sector in Tanzania. The study expresses concern that “existing professional and technical staff in the sector are mostly, single-profession biased who are not ready for [the ever-changing and expanding scope of professional and technical needs of the MLHSD] ... without dedicated re-orientation.”¹⁷¹ Moreover, it observes that the “officers working in land administration need a broader education” and that academic departments need to revamp their teaching programs.¹⁷²

The SPILL report examines another important aspect of the institutional support for land registration: **professional associations**. It notes that the professional associations supporting the land administration process in Tanzania are:

- The Institution of Surveyors of Tanzania
- Tanzania Institute of Valuers and Estate Agents
- Tanzania Association of Town Planners

¹⁷⁰ Ministry of Lands & Human Settlements Development homepage at <http://www.tanzania.go.tz/lands.htm>.

¹⁷¹ SPILL Report, at 26.

¹⁷² Id. at 26.

- Institute of Architects and Quality Surveyors of Tanzania.

While the SPILL report optimistically states that the “very existence of such association and institutions provides firm cross-sectoral linkages at all levels,”¹⁷³ there is no analysis in the SPILL Report or in other literature to indicate that these institutions provide any meaningful support or improvement to the system of land administration in Tanzania.

Social Dynamics

There is a strong demand for reform of land registration and land titling processes in Tanzania, from the Tanzanian business community and government, as well as NGOs and donors. As part of the underlying social dynamic involving land registration, therefore, there have been several programs aimed at reforming the systems. Most important was the work of the Presidential Commission of Inquiry into Land Matters and the creation of Tanzania's 1995 National Land Policy. As noted by Geir Sundet, Tanzania has made sweeping changes at the village level in terms of land registration, allocation, and dispute settlement.

Yet, despite increased popular desire for the state to divest itself of land “ownership” in favor of freehold interests in private entities (possibly including non-citizens), a significant recommendation in the Shivja Commission was not adopted: that land be divested from the president. This was particularly controversial with the government, which did not want to be put in the position of begging for land to be used for economic development purposes.¹⁷⁴

The 2005 SPILL report notes “an outcry of those who wish to build homes” in urban centers, due to the “absence of readily available surveyed and serviced plots in urban centres.”¹⁷⁵ There is no available literature that has updated that finding and it is unclear whether any improvements have been made to the availability of home lots in urban centers.

The SPILL report also notes that there is gender inequity in land tenure and emphasizes that titles

to land must be framed in the names of both spouses, with co-ownership. Further, it notes concerns with inheritance involving land tenure and recommends that better personal identification systems be encouraged as a step in the direction of ameliorating problems with conflicting claims to land title.¹⁷⁶

The issue of women and property rights in Tanzania also has been more recently the subject of a detailed USAID-sponsored study by ARD, Inc, entitled *Study on Women and Property Rights: Project Best Practices*, published in October 2006. That project looked specifically at how recent and existing land tenure/property rights reform projects in Tanzania affect women's rights to land. That study concludes that, “as a rule, the rights and needs of women are not considered in land tenure and property rights programming.”¹⁷⁷ It further observes that, “[w]here they are included, the process of engaging women and the outcomes of the project efforts are not captured with consistency or rigor, and are not readily available for review.”¹⁷⁸

Recommendations

- Implement a centralized uniform land registration system with district registries.
- Update all land records into information and communications technology (ICT) databases, with cross-referencing, so that users can find information in minutes and read it on a computer screen, including eventually remote on-line internet access and searching.
- Physically upgrade the land registration facilities, including sorting, cleaning, and restoring documents, and placing them in secure (fireproofed) storage.
- Digitize (scan) and index deeds, mortgages, and other land instruments and link them to the surveyed land plots they relate to, so that users can find such information in minutes and read it on a computer screen.

¹⁷³ Id. at 28.

¹⁷⁴ See report by Geir Sundet (2006) “The formalisation process in Tanzania: Is it empowering the poor?” (referenced above).

¹⁷⁵ SPILL Report, at x.

¹⁷⁶ Id at x.

¹⁷⁷ USAID/ARD, *Study on Women and Property Rights: Project Best Practices* (October 2006), at vi.

¹⁷⁸ Id.

- Conduct land tenure/titling education and training programs for courts and land disputes tribunals, with emphasis on transparency and case management, and create more effective dispute resolution mechanisms.
- Conduct land tenure/titling education and training programs for state officials involved in land registration processes, coupled with stakeholder consultations on areas where improvement is needed.
- Offer land tenure/titling education and training programs to the general public to create greater awareness of land tenure rights.
- Expand to a national scale a uniform system of land mapping, using aerial photography and satellite surveying on a large scale, and modernize geodetic control and mapping systems.
- Formalize property rights in land settlements areas.
- Fully implement the Village Land Act and create formal structures to support the legislation.
- Analyze and support activities underway by such programs as the BEST program, and ensure harmonization and coordination among the various programs.

Intellectual Property

Intellectual property rights (IPR) and laws in Tanzania are divided between those of mainland Tanzania and those of the island of Zanzibar (including the island of Pemba). This diagnostic only considers the laws of mainland Tanzania. Importantly, IPR protection in Tanzania does not necessarily confer any rights in Zanzibar, and vice versa.

Legal Framework

Tanzania is a member of the World Intellectual Property Organization (WIPO) and the African Regional Intellectual Property Organization (ARIPO), and is a signatory to the significant

international agreements on intellectual property, including:¹⁷⁹

- WIPO Convention
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Paris Convention
- Berne Convention
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
- Patent Cooperation Treaty (PCT).
- In addition, Tanzania has more than 13 laws and regulations that relate to the registration and enforcement of IPR, the most significant of which are:
 - The Patents (Registration) Act
 - The Trade and Service Marks Act, 1986
 - The Trade and Service Mark Regulations, 2000 (under Government Notice No. 40)
 - Copyright and Neighbouring Rights Act, 1999
 - United Kingdom Design (Protection) Ordinance of 1936, Cap. 219
 - The Tanzania Commission for Science and Technology Act, 1986
 - The Fair Trade Practices Act of 1994
 - The Protection of New Plant Varieties (Plant Breeders' Rights) Act, 2002
 - The Merchandise Marks Act.

As with most laws in Tanzania, there is considerable difficulty involved with locating a copy of the primary legislation and subsidiary regulations listed above. Little is available online and even less is available from book sellers. When it can be located, the legislation is available in English.

The patents laws are a good example of the difficulty in locating up-to-date legislation: a copy of the original Patents Act No. 1 of 1987 is available on the Tanzania Parliament website, but that law is not the most current version of Tanzania's patents law. Instead, the Patents Act No. 1 of 1987 was expressly incorporated subsequent to its enactment into Chapter 217, the Patents (Registration) Act. However, the more recent legislation is not available on the Parliament website. While various other websites list Tanzania's laws – including the

¹⁷⁹Dates of Tanzania's accession are available at the WIPO website, <http://www.wipo.int/treaties/en/Show>.

more up-to-date Patents (Registration) Act – at best, this leads to significant confusion.

Fortunately, the laws themselves – once located – are well drafted and generally provide a scope of protections commensurate with international norms. The **Copyright and Neighbouring Rights Act** and the **Protection of New Plant Varieties (Plant Breeders' Rights) Act** were adopted following Tanzania's adoption of the TRIPS agreement and appear to comply with the obligations of that treaty. Other intellectual property-related laws are pre-TRIPS, have had some minor amendments, and are due to be reformed to ensure compliance with TRIPS. There has also been discussion within the government regarding an initiative to draft new legislation combining all intellectual property laws into one Act (with the exception of the law on new plant varieties, for reasons of political expediency), based on limited input from various stakeholders within and outside government. No efforts appear underway at this time, although there is a rumor that there may be a cabinet paper that reflects an interest in updating and combining at least the patents, copyrights, trademarks, and industrial designs legislation. There is also anticipation within the Government that the East African Community (EAC) will draft and implement new intellectual property laws, obviating the impetus to undertake any major reforms in Tanzania at this time.

The **Patents (Registration) Act**, while adopted pre-TRIPS, is a significant improvement over the prior patents registration regime in Tanzania. There has been discussion within the government regarding the need to draft a new, more clearly TRIPS-compliant patents law, neither the WIPO nor other stakeholders have applied pressure on Tanzania to do so. Most intellectual property-related industries – especially pharmaceuticals and cosmetics and other areas of research and development – are limited in Tanzania and there is little involvement by multinationals.

In fact, in the opinion of stakeholders interviewed for this diagnostic, the Patents (Registration) Act does appear satisfactory, especially as it is generally regarded as meeting its stated goal of providing “for the promotion of inventivity and innovation for the facilitation of the acquisition of technology on fair terms

through the grant and regulation of patents, utility certificates and innovation certificates.” Toward that end, among other things, the Patents (Registration) Act clearly defines the establishment and duties of the patents registration office; sets forth clear provisions for patentability, granting of patents, rights of patent applicants and holders, duration of patents, and relief for infringement; and enhances its international scope by appropriate reference and linkage to ARIPO and United Kingdom patent laws, as well as the provision for international applications pursuant to the Patent Co-operation Treaty. Patents rights under the Patents (Registration) Act are granted for a term of 10 years. The TRIPS Agreement requires WTO members to provide protection for a minimum term of 20 years from the filing date of a patent application for any invention, including for a pharmaceutical product or process.¹⁸⁰ No plans to amend the Patents (Registration) Act to bring it into compliance with the TRIPS minimum term could be ascertained from interviews for this diagnostic.¹⁸¹

The **Trade and Service Marks Act** also is consistent with international norms and expressly provides for compliance and consistency with the Paris Convention and the Nice Agreement. It gives priority to persons who have applied for protection for any trade or service mark in a country of the Paris Convention. The registration date in Tanzania is deemed the same as the date of the application in the country of the Convention, provided that the application for registration is made within six months from the date of earlier application. Similarly, it ensures compliance with international standard, by basing the classification system used for registration of

¹⁸⁰ The TRIPS Agreement extended the duration of patent protection beyond that customarily found in many countries, especially in developing countries, whose patent durations were typically only 5 to 7 years.

¹⁸¹ It is interesting to note that the wisdom of the TRIPS 20-year patent duration, applied generically to all inventions instead of a multi-tiered system of durations to fit particular inventions, is debated by some scholars: an interesting recent paper is Andrew F. Christie I and Fiona Rotstein, “DURATION OF PATENT PROTECTION: DOES ONE SIZE FIT ALL?” (Intellectual Property Research Institute of Australia, University of Melbourne School of Law, Working Paper No. 04.07, ISSN 1447-2317, June 2007) at <http://www.law.unimelb.edu.au/ipria/publications/workingpapers/2007/IPRIAWP%2004.07.pdf>.

Trade or Service Marks in respect of particular goods or services is according to the International Classification system of the Nice Agreement. Registration is made through the Registrar of Trade and Service Marks Office, in the Business Registration and Licensing Agency (BRELA). The initial registration is valid for seven years, and the mark may then be re-registered for additional 10-year terms.

The **Copyright and Neighbouring Rights Act** became operational after December 31, 1999 and is also compliant with international norms and practices, including the Berne Convention and TRIPS Agreement. Among other protections, the Copyright and Neighbouring Rights Act expressly provides for protection of performing artists of all kinds and, of particular significance especially in Tanzania, it provides protection for the expression of folklore, such as:

- Folk tales, folk poetry, riddles
- Folk songs and instrumental folk music;
- Folk dances, plays, and artistic forms of rituals
- Drawings, painting, carvings, sculpture, pottery, terra cotta, mosaic, wood work, metal ware, jewelry, baskets, costumes, and traditional musical instruments.

The Copyright and Neighbouring Rights Act includes clear civil remedies and criminal sanctions against those found to have committed acts of infringement and piracy. Civil remedies include injunctive relief, compensatory damages, exemplary damages, and seizure (or destruction) of objects made in violation of the Act and seizure of receipts resulting from such violation. Criminal offences carry a penalty of substantial fine and/or imprisonment (up to five years) for each offence.

The Copyright and Neighbouring Rights Act also provides for the establishment of the Copyright Society of Tanzania (COSOTA). The role and functions of COSOTA are discussed in detail under the Implementing Institutions section of this chapter.

In sharp contrast to the patents, trademarks, and copyrights laws, which are up-to-date and consistent with international norms, Tanzania's legal framework regarding **industrial designs** (the aesthetic features of a product, in contrast

to the product's technical or functional features) at best provides procedures that are complex, confusing, and out-of-date. Industrial designs are loosely protected under a combination of ARIPO Harare Protocol registration and the antiquated colonial British ordinance, United Kingdom Design (Protection) Ordinance of 1936, Cap. 219.¹⁸² There has been discussion of a draft law, although during interviews for this diagnostic, no respondent had any meaningful information on such efforts or their status. As such, there remains no provision in any law for an industrial design to be registered in Tanzania.¹⁸³ Instead, in order to achieve some protection of industrial designs in Tanzania at present, one must either:

- Register the industrial design in the United Kingdom under the Patents and Design Acts 1907 to 1932, as amended, in which event the holder of a certificate of registration is granted under the Ordinance the same privileges and rights in mainland Tanzania (not in Zanzibar) as in the UK
- File an application with ARIPO for registration of an industrial design, designating Tanzania as one of the contracting states in which the applicant is seeking protection of the design – and if the application meets the formal requirements for registration and Tanzania lodges no refusal within six months following application to ARIPO, then the registration is effective in Tanzania.

Even without registration of an industrial design it is possible for a designer to argue that the design is protected under copyright laws. Generally, an industrial design is a work of art in itself. However, the main advantage to industrial design registration is that there is a formal registration of the design and (usually broader) protections that are clearly provided to the holder of the registration.¹⁸⁴

¹⁸² There also may be some limited protection under the Berne Convention, but an analysis of this is not within the scope of this diagnostic.

¹⁸³ As a party to the Paris Convention, Tanzania may arguably have a greater obligation to put in place more clear protection of industrial designs.

¹⁸⁴ Notably, although Tanzania is a member of WIPO, it is not among the 46 signatory countries to the Hague Agreement Concerning the International Registration of Industrial Designs, providing for the WIPO-administered Hague system of international registrations of industrial

Finally, the **Tanzania Commission for Science and Technology Act** provides for the establishment of the subject Commission (known as COSTECH), replacing what was formerly known as the Tanzania National Science Research Council. Discussed in detail in the Supporting Institutions section of this chapter, COSTECH's primary role is to advise the government and assist it in formulating and implementing policy on the development of science and technology.

Implementing Institutions

The primary implementing institution for the administration of intellectual property laws in Tanzania is **BRELA**. BRELA was officially inaugurated in December 1999 as a Government Executive Agency,¹⁸⁵ with a stated aim of ensuring that “businesses operate in accordance with the laid down regulations and sound commercial principles” and, in the case of intellectual property, “to stimulate scientific and technological inventiveness and innovation and encourage technology transfer” and “protect the development of creativity in artistic, literary works, and expression of folklore by protecting such work in conjunction with rights owners.”¹⁸⁶

Toward that end, BRELA administers both the **Patents Office** and the **Trade and Service Marks Office**. Within each, the Registrar of Patents and the Registrar of Trade and Service Marks, respectively, maintain registries. These respective registers contain the details of all patents granted and registrations of trade and service marks, and they are available to the public for review.

Notably, BRELA lacks technical expertise sufficient to conduct substantive examinations. For example, it was reported that there are no lawyers in BRELA who also have technical backgrounds, such as an engineering degree. In both the case of patent and trademark/service mark registration applications, BRELA only reviews the sufficiency of the application on its face, as to compliance with the formalities of the

designs. This is a particularly good system to which Tanzania could avail itself until it completes drafting and enactment of its own law.

¹⁸⁵ Established under the Government Executive Agencies Act No. 30 of 1997.

¹⁸⁶ BRELA website at <http://brela-tz.org>.

Patents (Registration) Act, the Trade and Service Marks Act, and implementing regulations.¹⁸⁷ In the case of trade and service marks, the application for registration is published in the monthly *Tanzania Patents, Trade and Service Marks Journal*, and any opposition to the ultimate registration may be lodged with the Registrar of Trade and Service Marks, who will then hear and decide the opposition. In the case of patent applications, the patent ordinarily is granted by the Registrar, registered with the Patent Office, and published in the *BRELA Journal*. Once it has been published, the burden is then on the true patent holder to bring a claim for patent infringement in court. The Journal is available in print and online.¹⁸⁸

While BRELA has responsibility for patents of most new inventions, an exception arises in the case of new plant varieties, which are not patentable under the Patents (Registration) Act. Instead, new plant varieties are registered pursuant to the Protection of New Plant Varieties (Plant Breeders' Rights) Act in the office of the **Plant Breeders' Rights Registry** in the **Ministry of Agriculture**. The **Registrar of Plant Breeders' Rights** has the responsibility to accept applications for registration of new plant varieties and to grant or deny those applications. Upon receiving an application, the Registrar publishes the details of the application in the Government Gazette, and objections may then be lodged with the Registrar. It is the Registrar's duty to determine whether the plant variety is registrable and to grant or deny the application.

Implementation of the legal framework for copyrights generally falls within the ambit of **COSOTA**, although it functions as a quasi-governmental membership society established under The Copyright and Neighbouring Rights Act for the benefit of its members. Essentially a collective management organization, COSOTA

¹⁸⁷ The Patents (Registration) Act does expressly provide for examination as to substance (s. 27), but this has never been done as a matter of practice and it does not appear that implementing regulations exist.

¹⁸⁸ available at <http://brela-tz.org/>; according to BRELA, the Journal incorporates the official Gazette required by S. 28(3) of the Patent Act read together with Regulation 65 of the Patent Regulations 1994, and Trade and Service Marks Journal required by S. 13 of the Trade and Service Marks Act NO 12 of 1986.

has 987 registered members,¹⁸⁹ of which 670 are musical composers, 21 music publishers and producers, 135 authors of drama and film works, and 161 authors of books and other literary works. The functions of COSOTA are statutorily defined as:

- Promote and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers, and, in particular, to collect and distribute any royalties or other remuneration accorded to them in respect of their rights provided for in The Copyright and Neighbouring Rights Act
- Maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters, and publishers
- Search for, identify, and publicize the rights of owners and give evidence of the ownership of these where there is a dispute or an infringement
- Print, publish, issue or circulate any information, report, periodical, books, pamphlet, leaflet, or any other material relating to copyright and rights of performers, producers of sound recordings, and broadcasters
- Advise the Minister of Industry, Trade and Marketing on all matters under The Copyright and Neighbouring Rights Act.
- Collect public performance and similar royalties on behalf of its members, and distributes those royalties (less an administrative charge of five percent in addition to the US\$25 fee charged by independent collection agents contracted by COSOTA) to the respective members.

COSOTA is governed by a Board whose members are appointed by the Minister of Industry, Trade and Marketing, and who include representatives from:

- The Commission of Culture
- The National Arts Council
- The office dealing with Industrial Property
- The Film Makers Association
- The National Museum of Tanzania
- The Faculty of Law of the University of Dar es Salaam
- The Attorney Generals Chambers

- The Tanzania Authors Association
- The Tanzania Broadcasting Commission
- The Customs Department.

Although COSOTA has only been operational since late 2001, it appears to have been quite active. According to its most recent activities report to its Board (through 06 June 2007), it has entered into reciprocal agreements with 13 organizations of different countries to defend musical works' copyrights in their respective countries, including MCSK (Kenya), ZAMCOPS (Zambia), COSOMA (Malawi), UPRS (Uganda), and AMRA (United States); further negotiations are taking place with MCPS-PRS in the UK. In addition, COSOTA has also established and is actively working through Regional Agents whose responsibility is to collect the public performances royalties on behalf of COSOTA and its members for musical works throughout Tanzania. Distributions of royalties are made twice each year, generally in June and December. Beyond collecting royalties, COSOTA has vigorously pursued action against copyright infringers. During the period June 2006 to June 2007, COSOTA instituted five Copyright Civil Cases against music users in Dar es Salaam who refused to pay royalties for use of music in their commercial establishments, and amicably resolved 41 other copyright disputes out of court.

Finally, although it is a relatively small implementing institution, the **National Arts Council (BASATA)** has a unique and potentially important role in the protection of folklore in Tanzania. Pursuant to the Copyright and Neighbouring Rights Act,¹⁹⁰ BASATA has responsibility for authorizing the expression of folklore made with gainful intent outside its customary or traditional context. BASATA may also collect a fee in connection with such authorization; such fees are to be used for the purpose of promoting or safeguarding national culture. Unfortunately, there are no implementing regulations giving force to the authority granted to BASATA under The Copyright and Neighbouring Rights Act. As such, there are no administrative structures in place to undertake these functions at BASATA, no budget established, no fee schedule, and no forms for applications. Until this situation is remedied, therefore, BASATA only has a

¹⁸⁹ As of 6 June 2007. Members pay an initial entrance fee to join COSOTA as well as an annual subscription fee.

¹⁹⁰ In conjunction with the National Arts Council of Tanzania Act No. 23 of 1984.

potential role in implementing an important area of IPR in Tanzania.

Supporting Institutions

The most significant supporting institution for intellectual property rights in Tanzania is the **Tanzania Commission for Science and Technology (COSTECH)**. COSTECH is a parastatal organization operating under the Ministry of Science, Technology, and Higher Education. COSTECH's primary role is to advise the government and assist it in formulating and implementing policy on the development of science and technology, and it is expressly established as "the principal advisory organ of government on all matters relating to scientific research and technology development."¹⁹¹ COSTECH is divided into three main parts: the Commission (the governing Board), the sectoral-based Research and Development Advisory Committees, and the executive Secretariat.

The Commission comprises: (a) members representing all sectors of the economy; (b) Deans/Directors of faculties/Institutes that deal with research activities; and (c) representatives from Ministries that directly affect research activities in the country, including:

- Agriculture and Livestock
- Public Health
- Forestry
- Fisheries
- Marine sciences
- Minerals
- Industry
- Wildlife.

The sectoral-based R&D Advisory Committees provide technical support to the Commission on how best to carry out its activities. They include R&D Advisory Committees on:

- Agriculture and Livestock
- Natural Resources
- Industry and Energy
- Public Health and Medical Research
- Environmental Research
- Basic Sciences
- Social Sciences
- Development and Transfer of Technology.

Further technical committees include the Tanzania Award for Scientific and Technological Achievements (TASTA) Committee, the National Research Clearance Committee, and the National Fund for Advancement of Science and technology (NFAST) Committee.

The executive Secretariat includes three Directorates (Research Co-ordination and Promotion, Information and Documentation, and Administration and Finance), as well as the **Centre for Development and Transfer of Technology**. Although a part of COSTECH, the Centre is also an important supporting institution for IPR and registration, in that it is the "principal organ of the Commission responsible for matters relating to the transfer, adaptation and development of technology including the assessment and choice of imported technology."¹⁹² Its primary goals include facilitating the development and transfer of technologies, and providing scientific and technological solutions for socio-economic development in Tanzania.¹⁹³

The Centre is responsible for maintaining registers of all technology advances in the country, including a register of imported technology, a register of domestic technological resources and manpower, and a register of all technology transfer agreements between local industry and foreign investors. It is important to note that, as the Centre concerns itself especially with the transfer of imported technology into Tanzania (apparently in an effort to support and promote local research and development), the Tanzania Commission for Science and Technology Act, 1986, s. 16.-(2), requires that certain specified technology transfer agreements between a local industry and foreign investors must be registered with the Centre and are subject to approval before they will be registered. This includes agreements for the use or exploitation of foreign-owned trademarks, or the use or exploitation of technological rights formulae and specifications, processes, patents, or technical know-how of foreign origin. In determining whether to approve an agreement, the Centre considers whether the agreement contains restrictive trade practices that, among other things, would

¹⁹¹ The Tanzania Commission for Science and Technology Act, 1986, s. 5.-(1)

¹⁹² Id. at s. 15.-(2)

¹⁹³ Centre for Development and Transfer of Technology website, <http://www.costech.or.tz/dctt/index.htm>.

limit the use of the transferred technology within Tanzania or limit the use of technological research and development by the transfer. Interestingly, it is unclear from the Tanzania Commission for Science and Technology Act whether there is any sanction for failure to register an agreement, as required. However, the Act does provide within the registration provisions a provision making it a criminal offence for any person (without reasonable excuse) to hinder or obstruct the Centre or its authorized officers in carrying out any the Centre's functions.¹⁹⁴

Also located within COSTECH is the recently launched **Intellectual Property Services Advisory Services and Information Centre (IPASIC)**. Established by BRELA and COSTECH with assistance from WIPO, IPASIC has a wide-ranging mandate:

- Promote the national IP system and to educate the public concerning the use and usefulness of the system in stimulating technological, industrial, and economic development in the country.
- Provide one-stop advisory services during implementation of the national IP system, especially in the areas of patent, trademark industrial designs and copyrights application, IP information searches, and licensing and commercialization of new technology.
- Promote the use of IP information, especially patent information, to the R&D and business communities so as to enhance the competitiveness of the agricultural and industrial sectors of Tanzania for national and global markets.
- Conduct training courses for user groups, including inventors and IP practitioners, in specialized topics such as IP registration, patent drafting, and licensing of technology so as to expand the base of skilled human resources in the country.¹⁹⁵

One of IPASIC's long-term ambitions is the development of a strong national IP system. In

the short-term, however, it is anticipated that one of the most significant roles of IPASIC toward supporting intellectual property research and development in Tanzania will be promoting the use of patent information among the R&D and business communities to enhance the competitiveness. The Director General of COSTECH, Prof. Brig. General Yadon M. Kohl, stated at the launching ceremony of IPASIC stated, in Tanzania "only eight percent of the researchers, scientists, engineers, and technologists have used patent documents as a source of information," largely because of lack of awareness of available information and fear of infringement. Kohl explains:

*There are a number of potential uses of patent information including: (1) Identification of business opportunities and alternative technologies; (2) Formulation of business strategies and foresight patent information could be used to monitor competitor's R&D activities; (3) Assisting in planning of R&D work before a new research is initiated. A patent search is used to establish the past and current researcher in field. (4) Identification of solution to technical problems. This is a point which I should emphasize. Patent documents contain millions of technical solutions, which could be utilized to improve the well being of our people and environment. Using patent information these solutions could be implemented in a shorter time than it would take if researched. I am appealing to all researchers, scientists, technologists, engineers, innovators and inventors to make use of this Centre in finding solutions to their technical problems rather than "Re-Inventing the Wheel". If possible do reverse-engineering and improve the original invention.*¹⁹⁶

In addition to parastatal organizations such as COSTECH and the Centre for Centre for Development and Transfer of Technology and IPASIC, **various trade and industry groups** are typically important supporting institutions in the registration and enforcement of IPR. It does not appear that the **private sector** plays an active role in supporting IPR, however. As discussed in the Social Dynamics section, this may be largely a product of an overall lack of

¹⁹⁴ The Tanzania Commission for Science and Technology Act, 1986, s. 15.-(5)

¹⁹⁵ Statement by the Representative of the Director General of WIPO, Dr. Kifle Shenkoru, at the Inaugural Ceremony of IPASIC, 27 March 2007, at <http://www.brela-tz.org/htmls/Statement%20at%20the%20inaugural%20Ceremony%20by%20Kifle%20Shenkoru.doc>.

¹⁹⁶ Welcoming Remarks by Prof. Brig. General Yadon M. Kohl (27 March 2007) at <http://www.brela-tz.org/htmls/Remarks-DG%20-%20COSTECH%20-%202007-March-07.doc>.

awareness and concern within the private sector regarding intellectual property rights.

Journalists and the **media**, in theory, can also serve collectively as an important supporting institution with respect to IPR. However, in Tanzania journalists do not appear to understand IP issues, although copyright infringement and piracy do receive occasional attention. Journalists do attend some of the IP public awareness fora, but they often reportedly appear more interested in collecting the per diem and free lunch they might receive for attending rather than being fully engaged with – and providing meaningful media coverage of – the subject matter of the forum. This contributes to a lack of public awareness and also a lack of political will to create a comprehensive national IP policy.

Finally, **lawyers** and **courts** are generally important supporting institutions for the enforcement of IPR. However, according to interviewees there are only five law firms in Tanzania that have significant IP expertise, although the IP lawyers in those firms are well trained (including international qualifications). Also, it does not appear that any CLE programs on IP are offered to practitioners who would like to learn more about IP laws, although the subject is offered generally as part of the bachelor of laws (LLB) curriculum at the University of Dar es Salaam (and possibly other Tanzanian law schools).

There are no specialized IP courts, such as a patents court or administrative tribunal to hear infringements cases. Since 1999, jurisdiction for intellectual property cases has been in the **High Court, Commercial Division** (prior to that it was in the general courts). Subject matter jurisdiction is not exclusive, however; it is shared with the general division of the High Court and parties can engage in a certain amount of forum shopping. Judges in the Commercial Division are generally regarded as competent to hear cases involving intellectual property rights, although they lack any specific training in this area. Within the Commercial Division, cases generally move without undue delays and procedures are not unnecessarily complex; judges utilize pro-active case management well (the Commercial Division has its own registry and staff) and enforce strict time limits. Decisions by the Commercial

Division judges are rendered in writing and are usually made available to the parties on the day they are issued.

At this point it is difficult to evaluate the efficacy of the Commercial Division in handling IP cases, however. Interviewees for this diagnostic reported that few IP cases have ever been brought before the court. No one interviewed could recall a patent case. Similarly, no one could recall any copyright cases. There have been a few trademark infringement cases, and the consensus appears that the court handled them well. In addition, there are no published case-law reporters in Tanzania and no online databases for researching Tanzanian court decisions. The High Court's decisions (as well as those of the Tanzanian Court of Appeals) are not readily available –this leads to conflicting decisions by the various courts, such as decisions the High Court renders that are in conflict with precedent the Court of Appeals decided. Given the few IP cases lodged, however, this does not likely pose a concern for IP litigants.

Although not focusing on its role in resolving intellectual property disputes, a recent World Bank report observed that the Tanzanian commercial court has had little impact on business decision making or the investment climate. A survey showed the existence of the court is not important to business decision-making. Within the financial sector there is no evidence that the existence of the court has positively affected the credit process. Other deficiencies need to be addressed to make the court a success, including inefficient administration of regulations, poor enforcement of judgments, inefficient appellate review.¹⁹⁷

Furthermore, another drawback to the Commercial Division is cost: where an amount of damages is specified, the fee for bringing legal proceedings in the Commercial Division is about 3.3 percent of the value of the subject matter, which in IP cases can be high. Where the claim is for injunctive relief or where no specific amount of damages is claimed, the fee is more moderate and fixed but still higher than in other

¹⁹⁷ "Court Specialization or Special Courts? A Toolkit for Development," Judge Dory Reiling, Justice Reform Practice Group (LEJIR), World Bank at <http://home.hccnet.nl/a.d.reiling/html/court%20specialization.htm>.

courts in Tanzania. The Commercial Court retains the fees it collects. As the subject matter in the Commercial Division is non-exclusive, however, parties can avoid the high commercial division fees by lodging cases in the general division.

Finally, it should be noted that the courts in Tanzania only use alternative dispute resolution in a minority of cases, although the judges in the Commercial Division do have authority to order it. The main reason given is that the lawyers are resistant to ADR – reportedly because they fear losing fees that are otherwise generated by protracted litigation. Again, given the infrequency of IP litigation in Tanzania, there is no information available regarding the use of ADR in IP disputes.

Social Dynamics

A lack of public education and awareness is probably the most important problem encountered with respect to IP registration and enforcement of rights in Tanzania. A number of members of the Parliament and others in the government appear aware of the need for an effective and efficient IP registration and enforcement regime, and have taken significant strides forward with such initiatives as the establishment of COSOTA, COSTECH, BRELA, IPIAC, and the Centre for Development and Transfer of Technology. However, a common observation is that IP reforms continue to be a relatively low priority in the Parliament, despite the efforts of several key members of Parliament to educate their colleagues about the importance of good IP laws. Also, a common complaint is that there is no coherent national IP policy and no single agency or ministry spearheading efforts in that regard. The lack of centralization of IP responsibility in a single ministry – and the lack of harmonization and focused coordination among ministries and agencies – is often cited as slowing IP-related initiatives within the government.

Furthermore, it was unanimously reported during interviews that small and medium-sized enterprises (SMEs) in Tanzania have virtually no awareness and understanding of IP registration available to them, the importance of protecting their rights, or the consequences of infringement. Similarly, the public is generally unaware of the enormous costs (including lost revenues) to the national economy resulting

from IPR infringement, as well as the social costs arising from not only consumer harm but from the resulting lack of foreign direct investment and domestic investment in research and development of innovative products, manufacturing, and distribution of legitimate products.

The various parastatal organizations have undertaken active campaigns to raise public education and awareness. For example, COSTECH actively engages in IPR-awareness creation seminars for research and development and science and technology institutions, as well as for private entities. It also provides technological information sourced from patent documentation to industries, SMEs, and the information sector. COSOTA also engages in active public education and awareness programs.

There appears to be a growing demand among manufacturers for laws to protect IP – especially to protect industrial designs – as well as better public awareness and education. Moreover, there is good support from outside organizations, such as WIPO and ARIPO, as well as the government and NGOs. However, a significant weakness may be the lack of any meaningful structure or collective organization within the private sector and the absence of coherent dialogue. There needs to be a coherent, focused national IP policy, spearheaded by one ministry or agency, with input from various stakeholders.

Recommendations

- A national IP policy needs to be developed, with input from Parliament, ministries and agencies, industry stakeholders, academic institutions, NGOs, and international experts; the policy should be harmonized with regional and international interests, as well.
- A centralized IP regime, with enabling legislation and regulations – residing operational authority in one ministry or agency – needs to be created, with regional or branch offices in key strategic locations, such as Mwanza and possibly Arusha.
- A centralized IP regime should create consolidated and harmonized operational authority and procedures with respect to

- patents, trademarks, service marks, copyrights, and industrial designs.
- A study should be undertaken to determine the current extent of TRIPS compliance in the IP laws and regulations of Tanzania; consolidated and harmonized IP laws and regulations need to be drafted to replace the existing laws, as needed, with input from Parliament, ministries and agencies, industry stakeholders, academic institutions, NGOs, and international experts.
 - Modern Tanzania-based industrial designs laws and regulations need to be enacted, with authority for registration and enforcement established in the same ministry or agency as with all other IPR.
 - All patents, trademarks, service marks, and copyrights registries need to be microfilmed and/or scanned into a computerized database for preservation and ease in indexing and searching.
 - All state and parastatal organization offices with responsibility for IP – including BRELA, COSTECH, COSOTA, Registrar of Plant Breeders' Rights (MoAg), BASATA – should undergo substantial physical upgrading of facilities, including sorting of paper documents and ensuring that all registries and applications are stored in secure (fireproofed) facilities.
 - All registries of patents, trademarks, service marks, copyrights, industrial designs (eventually), and plant breeders' rights should be updated into ICT databases, with cross-referencing, so that such information can be found in minutes and read by any member of the public on a computer screen, including eventually remote on-line internet access.
 - There should be increased public education and awareness of IP rights, especially regarding the national economic harm and the personal and economic injury caused by counterfeit products and piracy.
 - There should be increased IPR education and training programs for general and commercial court judges (including magistrates), coupled with establishment of specialized IPR courts or tribunals.
 - There should be IPR education and training programs for all state officials involved with IPR processes.
 - There should be better coordination of IPR enforcement activities.
 - There should be close coordination and stronger input from industry and trade representatives in the reforming of IP laws and regulations
 - A study should be undertaken to determine whether the rights of indigenous peoples in Tanzania are being protected under the current IP legal and institutional framework, and whether reforms need to be undertaken to ensure protections and benefits to indigenous communities.
 - Implementing legislation and regulations need to be drafted with respect to folkloric rights, as administered by BASATA – including a funded regime and facility for registration of folkloric expressions.
 - More IP centers need to be established and funded in Tanzanian universities.

GETTING CREDIT

THE DOING BUSINESS RANKINGS (2006) Getting Credit	
Tanzania / World	117 out of 175
Tanzania / Sub-Saharan Africa Region	21 out of 45

Introduction

The ability of entrepreneurs to borrow money at reasonable interest rates and for appropriate durations depends on a number of factors that collectively affect the risks associated with lending. These include a mix of policies, laws, and regulations; property rights; processes and standards for loan approval; the quality of registration systems; and enforcement mechanisms. In jurisdictions where these and other factors do not work to protect lenders (or borrowers), the risk of default is typically high, and this risk is reflected in the increased cost and, in many cases, decreased availability of credit. Further, certain types of borrowers are perceived as raising additional risks due to their limited capital, entrepreneurial history, or precarious social situation. As a result, small and medium-sized enterprises (SMEs), women, rural borrowers, and other less secure groups typically face significant obstacles in securing credit.

In Tanzania, a key component to the national strategies for supporting the reduction of poverty, economic expansion, and the country's general well-being is to increase access to financial services, including savings facilities, business and personal credit, insurance, and payment systems.¹⁹⁸ Access to credit remains one of the greatest barriers to Tanzania's economic development. While it is difficult to obtain reliable, detailed information, a recent survey of 5,000 Tanzanians indicated that only nine percent have access to formal sector financial services and only four percent have a

personal loan from a bank.¹⁹⁹ Another study estimates that 85 percent of micro and small businesses do not have access to credit.²⁰⁰

This chapter examines the risk factors that affect access to credit in Tanzania and makes realistic, practical recommendations on how they can be modified to improve the current lending climate. This chapter details nine general areas:

The lending environment. Although the legal and regulatory framework governing the formal financial sector (commercial banks and financial institutions) has improved with the implementation of Government's financial sector reforms, Tanzania's businesses and households' huge demand for credit continues to go unmet. Some commercial banks invest large amounts in government bonds and liquid assets instead of lending to their full potential. But lending in Tanzania is fraught with uncertainties at almost every stage. Major risks include the difficulty in identifying applicants (there is no national ID system), lack of credit information, poor systems of collateralization, and ineffective enforcement mechanisms.

The semi-formal lending sector, including Savings and Credit Cooperative Organizations (SACCOs) and financial non-governmental organizations (NGOs), suffers from different but equally serious concerns. Although they are expected to play a major role in the government's poverty alleviation strategies, these entities are subject to minimal oversight by ministries that readily acknowledge their lack of capacity, both in terms of staff and technology. Further, many of the SACCOs lack the capacity necessary to manage the administrative tasks needed to operate. It also appears that borrowers need more support in using credit to build viable enterprises – they specifically need better access to training in business skills, marketing, and quantitative literacy.

¹⁹⁸ See Vision 2025, the National Poverty Eradication Strategy, the Tanzania Assistance Strategy (TAS), the Poverty Reduction Strategy Paper (PRSP) and the Poverty Reduction Support Credit and Grant (PRSC).

¹⁹⁹ Financial Sector Deepening Trust (FSDT, FinScope Survey (2006).

²⁰⁰ DFID Country profile.

Credit reference bureaus. The risks involved in lending can be mitigated to some extent if lenders have access to information on applicants' past experiences in managing credit. Credit reference bureaus are entities that collect and compile credit and other types of information for resale to banks and other providers of credit. Currently, the Tanzania Banking Association operates a limited credit reference bureau for its members use. The Bank of Tanzania is moving forward with the implementation of a broader credit reference system that promises to contain more complete information and to be widely accessible.

Secured transactions. The use of property, whether immovable or moveable, to secure loans dramatically increases the probability of repayment and satisfaction of the debt in the event of default. In turn, the decreased risk of lending leads to lower interest rates and other more favorable terms for borrowers. The laws and procedures governing secured transactions schemes in Tanzania are in different stages of reform. While the rules governing the mortgage of immovables (land and buildings) have been subject to much analysis and amendment, the laws governing "charges" on moveable property remain woefully out of date. A modern secured transactions regime, coupled with efficient registries, could be instrumental in adding certainty to the lending process, thereby improving the lending environment. As these reforms could provide certain desired results of long-term reform efforts, it is critical that they become a priority for the government.

Warehouse receipts.

In an effective warehouse receipts system, a participating farmer delivers his or her product to an accredited warehouse and receives a warehouse receipt. Under the law, the receipt is deemed to be a negotiable instrument, and as such may be freely exchanged, traded, or sold. As a result, the farmer is not forced to sell the product at unattractive seasonal prices in order to ease cash constraints.

A system of warehouse receipts is being promoted in Tanzania as a means of helping farmers better manage their cash flow and financial needs. The system is in the nascent stage, but is proving particularly successful in the coffee industry. The usefulness of warehouse

receipts could be dramatically improved by the construction of more warehouses in rural areas and through the provision of training on how to organize and manage individual warehouses.

Leasing. Leasing is a convenient alternative to traditional lending, particularly in jurisdictions with poor property rights and enforcement mechanisms. The enactment of a modern secured transactions system, as previously recommended, would also support the development of the leasing industry with the establishment of a modern registry.

Guarantees. The state has sponsored a number of "guarantee-based" incentive programs as a means of facilitating credit, with varying degrees of success. The types of guarantee programs offered have included short-, medium-, and long-term lending, and generally target specific sectors such as agriculture. There are, as discussed later in this chapter, significant complaints about the operation and design of these programs. Nonetheless, lenders agree that additional incentives could be helpful in supporting the facilitation of certain types of credit, provided steps are taken to limit documentation requirements, streamline approval process, and make the process more responsive to lenders and quicker to make payment. As a separate but related matter, increased use of guarantees could bolster the current level of funding by banks to microfinance lenders.

Insurance. Steps were taken in the mid-1990s to liberalize Tanzania's insurance industry. Currently, there are 12 registered insurance providers that provide casualty and loss insurance on property that serves as loan collateral. However, the industry has not taken a lead role in providing long-term financing to banks and other financial institutions. An in-depth evaluation of this matter may be in order, but is beyond the scope of this diagnostic.

Enforcement. The risks associated with lending, specifically the risk of default, can be mitigated by systems that provide for the effective and efficient enforcement of credit agreements. In order for an enforcement regime to be effective in reducing risks, the benefits (e.g., the realistic potential of recovery) must be greater than the financial and administrative costs of the process. Every lender interviewed cited contact

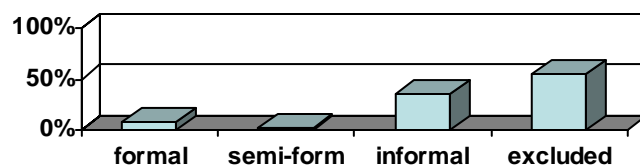
enforcement as a key restraint in extending credit. The various reforms currently underway in the courts are critical to the long-term interests of the credit community in Tanzania.

Bankruptcy. An effective bankruptcy regime provides certainty with respect to the disposition of assets and settlement of debts in the case of the borrower's insolvency. A modern bankruptcy regime would support the reforms in enforcement by granting additional certainty to lenders.

Legal Framework

The availability of reasonably priced credit depends on a wide range of interdependent factors including public policies, the applicable legal framework, property rights, the processes and standards for loan approval, the quality of registration systems, and enforcement mechanisms. If these factors combine to create a competitive lending environment that fosters timely repayment and efficient settlement methods, the risk of credit default is usually low, and lenders will be more disposed to extend credit at reasonable rates.

Unfortunately, despite recent improvements in Tanzania's financial sector, the huge demand for credit continues to go unmet. Indeed, the limited access to credit is considered one of the greatest barriers to Tanzania's economic development. A 2006 survey conducted by FinScope Tanzania provides insight into the current state of the financial sector and its effectiveness in serving the needs of the population:



Source: 2006 FinScope Tanzania

As reflected in the forgoing chart, only nine percent of those interviewed reported access to formal services (banks and financial institutions); two percent reported access to semi-formal services (SACCOs and financial NGOs); and 35 percent reported having access to informal services, including moneylenders and family members. The remaining 54 percent of the

population surveyed reported that they do not have access to any type of financial services. Similarly dismal figures are found in evaluations of various sectors and borrowers including rural areas,²⁰¹ agriculture,²⁰² non-agricultural operations in rural areas,²⁰³ and microfinance providers.²⁰⁴

Given these findings, it is clear that the financial sector reform efforts in Tanzania need to be reviewed in light of the urgent need to increase the availability of financial services to the population and to facilitate access to credit at all levels of the economy.

The Lending Environment

Banks. In the mid-1980s, the government undertook a series of reforms designed to transform the Tanzanian financial sector from a collection of poorly performing state-owned entities²⁰⁵ to an industry based on market principles and international best practices.

As part of this effort, the government enacted a number of framework laws governing the banking and financial services industry.²⁰⁶ Collectively, these laws liberalized interest rates, eliminated administrative credit allocation, strengthened the Bank of Tanzania's role in regulating and supervising commercial banks and other financial institutions, restructured state-owned financial institutions, and allowed entry of private banks into the market. A separate law established rules for dealing in foreign exchange,

²⁰¹ Bee, Faustine Karrani; (April 2007) Rural Financial Markets in Tanzania: An Analysis to Financial Services in Babati district, Manyara Region.

²⁰² Rweyemamu, D.C., Kimaro, M.P., and Urassa, O.M. Assessing Microfinance Services in Agriculture Sector Development: A Case Study of Semi-Formal Financial Institutions in Tanzania.

²⁰³ World Bank, Sustainable Development Network Eastern Africa Country Cluster I, Africa Region, Report No. 40108-TZ, Tanzania Pilot Rural Investment Climate Assessment, Stimulating Non-farm Micro enterprise Growth (June 2007).

²⁰⁴ Fraizer, High K. and Vivian Kazi, Assessing the Relative Poverty of Clients and Non-Clients of Non-Bank Microfinance Institutions in Tanzania (2004).

²⁰⁵ The major entities include the National Commerce Bank (NBC), the Co-operative and Rural Development Bank (CRBD), the Tanzania Investment Bank (TIB), and the Tanzanian Housing Bank. Each institution suffered from poor management and policies and was known to cater to well-connected individuals.

²⁰⁶ The Banking and Financial Institutions Act, 1991 (BAFIA, 1991) and the Bank of Tanzania Act, 1995 (BoT, 1995).

gold, securities and goods.²⁰⁷ The legal and regulatory framework governing the formal financial sector, including commercial banks and financial institutions, has improved with the implementation of these reforms. Currently there are 22 commercial banks (both domestic and foreign) and three licensed financial institutions.²⁰⁸ The increase in financial sector participants (both domestic and foreign) has fostered increased competition, better service, and more product diversification.

Pursuant to its authority as primary bank regulator, the Bank of Tanzania issued a series of prudent regulations that govern the operations and lending practices of licensed commercial banks and financial institutions. Generally, these regulations were designed to implement the internationally recognized standards of Basel I, promulgated by the Bank of International Settlements (BIS), which was in effect at that time. These regulations not only addressed capital risk-management, but also established minimum loan collateral requirements, limitations on loans to one borrower, and restrictions on guarantees.

In 2006, the government supplemented these initial reforms with the enactment of the Banking and Financial Institutions Act (BAFIA). BAFIA was drafted to address a number of weaknesses identified in the operation and regulation of the formal financial sector and to improve the status of the Bank of Tanzania as the primary regulator. Known as Basel II, the provisions found within BAFIA are more sophisticated than their predecessors. Basel II takes a three-pillar approach to bank regulation, emphasizing: (i) the enactment of sound rules and regulations; (ii) the on-going monitoring and enforcement of regulations; and (iii) market discipline. Further, in support of the efforts to harmonize banking laws and practices within the East African Community (EAC), the new law includes provisions that allow for sharing supervisory information with other appropriate supervisory authorities on a reciprocal basis. These efforts will support lending through strengthening the banking system.

²⁰⁷ The Foreign Exchange Act, 1992.

²⁰⁸ Financial institutions are defined as licensed entities which may engage in the banking business, not involving the receipt of funds on current account subject to withdrawal by check.

Similar to many emerging market economies, however, Tanzania's commercial banks are lending a relatively small portion of their total deposits, and a large percentage of their total deposits remain in liquid assets such as cash, inter-bank loans, central bank debt, and short-term state securities. By way of comparison, US banks keep roughly six percent of their total deposits in liquid assets.²⁰⁹ The figure for Tanzania's National Bank of Commerce is 46 percent. This problem is exacerbated in Tanzania due to the attractive terms offered on government-issued bonds and the lack of alternative investment vehicles. These bonds, with rates as high as 30 percent, are tax-free for a period of three years and are virtually risk-free.

Credit cooperatives and microfinance institutions. Due to the government's heavy reliance on microfinance lenders to achieve its long-term poverty alleviation goals, this diagnostic would be incomplete without a review of the semi-formal lending sector. In Tanzania, the semi-formal sector is made up of SACCOs, similar grass-root entities such as Accumulated Savings and Credit Associations (ASCAs), and financial NGOs. As noted previously, one survey credits SACCOs and financial NGOs with servicing a mere two percent of the population. Although this number seems inconsequential, it belies the true importance that these institutions are expected to play in the government's long-range plans, which is to provide the poorer population with the financial management experience they need to move up the "credit ladder." Public policy intends for the SACCO members of today to be the commercial bank customers of the next decade.

Briefly, SACCOs are small, member-sponsored cooperatives the Ministry of Agriculture, Food Safety, and Cooperatives charters. According to a 2005 survey the Bank of Tanzania sponsored, there were 1260 SACCOs operating at that time, but with the government's push for more charters, the number is likely to be much higher. Their lending practices are based on the Tanzanian customary concept of *upatu*, whereby a local group, made up of like-minded citizens, joins to pool funds and extend credit. Once an individual has been a SACCO member for two to three months, he or she may apply for a small

²⁰⁹ Paul Freedman, *Designing Loan Guarantees to Spur Growth in Developing Countries* (USAID, 2004).

credit. The loan must be secured by the savings of the applicant member, and guaranteed by two additional member savers, who pledge their deposits as collateral.

SACCOs are virtually unregulated by the Government, but are expected to receive support from the cooperative structure. This structure includes:

- Cooperative unions at the district or regional levels (e.g., the Kilimanjaro Native Cooperative Union, established in 1936)
- An apex organization based on activity specialization (e.g., (a) the apex organization for cooperatives involved in sugar, coffee or tobacco, or production sectors, or (b) the Savings and Credit Cooperative Union League of Tanzania (SCCULT), which is the representative apex organization for SACCOs)
- TFCs, which are the national-level umbrella organization for all kinds and tiers of cooperative societies (recent audits sponsored by the Ministry of Agriculture of the upper-tier entities revealed "serious weaknesses" in their ability to provide the SACCOs with the necessary support due to lack of personnel and technical capacity).

As cooperatives, the SACCOs are, in theory, subject to a number of prudential guidelines and international best practices as set forth in Tanzania's Cooperative Development Policy, 1997, and its Cooperative Development Policy, 2002. However, as a practical matter these steps have done little to improve the safety and soundness of these entities. Operational problems with respect to SACCOs include poor administrative systems and weak financial control within the societies, as well as a lack of effective supervision of the SACCOS as financial intermediaries.²¹⁰ Further, there are inherent weaknesses in the structure of the SACCOs. Most are funded exclusively by members' small, monthly contributions; accordingly, the failure of even one member to contribute can jeopardize the stability of the entity. In one situation, a SACCO became insolvent when two members were terminated from their positions with the national Government.

In light of the important role these semi-formal credit cooperatives are expected to play in the Government's strategies, action should be taken to strengthen their operation and structural soundness, both individually and as an industry. As a threshold matter, there should be an in-depth analysis of the regulation, industry structure, and capacity of the SACCOs to determine how best to support these entities in meeting the Government's goals.

Next, the financial NGOs in Tanzania operate exclusively as microfinance institutions and provide micro credit, savings facilities, and training to SMEs.²¹¹ Again, because of poor recordkeeping, it is difficult to secure accurate data, but according to a Bank of Tanzania survey, in 2005 there were 63 financial NGOs operating in Tanzania. The most familiar of these include the Presidential Trust Fund (PTF), the Foundations for International Community Assistance (FINCA), the SERO Lease and Finance Company (SELFINA), and the Promotion of Rural Initiatives and Development Enterprise (PRIDE-Tanzania), which are all supported by donor funding. Both large and small microfinance lenders seek funds from commercial banks in the form of loans under "linkages" arrangements. As is the case with SACCOs, financial NGOs are not subject to formal regulation until they meet the core capital threshold of TZS800,000. But as funding typically comes from donor contributions, there is a certain amount of oversight from the donor organization. Similarly, those entities that receive commercial bank loans usually receive training and assistance from the funding bank.

Credit information. The risks involved in extending credit, whether by a commercial bank, utility, or vender, can be mitigated if the credit provider has access to reliable information on the applicant's past credit experience. An applicant's past management of credit generally provides a good indication of how he or she will manage credit in the future. Credit reference bureaus are entities that collect and package credit information for resale to banks and other credit providers for use in the credit application process. The credit information system works best when credit reference bureaus are able to provide lenders

²¹⁰ National Microfinance Policy (May 2000).

²¹¹ Assessing the Relative Poverty of Clients and Non-Clients of Non-Bank Microfinance Institutions in Tanzania, supra note ____.

with up-to-date, accurate information, quickly and cost-effectively.

An effective credit information system supports not only individual lenders but also the credit system as a whole. When lenders can make well-informed credit decisions and avoid making bad loans, the cost of credit is lowered. Lenders can better manage risks by pricing credit according to the track record of the individual borrower. Finally, reliable credit information helps to decrease the work and effort involved in the application process by limiting the amount of due diligence that must be conducted on individual applicants.

Currently, there is only one small credit reference bureau operating in Tanzania. The Tanzania Bankers Association organized this bureau for exclusive use by its members. As it relies solely on information it receives from commercial banks, its effectiveness is limited. Reportedly, however, some banks have found the bureau useful in weeding out bad borrowers and making difficult credit decisions.

The Bank of Tanzania has enacted an initiative to support the establishment of a more extensive credit information system. The Bank of Tanzania will collect information for banks and financial institutions and make it available to private credit information bureaus for packaging and resale to their clients.

Credit reference bureaus can prove particularly useful to SMEs and women, who typically have limited credit histories and assets. Through the collection of information from microfinance companies, utilities, and other credit providers, reliable borrowers can establish positive credit histories, which can be used to access commercial loans. Representatives of the Bank of Tanzania familiar with the credit reference bureau project clearly understood the importance of capturing microfinance data as a means to establish strong credit histories for SMEs and women. However, they were unable to confirm whether the new system would include this information.

Secured transactions. The use of property, whether moveable or immovable, to secure credit decreases the risks involved in lending by increasing the probability of repayment and providing a means for satisfying the debt in the

event of default. Modern secured transactions regimes based on strong laws and efficient registries have proven effective in facilitating access to credit even in jurisdictions that have weak property rights and ineffective enforcement mechanisms. The scheme is relatively simple: when the loan is made, a security interest is taken in certain property, known as "collateral." This security interest is registered in a public registry. If the borrower fails to make payment, or the loan otherwise falls into default, a lender is legally entitled to take possession of the collateral and to satisfy the debt through its sale. The public notice provided the registry provides establishes priorities of claims, which provide additional creditor protection vis-à-vis other claimants.

In Tanzania, a number of contributing factors, including obsolete laws, antiquated and poorly operated registries, high costs, and inefficient enforcement mechanisms diminish the attractiveness of using secured transactions as a means to decrease the risks of lending. Due to the inherent differences between the secured transactions regimes affecting immovable property and movable property, they are discussed separately below.

Mortgages on immovable property. For most conventional lenders, immovable property (land and buildings) is the preferred form of collateral, due to the fact that it is more likely to retain its value over the course of the loan. But the advantages of taking immovable property as collateral are diminished in jurisdictions where land rights are unclear, overly complicated, subject to unreliable registration systems, or vulnerable to poor enforcement mechanisms. Unfortunately, the land system in Tanzania suffers, to various degrees, from all of these defects.

First, the land system in Tanzania is complex. Land in Tanzania is divided into three types:

- Reserve Lands (forests and wildlife areas constituting 28 percent of the land)
- Village Lands (lands falling under the jurisdiction of existing registered villages amounting to 70 percent of land)
- General Lands (mainly urban lands and lands already under granted titles).

Due to historical differences in the Government's approach to regulation, allocation, and use, the mortgage of general land is governed by the provisions of the Land (Amendment) Act 2004 and registered in the Land Registry. The mortgage of village property is governed by the Village Land Act and registered in the Village Land Registry. Both registries are supervised by the Office of Registrar of Titles, but appropriate village council administers the Village Land Registry.

Second, land property rights are weak. Probably the biggest disincentive in Tanzania to taking land as collateral is the limited extent to which land has been formally surveyed or recorded. As a general rule, lenders will not accept un-surveyed or unrecorded land as collateral due to the uncertainty of boundaries and ownership rights, as well as the possible existence of unrecorded liens. The Government is aware of the problems raised by untitled land, and supports the Project to Formalize Property Rights (also known in Kiswahili as "Mpango wa Kurasimsha Rasilimali na Biashara za Wangonge, abbreviated as MKURABITA). MKURABITA focuses on improving the status of land as collateral and overseeing the surveying effects. And while it is making significant progress, it is currently estimated that 70 percent of urban dwellers live in informal settlements that have not been planned and surveyed, and rural landholders are similarly unable to document title to their land.

Third, the mortgage law does not fully protect lender rights. Over the past several years, mortgage law has been subject to significant debate and revision. At one time, the Government sought to protect the interests of certain mortgagors (households and farmers) by limiting foreclosure actions in the event of default. As a consequence, lenders refused to lend on those properties, which further limited the mortgage market. These provisions, which were contained in Chapter X of the Land Law, were subsequently repealed in the Land (Amendment) 2004. Unfortunately, the substitute foreclosure provisions adopted in 2004 make it mandatory for creditors to seek court intervention in order to repossess residential or agricultural property. As discussed in more detail elsewhere in this report, court involvement involves delay, expense, and

frustration, which defeat the purpose of using collateral.

Finally, those lenders that do accept general land as collateral are confronted by the difficulties and uncertainties of the Land Registries. In Tanzania, it costs 21.3 percent of average per capita income to create and register collateral.

In addition to the problems noted here with respect to general land, the taking of village land as collateral raises additional issues. A significant amount of village land remains un-surveyed and unregistered. In addition, the mortgage, foreclosure, and disposition of village land are all subject to customary law, which raises a number of difficult issues. First, in certain areas, there are restrictions on resale, which can be used to defeat lender rights. Second, these properties are particularly prone to the existence of unregistered mortgages, and currently it is difficult, if not impossible, to investigate their existence. Finally, disputes involving mortgages on village land can be referred to a land court for consideration, which has the power to "re-open" mortgages for unfairness and disadvantages to dependants.

In light of the importance of customary law, the rights and obligations of taking mortgages on village land should be thoroughly investigated and practical solutions to its use as collateral should be widely discussed. While this is a long-term process, it is necessary to address the inherent uncertainties of village land as collateral.

Charges on movable property. A modern secured transactions regime for movable property can increase the availability of credit even in those jurisdictions that have weak property rights and poor judicial systems. Unfortunately, the legal framework in Tanzania that governs the taking of a security interests on movable property to secure a debt (or a "charge) is woefully out-of-date, unnecessarily complex, limited in scope, and incompatible with modern business and banking practices.

Under the existing laws, if the security provider is a company, the creation of a "charge" is governed by the Companies Act, 2002, and registered in the Company's Registry, operated by BRELA. On the other hand, if the security provider is an individual or group of individuals,

the same type of security interest is governed by the Chattel Transfer Ordinance, CAP 334, and registered in the Registry of Titles under the Land Registry. The historical basis for treating these interests differently, if there ever was one, is no longer valid, and the continuation of this bifurcated approach is unnecessary.

Further, instead of providing a cohesive group of rules that serve to facilitate the system of secured transaction, the laws contain obsolete provisions that can be used to defeat the interest of the lender. For example, the applicable provisions of the Companies Act, 2002, require registration of all charges as a condition to their validity. Registration should not be a condition to validity, only a means for establishing priority of claims with respect to other claimant. Another concern is the rules on priorities, which are vague and unclear as they pertain to other security interest. Most troubling is the fact that there is a 42-day period within which the charge may be registered without giving up the priority position. This matter is of particular concern since upon registration legal protection relates back to the date the subject agreement was created.

The Chattel Transfer Ordinance contains different but equally unacceptable provisions that limit its usefulness. Specifically, it is unnecessarily limited in scope; requires the filing of unnecessary information that can quickly become out-dated; contains "renewal" provisions that can be used to defeat valid liens; fails to state rules governing default and enforcement; and requires the attestation of filings.

Tanzania needs a comprehensive system of collateral lending that is open to all potential lenders and borrowers at a low cost. The system must include rapid, out-of-court enforcement capacity to ensure success. Such a system will open the access to credit to those who have no interest in land, as well as those who have limited credit history.

Warehouse receipts. A warehouse receipt system is being promoted in Tanzania as a means of helping farmers better manage their cash flow and financial needs. The Tanzania Warehouse Receipts Act # 10 was passed in 2005, and implementing regulations were enacted in 2006. For this diagnostic,

interviewees reported that commercial banks now accept agricultural commodities as collateral under the warehouse receipt arrangement.

The warehouse receipt system in Tanzania is in the nascent stage, but is proving to be a particular success in the coffee industry. However, it has become apparent that the usefulness of the system could be dramatically improved by the construction of more warehouses in rural areas, and the provision of training on how to organize and manage individual warehouses.

Guarantee programs. The Government of Tanzania has both sponsored and participated in a number of guarantee programs with varying degrees of success. These programs, designed to encourage lending by limiting risk through the guarantee the payment of a percentage of the default amount, are typically designed to target specific sectors or types of borrowers such as the agriculture sector or women.

There are several guarantee programs operating in Tanzania, the most high-profile being the Small and Medium Enterprise Credit Scheme (SME-CGS), which the Bank of Tanzania, as an agent for the Government, operates. Although there were a variety of problems at the commencement of this program, now it is generally viewed as a success. Under the terms of the program, SMEs can take advantage of Government-backed loan guarantees through a limited number of participating financial institutions. To qualify for the program, applicants must be "formal businesses" that meet certain pre-determined capital requirements.

Some lenders interviewed for this diagnostic complained that guarantee programs are unattractive because the 50 percent guarantee does not justify the additional due diligence, paperwork, administrative effort, or loan servicing required under the project terms. Further, there are incidences where the guarantee program failed to make pay-out for months, and in at least one case years. As a result, the lender was placed in the same uncertain situation as dealing with the courts. Program staff suffered from lack of capacity and interest and had little understanding of the overall guarantee process.

But this attitude may be changing. With the increase in competition, more banks are moving down the lending ladder, specifically seeking out creditworthy SMEs as clients. Banks are closely watching the lending activities of the Tanzania Investment Center (TIC) and other institutions engaged in development lending as possible models for lending in this difficult environment. As a consequence of these shifts, credit guarantee schemes may be more appealing.

Recommendations regarding the type of guarantee facilities that would be most useful are beyond the scope of this document. Nonetheless, lessons should be taken from the past failures. Attention should be paid to limiting loan documentation requirements, streamlining approval processes, improving responsiveness to lenders, and speeding up payments.

Leasing. Modern asset-based leasing may be another option for extending credit in Tanzania, especially for businesses and individuals who have limited credit history or assets to use as collateral.

Under the terms of a financial lease arrangement, the lender (lessor) finances the sale of an asset to a borrower (lessee) who makes periodic payments similar to that of an ordinary lease. Over the course of the lease, the lender (lessor) retains legal title to the asset, and, in the event of default, simply retrieves the asset from the borrower (lessee). If the lessee refuses to give up possession of the property, the police will assist the leasing company in the recovery. At the end of the lease term, the borrower (lessee) makes a final payment to finalize the purchase and acquires legal title. Financial leasing allows borrowers who might otherwise be ineligible for financing to purchase assets without making a large down payment. Lenders (lessors) derive the benefit of retaining title to the property until the lease is paid in full.

This approach to leasing was introduced some time ago and facilitated under the provisions of the Contracts Act. After significant debate, however, it was decided that the new industry needed to be supported by a new law, which was enacted in 2007. A project funded by a consortium of donors in partnership with the Government of Tanzania is promoting the

industry.²¹² The project aspires to increase the number of lease transactions from the current estimated level of US\$17 million by 6.3 percent per year.

The establishment of a modern secured transactions regime on movable property would help the leasing industry. Specifically, leases would be eligible for registration in the movable property registry and thereafter easily located, thus decreasing the possibility of fraud due to unauthorized asset resale and unknown liens.

Insurance. A vibrant, cost-effective insurance industry can play several key roles in mitigating risks and facilitating the access to credit. First, the provision of casualty and loss insurance decreases the risks to both lenders and borrowers. Second, lenders can insure themselves directly by obtaining insurance against default. Finally, insurance companies can provide long-term funds to promote mortgage and similar long-term funding.

Tanzania took steps in the mid-1990s to liberalize the insurance industry. The Insurance Act, 1997, was enacted to provide for the creation of a regulatory agency, the Insurance Supervision Department, vested with the responsibility of coordinating policy and other matters relating to insurance. The Insurance Act also allowed both private and foreign investment in insurance and established minimum capital regulations and prudent regulation.

Currently, there are 12 insurance providers registered in Tanzania. They offer casualty and loss insurance on property that serves as loan collateral. However, the industry has not succeeded in supporting the banking sector, as was originally intended. For example, it has not taken a lead role in providing long-term financing to banks and other financial institutions. Further evaluation of this matter may be necessary.

Enforcement. The risks associated with lending, specifically the risk of default, can be mitigated through mechanisms that support the efficient enforcement of credit agreements. For an enforcement regime to be effective in reducing

²¹² The International Finance Corporation, the private sector arm of the World Bank Group, in partnership with the State Secretariat for Economic Affairs of Switzerland (SECO) and the Tanzanian Government,

risks and increasing access to credit, the benefits (e.g., the realistic potential recovery) must be greater than the financial and administrative costs of the process.

According to Doing Business in 2008, it takes 38 procedures and 462 days from the time a plaintiff files a lawsuit to when he or she is actually compensated. The average cost of enforcing contracts in terms of legal and court fees is reportedly 14.3% of debt value. During this diagnostic, the difficulties of dealing with the courts were reiterated by nearly every practitioner interviewed.

In theory, lenders have the authority to repossess collateral outside of the court system, a practice known as "self-help." Financial NGOs are known to exercise "self-help" and repossess property without court assistance, but according to some sources, self-help is rarely successful. One NGO representative noted that this practice decreases settlement costs.

Both the private sector and reform activists have praised the establishment in 1999 of a commercial court at the Tanzania High Court in Dar-es-Salaam. In the beginning, the commercial court took an average of three months to dispose of a case. This rate of disposition contrasted positively to the other high courts' average of at least two years. Unfortunately, the disposition rate for cases has since increased to six months. The success of the commercial court is limited by its limited locations, its high costs, and its high value threshold. The absence of a commercial division at the appellate level raises another problem, as those cases that move swiftly through the commercial court can languish in the system for years if appealed.

Further, Tanzania's rules of civil procedure are over 40 years old.²¹³ Reforms are needed to make litigation more efficient and accessible, move cases forward more quickly, and decrease the cost of litigation.

²¹³ Civil Procedure Code, 1966.

Tanzania is undertaking a series of reform to the legal framework and the courts themselves with the objective of improving the quality of civil and commercial justice. Further, the Office of the Registrar of the Court of Appeal reportedly has established a technical review working group, which has developed proposed priorities in relations to commercial dispute resolution. Work has been commissioned on the review of Alternative Dispute Resolution and additional ADR training for judges. Further, the judiciary and the Tanganyika Law Society have

commissioned a Commercial Justice Training Program with the aim of establishing a continuing legal education program for judges, magistrates, and advocates.

Bankruptcy. Bankruptcy laws establish an orderly, predictable system for handling commercial debts in

the event that a borrower becomes insolvent and cannot meet his or her financial obligations. Due to Tanzania's socialist history, the concept of private corporations and, in turn, the insolvency of those entities is a recent phenomenon. Accordingly, the number of corporate insolvencies has been relatively low. This topic is developed more extensively in this report's chapter on Closing a Business.

Implementing Institutions

The range of implementing institutions pertaining to getting credit tracks the range of laws covering this area. Most implementing institutions in Tanzania readily acknowledge a lack of capacity, both in terms of staff and technology, to fulfill their regulatory functions. These issues are discussed below.

The **Ministry of Finance** is the line ministry charged with the overall responsibility for managing the state's finances and for drafting legislation that governs access to credit. It has championed efforts to transform the financial sector into an industry based on market

²¹⁴ Review of the Legal, Regulatory and Judicial Framework Regarding Manufacturing and Business Sector in Tanzania, Draft Final Report, November 1999, as quoted in the Introduction to the Programme for Business Environment Strengthening for Tanzania (BEST).

principles. It oversees all official donor assistance coming into the country, including programs planned with other Ministries. The officials and staff of the Ministry of Finance are well regarded by the private sector and are praised for their transparent approach to financial sector reform.

The **Bank of Tanzania** serves as the primary financial regulator. The Bank's mission is to strengthen the overall legal and regulatory framework to try and increase financial discipline and improve the payment culture. The officials and staff of the Bank of Tanzania are highly regarded by the donor agencies with which it collaborates, as well as the commercial banks that it supervises. The staff is viewed as being well trained and professional. Unfortunately, as in many countries, the Bank of Tanzania suffers from a "revolving door" through which the employees are frequently lured away by higher salaries from the private sector.

The Bank of Tanzania is facing the challenge of retooling itself to regulate the implementation of Basel II. Basel II is far more complicated and demanding than Basel I, which will challenge the capacities of the Bank.

As the ultimate regulator of SACCOs and financial NGOs, the Bank of Tanzania readily acknowledges that it lacks the staff and technology to oversee these industries.

In general, the one operating **commercial court** is viewed as more efficient than other courts and as having more judges with specialized knowledge of commercial matters. Overall, though, all courts in Tanzania are under-funded and under-staffed, while judges and court officials appear to be insufficiently trained and underpaid. Interviews elicited a consensus from legal practitioners that judges are not well versed in the law, either due to lack of information with regard to new legislation or an unwillingness to put in the time required to stay up-to-date. Also, there are clear suggestions that corruption plays a part in court decisions. Given these circumstances, it is not surprising that courts do not have the public's confidence and are not viewed as institutions capable of enforcing contract rights.

Court brokers are appointed to facilitate the execution of court orders. The court or by private sector actors may retain them in order as they seek to take action pursuant to judicial actions; such broker generally act as bailiffs.

In 1997, in response to a number of complaints regarding the disappearance of settlement funds and similar types of misconduct, the government enacted the Court Brokers and Process Servers (Appointments, Remuneration, and Discipline) Rules. These rules impose standards for appointment, procedures for discipline, and numerous minimum requirements, including bonding. Despite the enactment of these rules, the activities of court brokers are still subject to complaints regarding efficiency, effectiveness, and professionalism. The BEST program, discussed elsewhere in this report, will attempt to address these problems as part of its judicial reform efforts.

Property registries. Property registries play a key role in strengthening land rights, establishing and prioritizing claims, and facilitating the access to credit by providing creditors with access to information on the existence and terms of prior liens.

Land registry and village land registries. The registration of real property is covered in this report's chapter on Registering Property. For purposes of getting credit, however, it must be underscored that there are serious deficiencies in the substance and practice of these registries.

Currently there is no national registration system for land. Mortgages on general land are subject to registration in the Land Registry, while village land is subject to registration in the Village Land Registry. There is a main Land Registry Office in Dar-es-Salaam, and six zone offices.

The process for registering a mortgage on general land is governed by outdated laws and procedures that are overly complicated, slow, and costly. Surveys show that in Tanzania, it costs 21.3 percent of per capita income to create and register immovable collateral.

Nonetheless, practitioners who are frequent users of the registry insist that its efficiency varies depending on the location. Registration in Dar-es-Salaam can take a month or longer, and

involve four to five steps, which must be closely monitor to ensure that the process is successful. Registration in Arusha reportedly takes an average of 10 days.

Almost all registries suffer from the fact that they are manually operated. Documents are misplaced or lost, making the system unreliable. A mechanism for checking for prior liens, which is critical to reducing the risk of lending, is time-consuming, costly, and unreliable. Staff is generally disinterested and poorly trained, and lack customer service skills.

The problems with the registries will only worsen as volume increases as additional properties are surveyed and registered. In this regard, the concerns the registries raise must be quickly addressed. More computerization is critical and staff members need a better understanding of the importance of their work.

The companies registry and the registry of titles. As noted, security interests on movable property are registered in the Companies Registry if the interest involves a company, and in the Registry of Titles if the interest is owned by an individual or group of individuals. Both registries suffer from the same staff and technology problems that plague the land registries. In the context of security interest in movable property, the delays and cost are even more critical. Practitioners indicate that, due to added time-sensitivities, registry employees can be encouraged to complete registration with small bribes.

Supporting Institutions

The creation of a strong lending industry depends on the effectiveness of a number of supporting institutions. As discussed in this section, Tanzania has the basic institutions needed, but there are questions as to whether they are truly serving the needs of their members and the goals of the government.

Formal and semi-formal credit providers. The legal and regulatory framework governing the formal financial sector has improved as a consequence of the Government's Financial Sector Reforms that began in the mid-1980s. The lifting of the 25-year prohibition on **foreign banks** has led to many new entrants into the industry. Today, there are 22 **commercial banks** and three other chartered **financial**

institutions operating in Tanzania. Of the 22 banks operating, only the National Microfinance Bank (NMB), the Co-operative and Rural Development Bank (CDBD), and the National Commerce Bank (NBC) have significant branch structures, with 104, 22, and 34 respectively.

Most commercial banks operate in urban areas, where customers are easily accessible and the infrastructure is more developed. NBC is seeking to increase its presence through the installation of a large network of automated teller machines.²¹⁵ Standard Charter Bank is upgrading its online business services, known as "Straight 2 bank," which is directed toward SMEs. Straight 2 bank will allow customers to complete about 80 percent of banking services online, reducing the time a customer must spend in the bank. Lenders at all levels express interest in new technology as a means to overcome the expensive and inconvenience of servicing the rural areas, and support the Government's efforts to enact a bill will facilitate the use of cell phones to may payments.

As a result of increased competition, some commercial banks²¹⁶ are branching into micro-lending, an area they generally ignored in the past. However, additional incentives are necessary to encourage more institutions to move "down market" and to lend in greater volumes. The TIB employs the development banking approach to support new business proposals. Development banking is the provision of medium- and long-term loans for projects identified as necessary to accelerate development. Therefore, the role of development finance institutions is not confined to only providing financial assistance, but also to providing other forms of assistance, such as training, business consultancy services, marketing services, and enterprise clustering.

The Government promotes **SACCOs** as the preferred vehicle for developing savings and credit options in the villages and rural areas. As noted previously, SACCOs are small, member-

²¹⁵ Banks are expanding their range of operations through the establishment of Automated Teller Machines (ATM)...the National Commerce Bank plants to increase the number of ATM countrywide from the existing 103 to 161 by 2009.

²¹⁶ Entities licensed as commercial banks that provide microfinance services include the National Microfinance Bank; CRDB Bank; and Akiba Commercial Bank.

sponsored cooperatives chartered by the Ministry of Agriculture, Food Safety, and Cooperatives.

The **financial NGOs** in Tanzania operate exclusively as microfinance institutions, and service to provide micro credit, savings facilities, and training to SMEs.²¹⁷ According to a Bank of Tanzania survey, in 2005 survey there were 63 financial NGOs operating in Tanzania. The activities of the financial NGOs are subject to considerable comment and concern. Chiefly, there are questions as to whether these entities are truly fulfilling their obligation to services the poor. For example, PRIDE, the largest microfinance NGO in Tanzania, provides loans with annual interest rates between 24 and 30 percent per annum. PRIDE lends only to entrepreneurs who save 25 percent of the loan value before the loan is granted.

A recent survey of the large NGOs²¹⁸ raises doubts concerning whether the large institutions are truly fulfilling their stated mission of servicing the poorest of the poor. As a separate but related matter, there is little evidence that microfinance customers in Tanzania are actually moving up the credit ladder and gaining access to larger loans at cheaper rates for longer duration.

Despite apparent ongoing expansion in the formal and semi-formal financial sectors, it appears that Tanzania will continue to be under-banked for the foreseeable future.

Banking Association. The Tanzanian Banking Association (TBA) comprises 22 commercial bank members who gather to meet to discuss common problems faced in the banking industry in Tanzania. TBA is on good terms with the Bank of Tanzania, actively lobbies for the interests of its members, and participates in the financial sector reform effects. TBA demonstrated the foresight to establish a small credit reference bureau for use by its members, which reflects an understanding of the importance of importing new banking techniques.

²¹⁷ Assessing the Relative Poverty of Clients and Non-Clients of Non-Bank Microfinance Institutions in Tanzania, supra note ____.

²¹⁸ Assessing the Relative Poverty of Clients and Non-Clients of Non-Bank Microfinance Institutions in Tanzania, supra note ____.

Credit information bureaus. Except for the private credit information bureau the Tanzania Bankers Association operates, there are no credit information bureaus currently operating in Tanzania.

Appraisers. Typically, the amount of a mortgage is based in some way on the value of the collateral. For example, the Bank of Tanzania's lending regulations require collateral of at least 125 percent of the loan amount, and in practice banks require an even higher amount. Accordingly, a property appraisal is required in connection with each mortgage application.

As formal mortgages are a relatively new phenomenon in Tanzania, the appraisal profession is underdeveloped. Since there is no true real estate industry, appraisers are typically limited to information about mortgages for comparable valuations. There is even less information regarding resale value on foreclosure. Banks complain that there is a tendency to over-value property, which jeopardized their interests upon foreclosure. Along with surveyors, assessors, and land economists, they are subject to the registration and disciplinary provisions of the Professional Surveyors (Registration) Act.

In light of the collateral requirements and the limited industry, the role of the appraiser is not as critical as it might be. As competition increases and the lending industry matures, it is inevitable that collateral requirements will be lowered. At that time, appraisers will play a key role in the industry.

Chambers of commerce and other business associations. The **Tanzania Chamber of Commerce, Industry and Agriculture** (TCCIA) has a presence in each of the country's districts and lobbies local governments and the national government. Some of the larger offices have established business training centers in an effort to address their members' demand for business educations. The Arusha office is organizing a business resource center where members can access current information on business trends and trade shows. With its wide presence, the TCCIA is hoping to establish itself as a network for capacity-building programs and training sessions.

The TCCIA is organized into various departments with specific areas of expertise. The banking group is well informed about the status of the financial sector legal framework and the activities of the Bank of Tanzania. The group has participated in the Government's reform efforts by commenting on the recent banking law. In order to serve as a leader in future reforms, however, the group must increase its understanding of modern banking practices and secured transaction techniques.

The **Tanzania Chamber of Commerce** is 19 years old and is the largest association representing the private sector in Tanzania. The Chamber has offices in 21 regions and 80 districts. Membership is voluntary. There are a total of 13,000 members of which 8,000 are paying. The Chamber's members consist of representatives from the commercial, agricultural, and industrial sectors.

Recent years have exhibited great improvement in the relationship between the Government and the private sector, and the Chamber has participated in the strengthening of these ties. The Chamber is developing its own business licensing center, which is planned for completion by 2009.

Collection agencies, or companies that manage the administrative aspects of the collection of debt and/or the repossession of property, do not exist in Tanzania as a stand-alone industry. Loans that fall into default are referred to law and/or accounting firms for enforcement due to the complexity of the collection and enforcement process. Certain law and accounting firms specialize in these areas. These firms take on the responsibility for providing required notice, court filings, engagement of court brokers, and all other aspects of settling the debt.

Social Dynamics

The social dynamics of a county, including the Government's approach to reform; society's attitude toward business; the savings and lending culture; and other factors have affect the availability of credit. In Tanzania there is a high demand for credit and financial sector participants that are competing to meet it. However, the data on the provision of financial service and access to credit confirm that serious barriers remain.

The Government has consistently followed a practical and transparent approach to financial service sector reform. Almost without exception, reform efforts have been preceded by a process of information-gathering (through national surveys, roundtables, stakeholder input, etc.), which is followed by the development of well-considered national or sector policies. Once it adopts a policy, the Government then prepares appropriate legislation. While this approach is highly praised, there seems to be a lack of connection between these well-considered policies and their actual implementation.

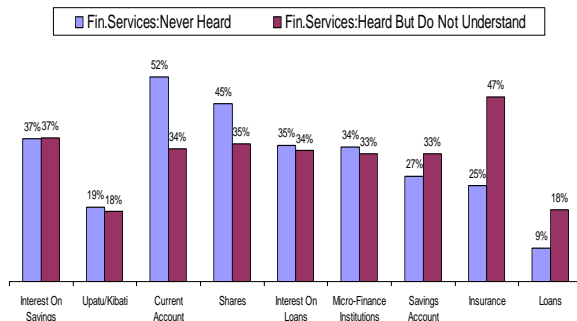
Practitioners complain that, historically, the Government has been bureaucratic and unhelpful in its approach to implementation. Requests for interpretations and clarification of laws and regulations have gone unanswered for months, making Government input a liability rather than a facilitating factor. Further, with respect to implementation of new law and policy, Government representatives are the first to concede that they do not have the requisite technical skills to implement the laws and policies.

Another concern arises from the Government's issuance of bonds. Although the purpose of these bonds is in dispute (some believe they fund the Government's need for cash, while other believe bonds are strictly a tool for managing liquidity), their attractive terms may have the result of lowering the incentives to commercial banks to lend to the private sector. Of further concern is the fact that bonds affect the interest rates charged on various types of lending. For example, it is not uncommon for donors of microfinance funds to peg their funding to the interest rate of the receiving country. As a consequence, the donor rate is tied to these expensive bonds and the additional cost is reflected in the interest charged on individual loans.

The high percentage of businesses that operate in the informal sector negatively affects access to credit. As entities that operate without the formalities of registration or tax identification numbers, informal enterprises are virtually precluded from securing credit from commercial banks and many microfinance lenders. This situation is further complicated because most

businesses in informal sector see few benefits in subjecting themselves to the lengthy and costly process of formalization.

It is a common refrain that borrowers in villages and rural environments are unsophisticated in the area of finance and that they have little understanding of the credit options available to them. The results from the FinScope survey provide insight into these comments.



Significantly, 91 percent of persons surveyed knew of loans. But, as this survey further reflects, the vast majority of borrowers turn to family, friends, and money-lenders for credit. Significantly, 91 percent of persons surveyed knew of loans. But, as this survey further reflects, the vast majority of borrowers turn to family, friends, and money-lenders for credit.

The job of providing financial education and training in the villages and rural area is expected to fall to the SACCOs and microfinance lenders. The Government, SACCOs, and banks all seem to support this approach. As a practical matter, however, dealing with microfinance lenders as a means to move up the credit ladder will prove difficult, and the operations of these lenders and their incentives should be reviewed.

Recommendations

Additional reforms can have a positive impact on access to credit. Indeed, as part of the Government's second generation of financial sector reform efforts, a number of key issues are already being addressed.²¹⁹ In addition to these reforms, the following is recommended:

- **Review Government's bond policy.** The Government's bonds provide

commercial banks with a high-yield, tax- and risk-free investment that may be raising interest rates and limiting bank lending. In this regard, the policy should be reviewed and recommendations should be prepared to address any negative impacts on the availability of credit in Tanzania, both in terms of the high cost of funds, and the commercial bank's willingness to lend.

- **Provide guarantees for banks' funding to microfinance institutions.** As a means of reaching borrowers who are not typically included in their credit policies, many banks extend loans to microfinance companies, which in turn lend these funds to small businesses and households. As these loans are deemed to be "unsecured," they are limited to the five percent of capital limitations contained in the Bank of Tanzania's prudential regulations. A loan guarantee program, designed specifically for these types of loans, could dramatically increase the amount of credit commercial banks extend to microfinance lenders.
- **Invest in new technologies, including electronic banking and telephone banking.** Tanzania is in the process of adopting a new electronic transactions law. Telephone banking is a relatively new concept, but there has been it has had some success in Kenya. It permits payments to and withdrawals from a bank account via mobile phone. This new technology holds promise for low-end banking because it allows for branchless banking and low transaction costs.
- **Support development banking.** While many commercial banks complain about the lack of qualified borrowers, development banks provide additional services to prospective borrower and to improve their changes of business and financial success. Throughout the course of this diagnostic, the importance of capacity-building and training were reoccurring themes. As development banks are already providing these extra services, their efforts should be supported through a national strategy geared toward improving the

²¹⁹ See Key Priority Areas for the Financial Sector Reform Program (June 2005).

conditions for entrepreneurship, coupled with efficient credit guarantee entities.

- **Strengthen the SACCO industry.** SACCOs and other semi-formal sector entities are expected to play key roles in the Government's poverty alleviation strategies. In this regard, they are expected to provide the rural and poor populations with financial and credit management skills. Unfortunately, there are weaknesses in both the supervision and administration of these entities at all levels, which raises special concerns due to the fact that SACCO members are typically the poorest segment of society. In light of their importance to the Government's plan, there is a need for a detailed analysis of the best approach for: (i) providing oversight and regulation of these entities (self-regulation, cooperative structure, national vs. local regulations); (ii) providing initial and ongoing technical and administrative support; (iii) insuring against unavoidable failures; and (iv) financial assistance.
- **Evaluate microfinance.** Microfinance lenders are expected to provide financial services to the poor and poorest members of society as a means of improving their standard of living. A successful lending program allows responsible borrowers to move up the credit ladder, thereby receiving larger loans at better rates for longer durations, with the ultimate graduation to the formal sector. Some of the microfinance lenders in Tanzania are not fulfilling this role, and many microfinance borrowers remain stuck in a difficult cycle of repaying high-priced loans without the advantage of moving up the credit ladder. An analysis of the loan terms and conditions afforded repeat borrowers is necessary. If there is no indication of improved circumstances of borrowers, incentives currently offered to microfinance lenders should be revisited.
- **Develop a comprehensive secured transactions regime.** In addition to reform efforts pertaining to land, the Government should place a high priority on the development of a secured

transaction regime on movable property, complete with a modern law and electronic registry.

- **Support the warehouse receipts system.** The new warehouse receipts system is enjoying initial success, particularly in the coffee industry. Unfortunately, a current lack of accredited warehouses, as well as a lack of technical knowledge on how to organize and manage warehouses at the local level, diminishes its usefulness to the agricultural sector. Additional warehouses are necessary to meet the existing and the anticipated needs. Technical assistance pertaining to the management of an accredited warehouse is also needed.
- **Promote credit guarantee initiatives.** Although Tanzania's experience with credit guarantee schemes has been varied, their previous introduction may have been premature in light of the status of the banking and lending industry. As competition has increased and lenders are being forced to take greater risks, the conditions are ripe for these programs to play a key role in facilitating access to credit. Recommendations regarding the type of guarantee facilities that would be most useful are beyond the scope of this report; accordingly, a separate analysis should be undertaken.

PROTECTING INVESTORS

THE DOING BUSINESS RANKINGS (2006) Protecting Investors	
Tanzania / World	83 out of 175
Tanzania / Sub-Saharan Africa Region	21 out of 45

Introduction

Good company law and good corporate governance are critical for a developing country like Tanzania. They protect investors – and encourage new investment – by providing clear rules for a company's internal management and by providing enforceable standards to protect shareholder rights and access to information. They can also establish the country's reputation as investor-friendly. As expressed in the introduction to South Africa's corporate governance code, "If there is a lack of good corporate governance in a market, capital will leave that market with the click of a mouse."²²⁰

At this time, notwithstanding a series of initiatives to improve responsiveness to the needs of investors, Tanzania's company law lacks best-practice standards and is often unclear and cumbersome to use. It suffers from having been drafted without extensive local consultation or comment. There is a great need to add provisions that will increase investor protection, to adapt the law to current international and Tanzanian business practice, and to add flexibility for SMEs.

On the other hand, the Government of Tanzania recognizes the need for good corporate governance, and in 2002 it issued a corporate governance code setting forth many international best practices. The code applies directly to stock exchange-listed companies only, but other companies in Tanzania observe it and it is currently under reviewed for possible expansion in content, in the number of companies covered, and in methods for

implementation and enforcement. The actual state of corporate governance "on the ground" is hard to measure, but clearly can be enhanced by a strengthened company law and corporate governance code.

Another essential part of investor protection is *foreign* investor protection. Tanzania generally exhibits a welcoming attitude to foreign investment, and the Government has taken many strides to implement this. However, a major problem is that information on companies is harder to come by in Tanzania than in comparable countries. This dissuades potential investment.

Legal Framework

The Tanzanian "company law" is part of the **Tanzanian Companies Act, 2002**, and its accompanying Regulations. The Tanzanian National Assembly passed the Act in April 2002, but it did not come into effect until early 2006, pending preparation of related Regulations; the Act and Regulations then became effective simultaneously, replacing the former company law, the Companies Ordinance, 1932. The new Act covers the usual subjects for governing business companies but also has extensive provisions on two other subjects that are not usually found in company laws: (a) registration of liens and mortgages on a company's property (called "charges" in the Companies Act); and (b) the liquidation and winding up of companies. Other chapters of this report discuss those subjects.²²¹ This unusual structure follows that of the English Companies Act of 1985, which England has since replaced.

The legal framework also includes the **Capital Markets and Securities Act, 1994**, which creates the Capital Markets and Securities Authority (CMSA), the Government body responsible for regulating the Tanzanian securities markets and stock exchanges. There is one stock exchange, the Dar es Salaam Stock Exchange. In 2002 the CMSA issued the corporate governance code referred to above,

²²⁰ Report of the King Committee on Corporate Governance, page 9, published at www.ecgi.org. The South African code was cited in the Tanzanian corporate governance code.

²²¹ See this report's chapters on Getting Credit and Closing a Business.

entitled ***Guidelines on Corporate Governance Practices by Public Listed Companies in Tanzania***. That code overlays the company law with respect to the protection of investors, but it applies only to stock exchange-listed companies.

Another key law aimed at investor protection is the **Investment Act, 1997**, which regulates foreign investment and creates the TIC, a Government body whose mission is to promote both domestic and foreign investment and to actively aid potential and established investors.²²²

The Company Law

Investor Protections in the Company Law.

The company law's main investor-protection features are listed below. Suggestions to change many of them are below and at the end of this chapter.

- There is one form of limited liability company (i.e., company in which the investors are legally shielded from personal liability for the company's debts and other obligations).²²³ It is called, simply, a "company." The law prescribes a broad range of formalities for a company's structure and operation that are appropriate where there is widely held ownership. Tanzania does not have a separate, more flexible form of company for small and closely held businesses or joint ventures. In this way the Tanzanian law differs from the laws of many countries. (The Tanzanian company law does distinguish between companies that are "public" and "private," but private companies remain subject to most of the formalities applicable to public companies.)

- The law states that a company must hold an annual shareholder meeting within six months after the end of its fiscal year; that shareholders holding 10 percent or more of the voting power may require other shareholder meetings, and that shareholders may ask the court to order a shareholder meeting if the directors do not do so (sections 133-37). Those are good investor-protection provisions that are also found in many other company laws.
- Regarding fiduciary duties, the law requires a company's board of directors to "act honestly and in good faith" and exercise "care, skill and diligence" (sections 182 and 185). (The latter is the "duty of care" and is common in other countries' laws.) However, these duties are imposed only on a company's *directors*, not on other persons who are often in control of the company, such as officers and controlling shareholders, who are covered in other countries' laws.²²⁴
- The law does not impose a general fiduciary duty of loyalty on directors or other controlling persons, and does not have rules requiring disinterested approval of conflict-of-interest transactions between controlling persons and the company. This is a serious shortcoming of the Tanzanian company law. In real business life, breaches of the duty of loyalty are a much greater problem than breaches of the hard-to-prove duties of honesty and care.²²⁵ Under other countries' company

²²² Other laws that relate to investor protection are covered in other chapters of this Report. These include the Business Activities Registration Act, 2007, and other laws and regulations governing business registration, licensing, and labor regulation. See this report's chapters on Starting a Business, Dealing with Licenses, and Employing Workers.

²²³ Tanzania also has general partnerships, in which the investors (partners) are not shielded from liability for the partnership's obligations. Partnerships also differ from companies in being consensual -- i.e., they are created by agreement of the partners, not by filing with the state registry -- although in Tanzania a partnership may be filed with the registry under the Business Names Registration Act. Such a filing protects a partnership's name and provides other legal benefits. Law firms, accounting firms, medical firms, other professional organizations, and, in some cases, NGOs and other non-profit entities, use partnerships.

²²⁴ Also, when other company laws state the duty of care they include the "business judgment rule," which states that a director or other controlling person is not personally liable for errors in business judgment made in good faith with no personal interest. The Tanzanian Companies Act does not have the business judgment rule.

²²⁵ It should be said that, while the Companies Act does not have conflict-approval rules, it does have some soft conflict disclosure rules. Directors are to notify the company of their stock ownership in the company, their emoluments (pay) from the company and any loans from the company, and to declare generally to the board any interest in a contract or in another firm with whom the company may have future contracts (sections 205-09). This last rule is often not complied with or enforced; the World Bank report described below states that "many companies did not disclose information on related party relationships, and some companies that reported related party transactions failed to provide the required detailed information."

laws the duty of loyalty includes a duty of a director or controlling person not to use company property for his own personal needs as though it were his own, not to disclose confidential information of the company or use it for his own personal profit, not to take business opportunities of the company for himself, not to compete with the company, and otherwise to serve only the company's interests in transactions where the person has a personal interest. In some countries (such as the US) these duties are established by courts in case law, but in developing countries where there is essentially no case law it is desirable to state them explicitly in the Act.

- The law does not limit directors' terms in office or require that they be subject to regular election or reelection. Such provisions are found in the company laws of nearly all countries with developed capital markets. They are designed to make directors' accountable to investors and to prevent "entrenchment" by insider-directors.
- The law allows a company to have a corporate entity as a director (see section 130). This should never be permitted. A director should always be an individual person who is chosen personally for his or her experience, judgment, and deliberation, and who investors can hold to account personally.
- The law does not require shareholder approval of major transactions such as mergers, major asset sales, major acquisitions, decisions to dissolve the company and other "organic" company acts. Such provisions are standard in other countries' laws and are designed to prevent, among other things, "runaway boards" and asset stripping by insiders. Also, many other countries' laws require a supermajority shareholder vote of two-thirds or three-quarters for such major transactions.
- The principle of "one share=one vote" is not in the law; nor does the law prohibit a company from setting a ceiling on the voting power of individual shareholders (such as a company by-law that a shareholder may not vote more than a certain percentage of the total number of shareholder votes, even when that shareholder holds more than that percentage.) These principles are often cited as corporate governance best practices, which are especially important for widely-held companies in developing countries, to ensure that investment is aligned with control.
- The law does not have provisions to allow dissenting minority shareholders to opt out of major transactions, such as mergers with another company, and receive the fair value of their shares, independently appraised. Such provisions are designed for situations where majority shareholders or controlling directors might engineer a discounted takeover by another company that they control, or that might provide them lucrative positions. Such provisions are standard in other countries' company laws.
- The law permits a company to issue preferred stock separate from its common stock – as a company should certainly be able to do – but does not require that the voting rights of the preferred be restricted, which could result in the "back door" creation of a *de facto* second class of voting common stock with no transparency as to its rights relative to those of common shareholders. Also, the law does not require that all of the rights and preferences of a class of preferred stock be made public.
- The law does not state clearly that shareholders have the right to vote for directors separately ("one by one"), so that director candidates cannot be proposed as a group by controlling shareholders on a "take it all" basis. The law does have a section on this subject (section 192), but it is confusingly worded and does not state this explicitly.
- The law should state clearly that shareholders can remove director without hassle and without having to prove "cause," if and when they believe that removal and change is in the best interest

of the company. The sections on this are also unclear.

- The law does not provide for cumulative voting for directors. Cumulative voting is a device commonly provided for in other countries' laws (and sometimes required), which protects minority investor rights by enabling minority shareholders to elect directors in proportion to their minority investment or percentage shareholding.
- The law has complex technical mandatory rules governing share capital (e.g., in sections 59-72.) These rules have no evident purpose; there is no requirement for companies to have minimum capital and the capital rules are not used in provisions restricting dividends or share buy-backs to protect creditors (see section 180). Some major commercial countries have eliminated share capital requirements entirely (e.g., the U.S.), while others have retained it for publicly traded companies but eliminated it for non-public companies (e.g., England and the EU Company Law Directives).

Enforcement of investors protections under the company law. Rights without the ability to enforce them can be meaningless. Regarding this, the Companies Act permits shareholders to bring "derivative" lawsuits against company directors who have violated their duties (section 234), similar to those allowed under US and UK law. Derivative lawsuits must be brought in the name and on behalf of the company, with damages recovered going to the company so that all shareholders benefit. Derivative lawsuits are a primary means of enforcing investor rights in the US, and increasingly in the UK, and they should be provided for -- as they are -- in Tanzania. However, all interviewees on this topic stated that derivative suits are unknown in Tanzania for several reasons, among them that judges and courts are unfamiliar with such suits and the issues they would involve; litigation is slow in Tanzania even in simple cases; and the Tanzanian dispute resolution system generally is undeveloped. Interviewees referred to cases that could have been brought -- for example for false prospectus statements -- but were not because of the slowness and inefficiency of litigation and, to a degree, concern about possible corruption in the court system.

The company law also gives monitoring and enforcement power to the company Registry. This includes the power to levy fines on companies and directors for violations of the Act and the power to require a company to produce additional documentation if the Registry believes that a document previously filed "does not disclose a full and fair statement of the matters to which it purports to relate." After such an investigation the Registrar may report the matter to the court (sections 215-16).

However, persons interviewed were not aware of any instance in which this has occurred. In reality, the Registry does not engage in monitoring or enforcement because it does not have the trained personnel who would be needed for that purpose; it is already having difficulty with its primary function as a repository of documents; and the law does not couple the enforcement power with rules and procedures for their exercise, such as evidentiary and appeal rules.

Usability of the company law. All interviewees who have worked with the company law remarked that it is overly complicated, opaquely drafted, and difficult to use.²²⁶ One interviewee called it "a monstrosity" and several commented that it was already outdated when it became effective in 2006. Another, noting that foreign experts drafted it and based it on the now-replaced 1985 English Act, called it an effort "to plant an oak tree in Africa where those don't grow."

The history of the law suggests the basis for these comments. Foreign experts drafted the law under foreign donor sponsorship with -- as another interviewee stated -- the aim simply to show the world that Tanzania now had a modern new company law to replace its old (1932) one. The drafting reportedly took place with minimal solicitation of comment or circulation of drafts to Tanzanian businesspeople or professionals.

²²⁶ If examples of this are desired, reference can be made to several hard-to-read provisions on matters that are simple in other company laws, such as in sections 141 (voting of shares owned by a company in another company), 142 (shareholder access to the agenda of a shareholder meeting), 143 (agenda items which require super-majority shareholder vote), and 193 (voting for directors to be one-by-one, not as a group).

The Corporate Governance Code

The *Guidelines on Corporate Governance Practices in Public Listed Companies in Tanzania* applies to stock-exchange-listed companies, of which there are now 10 with listed stock and four with listed bonds. Despite this limitation, at least some unlisted companies are following the *Guidelines* voluntarily; the directors of one such company made a point of stating that their company does so because they believe that a reputation for good corporate governance helps maximize the company's value and good will. Tanzanian investment funds (institutional shareholders) who were interviewed made the same point. For similar reasons, several foreign companies doing business in Tanzania have adopted voluntary corporate governance codes with provisions similar to those of the CMSA code. Examples of this are Celtel and its parent company MTC, and Unitrans Holdings.

On the negative side, it appeared that the Tanzanian code is not nearly as well known or publicized in Tanzania as it can and should be. One investor-oriented organization and an investment fund interviewed for this diagnostic stated that they were unaware of it.

The *Guidelines* must be considered an important national document. Its rules are not legally binding, but companies are encouraged to follow them, and a company that does not follow them can be "shamed" in the market. The single "binding" requirement in the *Guidelines* (which could be enforced indirectly through devices such as the stock exchange listing rules) is that a listed company must "comply or explain" – i.e., it must publicly disclose annually -- whether it is conforming with the *Guidelines* and, if it is not, must "indicate the steps being taken to become compliant."

It is instructive to list the *Guidelines'* contents because these show its broad scope -- and the fact that international best practices are recognized in Tanzania. The *Guidelines*:

- Recites its context and background, referring to the Organization for Economic Co-operation and Development (OECD) Principles of Corporate Governance and other codes that were taken into account, including those of the UK, South Africa, Malaysia, and the Commonwealth

- Sets forth a list of principles and best practices for a company's board of directors, including a statement of its role and responsibilities; the need for balance between independent, non-executive and executive directors; the value of having nominating and remuneration committees of majority non-executive directors; and the value of separating the chair and CEO positions with the chair being an independent or non-executive director
- Sets forth shareholder-rights principles, including fair treatment of minority shareholders; shareholders' right to financial and other information; right to participate and vote at shareholder meetings; and importance of regular communication with shareholders, including encouragement of a shareholders' association
- States that the board should have an audit committee of at least three independent directors who have financial expertise and who monitor and review the work of and relations with the company's independent audit firm, and who also establish and monitor an internal audit function.

The *Guidelines'* provisions broadly resemble those of many other countries which have adopted governance codes.²²⁷ These others include South Africa and Kenya, whose codes, however, contain additional provisions such as a separate company code of ethics and regular periodic self-evaluation by a board of directors. Those should be considered for a revised version of the Tanzanian code.

The *Guidelines* do not cover the subject of conflict of interest transactions between the company and directors (or other controlling persons), and do not deal with monitoring or enforcement through CMSA or stock exchange rules or otherwise. These points and others were discussed with CMSA officials responsible

²²⁷ More than 30 other countries have issued corporate governance codes, many of them -- like Tanzania's -- as non-binding or partially binding guidelines using the comply-or-explain principle. The best research source for these is the website of the European Corporate Governance Institute, www.ecgi.org. That site does not include the Tanzanian code but it is suggested that the CMSA should submit it there for inclusion.

for the *Guidelines*, who stated that CMSA regularly reviews the *Guidelines* with a view toward possible revision and coverage expansion. CMSA has authority to expand coverage to all public companies with more than 50 shareholders, which, if done, would largely deal with the need to issue new regulations.²²⁸

INVESTOR PROTECTION COMPARISONS											
Law or Code	What companies are covered?	Is it Mandatory?	How is it Enforced?	Duties of Directors/Controlling Persons	Rules for Conflict of Interest Transactions	Rules for Director Elections	One share = one vote?	Is Shareholder Approval Required for Major Company Actions?	Minority Protection on Sale of Control?	Are Independent Directors Required?	Is an Independent Board Audit Committee Required?
Tanzania Company Law ¹	All Tanzanian companies	Yes	By investor lawsuit or Government fine (both very rare)	Honestly, good faith, care (for directors)	Generic disclosure only is required	Multi-year and staggered terms permitted	No	Very limited	No	No	No
Tanzania Corporate Governance Code ²	Only companies on Dar Stock Exchange – but is recommended for others	No – but calls for “comply or explain” disclosure	By adverse market reaction for noncompliance; possible stock exchange sanctions	As detailed in the Code	Detailed disclosure required; conflicted person may not vote on the transaction	Election/ election at least every 3 years	Not covered	Yes (e.g., major asset sales, acquisitions or mergers, director pay)	Not covered	Yes – at least 1/3 of the board	Yes

¹ Tanzania Companies Act 2002

² Tanzania Capital Markets Authority *Guidelines on Corporate Governance*

The state of investor protection in actual practice. Interviewees said that in Tanzania – as in the rest of the world – corporate governance is imperfect and the process of changing old habits is slow. They also said that the company law and the code have a strong impact. A practical survey of the actual state of corporate governance for this report was not possible, but in late 2004 the World Bank conducted a survey on a related subject, financial disclosure of Tanzanian companies, published in 2005.²²⁹ That report assessed the financial reporting requirements of the Companies Act 2002 and of the CMSA and Stock Exchange rules and the actual reporting and disclosure practices of Tanzanian public companies, banks, and insurance companies. It concluded that the companies' reporting practices vary and are often inconsistent and noncompliant with international accounting standards and that there are significant gaps in CMSA and Stock Exchange enforcement of standards. The report recommended that the legal framework for accounting and auditing (including the Companies Act 2002) be improved; that the monitoring and enforcement powers of CMSA,

²²⁸ Interviewees stated that the Bank of Tanzania has issued a separate governance code for banks; that was not reviewed for this report.

²²⁹ World Bank, Report on the Observance of Standards and Codes (ROSC)—Accounts and Auditing –Tanzania.

the Stock Exchange, and other bodies be strengthened; and that professional education and training be enhanced for those bodies as well as for financial statement preparers within the companies. Those recommendations substantially parallel recommendations made below with respect to investor protection in general.

The Investment Act 1997 and the Situation of Foreign Investors

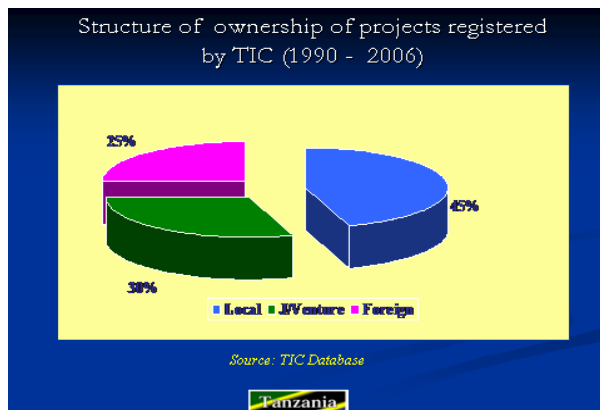
The Investment Act and the Tanzanian Investment Centre (TIC). There is a strong consensus that Tanzania has a welcoming attitude toward foreign investment and that the government has taken considerable practical strides to encourage and protect it. This is evident in the laws interviews with investors.

The key law on foreign investment is the **Tanzania Investment Act, 1997** which, among other things:

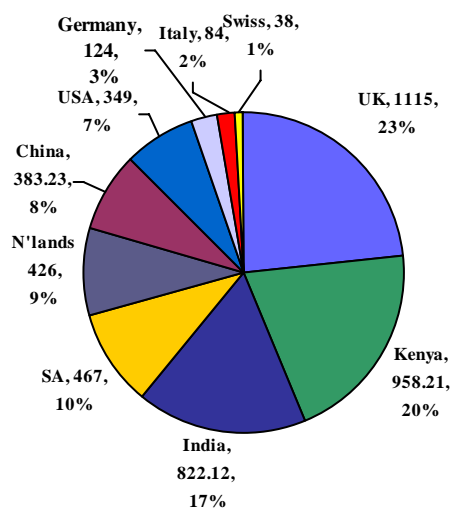
- Provides, in language similar to that found in laws of other countries that have investor-friendly reputations, for convertibility and foreign repatriation of profits, loan service payments, royalties, and similar items; for prohibition of nationalization or expropriation without “fair...prompt” compensation; and for dispute settlement by arbitration including under the rules of the International Center for the Settlement of Investment Disputes (ICSID)
- Creates TIC to be the primary agency to “coordinate, encourage, promote and facilitate investment in Tanzania and to advise the government on investment policy and related matters”
- Directs TIC to undertake a long list of investment-aiding activities, including locating investment sites and opportunities, collecting information for potential investors, and – critically important – acting as a one-stop-shop for helping investors obtain “necessary permits, authorizations, approvals, registrations, consents, licenses, and any other matter required by law for a person to set up and operate an investment.

TIC's mission covers both domestic and foreign investment, but as a practical matter most of its work is with foreign investors. A breakdown of

domestic vs. foreign investment project ownership:



For these projects TIC competes with similar agencies in other countries—including neighboring African countries – for the same investors. Africa receives only three percent of total worldwide foreign direct investment (FDI). Tanzania's level of FDI is lower than that of South Africa, Kenya, and others. The foreign investor countries vary widely – the top ten for foreign investment in Tanzania include:



TIC's internal organization and its 2007 award as World's Best Investment Promotion Agency are described in the Implementing Institutions section.

TIC does not handle all foreign investment promotion in Tanzania. Three sectors are excepted from the Investment Act: mining, petroleum, and armaments and hazardous chemicals. Ministries that have jurisdiction over those areas directly handle such investments, but even in those cases TIC is involved. Also,

the National Investment Steering Committee (NISC) helps with complex investments of large size, cross-sectoral nature, inter-ministry overlap, or other special circumstances.. The Prime Minister chairs NISC, whose members include the Attorney General, the Governor of the Bank of Tanzania, and the Ministers of Planning, Industry, Land and Human Settlement Development, and Agriculture. But even in these cases TIC is involved. The government may negotiate with investors and provide specific incentives that may be deemed appropriate for a particular investment; this is provided for in section 20 of the Investment Act. As described in interviews, these may be granted in cases where the investment is particularly large, creates substantial local employment, brings technology to Tanzania, creates export capability, or locates the project in disadvantaged areas.

What do investors not like? Non-Government interviewees all spoke positively of TIC and the government's support of foreign investment generally (an important fact to note), but they mentioned the following problems:

- Some corruption, especially with licensing bodies and particularly at local levels, with investors from different countries responding in different ways to the temptations, and with some companies refusing to "go along" at all and knowingly suffering the consequences
- Some general prejudice against some foreigners, in some cases not unlike that found in other countries
- Inconsistent and unpredictable tax policies and tax-collection methods
- Governmental attitudes reflecting what some called a "continuing socialist mindset"
- General slowness and lack of usefulness of dispute resolution in the courts.
- General problems in dealing with licenses

Profile of and information on Tanzanian companies. Potential investors – as well as the public – must have broad and easy access to information on companies. Unfortunately, data on companies (other than the few stock-exchange listed ones) is much harder to come by in Tanzania than in many other countries.

The vast majority of Tanzanian companies, both SMEs and some large businesses are family- or otherwise closely owned. Those companies tend to be private, with little internal information available outside what is required to be filed with the Registrar (which, as noted below, should be but usually is not available). At the opposite end of the scale are the ten large, widely held companies listed on the Dar es Salaam Stock Exchange. For those, the CMSA and Stock Exchange rules require extensive public disclosure is required. In between, there is a significant number of "public" companies with dispersed shareholding but not listed on the Exchange. Some of these were interviewed for this diagnostic but there is no available data to identify their number or business-sector breakdown, and the Stock Exchange rules do not cover them.

Even the information that does exist is not easily accessible. The information contained in a company's filed Memorandum of Association and Annual Report (such as address for delivery of notices, names of directors and commissioners, names of founders, number of shares and nature of each class of shares if there is more than one) is sometimes effectively treated as "confidential" by the Registry and not made available without permission from the company, or special payment, or written request to the Registry on an individual company basis. It was also not possible to obtain, for example, breakdowns of all companies by type of business (such as by industrial classifications, as used in the US), size (by any rough measure such as capital, total sales, or number of employees), number of shareholders, number of companies that are foreign-owned or domestically owned, number and names of companies that are linked in common ownership, names of company directors, addresses, and contact information for companies, and lien filings against a company or its owners.

Potential investors and business partners of a company need that information for a standard due diligence investigation. It is readily publicly accessible in all countries with developed capital markets and in several developing countries that are comparable to Tanzania. At least part of the reason for the problem is that the Registry is still entirely a paper-based operation without electronic storage of such information. A company's registration documents can be

physically hard to find even by the company itself, and even with the help of Registry personnel. This is a serious, widely recognized, and fixable, problem. At a breakout session with interviewees at the end of this diagnostic at which tentative recommendations were ranked, the need to reform this ranked highest both in terms of impact and in terms of feasibility.

Implementing Institutions

Registrar of companies at the Business Registration and Licensing Agency (BRELA). BRELA is the body primarily charged with administering the company law. A company begins its existence with registration with the Registrar; its organic documents, including its constitutional charter (called the Memorandum of Association), are filed there together with any amendments made throughout the company's life. A company is also required to file annually with the Registrar an Annual Return containing data including its address, principal business activities, the names and addresses of its directors and shareholders, the number of issued shares of each class and a statement of the nature of each class, and, in the case of a public company, its financial statements as presented at a shareholder meeting during the period covered by the Return. This is highly useful information which should be – and theoretically is – available to the public including any potential investor or business partner of the company. As pointed out above, however, it is not available, for reasons including the fact that it is not kept electronically but is filed manually in paper copy only. Another problem is that the Registry has only one office, in Dar es Salaam. Persons located elsewhere who must deal with or obtain information from it are obliged to make what should be an unnecessary physical journey.

As a separate point, the Registrar has power to levy fines for violation of the company law and power to require a company to produce additional documentation if the Registrar believes that a document previously filed "does not disclose a full and fair statement of the matters to which it purports to relate," and after investigation the Registrar may report the matter to the court (Companies Act sections 215-16). Problems with this are discussed in the Legal Framework section. Generally, the Registry only acts as a custodian of documentation; it does not monitor compliance

with or enforce the company law or financial reporting requirements. Thus, while CMSA and the Stock Exchange regulate listed companies in some detail, unlisted companies are, in reality, not regulated at all.

Capital Markets and Securities Authority (CMSA). CMSA, its creation under the Capital Markets and Securities Act, and its issuance of the corporate governance *Guidelines* are each described above. As the supervisory body of the stock exchange, CMSA has appellate review and appellate authority over stock exchange sanctions, such as delisting, suspension of trading, and fines. CMSA also has comprehensive licensing and regulatory authority respecting brokers-dealers and investment advisers, some of which it has delegated to the Dar es Salaam Stock Exchange, subject to CMSA oversight.

Dar es Salaam Stock Exchange. Tanzania has a small, well-functioning stock exchange with an attractive and informational (although a little out of date) website, www.darstockexchange.com. It is much less active than the neighboring Kenya Stock Exchange, but it appears well placed for expansion. The exchange was founded in 1996 and began trading in 1998. It is incorporated under the Companies Act; is governed by a 10-member Council; and is managed by a Chief Executive Officer and a full-time staff of eight. There are currently ten equity listings, of which seven are Tanzanian-registered companies (including Tanzania Breweries, Tanzania Tea Packers, and Tanga Cement) and three are foreign companies that are also listed on foreign exchanges (Kenya Airways, East African Breweries and Jubilee Holdings). There are currently four corporate bond listings and more than 30 state bond listings. Trading takes place electronically on Tuesday through Friday mornings in a trading room with about a dozen computers and an adjoining public visitors' area. When the Exchange was visited in connection with this diagnostic, there was trading in most, but not all, of the ten equity listings.

In regard to corporate governance, the Exchange's listing rules require a company to have independently audited financial statements and a board audit committee, that at least one-third of the directors must be non-executive directors (but not necessarily be independent of the company), and that the company comply

fully with the CMSA *Guidelines*. The listing rules do not have a provision on conflict transactions between a director and the company, but they have a general provision that if a company has a relationship with a controlling shareholder (defined as one with 30 percent or more of the voting power or the power to control a majority or the board) that "could result in a conflict of interest between its [the company's] obligations to that shareholder and its duties to the general body of shareholders, the conflict could render the company unsuitable for listing." The Exchange has power to delist or suspend trading in a stock and to levy fines for violation of the listing rules, although it has rarely taken these steps. In one case where it threatened suspension, personal contact and "negotiation under threat" led to cure of the alleged violations – a process familiar in the US and other countries. There have also been cases in which companies were required to restate their financial statements at the time of initial public offerings.

Tanzania Investment Centre. The TIC, its creation under the Investment Act 1997, and its purpose and to promote and facilitate foreign investment, are described above. TIC takes its mission seriously and is by all accounts user-friendly with personnel willing to go out of their way to help. This appeared both from interviews at TIC's Dar es Salaam headquarters and from interviews with foreign investors and lawyers who represent them. As already stated, one activity is to be a "one-stop-shop" for permits and licenses. For that, representatives of BRELA, taxing authorities, and labor authorities all have office space inside TIC headquarters in Dar es Salaam. TIC also has an office in the Kilimanjaro region and is opening one in Mwanza; these are smaller but their services include company registration with BRELA on TIC premises.

Overall, TIC's activities are divided into two departments: investment promotion and investment facilitation. The promotion personnel identify specific regional and sectoral opportunities and make frequent promotional road shows in other countries, including India, Indonesia and Malaysia. The facilitation personnel have organized three groups – agribusiness, extractive and infrastructure – that concentrate on projects, investors, and licenses in those areas.

As noted above, one of TIC's most valuable functions is acting as an investor advocate long after the enterprise's registration. As active as it is, it appeared evident that TIC (and its investor-clients) would benefit from more staff and, specifically, more education and training in investment promotion techniques. TIC personnel indicated that TIC competes directly with South Africa, Kenya, and others for the same investors and does not want to be at a disadvantage..

In 2007, TIC received the honor of being named "World's Best Investment Promotion Agency" at the annual meeting of the World Association of Investment Promotion Agencies in Geneva.²³⁰

Other public bodies. Many other bodies provide or affect investor protection, directly or indirectly. Of great importance are the ministerial level and local bodies with which an investor must deal to acquire permits and licenses, and the tax and employment authorities, discussed in this report's chapters on Dealing with Licenses, Paying Taxes, and Employing Workers. Others include the Bank of Tanzania, which regulates banks and non-bank financial institutions, and the Ministry of Finance, which regulates insurers.

Courts. The courts are the ultimate legal recourse for resolution of investor and other business disputes. This subject is covered in detail in this report's chapter on Enforcing Contracts. In general, persons interviewed on investor protection – businesspersons, lawyers, and other professionals -- remarked that the courts are slow to make decisions, costly and cumbersome to use, and largely unsophisticated in company and business matters. "They are avoided whenever possible" was a characteristic remark.

Several people also commented on corruption in the lower levels of the court system – but not at the high court level. One person stated that it is not the official court costs but the "special payments" that make court litigation expensive for many litigants. To counter this, some larger companies make a point of never making special payments and suffer the consequences willingly. The commercial court division of the high court, where investor disputes would most likely be

heard, was also characterized as understaffed, with only three judges.

Other dispute resolution bodies. Arbitration and mediation are likely alternatives to the courts, but they are not much used, although they could be. The unavailability (or non-use) of local non-court dispute resolution mechanisms is a major negative for business dispute resolution in Tanzania.

Supporting Institutions

Lawyers and accountants. There is an experienced and sophisticated body of private lawyers and accountants, especially in Dar es Salaam. Those interviewed were familiar with the issues discussed in this chapter. Both domestic and foreign investors seek their advice in company organization and structuring.

The **Tanganyika Law Society** is the primary professional lawyers' organization in Tanzania. The Society is just beginning to offer continuing legal education (CLE) in commercial law topics. The only other significant bar association of lawyers operating in Tanzania is the regional **East Africa Law Society**. Reportedly listing a membership of more than five thousand individual lawyers who also hold memberships in the Law Society of Kenya, the Tanganyika Law Society, the Uganda Law Society, and the Zanzibar Law Society, the Society appears focused primarily on matters of human rights, constitutionalism, good governance, and other broad rule of law concepts. Although the Society does not currently engage in commercial law-related efforts, it may be a useful forum in the future for developing greater harmonization among laws and practices in the region.

The **"big four" accounting firms** are present and they audit all of the Stock Exchange-listed firms as well as most of the financial institutions, multinationals, and other large companies in Tanzania. Local accounting firms mainly audit SMEs. The National Board of Accountants and Auditors (NBAA) is the accountants' professional organization. It administers examinations and provides professional education. The World Bank report referred to previously expressed the view that "the NBAA is not able to function effectively as a regulator or as a professional accountancy body" for reasons including lacking of capacity to monitor and provide practical training. That report also

²³⁰ The TIC tied with the investment promotion agencies of Portugal and South Korea for this award. See www.ippmedia.com/pp/guardian/2007.

concluded that “there appears to be a shortage of qualified accounting professionals in Tanzania.”

Law Reform Commission (LRC). LRC is a significant law-drafting body in Tanzania, although it had no involvement with the company law or the other laws discussed in the chapter. It is a permanent, standing body, staffed by four full-time and four part-time experts who review laws and drafts at the request of ministries and other agencies working on them. However, their involvement is not required when new or revised laws are proposed. LRC is currently strongly recommending two donor projects that would have positive effects for investor protection: access to laws and publication of judicial opinions.

Presidential Parastatal Sector Reform Commission (PSRC). PSRC is the public agency responsible for privatization state-owned companies. It was created in 1993 and has since carried out a massive privatization program with the stated objective of liberalizing the economy to make it competitive internationally. Most of its larger sales have been to foreign strategic investors, as opposed to purely financial investors or domestic investors – a fact that illustrates where the potential for investment is and where Tanzania is concentrating. PSRC's transactions have included competitive-bid sales and negotiated share and asset sales. A useful and informative list, with dates, transaction structure, name of investor/purchaser, and breakdown by industry and by foreign vs. domestic investor/purchaser, is available from the PSRC.

Donors and NGOs. Many donors are working on business-related development in Tanzania, although none are currently dealing with the investor-protection issues covered in this chapter.

Shareholder and investor organizations and funds. There are significant Tanzanian institutional investors who manage Tanzanian-source moneys and whose interests are for better corporate governance and investor protection. They include the Unit Trust of Tanzania and its constituent funds, the National Investments Company (NICO) and the Parastatal Pension Fund (PPF). NICO invests substantial funds raised from Tanzanian

individuals and is willing to invest in unlisted enterprises, which is important for economic growth. As a whole, these investors are not as active or informed as are similar investors either in Western countries or many other developing countries. These investors are sometimes known as “shareholder activists” who advocate enhanced corporate governance. In one interview it was stated that funds have been dissatisfied with financial reports of investee companies, including some listed on the Dar Stock Exchange; this point was also made earlier in the 2005 World Bank Report described above. This has not, however, led to organized investor activism as it has in some other countries. A recommendation below suggests that these organizations become more active and organized.

Tanzania National Business Council (TNBC). TNBC is a donor-supported organization which provides education, training and advocacy in many areas of business concern. In March 2007 the TNBC held a major International Investors Roundtable in Arusha attended by the Presidents of Tanzania and Zanzibar, about 30 leading Tanzanian companies, and many important government officials as well as representatives of the World Bank. It has formed task forces to deal with numerous issues including BRELA registration, business licensing reform, court reforms, labor law reforms, anti-corruption, and land law changes. Its activities do not now directly include the corporate governance and investor protection issues discussed in this chapter. Those could be included, however, as discussed in interviews at TNBC.

Private and quasi-private corporate governance organizations. Such organizations can have a major positive impact in shaping and monitoring corporate governance but they do not appear to exist in Tanzania. A recommendation below describes types of such organizations which exist in other countries and urges that they be developed in Tanzania.

Social Dynamics

Investment – especially foreign investment – is steadily increasing in Tanzania for many good reasons. The current government supports foreign investment, more so than any previous Tanzanian government, and it has made great strides to encourage it. Foreign investors expect

and receive responsiveness from the state institutions with which they must deal. Interviewees made many anecdotal references to corruption, but corruption is absolutely not perceived to exist in the investment promotion agency and by all accounts it is not a major factor discouraging foreign investment. The security environment – always an investor concern – is positive also. Sabotage and security issues are not significant worries as in many countries including other African countries. Anecdotal instances of prejudice against foreigners (including prejudice against foreigners from other African countries that may be considered rivals) were mentioned by interviewees but, they are not perceived to be a major problem or an overall discouragement. On this point, Tanzania's strong laws protecting foreign investment should be emphasized.

For context, however, negative factors must also be recognized. One is cultural attitudes that are not always conducive to market-economy development. Several interviewees referred to a lingering "socialist mindset." Others mentioned the (obvious) fact that many people are simply not accustomed to Western approaches to doing business, including the confrontational attitudes associated with litigation and dispute resolution in courts. These are clearly reasons why derivative and other lawsuits by investors have not developed as they have in the West. That in turn has retarded the development of the law in the area of corporate governance rules.

To these "cultural" factors must also be added specific problems described above, particularly the undeveloped court and dispute resolution system, and the fact that the capital market is limited because most substantial businesses, whether domestically or foreign-owned, are still family and closely owned.

The current state of investor protection can be understood in these contexts. It helps explain why Tanzania has an advanced, internationally recognizable corporate governance code but lacks an efficient infrastructure for asserting investor rights (or independent and assertive investor-interest organizations).

At this point the social dynamics favoring enhanced investor protection are positive. The

recommendations below are crafted to help in that respect.

Recommendations

- Review and revise the company law:
 - Taking account of the suggestions in the Annex below and the points made in the Legal Framework section
 - Using input from and consultation with lawyers, businesspeople (including both entrepreneurs and company directors and officers), other professionals including accounting firms, judges, investor funds such as those cited above, CMSA, the Stock Exchange, TIC, and BRELA, as well as appropriate ministries.
 - It is essential to have input and buy-in from those Tanzanian groups in the drafting of a law that is this important. Further, the law should be in plain legal English, similar to the Investment Act and other Tanzanian laws. The insolvency provisions of the companies Act should be moved into a separate free-standing Act.
- Strengthen TIC and other foreign investment encouragement by:
 - Enhancing education and training, particularly in the area of investment promotion and recognizing the activities of neighboring and regional African countries
 - Putting added emphasis on TIC's function as an advocate throughout a company's life, not only at its inception

Possibly revising the Investment Act 1997 to formalize and give explicit recognition to the role of NISC.
- Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:
 - Strengthen the CMSA *Guidelines on Corporate Governance Practices* by (1) adding strict rules for

- disclosure and approval of conflict of interest transactions with directors, officers, and other controlling and related persons, consistent with the suggestions in the Annex below for revision of the company law, and (2) regularly reviewing and seeking comment on the *Guidelines*, and regularly reviewing other countries' codes, with a view toward possible changes and additions to the *Guidelines*.
- Update and establish a procedure for continually revising the regulations of CMSA and the Dar es Salaam Stock Exchange to incorporate (and be consistent with) provisions of the *Guidelines* and other best practices. Among other things, consider requiring all public companies (or at least all with more than 50 shareholders) to "comply [with] or explain" any noncompliance with the *Guidelines* and to publish their statements on this at least annually
 - Clarify and make more specific CMSA's and the Stock Exchange's enforcement powers, including the power to levy fines, issue cease and desist orders, suspend trading in a particular stock, delist a particular company, bring litigation in court, and publicly "expose" defaulting companies by public announcement or press release. This might be done through further stock exchange rules or through amendment of the *Capital Markets and Securities Act*.
 - Increase attention to corporate governance in (1) closely held, small, and family companies, which are the bulk of Tanzanian companies but are not subject to CMSA or Stock Exchange regulation, and (2) state-owned companies. Regarding closely held companies, the company law can be revised and strengthened as suggested in the Annex below. Also consider expanding the *CMSA Guidelines* with specific provisions for private and family companies, as is done in some other countries. Regarding state companies, the *Guidelines* can be revised to incorporate or adapt provisions of the *OECD Principles of Corporate Governance for State Owned Enterprises (SOEs)*.
 - Make basic information on all registered companies easily and freely available to the public. This should include at a minimum the types of information described in this section. This should have the highest priority and it should include, at a minimum, reorganizing Registry procedures, storing its data electronically, and providing an attractive website where users can view such information immediately on any registered company, whether listed, public and unlisted, or private.
 - Strengthen the dispute resolution system as it relates to investor protection. As noted earlier, having access to independent, prompt, and knowledgeable court resolution of disputes is almost as important as having good laws and codes in the first place – and is essential for the laws and codes to be implemented. For this, increase education and training of judges in business matters, streamline court procedures and case reporting, encourage the use of arbitration and mediation, and clarify the courts' power to enforce arbitration awards.
 - Encourage and establish more non-governmental bodies to support and refine the elements of good corporate governance, and to liaise with similar bodies in neighboring countries including Kenya and Uganda that have corporate governance codes comparable to the *CMSA Guidelines*. Tanzania appears to have a relative scarcity of such private organizations. In other countries, such organizations include:
 - o Shareholder organizations, such as organizations of funds and institutional investors of

- which there are several in Tanzania,
- An institute of corporate directors that provides training and certification of prospective directors
 - Lawyers' and other professional organizations that provide workshops and forums on investor protection
 - University law faculty activities concentrating on investor protections and corporate governance matters
 - Organizations, including corporate executives, that draft codes and could collaborate with the CMSA's revision of its *Guidelines*. These could be comparable to the Kenya Private Sector Initiative for Corporate Governance, which developed the Kenya corporate governance code.
- Make all of the laws and regulations referred to earlier available on the internet at no charge. Most are available on the internet, but some, such as the Companies Act Regulations, are not.

Annex: Specific Suggested Revisions to the Company Law

The following suggestions concerning investor rights and protections are respectfully made for consideration and discussion:

Fiduciary Duties and Liabilities of Directors and Other Controlling Persons

While this is a subject of the CMSA *Guidelines*, it should be covered definitively in the company law, since the company law – unlike the *Guidelines* – is both (1) mandatory and (2) applicable to all companies, listed, public non-listed, or private.

- Expand the provisions in sections 181 and following to incorporate internationally recognized definitions of the duty of loyalty that directors and company officers should have to the company, and to extend some duties to controlling shareholders of the company. The duty of loyalty includes a duty not to use property of the company for personal needs as though it were the person's own property, not to disclose confidential information of the company or use confidential information of the company for personal profit, not to take business opportunities of the company for him or herself, not to compete in business with the company, and otherwise to serve only the company's interest in all transactions in which the person has a personal interest.
- Expand the provisions in sections 209 and following to have specific definitions of the concept of "personal interest" (to cover family relationships for example), and rules for authorization or ratification of any contracts or transactions between a company and a covered person by "disinterested" directors or shareholders or others who themselves have no

personal interest in the matter -- and who also are aware of all material facts regarding the personal interest and the specific transaction. It is suggested that the law provide further that a transaction that violates such rules is voidable at the company's option (although without prejudice to innocent third party rights); such a self-executing remedy is especially important in countries like Tanzania where court or other remedies may not be prompt or practicable.

- In or near section 185 (stating the duty of care), add a statement of the business judgment rule.

More General Points

- Allow one-owner private companies. At present the law states that a private company (but not a public company) must have at least two shareholders, a requirement that other laws do not have and that has no evident purpose.
- Eliminate the concept of share capital from the law, together with associated detailed rules on nominal share value and on reduction, consolidation, division, reporting, etc. of capital – for violation of which "every officer" of a company is subject to a fine (section 67). Many other countries have eliminated such concepts in recognition that they are unclear, complex, and confusing (and subject to manipulation) as an accounting matter, and do not protect either creditors or shareholders as a practical matter, and are not enforceable in any event. This will simplify sections 59-72.
- State in more detail the rules for stock. For example, state that every company must have common stock and that all common stock has the same rights, which include one vote per share; this promotes transparency and investor control. State that any company may also have one or more classes of preferred stock with preference over common stock for dividends and/or liquidation distributions, but *all* of the rights and preferences of each class of preferred stock must be fully stated in the company's publicly filed and publicly available Memorandum of

Association. Further, state that preferred stock does not have voting rights (except possibly in exceptional cases where preferential dividends are in default or the preferred stock is convertible into common he stock).

- Add detail to the rules for convening, conducting, and voting at shareholder meetings. Include more rules for advance notice to shareholders, including setting the record date, setting the agenda (including allowing shareholders to propose agenda items including director nominations), proxies, more detailed quorum requirements, rights to secret ballots in director elections and other cases, vote-counting safeguards, minority calling of shareholder meetings, and other matters. Some of that is currently in Table A to the Companies Act, but that is not mandatory. International experience has shown that these seemingly minor details can be essential to protect the integrity of shareholder control and to forestall argument and dispute. State that ordinary matters are to be decided by majority vote of shareholders and add a list of major actions that must be approved by the shareholders, perhaps by supermajority vote.
- Clarify the role and accountability of a company's board of directors. For example, provide that all directors are to be elected or re-elected at each annual shareholder meeting (although there should be no limit on how many times one can be reelected); that shareholders must approve their *individual* compensation and benefits; that cumulative voting may be adopted so that minority investors can elect directors in proportion to their minority holding; that a public company must have some independent directors (sometimes defined as directors who for two years were not employees of and did not have specified types of dealings with the company, and who do not own more than 30 percent of the company's stock); and that the board of a public company must have an audit committee that includes or consists exclusively of independent directors, a nominating committee, and a compensation

committee, with duties are spelled out in the law.

- Expand the restriction on dividends in section 180 so that it applies also to share buybacks and so that the balance sheet solvency and debt-service ability requirements always apply. Also, expand section 180 to state that the directors who cause a company to pay prohibited dividends, and shareholders who accept them knowing they are prohibited, are personally liable to return the amounts illegally paid or received.

Private and Smaller Companies and Joint Ventures

The majority of Tanzanian companies are in this category, and the law should have simpler and more flexible provisions for them – as opposed to public companies, which can have an unlimited number of shareholders, including passive investors who need more formal protections as are now required for any company. The company law should be easily usable:

- By the smallest businesses with no need for a lawyer
- By large closely-held businesses, including international joint ventures whose owners can negotiate a shareholder agreement among themselves.

To serve this need (and to conform to private company laws in many other countries²³¹):

- Make clear that a private company's members may structure its governance as they wish – e.g., the private company could give all members equal management authority, or it could name certain persons as managers, or it could have a formal elected body like a board of directors and

²³¹ In many countries this is done with a separate form of company (e.g. a limited liability company as in the U.S., Continental Europe and Gulf countries); in some it is done with special rules for private companies within the same company form. It can also be done within partnership law by (e.g.) allowing a general partnership to have partners which have limited liability.

formal shareholder meetings as in the present company law. However, there should also be a “default” provision that specifies the structure if the members do not agree otherwise (it could state, for example, that they have equal authority as in a partnership).

- Allow a private company's members to share votes and share profits and other distributions as they wish – e.g., equally, on a family basis, in proportion to their capital contributions, or on some other agreed basis. Arms-length joint ventures might have several classes of ownership units with different votes, different rights to appoint a particular manager or board member, etc. However, the law should state how such things are shared if the members do not agree otherwise (it could state that they share equally in that case).
- Allow a private company, by agreement of the members, to impose restrictions on sale of shares– e.g., free transferability (no restrictions), transferability only to family members or other company members, requirement of a first offer to the company or to existing members. However, the law should state how transfer is restricted if the members do not agree otherwise (e.g., it would restrict transfer to inheritance or transfer with unanimous or a certain percentage of shareholder approval)
- Provide that decisions in a private company are made by majority voting power except that certain major decisions require unanimous consent – such as admitting a new member, amending the charter, sale of the company's assets, merger with another company, etc. However, the law should also allow the members to vary those requirements.
- In any event, the law's private company provisions for fiduciary duties of controlling persons and for shareholder access to financial and other company records should be essentially the same as for public companies. Such provisions should also be extended to partnerships.

PAYING TAXES

THE DOING BUSINESS RANKINGS (2006) Paying Taxes	
Tanzania / World	113 out of 175
Tanzania / Sub-Saharan Africa Region	24 out of 45

Introduction

The rate at which individuals and enterprises pay their taxes reflects both the capacities of a state and the health of an economy. The fairness and efficiency of a tax system can have significant bearing on whether entrepreneurs choose to join the formal sector in the first place – namely, if they believe that the tax system is fair and the state will use their money wisely, they are more likely to participate. If the tax system is perceived as excessively burdensome and unfair, however, and the citizenry further perceives the state as a poor steward of its monies, then informality persists, with few enterprises paying into the system and few benefits emerging. Of course, a larger tax base means that the state can pursue more growth-oriented priorities, such as education, public health, and infrastructure. Also, when more individuals and enterprises participate in the system, the government can reduce the payments it seeks from each.

In addition, the stability of tax policy is equally important. Tax laws should not change continuously, and tax changes should be permanent and not temporary. Instability in the tax system makes long-term planning difficult, and increases uncertainty in the economy, which could drive away potential investors in the country.

This chapter examines Tanzania's regimes for tax collection, along with the critical issue of how the government uses those taxes – that is, the critical issue of sound fiscal management. This chapter specifically examines Tanzania's compliance with international best practice in tax collection and further considers the relative strengths of its auditing and accounting professions. The results of this inquiry

contribute to an understanding of a company's incentives for and against joining Tanzania's formal economy and will point to reforms that will increase business formalization and tax compliance.

As with the other sections of this report, it is grounded in the World Bank's annual Doing Business survey, in this case its Paying Taxes section. The World Bank's indicators focus on the number of steps and time it takes for an enterprise to comply with its tax obligations, as well as countries' specific rates of taxation. Tanzania does not rank particularly well in this regard – 113th out of 175 of the countries most recently surveyed.

As pointed out in *Doing Business 2007: How to Reform*,²³² “No one likes paying taxes, but some like it less than others.”²³³ Factors that influence the overall popularity of a tax regime, and compliance by would-be taxpayers, include not only relatively high or low rates, but also complexity of the tax system, perceived corruption in tax administration, and the perception that the revenues collected are actually used to provide and improve public services (especially education/training and business infrastructure).

Legal Framework

The primary legal framework for tax in Tanzania consists primarily of **18 different national tax laws** the Tanzania Revenue Authority (an executive agency under the Ministry of Finance) administers. This diagnostic limits its scope to that framework of national laws affecting taxpayers in Tanzania, including in particular the **Income Tax Act, 2004; the Value Added Tax Act, 1997; and the Tax Revenue Appeals Act.**

As a preliminary matter, however, it is important to note that local authorities also have power under the **Local Government Finances Act** to raise certain revenues from taxes, levies, and fees. The local authorities set

²³² Available at www.doingbusiness.org.

²³³ Id. at 38.

their own revenue policy within the limits set by central government. They retain all their revenues and use them as part of their own budgets – these revenues do not form part of national revenues. The taxes, levies, fees, and revenue sources that local authorities may raise include local property tax, tax on goods and services (including crop cess and forest produce cess, and tax on specific services such as a guest house levy), business and professional licences, motor vehicles tax and other equipment and ferry licences, entrepreneurial and property income tax, certain administrative fees and charges (such as meat inspection charges, land survey service fees, and building permit fees), and fines, penalties, and forfeitures (including a share of fines imposed by the Magistrates Court). Local governments are not allowed to levy any taxes, levies or fees that the Local Government Finances Act does not expressly authorize.

All of the national tax laws are available to the public in English, and the national laws are all published on the Tanzania Revenue Authority (TRA)'s user-friendly and relatively up-to-date website at http://www.tra.go.tz/info_laws.htm. According to tax professionals interviewed for this diagnostic, the national tax laws are regarded as relatively straightforward and not overly complicated, especially for lawyers and accountants, to understand. Tax payments are based on self-assessment, subject to review and re-assessment by the Tanzania Revenue Authority (for example, in the case of income taxes, there is generally a three-year period during which TRA may adjust a taxpayer-provided assessment). Even exempt entities must lodge a return, information from which the government uses to determine future fiscal policy, including an analysis of what potential tax revenues are being lost by exemptions.

The legal framework for paying **income tax** in Tanzania is sound and encompasses best international practices. The framework includes individual income tax, corporate tax, the pay-as-you-earn system for employees, presumptive income tax for small individual businesses, provisional and final withholding taxes, and capital gains tax. While corporate taxpayers are taxed at a fixed rate of 30 percent of their profits, individual taxpayers are taxed according to a graduated scale, with the maximum being 30 percent. According to the Ministry of

Finance, “[a]mong the aims of the Act are to provide a clear, coherent and structured income tax law, to ensure horizontal equity (income of different types being taxed similarly) and vertical equity (higher burden on rich than poor), to provide for ease of administration and compliance and to prevent tax avoidance.”²³⁴ The taxpayer may self-assess and pay incomes taxes by lodging a return with TRA, withholding and PAYE systems (tax withholding from the taxpayer's income source and sent to TRA directly by the payer), or through payment of installments. In the case of individual taxpayers, employers withhold and pay income tax on behalf of their employees. In the case of corporate entities, the business pays its annual income tax when it lodges its quarterly installment returns.

In determining the amount of business profits/taxable income, the legal framework relies upon international best practices: the taxable income from business is based generally upon the overall income derived from sale of goods and services and other amounts derived from conducting the business, excluding exemptions and less deductions for depreciation allowances (e.g., interest expenses, research and development, environmental, and repair and maintenance expenditures) and balancing adjustments, trading stock allowances, loss carried forward from previous years, deductible (e.g., public and charitable) donations, and with net capital gains (i.e., after deducting capital losses) added in.

Stability in Tax Policy. While the main issue in Tanzania is broadening the taxpayer base, the issue of tax policy stability is an important one to address. Renegotiation of mining contracts is an example of policy instability that could undermine investors' confidence. In addition, it is important for the Government of Tanzania to focus on increasing tax compliance. Solutions to this issue include uniformity and consistency in tax collection behaviour and policy; public awareness that paying taxes improves the country; demonstrating the improvement through increased public works/ improved infrastructure/ social benefits; refining the tax assessment/ audit/ appeals process to make it more fair/neutral and less TRA-biased; and

²³⁴ MoF Website, “Introduction to Income Tax” at http://www.mof.go.tz/index.php?option=com_content&task=view&id=39&Itemid=54.

changing the culture of the TRA and government overall to make TRA less collections-driven from a policy viewpoint, to allow it to focus on its core function of tax compliance and collections.

The Valued Added Tax (VAT) framework – which has only been in place since 1998 – also encompasses best international practices and is generally sound. This is evidenced by a relatively high VAT-compliance level of 73 percent, which, according to the Tanzania Revenue Authority, is “very much in line with sub-Saharan Africa average.”²³⁵

The VAT is a consumption tax, levied at a rate of 20 percent of the value of the product purchased. All imported products, and goods and services consumed in Tanzania, are levied with VAT; all exported goods and services consumed outside Tanzania have no VAT. Moreover, the VAT turnover threshold is TZS40 million, such that only entities whose annual sales equal or exceed TZS40 million are required to register for VAT.

The definition of taxable supply of goods and services subject to the VAT is clear and consistent with international practices. In addition, “[t]he Tanzanian Government aims to make the VAT system more equitable by exempting and zero-rating some goods and services which are disproportionately consumed by poor people or which are crucial welfare goods, while giving special relief to certain purchasers.”²³⁶ The exemption/relief schedules (zero-rated supplies and exports, exempt supplies and imports, and special reliefs) to the VAT Act appear to be clear and unambiguous in scope and definition. However, an area of concern is whether the scope of the schedules is overly inclusive (i.e., too much relief from VAT) and also whether there needs to be better harmonization between the three relief schedules. For example, TRA has observed that “some sectors such as the mining sector enjoy double reliefs” under both the First Schedule (zero-rated category) and the Third Schedule

(special reliefs category).²³⁷ Moreover, TRA has identified certain “distortionary reliefs” the Third Schedule provides, and has suggested “streamlining exemptions” the Second Schedule provides, as well.²³⁸

While TRA's mission is the collection of revenues and administration of the national tax laws in Tanzania, TRA also addresses tax policy issues. It has accomplished this through a series of five-year Corporate Plans, the second of which is ending in 2008, and the third of which (2008/09–2012/2013) it is drafting. In implementing its second corporate plan, TRA currently anticipates achieving up to 95 percent of its 70 planned major reform initiatives, across a series of strategic goal areas. These initiatives have included simplification of tax laws and regulations in order to improve tax enforcement, through such reforms as introduction of the Income Tax Act 2004, the Miscellaneous Amendments Act (to consolidate and harmonize certain tax laws and regulations), and adoption of the East African Community Customs Management Act 2005.

In addition, TRA has recently completed a thorough “Medium and Long Term Revenue Mobilization Strategy” – a review of the exemptions, special reliefs, and other structural features of major taxes in the Tanzanian tax system -- with assistance from an outside professional tax policy consultant as well as direct input from major stakeholders such as the Ministry of Finance, the Bank of Tanzania, the President's Office - Planning and Privatization (POPP), and the Economic and Social Research Foundation. This thorough study culminated in a comprehensive Final Report issued in November 2006 that details findings and – more importantly – recommends addressing rate adjustments to the VAT, abolition of certain specified VAT exemptions and tax reliefs (characterized by TRA as distortionary), and environmental tax policies. TRA final report also analyzes the fiscal regime of the mining sector – an important aspect of Tanzania's overall economic growth – and, along with certain targeted recommendations based on the Income Tax Act 2004 and otherwise, the final report also recommends further review of the interplay

²³⁵ “Medium and Long Term Revenue Mobilization Strategy – Final Report”, available from Tanzania Revenue Authority Headquarters, Dar es Salaam (issued November 2006).

²³⁶ MoF Website, “Value Added Tax – Special Measures” at http://www.mof.go.tz/index.php?option=com_content&task=view&id=40&Itemid=55.

²³⁷ “Medium and Long Term Revenue Mobilization Strategy – Final Report”, available from Tanzania Revenue Authority Headquarters, Dar es Salaam (issued November 2006)

²³⁸ Id.

between the Mining Act 1998 and the Income Tax Act 2004, with input from the mining sector operators and the Government. A further review and study the TRA recommends is echoed in the recommendations section of this Report.

As indicated in the discussion of VAT, the legal framework for taxes in Tanzania provides for various tax incentives typically used in other countries: tax exemptions, tax reliefs, and customs exemptions. Furthermore, as a member of the East African Community Customs Union, Tanzania also is a party to certain tax incentives affecting the movement of goods between Tanzania, Uganda, and Kenya. It is the opinion of some TRA staff that too much potential tax revenue is surrendered by the myriad exemptions and tax reliefs. While Tanzania has offered "tax holidays" to encourage certain investment, it will not offering others and is phasing out the ones in existence.

This diagnostic was unable to determine whether **tax incentives** offered in Tanzania are consistent with regional norms (apart from those mandated by the EAC) and whether they ultimately result in a net fiscal benefit to Tanzania. Indeed, tax exemptions, tax reliefs, and other tax incentives collectively comprise one of the areas TRA has targeted for further study and possible legal reforms – especially as noted with respect to the mining sector. TRA pointed out in a Tax Exemptions Analysis report released in August 2006 that "tax exemptions constitute an expenditure area that not only erodes the tax based of a tax system but also attracts abuse and generates avenues for tax evasion."²³⁹ In general, it is often debated whether certain tax incentives (exemptions, reliefs, or otherwise) actually affect the amount or location of direct investment in a given country, and a careful analysis needs to be undertaken with respect to Tanzania. Moreover, if it is determined that tax incentives are affecting economic growth in Tanzania, there should also be an analysis undertaken to determine if there is a need for careful and clear harmonization policies between Tanzania and its neighbors in the EAC, in order to mitigate harmful tax competition.

²³⁹ "Tax Exemptions Analysis in Tanzania 2002/03 – 2004/05", available from Tanzania Revenue Authority Headquarters, Dar es Salaam (issued August 2006).

The legal framework supports active input from TRA and other stakeholders into the government's overall fiscal policies. The organizational structure of TRA, for example, includes a senior-level Director for Research, Policy, and Planning, whose role includes providing information and recommendations directly to the TRA Commissioner General and Board of Directors on matters of tax policy. This information is based, at least in part, upon frequent consultations with various stakeholders, including a quarterly "Stakeholders' Forum" of representatives from Customs, freight clearing and forwarding agents, and various taxpayer groups. The TRA Commissioner General and Board of Directors (a semi-autonomous board, appointed with approval by the Tanzanian Ministry of Finance), in turn, makes recommendations for tax policy reforms (although limited, in practice) to the Ministry of Finance.

As a matter of course, TRA-proposed reforms are generally limited, as TRA focuses more on how to better collect tax revenues rather than on overall fiscal policy: most reforms proposed and adopted with respect to tax policy are efficiency-oriented, aimed at establishing a wider tax base and greater efficiencies in tax administration. In the past year, however, proposed reforms have included suggested changes in the income tax and VAT laws, with limited success.²⁴⁰

Similarly, the Ministry of Finance also coordinates an annual Task Force on Tax Reform (generally during February-April). The stated aim of the Task Force is to "promote transparency in tax policy development, and harness the expertise of the various stakeholders."²⁴¹ Through the Task Force, the Ministry of Finance invites submission and proposals from other Government institutions, the general public, and the private sector. The Ministry of Finance analyzes these submissions and proposals; the analysis forms the basis of recommendations to the Minister for budget revenue measures in the coming year.

²⁴⁰ Last year, reportedly two out of eight TRA-proposed changes to the VAT laws were accepted by the Ministry of Finance, and one of two proposed changes to the income tax law was accepted by the MoF.

²⁴¹ See MoF Website, "Task Force on Tax Reform" at http://www.mof.go.tz/index.php?option=com_content&task=view&id=47&Itemid=62.

Although it appears that the legal framework supports an effective and transparent flow of information and policy recommendations between the government and various stakeholders, several interviewees questioned whether the Parliament and the Ministry of Finance, in particular, do enough “look-back” analysis to see how reforms in the legal framework affect tax collections and revenues overall. More legislative and ministry-level scrutiny is needed with respect to fiscal policies and the medium-term fiscal framework and medium-term priorities, as well as details of expenditures and revenue on an annual basis. Moreover, while interviewees generally agreed that so far reforms have been positive, there is still a concern that the Government does not have a clearly defined tax policy. That is, revenue collection is the predominant concern of the tax laws and administration, rather than broader economic policy, social policy, environmental policy, or clearly focused investment-driven policies.

Finally, it should be noted that the legal framework for **audit, investigation, and enforcement of the tax laws** – both civil and criminal – appears consistent with international best practices, at least as written. The tax laws provide for the clear, unambiguous, and non-arbitrary administration of civil penalties, as well as penalties for criminal offences, including imprisonment upon conviction of offences such as willfully making false/misleading statements or impeding the administration of the tax laws. However, it is unclear the extent to which courts prosecute and/or impose criminal penalties in tax fraud cases.

Implementing Institutions

The primary responsibility for implementation of tax laws in Tanzania lies with the **Tanzania Revenue Authority**, with **local governments** having authority for administering local tax laws. The Tanzania Revenue Authority Act No. 11 of 1995 established TRA. TRA is a semi-autonomous agency under the **Ministry of Finance**, responsible for the administration of the Central Government taxes as well as several non-tax revenues. TRA is governed by a ten-member Board of Directors, comprising a Chair appointed the President of Tanzania appoints, the Commissioner General of TRA, and various representatives from Government ministries,

Parliament, the Bank of Tanzania, and the public. The Board of Directors oversees the formulation and implementation of the policies of TRA, and is also charged with advising the Minister of Finance on tax matters and overall fiscal policy of the country. TRA's major functions are to:

- Assess, collect, and account for all Central Government Revenue
- Administer efficiently and effectively all the revenue laws of the Central Government
- Advise the Government on all matters relating to fiscal policy
- Promote voluntary tax compliance
- Improve the quality of services provided to taxpayers
- Counteract fraud and other forms of tax and fiscal evasion
- Produce trade statistics and publications.²⁴²

To accomplish its functions, TRA has embarked on a series of five-year Corporate Plans, as discussed under Legal Framework. The first Corporate Plan (1998/99-2002/03) was largely consultant-/donor-driven, and focused primarily on changes in infrastructure within TRA. The second Corporate Plan (2003/04-2007/08) focused primarily on service provision and simplification of laws and regulations. The view within TRA currently is that the first two plans achieved major structural changes (such as merging income tax and VAT functions into one department and otherwise restructuring TRA), and that a Third Corporate Plan (currently in its second draft) will seek merely to refine the broad changes already accomplished. In addition, there is also some discussion within TRA of shortening the impending Corporate Plan to only three years, as five years may be too long to allow the repeated fine-tuning that TRA now desires.

A significant concern many stakeholders raised is that TRA has a revenue-driven mandate, with projections and goals to achieve in collection of taxes. Each year, TRA prepares an analysis of projected tax collections, which it submits to the Ministry of Finance. The Ministry of Finance then revises TRA projections to account for projected needs. It is these revised collections projections that the Ministry of Finance uses to

²⁴² TRA Website, “Profile” at <http://www.tra.go.tz/profile.htm>.

prepare the budget it submits to Parliament. Not surprisingly, the Ministry of Finance states on its website:

The Government requires more domestic revenue than is collected at present. It is the Government's policy to increase domestic revenue collections at a faster rate than GDP growth in order to finance increased expenditure and reduce dependence on donor funding in the budget.²⁴³

This goal on its face is appropriate, in that more effective and efficient collections of tax revenues are always an important goal of an effective tax authority. However, the concern is that the Ministry of Finance pressures TRA into meeting artificially established and overly ambitious revenue-collection goals, rather than on merely administering the tax collection system in an impartial manner. This has led to considerable criticism from taxpayers and their tax advisors, particularly in regard to TRA's general response to self-assessment. Taxpayers and advisors assert that TRA invariably displays a strong bias against taxpayers' self-assessments, and always insists on higher assessments when reviewing tax returns – including, for example, inconsistent (from year-to-year and between taxpayers) allowances or disallowances of deductions and other tax reliefs.

One tax advisor explained during this diagnostic that TRA is known for being aggressive in its audit and re-assessment activities, with an apparent attitude that its mandate is to increase assessments in every case where it conducts an audit. Another tax professional remarked during an interview for this Assessment, "The tax system is in a credibility crisis." Taxpayers and advisors describe TRA as "high-handed" and "subjectively arbitrary," lacking any meaningful oversight from the Government.

TRA has undertaken significant reforms over the past six to eight years, in particular through implementation of the first two five-year corporate plans described previously. While the reforms have focused primarily on achieving

greater internal efficiencies, creating a TRA workforce that is less arbitrary, more professional, and user-friendly has also been a stated goal. This has included restructuring the administrative units within TRA according to the category of taxpayer served rather than according to operational functions and type of tax. For the purpose of making TRA more "customer-oriented," for example, this meant creating a large taxpayers department and a domestic revenue (smaller taxpayers) department that both deal with income tax and VAT, instead of more generalized income tax and VAT units that would broadly cover all taxpayers.

Similarly, within the broader departments, there are specialized units according to type of taxpayer. For example, within the large taxpayers department, there are specialized audit groups, each assigned to a particular sector of the economy (generally so-called "high-risk" sectors, such as mining, manufacturing, and communications), encouraging greater industry expertise among TRA auditors.

Many of the reforms are also focused on better hiring and training practices to enhance TRA's overall professionalism. Auditors, for example, are university graduates. They include not only certified public accountants (CPAs) and tax experts, but also engineers and geologists with sector specialization. All auditors complete in-house training in TRA's Institute for Tax Administration. As a part of the "public service" and not the "civil service" in Tanzania, TRA is able to maintain relative autonomy in its employment practices and pay competitive salaries and good benefits. For the example, in the Large Taxpayers Department all employees sign performance agreements each year and are subject to demotion and termination for failure to meet expected standards. Even the Commissioner and Deputy Commissioner of the Large Taxpayers Department are employed under a three-year contract, renewal of which is based on performance (evaluated according to what is described as a "balanced score-card system").

Overseeing TRA, the **Ministry of Finance** is an important implementing institution for tax laws in Tanzania. While TRA holds the primary authority in administering the tax laws, the

²⁴³ MoF Website, "Revenue and Taxation Policy" at http://www.mof.go.tz/index.php?option=com_content&task=view&id=37&Itemid=52 (emphasis added). The MoF does state further that, "The Government also is committed to taxation policy that does not hinder growth in business and investment, that is equitable and fair, that has low compliance and administrative costs, and that is as simple as possible."

Ministry of Finance is responsible for directing TRA's revenue policy and goals (especially collection goals). Further, the Ministry of Finance has absolute jurisdiction over adjudication of taxpayer disputes, through its subsidiary **Tax Revenue Appeals Board** and **Tax Revenue Appeals Tribunal** – adjudication by which is a condition precedent to jurisdiction of the court.²⁴⁴

Taxpayer objections are lodged initially with the Commissioner General of TRA, who makes the initial determination (perceived to be almost always against the taxpayer and in favor of TRA). The TRA Commissioner General's determination may only be appealed to the Tax Revenue Appeals Board, appeals from which the Tax Revenue Appeals Tribunal hears. While a taxpayer must lodge any objection to an assessment within 30 days of notice of the assessment, the Commissioner General has no specified time period within which he must decide the objection. It is conceivable – and in practice appears to occur – that the Commissioner General can simply ignore the objection indefinitely. One tax professional remarked that he has taken over responsibility for a case currently pending before the Commissioner General that dates back to when he (the professional, in his mid-thirties) was a student in primary school.

In such situations, the taxpayer is faced with either withdrawing the objection, negotiating a compromise to the assessment (if TRA is willing to entertain the idea), or waiting out the Commissioner General. In the meantime, the taxpayer has no further or other avenue of relief. Moreover, the taxpayer – in lodging the objection with the Commissioner General – is required by the Tax Revenue Appeals Act, pending the final determination of the objection to an assessment by the Commissioner General, to pay either the amount of tax that is not in dispute or one third of the assessed tax, whichever amount is greater. While there are provisions for recovery of interest on the money paid if the taxpayer is ultimately successful in his objection, reportedly this is difficult to be obtain. Further, an objection (and

any subsequent appeals) is pending, the taxpayer is faced with the added difficulty of year-end accounting and closing-out his books.

Reportedly, once the Commissioner General determines an objection, any further appeals move relatively quickly through administrative adjudication and the courts. Tax professionals report that they can expect a fair decision in the **courts**, with reasonably knowledgeable judges (although there is no judicial academy or provision for specialized judicial training in Tanzania).

Supporting Institutions

The primary supporting institutions for Tanzania's system of paying taxes generally are **tax professionals** such as **lawyers** and **accountants** who advise taxpayers and advocate on their behalf; **university faculties** that train tax professionals and policy advisors in areas of tax law, accounting, and economics; and **chambers of commerce** and similar business groups that lobby and provide stakeholder input to Government officials on behalf of business taxpayers. In addition, **bar associations** and similar professional organizations that offer continuing professional training programs are generally necessary. With the exception of tax professionals and supporting university faculties, these institutions are largely absent, or at least un-involved, with respect to the tax regime in Tanzania.

Taxpayers are easily able to find good **tax professionals** in Tanzania who can advise them on most domestic tax matters. Tax lawyers are readily available and there is a good supply of well-qualified tax lawyers. There are five faculties of law in Tanzania (including one in Zanzibar), as well as an anticipated Law School of Tanzania, which will provide mandatory post-graduate law training in place of the current system of post-graduate externship and pupillage. There is currently a **Legal Sector Reform Program** in place, which has been charged with reviewing and establishing a uniform law curriculum in Tanzania. The basic Bachelor of Laws qualification includes coursework in tax law. Moreover, many of the more prominent tax law specialists have other or further foreign qualifications due to the current absence of advanced tax law courses available in Tanzania. It is anticipated that beginning in 2008, the University of Dar es

²⁴⁴ As discussed also under Social Dynamics, the resolution of taxpayer disputes through these administrative tribunals in the first instance also incurs a great deal of criticism from the public as being arbitrary, slow, and heavily biased in favor of the TRA.

Salaam will be offering specialized coursework and a Master of Laws qualification in tax law.

Within TRA, as previously mentioned, there is also an **Institute for Tax Administration** (which provides in-house training for tax auditors) and other in-house training of tax professionals. Indeed, some of the private tax professionals now in practice in Tanzania obtained their initial training as part of TRA.

The **Tanganyika Law Society** is the primary professional lawyers' organization in Tanzania. The Tanganyika Law Society is involved in monitoring human rights issues in Tanzania and is somewhat active in promoting better quality legal assistance and the review of complaints against lawyers for ethical breaches, but it is not involved significantly in CLE or similar training. In fact, there does not appear to be any professional law organization that provides any specialized tax law training in Tanzania. The only other significant bar association operating in Tanzania is the regional **East Africa Law Society**. Reportedly listing a membership of more than five thousand individual lawyers who also hold memberships in the Law Society of Kenya, the Tanganyika Law Society, the Uganda Law Society and the Zanzibar Law Society, the East Africa Law Society appears focused primarily on matters of human rights, constitutionalism, good governance, and other broad rule of law concepts.

A number of **tax accounting firms** operate in Tanzania. It appears from interviews that they are adequately staffed with able professionals and that they do serve the market satisfactorily. The so-called "Big Four" accounting firms are present and they provide tax advice to all of the Stock Exchange-listed firms as well as most of the multinationals. Indeed, in some specific areas of specialized tax law (such as transfer pricing and other tax issues affecting multi-national clients), the tax professionals in these firms appear to have a much greater understanding of those areas than does TRA. Some multinationals, who are seeking to avoid double-taxation and to reduce their tax liabilities overall, cite this as a source of frustration; and TRA officials note this as a concern as well, recognizing that this lack of clear guidelines and expertise could also hurt Tanzania in the form of potential trade and tax distortions and abuses by companies seeking to avoid exchange

controls and to achieve tax-free repatriation of profits.²⁴⁵

Finally, it does not appear that there are any meaningful lobbying or advocacy activities by **chambers of commerce or business groups** on behalf of taxpayers. When stakeholders offer input to TRA, for example, it appears that such input is due to TRA initiative. Similarly, taxpayers' education and awareness regarding their rights and obligations under the tax laws also appear to be exclusively a TRA initiative.

Social Dynamics

One of TRA's slogans in its public awareness campaigns is, "Together we build our nation." This theme appears based upon the unanimous consensus among TRA officials as well as tax professionals that taxpayers do not mind paying reasonable taxes when they can see that the Government provides fair and tangible value in return, in the form of improved infrastructure and overall quality of life. TRA has embarked on a strong nationwide campaign to increase awareness and education of taxpayers as to the obligation and the importance (to the overall welfare of Tanzanians) of paying taxes. There is a senior-level Director for Taxpayers Services in TRA and a taxpayers' education unit reporting to that Director. Despite these education and awareness programs, interviewees observed that tax compliance (and willingness to participate in the formal economy) in more rural areas is much lower than in Dar es Salaam and other more developed parts of the country (where compliance is improving), as rural Tanzanians do not see the Government providing its part of the nation-building bargain.

In addition to improved Government services and increased public education/awareness campaigns, recent reforms to the tax laws, regulations, and administration also have had a positive effect on the social dynamic of the tax regime. The **Large Taxpayers Department** of TRA, for example, reports relatively high tax compliance (65-70 percent), as compared with an overall compliance rate in Tanzania of less

²⁴⁵ In the case of transfer pricing, the tendency is to look to the OECD Transfer Pricing Guidelines as a workable framework, but the consensus appears to be that the TRA lacks any meaningful expertise in negotiating under these guidelines or any other "arms length" principles regarding transfer pricing.

than 50 percent. The Large Taxpayers Department attributes this success to increased professionalism (such as having attained ISO certification) and maintaining improved customer service. The **Domestic Taxpayers Department**, while attributing its lower compliance rates to the nature of its taxpayers (who it says do not understand their tax obligations or know how to keep good financial records), also boasts of a more customer-oriented approach, claiming that it assist and even negotiates compromises with taxpayers who lack education and/or otherwise fail to keep good records.

While most Tanzanians positively regard the reforms within TRA and the tax system – especially when considered against the frame of reference of previous years of reportedly arbitrary, corrupt, and non-transparent tax assessment/collection practices – a common sentiment expressed is that the reforms are good but have not yet gone far enough. Problems with the audit and objections (dispute resolution) processes need drastic improvement. Tanzanians need to see consistent, fair, impartial administration – and one that is not revenue-driven with artificial goals.

One senior tax professional observed that, “the lawlessness of the tax system discourages businesses from entering the formal sector.” This is a major concern, in that the Tanzanian tax base is narrow, and in a country with of approximately 35 million people, the vast majority work in informal businesses, such that there are only about 300,000 registered (business) taxpayers. With such a narrow tax base, an unfairly small proportion of businesses and workers shoulder the revenue burden of the country, leading to higher tax rates in order to achieve targeted revenues. This, in turn, causes even more business to be conducted outside the formal sector, narrowing even more the tax base, continuing the cycle.

Moreover, the extent of Tanzania's informal economy has not been adequately determined. While most Tanzanians acknowledge that informality among businesses is the norm, there do not appear to be any significant studies directed toward understanding the actual rates of informality in various regions and sectors nor the overall causes of informality.

Recommendations

The following recommendations primarily address two broad and interrelated concerns: tax policy and tax compliance. It is noted at the outset that the issue of tax policy requires a comprehensive analysis of whether the scope of the exemption/relief schedules (zero-rated supplies and exports, exempt supplies and imports, and special reliefs) to the VAT Act is overly-inclusive (i.e. too much relief from VAT) and also whether there needs to be better harmonization between the three relief schedules, especially in the case of the mining sector (which may enjoy double reliefs) and elimination of distortionary reliefs. As noted above, there is a concern that the Government does not have a clearly-defined tax policy, and that revenue collection is the predominant concern of the tax laws and administration, rather than broader economic policy, social policy, environmental policy, or clearly focused investment-driven policies. This lack of a clear and non-arbitrary policy, other than perhaps the Government's stated policy of increasing domestic revenue collections at a faster rate than GDP growth, in fact, shakes investor confidence more than would be likely from any restructuring of the overall VAT exemption and relief regime.

The lack of tax compliance (or more accurately the significant non-compliance) in Tanzania is fed in part by the perception that tax policy, such as it is, is arbitrary and favors certain taxpayers (or sectors) more than others without clear benefits to the economy, as well as by the perception that the TRA is pressured into meeting artificially-established and overly-ambitious revenue collection goals, rather than on merely administering the tax collection system in an impartial manner -- invariably displaying a strong bias against taxpayers' self-assessments, and always insists on higher assessments when reviewing tax returns. Tanzanians need to see consistent, fair, impartial administration – and one which is not revenue-driven with artificial goals. Quite significantly, one very experienced and senior tax professional observed that, “the lawlessness of the tax system discourages businesses from entering the formal sector.” This is a major concern, in that the Tanzanian tax base is generally regarded as very narrow and a concern is expressed even within the TRA that in a country with a population of approximately

35 million persons, the vast majority work in informal businesses, such that there are only about 300,000 registered (business) taxpayers. As noted above, this may encourage even more business to be conducted outside the formal sector, narrowing even more the tax base – and a downward spiral continues. Finally, it should be noted that tax compliance would likely increase if Tanzanians could see a fair and tangible value in return – in the form of improved infrastructure and overall quality of life in Tanzania. This is indicated also by the fact that tax compliance (and willingness to participate in the formal economy) in more rural areas is much lower than in Dar es Salaam and other more developed parts of the country (where compliance is improving), where the Government is not providing the same level and quality of services and infrastructure.

As such, the following recommendations are made for improving the tax base of Tanzania:

- Analyze the 18 different tax laws TRA administers and determine whether there is too much centralization of administrative responsibility within that one agency.
- Analyze the zero-rating, exemptions, and relief schedules to the VAT Act as to scope and consistency between the schedules. This analysis should include a careful study of whether the tax relief those schedules provide actually generates a net fiscal/investment benefit to the country.
- Analyze the overall tax incentives given in Tanzania, especially with respect to consistency with regional norms and whether they result in a net fiscal/investment benefit to the country.
- Develop a comprehensive and regionally harmonized tax policy for Tanzania, with significant input from TRA, Ministry of Finance, professional tax advisors, investment stakeholders, chambers of commerce, business groups, economists, non-governmental organizations (NGOs), and other stakeholders; the resulting tax policy should focus not only on revenue collection, but more importantly on supporting other areas of social/Government concern – such as environmental issues, industrial research and development, and promotion of targeted sectors of the economy.
- Analyze specific sectors of the economy with respect to how tax and investment policies affect them. For example, study the mining sector, in particular the interplay between the Mining Act 1998 and the Income Tax Act 2004, the impact and harmonization of VAT applicable VAT schedules, and other areas of concern mining sector operators, NGOs, and the Government express.
- Conduct more frequent and inclusive stakeholders' fora, expanding upon the quarterly "Stakeholders' Forum" held with representatives of TRA, Customs, freight clearing and forwarding agents, and other related stakeholders.
- Expand the Annual Task Force on Tax Reform as a permanent standing group, eliciting input on an ongoing basis from Government, NGO, private stakeholders, and the public, and providing quarterly input and annual recommendations to the Minister of Finance and Parliament.
- TRA's mandate and mission should not be tied to revenue projections and needs the Ministry of Finance targets, but should instead be the revenue-neutral administration of tax laws and policies established by the Ministry.
- Issue clearer guidelines for tax administration, minimizing inconsistencies and subjective discretion by TRA personnel, and enhancing transparency and predictability in the tax regime. The first area that should be more clearly defined in the regulations is the area of tax deductions, credits, exemptions, and reliefs.
- Develop TRA corporate plans with more frequency – at least every three years, with careful and on-going review as to the impact of each such plan.
- Provide more training to TRA personnel, including advanced training and education in areas affecting international trade, such as transfer pricing.

- Request that the Parliament, with input from TRA, NGOs, tax professionals, the international business community, and other stakeholders, establish transfer pricing guidelines.
- Replace or substantially modify the Tax Revenue Appeals Act to accomplish, at least, the following:
 - A specialist tax court needs to be established, replacing the administrative Tax Revenue Appeals Board and Tax Revenue Appeals Tribunal, exercising expertise and independence from stakeholders such as TRA and Ministry of Finance.
 - A reasonable deadline needs to be established by which TRA Commissioner General must decide objections lodged by aggrieved taxpayers.
 - The requirement that a taxpayer lodging an objection with the Commissioner General must pay either the amount of tax which is not in dispute or one third of the assessed tax, whichever amount is greater, needs to be eliminated in favor of a more reasonable requirement, such as a tax lien or bonding provision.
 - Conduct CLE and similar continuing professional education and training in tax law through law societies and other professional organizations, with either NGO or even Government funding and sponsorship, possibly through the auspices of a university law faculty.
 - Encourage professional and business organizations to engage in lobbying, advocacy, and education activities on behalf of their memberships.
 - Analyze the informal economy, focusing in particular on the overall causes (and the demographic/geographic spread) and the law and regulatory policy reforms that are needed to minimize the informal economy.

TRADING ACROSS BORDERS

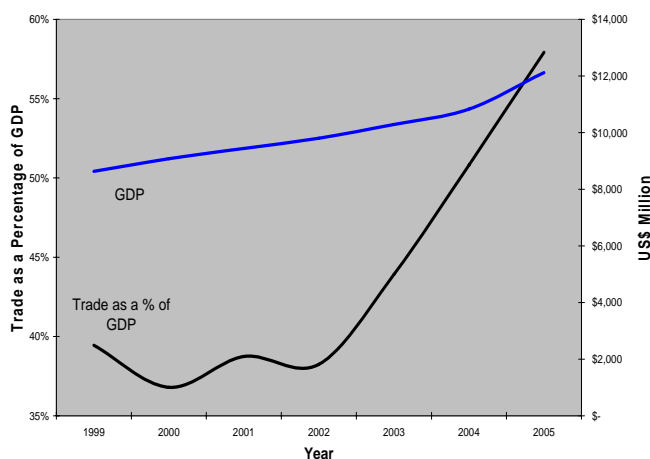
THE DOING BUSINESS RANKINGS (2006) Trade Across Borders	
Tanzania / World	67 out of 175
Tanzania / Sub-Saharan Africa Region	7 out of 45

Introduction

Following substantial economic liberalization in the business and trade environments in the 1990s, Tanzania's international trade regime has markedly improved from its recent past. The contribution of international trade to Tanzania's gross domestic product (GDP) has grown, on average, by seven percent between 1999 and 2005, and now accounts for nearly three-fifths of GDP.

Tanzania is poised to continue its reforms, both with respect to its international trade regime generally and the facilitation of trade at its borders. The country is endowed with an abundance of natural resources and is strategically located to engage in trade. It borders five landlocked countries and offers the port of choice for eastern Congo. As a Least Developed Country (LDC), Tanzania receives preferential treatment in all of the world's largest export markets, including the European Union (EU), United States, Japan, and China.

Figure 1: Tanzania: Trade and the National Economy



Recently, Tanzania enhanced its trade potential by incorporating international and regional agreements into its legal and regulatory frameworks and by creating or strengthening a variety of institutions charged with implementing these agreements. The country is a founding member of the World Trade Organization (WTO), a member of the East African Community (EAC), and a member of the Southern African Development Community (SADC). In 2005, Tanzania took the significant step of establishing an EAC customs union with Kenya and Uganda (Rwanda and Burundi joined in June 2007). By adopting the EAC Common External Tariff (CET), Tanzania replaced a four-band tariff structure with a simplified three-band tariff structure of 0, 10, and 25 percent.

Principal Exports 2005	\$USM
Gold	615
Cotton	122
Coffee	82
Cashews	54
Tea	30

Source: Economist Intelligence Unit

Tanzania has also made important strides toward improving the facilitation of movement of goods at its borders. As detailed in this chapter, initiatives are underway to ensure integrity, transparency, and consistency for the trade community. These initiatives, if continued in earnest, can improve the enabling environment for private-sector growth and investment over the next generation.

Notwithstanding recent developments, a great number of reforms have yet to take place. Tanzania runs a trade deficit – for a variety of reasons, the value of its imports outweighs the value of its exports. In 2005, the deficit reached US\$987 million, or more than 5.4 percent of GDP. With respect to trade in goods, a number of taxing schemes, bureaucratic delays, and other regulatory constraints continue to limit the competitiveness of Tanzanian exports. Trade in services is similarly not reaching its

potential, due in significant part to continuing restrictions on the free movement of labor. In addition, Tanzania has not committed to important international standards in trade facilitation. It has not signed the International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto convention) and does not yet engage critical international transit procedures.

Principal Imports 2005	\$USM
Consumer Goods	643
Machinery	584
Oil and other fuels	315
Industrial raw materials	280
Food and food stuffs	185

Source: Economist Intelligence Unit

Thus, Tanzania faces challenges both in trade policy development and implementation of trade reforms. This chapter first discusses the country's international trade law and policy regime generally, including the extent to which the country's major stakeholders and decision-makers understand international trade. Then, the chapter examines key aspects of facilitation of trade at Tanzania's borders, with an emphasis on the activities of the Customs and Excise Department (CED) of the Tanzanian Revenue Authority and other border institutions.

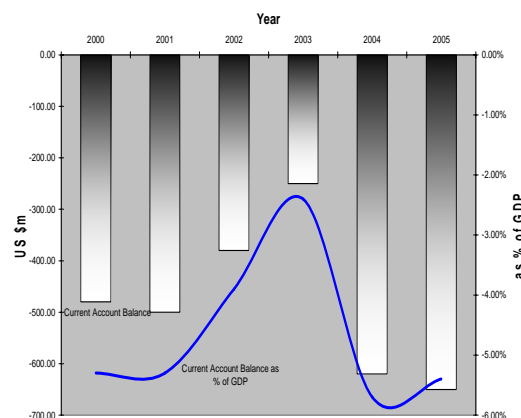
International Trade Law and Policy

Legal Framework

Overview. Following years of socialist policies, Tanzania's trade regime underwent a wholesale transformation in the 1990s from a set of policies based on "trade confinement," to one based on competition, tariffication,²⁴⁶ and market-based pricing. Falling under the **National Strategy for Growth and Reduction of Poverty (NSGRP)** and the **Tanzania Development Vision 2025**, which jointly constitute the Government's economic

²⁴⁶ The vast majority of tariffs are ad-valorem. Exceptions to this rule include export taxes on hides and skins and fish products.

Figure 2: Current Account Balance



development strategy, the **National Trade Policy of 2003** is the Government's description of its trade agenda and reflects the country's goals and strategies for each policy instrument at its disposal.

In general, the laws and regulations that make up Tanzania's trade regime are clearly drafted and easy to use. They are not, unfortunately, consistently available from a central location -- they tend not to be available at the Government print shop or online. Moreover, laws and regulations are not available in Kiswahili, thus limiting access to the legal framework, even considering the widespread fluency in English.

In addition to membership in the world's multilateral trading system via the WTO, EAC, SADC, the Regional Integration Facilitation Forum (RIFF), and multiple bilateral treaties and international trade conventions, Tanzania benefits from multiple trade preference schemes. Tanzania receives **non-reciprocal trade preferences** from the European Community (EC) under the **Cotonou Agreement** and the **Everything But Arms (EBA)** initiative, and has an **Economic Partnership Agreement (EPA)** with the European Union, which is geared toward encouraging development of exports. Tanzania is also a beneficiary of the **U.S. African Growth and Opportunity Act (AGOA)**, which since 2000 has offered incentives to African countries to open their markets and develop other free-trade policies. Tanzania also receives preferences under the schemes of Australia, Canada, EC, New Zealand and the United States. Under the Global System of Trade Preferences (GSTP), India and Turkey

also grant Tanzania preferential market access.²⁴⁷

Moreover, Tanzania has signed trade-related conventions such as the Convention on Recognition and Enforcement of Foreign Arbitral Awards. Tanzania allows investors to follow United Nations Commission on International Trade Law

(UNCITRAL) rules and procedures. Tanzania has not signed any plurilateral agreements under the WTO and has not been directly involved in any WTO dispute settlement proceedings. The country was a third party to three cases filed against the European Union (EU) based on their sugar export subsidies. Tanzania has signed numerous bilateral trade and investment treaties and has engaged the dispute resolution mechanisms the International Centre for Settlement of Investment Disputes at the Hague offers.

Tanzania has a long history of regional integration with Kenya and Uganda. In 2000, the EAC re-entered into force (after having collapsed in 1977), further cementing the trade ties of the three East African nations. With the re-creation of the EAC, whose ultimate end is

said to be political federation, Tanzania's trade regime was substantially altered. At this time, the EAC is legally one Customs territory with a common Customs law for its members.

The **EAC legal framework** is the core of the Tanzanian trade regime. It is made up of the following three documents:

- **Treaty establishing the EAC** (November, 1999). The broad goal of the EAC treaty is

to enhance co-operation in all areas for the mutual benefit of partner states. To this end, a customs union (with the pre-requisite common external tariff) was established in 2005. The treaty envisions a Common Market, monetary union, and eventually political federation.

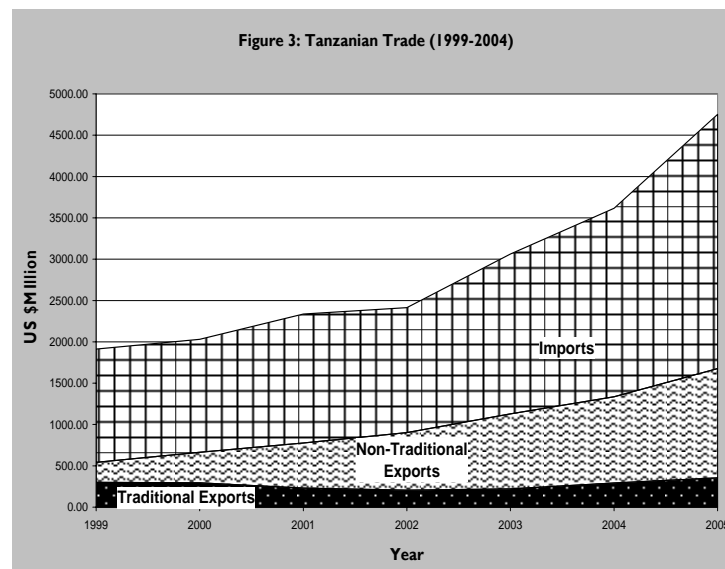
- **Customs Union Management Act** (enacted in 2004 by the EAC Legislative Assembly). This Act provides for administration of the day-to-day customs operations by the respective National Revenue Authorities of the EAC member states. The Act provides the legal basis for jointly setting common external tariffs.
- **EAC protocol.** This protocol provides for the elimination of internal tariffs and other charges of similar effect, the elimination of non-tariff barriers, and the establishment of common external tariffs, rules of origin, anti-dumping measures, subsidies and

countervailing duties to meet the requirements of the customs union set out in the 1999 treaty. The EAC Protocol was concluded and signed in March 2004, ratified by the Partner States in December 2004, and

came into effect on January 1, 2005.

Trade in Goods. The Tanzanian economy is still dominated by agriculture, forestry and fishing, which collectively make up more than 45% of GDP. Imports and non-traditional exports led this growth, while traditional exports stayed relatively flat and declined in the 2000-2002 period by an average of 11 percent.

As a region, Asia is the leading importer to Tanzania. Europe is the leading market for Tanzania's exports. In 2005, gold accounted for



²⁴⁷ WTO, Tanzania Trade Policy Review (2006). Report by the Secretariat, WT/TPR/S/171/TZA.

by far the largest share of exports, and consumer goods represented the largest share of imports, accounting for more than US\$615 million and US\$643 million in hard currency sales, respectively.

The Tanzanian legal framework conforms with the core principles of the **General Agreement on Tariffs and Trade (GATT)**: Tanzania grants Most Favored Nation (MFN) status to all members of the WTO, and does not appear to discriminate against imports or investments based on their country of origin, either at the border or once the good is in the territory of Tanzania. Yet a few issues relating to GATT compliance and economic competitiveness indicate that more can be done to demonstrate the Government's commitment to free trade:

- **The high number of products classified as "sensitive".**

Products classified as sensitive fall outside of the normal three-band tariff schedule and tend to receive substantial protection from any sort of competition. Tanzania's classification of 859 products as "sensitive" indicates a continuing suspicion of liberal trade policy.

- **The small fraction of tariff "lines" that are actually "bound" (13.4 percent).²⁴⁸**

The degree to which a country's tariffs fall outside the "bound" rate reflects its overall commitment to not raising tariffs. The fact that the majority of tariff lines remain un-bound suggests that Tanzania has not fully committed to tariff liberalization.

- **Higher fees charged to foreigners relative to Tanzanians in order to get a general business licenses.** Foreigners are charged higher fees for acquiring business

licenses, likely because Tanzanian authorities presume that they can "afford it." While this may be true, it also reflects a tendency to treat foreigners less favorably in Tanzania, a notion that strikes at the heart of multilateral liberalization efforts at the WTO.

- **A prohibition on the export of unprocessed fish products.** By prohibiting the export of unprocessed fish products, the Government reduces the options available to the country's fishermen and thus reduces the potential returns on their labor and investments. Although the policy objective is to encourage the creation of value-added fish products, it is neither a pro-trade nor pro-poor policy because it reduces the quantity of Tanzanian trade and reduces the demand for goods produced by the poor.

Export taxes and export prohibitions

The current trade regime prohibits the export of unprocessed fish. In violation of GATT Article XI, this policy is also biased against the lowest and poorest actor in the value chain: the fisherman. By prohibiting the export of raw fish the authorities are trying to encourage more value-added processing to the country's resources. In doing so, they may also be hurting the anglers trying to sell their fish. Namely, by reducing demand, authorities are artificially lowering the price of fish for local processors at the expense of the fishermen. Similarly, by taxing the exports of raw hides, skins, and cashews, authorities are also reducing the potential returns to the producers at the bottom of these two value chains.

As these examples illustrate, vestiges of Tanzania's historically insular economy remain. Whether this is intentional or a by-product of a complex and incomplete reform process is not clear. The progress made to date is insufficient to capture gains from increased predictability and competition from the multilateral trading system. With such a large number of products classified as sensitive, average tariff bindings of 120 percent, and a modal tariff rate of 25 percent,²⁴⁹ Tanzania is

a relatively but not very open economy.

Non-tariff barriers remain an impediment to further expanding international trade in Tanzania. While most quantitative restrictions on imports and other non-tariff measures have been abolished, trading across Tanzania's borders remains a process laden with duplication of steps and unnecessary, costly delays. Exporting goods under the authority of

²⁴⁸ WTO, Tariff Profile 2006.

²⁴⁹ Integrated Framework, Tanzania Diagnostic Trade Integration Study (2005).

trading boards, while substantially improved over recent years, remains a challenge. Exporters of agricultural products, including cashews, tea, and cotton are reported to be heavily taxed at multiple levels, including local, regional and national, and in different forms, including value-added tax (VAT), export levy, corporate tax, and property tax. Furthermore, licensing requirements for agricultural products falling under the purview of trading boards are extensive and often reported as arbitrary by our interviewees. Duplication of documentation and paper processing of required documents for import and export is reported to be extensive and costly to comply with.

Technical Barriers to Trade (TBT) and Sanitary and Phyto Sanitary (SPS) Measures.

Compliance with international trade rules, particularly those pertaining to product safety, is of increasing importance to Tanzania. The country's imports of non-traditional goods, such as consumer goods and food products, grew 15 percent between 2000 and 2005. During the same period, there were sharp increases – totaling 33 percent -- in non-traditional exports such as spices, fish products, and horticulture. Traditionally, issues of private standards and stricter regulations in importing markets were of little concern to Tanzanian growers and exporters. But now TBT and SPS regulations found in international trade agreements are of enormous importance to those constituencies – farmers, cooperatives, consumers, and others – that expect to take advantage of increased international and regional trade.

In 1999, concerns over Tanzania's SPS enforcement led to an embargo on fish exports from Lake Victoria. As a result, Tanzania engaged in a series of legal and regulatory reforms to its SPS regime, which quelled the crisis in a sector that earns up to 10 percent of GDP. Tanzania's food safety system is now based on multiple pieces of overlapping legislation, including the **Animal Disease Act, 2003**, **Food and Cosmetics Act, 2003**, **Plant Protection Act, 1997**, and the **Veterinary Act, 2003**. The Tanzania Bureau of Standards (TBS) is the national enquiry point for both TBT and SPS measures. Existing standards and technical regulations do not distinguish between domestically produced and imported goods. Tanzania has harmonized national standards with international agencies

and regional standards, and where there are existing international standards or technical regulations, TBS has adopted them. Tanzanian standards have tended to be adopted from either European or international norms.²⁵⁰

Notwithstanding these significant reforms, regulations supporting the Animal Disease Act, the principal piece of legislation covering animal control and veterinary activity, are still in draft form. Moreover, regulations to implement standards, technical requirements, and SPS measures still need to be harmonized across EAC countries.²⁵¹

Contingency trade remedies. The Anti-Dumping and Countervailing Measures Act, 2004, in addition to the previously cited EAC Protocol, provide the legal basis for contingency trade measures, including anti-dumping duties and countervailing measures. Tanzania does not have national legislation on safeguards measures but can revert to equivalent legislation at the EAC level where necessary. Based on a widely held belief among Tanzanians that goods are being "dumped," especially those imported from Asia, Tanzanian authorities passed legislation to specifically allow redress in such circumstances. The legislation provides a legal basis for action; however, no cases have yet been brought under the procedures established under the Act.

Recently reviewed by specialists in the area, the Act is not considered compliant with the WTO rules on the subject and is currently being revised. Interviewees expressed doubt over the capacity of the Anti-Dumping and Countervailing Measures Advisory Committee established to advise the Minister on the implementation of the Act. Namely, the committee is viewed as "too high-level" and "political in nature." Appointing a body of lower-level technical experts to staff the committee would be a pragmatic response to what is considered a priority trade issue.

Moreover, some members of the legal community believe anti-dumping and countervailing duty cases might be too data-

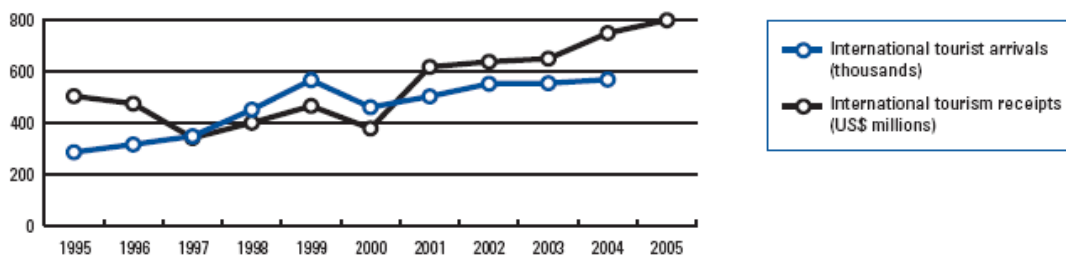
²⁵⁰ WTO, Tanzania Trade Policy Review, 2006. Report by the Secretariat, WT/TPR/S/171/TZA.

²⁵¹ WTO, East African Community Trade Policy Review, 2006. Report by the Secretariat, WT/TPR/S/171.

heavy for the Tanzanian court system, should a case ever be brought before it.

Subsidies. Available data on public subsidies for agriculture in Tanzania show no signs that such subsidies distort agricultural production volumes. Interviewees were aware of no export subsidies and only limited production subsidies in agriculture. Even as the Government provides subsidies for agricultural products such as improved seeds, fertilizers, and other important inputs, interviewees noted that the actual subsidy has little or no effect on the production of goods. Subsidies are provided through cheap fuel for transporters of the commodities; the impact of this subsidy on producers, reportedly, is negligible.

Trade in services plays a large and growing role in Tanzania's economy. With commercial service imports and exports of US\$1.2 billion and US\$1.1 billion respectively, in 2005, the service sector contributed more than 39 percent of GDP for the year. Tourism accounts for the largest share of services receipts, with over US\$800 million in 2005 and is the single largest earner of foreign exchange.²⁵²



Source: United Nations World Tourism Organization

Although the domestic legal framework appears generally supportive of trade in services, there are numerous examples of how liberalization of services has not been taken seriously in practice. For example, a lack of specific liberalization commitments is undercutting the certainty of Tanzania's trade regime. Under the WTO's General Agreement on Trade in Services (GATS), Tanzania committed to national treatment with respect only to hotels of four stars and above, meaning that it has not yet liberalized the vast majority of service sectors.

Similarly, Tanzania is not a signatory to the WTO's agreements relating to financial or telecommunication service commitments.²⁵³ The economy remains below-average in firm-level productivity,²⁵⁴ at least partially reflecting a low level of service provision. Utilities such as the Tanzania Electric Supply Company (TANESCO) and infrastructure such as the Tanzania Ports Authority (TPA) will remain in the hands of the state for the foreseeable future.

Perhaps the most critical constraint to the Tanzanian service sector is the lack of support for so-called "Movement of Natural Persons," that is, the provision of services by individuals moving from abroad into Tanzania. The **Tanzania Investment Act, 1997** specifically allows for every enterprise granted a certificate of incentives from the Tanzania Investment Center (TIC) an immigrant quota of up to five persons. Companies with more than five foreign employees are subject to TIC and Immigration Department review.

Interviewees repeatedly cited "lack of skilled workers" and "difficulty in getting visas for employees" as their key constraints to working

in Tanzania. Financial services, telecommunication, and transportation companies all cited jobs that went unfilled for months due to the lack of local staff suitable for the positions. In one case, a particularly innovative banking product could not be implemented due to the absence of local experience in this area.

Short-term business travelers also reported significant delays in getting business visas to enter the country. For both short- and long-term expatriate labor, the process of attaining a

²⁵² WTO and UN World Tourism Organization

²⁵³ See WTO Trade Policy Review 2006, WTO/TPR/S/171/TZA.

²⁵⁴ See World Bank Investment Climate Assessment (2004).

visa is unnecessarily cumbersome and bureaucratic. In the case of long-term visas, one must prove to TIC and Immigration Department that the person in question is “necessary,” taking into account “availability of qualified Tanzanians, complexity of the technology employed... and agreements reached with investors.”²⁵⁵ Interviewees specifically noted the process to be “arbitrary” and “lengthy,” and without much chance of successfully attaining the required visa.

Other critical sector-specific service issues include:

- Laws and regulations relating to the service sector, while officially available, are often difficult to find.
- Tour, hotel, and travel agency operators experience an unduly burdensome regime of licenses in order to operate.
- There is a lack of enforcement of transportation-related regulations, increasing the risk to consumers and businesses relying on transport services.
- The lack of regulation and consistency of inter-modal connections, including port-rail and rail-road connections undermine the transport sector.
- Equity restrictions on foreign investors seeking to enter the telecommunications sector are, or in the future will become, unnecessary or counterproductive.
- Procurement of construction services is reported to be opaque and corrupt.

“There is no resistance to the idea of reform. But there is considerable resistance in how to reform.”—Tanzanian Government Official

Implementing Institutions

Significant components of Tanzanian trade policy take place at the regional level. The **EAC Secretariat**, based in Arusha, is tasked with ensuring that the laws and regulations the Community adopts, through its **Council of Ministers**, are in fact implemented. The Council is the principal policy-making body at the EAC. Chaired by a Minister from a member state on a rotating basis, the body meets twice a year or at the request of the Chair or a member state.²⁵⁶

At the national level, Ministry of Industry, Trade, and Marketing (MITM) has the lead in trade policy-making.

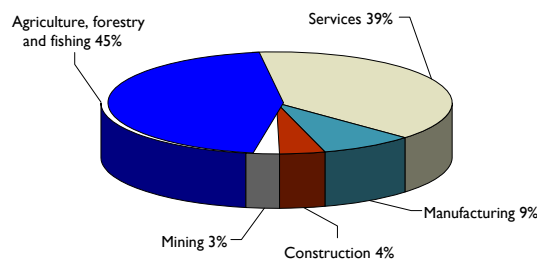
Its mandate is clearly defined and adequately supported to implement the country's trade regime. Prior to January 2005, the **Ministry of Finance** (MOF) filled this role. While MITM is fully accepted as the lead Ministry in making

Tanzanian trade policy, both Ministries exert substantial influence over trade policy and are supported by several other Ministries in carrying out this function.

Notwithstanding the shift of policy-making authority from the MOF to the MITM, MOF and Customs still play a strong role in setting tariff policy.²⁵⁷

When trade-related issues become especially political in nature, policy control typically reverts to the **Ministry**

Origins of GDP 2005



²⁵⁵ Tanzania Investment Act, 1997 Part III (14).

²⁵⁶ East African Community website: www.eac.int.

²⁵⁷ According to the 2006 WTO Trade Policy Review, other institutions implementing a substantial portion of Tanzanian trade policy include the Tanzania Revenue Authority, Ministry of Foreign Affairs and international co-operation, Ministry of Agriculture Food Security and Cooperatives, Ministry of Livestock Development, Ministry of Infrastructure Development, Ministry of Energy and Minerals, Ministry of Natural Resources and Tourism, Ministry of Health and Social Welfare, the President's Office, Bank of Tanzania, Board of External Trade, Parastatal Sector Reform Commission, Tanzania Petroleum Development Corporation, Tanzania Communications Regulatory Authority, Tanzania Civil Aviation Authority and the Surface and Marine Transport Authority.

of Foreign Affairs and International Cooperation (MFAIC) and its representatives in Geneva for WTO-related issues or Brussels for Economic Partnership Agreement (EPA) issues. In light of the breadth of policies covered within the EAC and SADC – which go substantially beyond trade policy – MFAIC coordinates the linkages to these organs. In all cases, MITM leads the analysis of trade policy.

Financing and personnel. MITM faces considerable internal budgetary constraints and relies on donor funding to finance many of its trade-related trainings and workshops. A MITM official noted that, of the Ministry's 28 staff members dedicated solely to trade, three-quarters of these have university degrees and half have Master's degrees or above. However, there are no trade lawyers on the MITM's staff, reportedly a major constraint to the Ministry's ability to formulate trade policy and an enhanced legal framework. Lawyers in the private sector confirmed that Government salaries are too low for them to be interested in such a position, despite their interest in the field of trade law. The EU and DANIDA in particular have funded a wide array of trade capacity-building initiatives, including the well received Master's program in International Trade at the University of Dar es Salaam.

Coordination. Currently, a variety of inter-ministerial trade policy-making bodies exist to deal with obligations imposed through membership in EAC, SADC, EPA, AGOA, and WTO, as well as the interplay of these obligations. A number of coordination bodies exist independent of each other, including the **National Trade Policy Technical Committee** (NTPTC), the **Inter-Institutional Technical Committee** (IITC), the **Inter-Ministerial Technical Committee** (IMTC), **National AGOA Committee**, and the **National EPA Technical Team** (NETT). While the formation of cohesive groups of issue experts is a necessary and positive step, participants noted that their committees do not meet frequently enough or with sufficient depth of analysis at their fingertips to make consistently informed judgments on trade policy. Various trade-coordinating bodies are considering a merger; at the time of writing, terms of reference were being drafted to bring some of the trade coordination bodies under one umbrella.

Cross-cutting institutional issues. Senior-level appointees were consistently lauded in interviews for their understanding and appreciation of complex trade issues. However, the resources at their disposal remain insufficient to support the quantity and composition of trade flows into and out of Tanzania. Three examples illustrate this point:

- Until recently, the TBS did not have an internationally **accredited laboratory** to carry out certifications to meet export requirements, despite the necessity of having such facilities for sales into their largest markets²⁵⁸
- All trade institutions have limited **research and analytical capacity**. There is little empirical analysis on pressing trade issues taking place within the Ministries.
- There is a substantial and serious **lack of quality data** available for use by Ministries or by outside researchers and the private sector. Data requests are usually met with skepticism, reminiscent of the "control economy." Moreover, the MITM website is not functional, and the websites of MOF and the Ministry of Foreign Affairs and International Cooperation (MOFAIC) are out of date and offer little substantive value. The key exception to this critique is the TRA, which maintains an up to date and functional online presence.

Collaboration with stakeholders. In general, Tanzanian authorities received mixed reviews on their ability to incorporate the views of the private sector into formal trade policies. Across all trade-related sectors, there is enormous demand for a more customer-oriented approach to trade policy-making. At this time, consultation takes place at stages too late to be meaningful, and Ministries reportedly are "captive" to a small group of interests that make it hard for newer or weaker stakeholders to get fair representation.

²⁵⁸ With the support of DANIDA, TBS is now in a position to certify exports, but remains an under-funded and understaffed institution not completely able to support the constantly evolving requirements set by large foreign markets such as the EU or US.

Tanzania's Economic Partnership Agreement with the EU is said to be strengthening the consultative process. While private sector representatives still complain about Tanzania's decision in 2000 to leave the Common Market for Eastern and Southern Africa for membership in the Southern Africa Development Community, numerous interviewees suggested that the establishment of NETT – the EPA implementation committee – has repaired certain bonds between the private sector and the Government that supports the trade policy-making process.

The Government continues to neglect the promotion of Tanzanian exports. The body charged with this job, the **Board of External Trade (BET)**, now focuses mostly on managing the Dar es Salaam International Trade Fair. The BET is said to offer little support to exporters in the form of market research or market linkages. Moreover, Tanzania's trade attachés stationed in embassies around the world tend not to support market linkages and export development, and instead reportedly focus only on bilateral relations.

Resolving trade disputes in Tanzania is still uncharted territory. Jurisdiction over trade disputes remains unclear and perhaps overlaps local, regional, and international institutions. The 2004 Anti-Dumping and Countervailing Measures Act has yet to lead to any cases. When a case does arise, either the Commercial Court or the Fair Competition Commission will be charged with hearing it.

Facilitating the flow of services. Tanzanian embassies, consulates, and immigration offices generally support legal trade in services. The **Immigration Department** holds a clear mission and is adequately staffed and equipped. The Government could do more to modernize its management of visa applications for highly skilled visitors seeking long-term stays, however. Business travelers are now required to provide supporting letters showing the existence of opportunities in Tanzania before receiving a visa either at the airport or at the Embassy/Consulate abroad. Implementation of laws relating to business travel is also somewhat arbitrary; visa fees often differ for two travelers from the same country and entering the country for the same purpose.

The political sensitivity of foreigners taking jobs in Tanzania is significantly responsible for this arduous and uneven treatment. Poor treatment is also attributable to management and capacity issues that should be resolved.

Secondary and tertiary bodies responsible for trade in services are the **Ministry of Natural Resources and Tourism (MNRT)** and the **Tourism Board**. MNRT is responsible for regulating the tourism industry and the TB for promoting it.

While MNRT's mandate is clear, its budget is not sufficient. With few employees, observers familiar with the industry noted that the MNRT is not positioned to address the key constraints facing the tourism sector, namely the lack of tourist infrastructure, revenue leakage (i.e., tourist revenues not staying where the tourists are staying), poor standards, and the number of informal operators.

The Tourism Board has a strong reputation in promoting the interests of the Tanzanian tourist market. With a well trained cadre of employees, the Board produces professional materials highlighting areas of interest to the international traveler. The Board has segmented the potential tourist market and has a credible strategy for attracting increasing flows of tourists over the next few years.

Supporting Institutions

A young but enthusiastic community of supporting institutions ensures that international trade policy-making in Tanzania will reflect the interests of key constituents. These institutions add "on the ground" knowledge to the high-level policy-making exercises the key implementing institutions such as MITM and MOF carry out.

Chambers of commerce, trade associations, and industry groups contribute to a business environment that supports international trade in goods and services. The private sector is broadly represented by the **Tanzania Private Sector Foundation**, **Tanzania National Business Council**, the **Confederation of Tanzania Industries**, the **Tanzania Chamber of Commerce, Industry and Agriculture** and numerous sector-specific associations, including

the **Tanzania Exporters Association**, the **Agriculture Council of Tanzania**, the **Tanzania Horticulture Association**, and others. While each of these institutions represents the private sector, several interviewees cited the need to more frequently rotate the leadership and to be more inclusive of representatives from SMEs.

Tanzanian trade and industry associations exist across all viable sectors of the economy and tend to be active in public dialogue pertaining to opportunities in international trade and the Government's policy course on any given topic. Some are noteworthy for their capable spokespersons, competent advocacy on behalf of their members, and ability to produce materials helping to inform the public debate on international trade. However, companies do complain about having to compete against larger, more technologically sophisticated international companies and further complain about increasing competition from Asian, mostly Chinese, companies.

Universities. Trade policy only recently became a course offering at universities in Tanzania. With the support of donors, and in particular DANIDA, Dar es Salaam University offers Master's degrees in trade policy. To date, the program has received strong reviews from people inside of Government and academia. Currently four staff members from MITM attend the course at Dar es Salaam University. The job market for these graduates is somewhat uncertain, however. Lawyers in Tanzania tend not to work on trade issues, due to disparities in pay with private law practices. This may foretell future employment decisions for these Master's graduates as well.

More generally, the university system in Tanzania produces students with highly variable qualifications. Many students graduate from the faculties of law, economics, and business without a precise understanding of international trade and trade policy-making. Professors are said to be well-trained, although a few still teach lessons dating back to policies proscribed under Tanzania's socialist regimes of the 1970s and 1980s.

EPZ Authority. Established under the Economic Processing Zone (EPZ) Act, 2002, the EPZ Authority (EPZA) falls under the MITM, and is

charged with regulating the EPZ operators and builders across the country. EPZs are intended to facilitate export-led industrialization, and, in so doing, aim to: (1) increase foreign exchange earnings, (2) create employment, (3) increase use of new technologies, and (4) promote processing of local raw materials. Currently there are 13 EPZs in Tanzania. Fees to set up and to operate EPZs are reasonable and the time it takes to get a license is not considered an impediment to entering this "market."

Despite generous incentives, few investors have taken advantage of the program. One critical problem is that access to water and power is not readily available prior to setting up operations. As access to infrastructure is one of the key attractions for investors to use EPZs, this fact bodes poorly for the program. In order to increase the budget that the EPZA has to spend on operations, it is currently considering building more EPZs and then renting the sites to the operators for a profit to be invested back into infrastructure development.

The EPZA has only one direct hire, the Director General, and has seconded staff from MITM to carry out its operations. The EPZA's budget is not sufficient to operate the agency in a manner conducive to successful implementation.

The community of **legal professionals** in Tanzania contributes to expanding international trade through its work in improving the business environment more broadly. As detailed throughout this report, the Government of Tanzania, with support from NGOs, the private sector, and an active donor community, is actively reforming the business climate through court, land, licensing, and other initiatives necessary to help businesses grow and operate. At this time, there is a general dearth of trade attorneys, due in large part to a lack of a "market" for their skills.

The **media** report regularly and freely on issues relevant to international trade. The EPA negotiations, the EAC Customs Union, and other issues relevant to the Tanzanian business community each feature prominently in daily and weekly newspaper articles. The quality of this coverage is low, reflecting the limited exposure most Tanzanian journalists have to formal training in subjects affecting international trade including economics, law and commerce.

Tanzanian journalists do not tend to demonstrate a convincing grasp on the subject of international trade and tend to report just the facts, without significant or any analysis.

However, within the Government institutional requirements to share information with the public remain weak and ad hoc at best. Moreover, data on international trade in Tanzania is difficult to find and tends to be of poor quality. Interviewees noted that much of their trade-related knowledge comes from Kenyan rather than Tanzanian publications.

Donors have been strong partners in building the capacity of international trade policy-making institutions and processes in Tanzania. Under the rubric of the **Integrated Framework**, the Government and its development partners have adopted an action plan in August 2007 to strengthen trade as a core component of the country's Poverty Reduction Strategy Paper (PRSP). Through assistance from European donors and international NGOs, much of the recent trade-related donor support for Tanzania has focused on institution-building and preparation for the EPA negotiations.

Research organizations in Tanzania have not successfully promoted the cause of trade in domestic policy debate. There are two research institutions in the country that consistently focus on trade and its effects on the Tanzanian economy. But the Government rarely, if ever, requests analysis on specific issues. Access to Government data to produce quality, timely research is an impediment to better, more useful research that could be used by policy makers.

Social Dynamics

From an economy based on principles of control, centralization, and the predominance of the state in all economic affairs, to its current emphasis on free-market principles and private-sector led growth, the prognosis for the Tanzanian economy is bullish. International trade stands as one of the most likely sources of economic growth and poverty reduction for Tanzania, most recently owing to strong political leadership, an engaged business community, and a constructive trade-related dialogue with foreign governments.

But numerous and substantial hurdles remain before Tanzania will be able to reach levels of growth necessary to reduce poverty. These include lack of competition, low levels of human capital, widespread corruption, and poorly developed trade related infrastructure.

Political leadership. A number of high-level officials have championed the cause of international trade as a development strategy. President Jakaya Kikwete often discusses the country's export-led strategy in public and frequently notes the strategic geographic location of Tanzania. He recently noted in a speech delivered in Washington, DC that, "to be able to wean ourselves from aid dependency, Africa must trade itself out of poverty."

The Government has an active dialogue with foreign governments and other external actors on the role of trade and how to maximize assistance to the country. However, the Government is at a crossroads on a number of different trade negotiations. The road ahead is an important one. During 2008, the Government will face the substantial challenge of deciding how fast to pursue deeper EAC integration, making commitments at the WTO under the Doha round, and deciding the most strategic course of action in EPA negotiations.

Private sector engagement. Business leaders in Tanzania are aware of global trends in trade in general. However, they remain skeptical about the benefits of trade. As a whole, the business community is said to be knowledgeable about global trends in their core business areas but less knowledgeable on lessons learned within the region or on a global level as to the benefits of freer trade in goods and services.

Competition. The Government and political leadership have lent only nominal support to the culture of competition. Inefficient agricultural input markets, pockets of trade protectionism, and monopolistic infrastructure service reduce the competitiveness of the Tanzanian economy and dampening the effect of trade policy reforms. As discussed in this report's chapter on Starting a Business, Tanzania's legal framework for competition policy is strong, drawing from the competition policies of the EU and Australia. But implementation of this policy framework remains weak.

A small number of firms dominate agriculture input supply markets, and access to their productivity-enhancing goods, such as seeds, fertilizer and pesticides, is limited as a result. Moreover, international competition for Tanzanian markets is protected through relatively high tariffs (25 percent modal rate) and, as previously noted, a substantial number of tariff lines classified as “sensitive.” Negotiating tariff rates at the level of the EAC is a complicating factor; certain industries where unequivocal benefit can accrue to Tanzania through liberalization are not supported by other members of the EAC. (For example, tariffs for pharmaceutical products are set at 10 percent, as opposed to duty-free, due to the fledgling Kenyan pharmaceutical industry).

Human capital. The Government and the private sector are committed to addressing critical issues of human capital development, although they can do more. Constraints to growth stem from problems in public health, literacy, and technical expertise. The prevalence of HIV among adult Tanzanians is relatively high at 6.5 percent,²⁵⁹ and Tanzanian firms are responding to the crisis less aggressively than their Kenyan counterparts.²⁶⁰ Workers in Tanzania also tend to have considerably less formal education than workers in either Kenya or Uganda,²⁶¹ directly affecting their competitiveness in export markets on a regional and global level.

Corruption is a top priority of the Government but remains a major problem at all levels of the trade environment. In nearly all interviews, interviewees identified corruption and the perception of corruption key impediments to investment. While President Kikwete has taken on the issue of corruption as a personal battle, large and small companies involved in cross-border trade noted the prevalence of corrupt border officials. Substantial amounts of regional trade are informal and go untaxed based on corrupt border officials.

Trade-related infrastructure. As detailed in this report's chapter on Infrastructure, Tanzanian trade-related infrastructure is in

disrepair. Supply-side constraints are repeatedly noted as ceilings to the growth of Tanzanian trade²⁶² and will mitigate other trade policy improvements if not addressed simultaneously. Energy, water, road, and port infrastructure each need expansion and an improved legal framework for greater investment. Much of the public discourse on privatization of these assets has revolved around a zero-sum game mentality; the prevalent attitude is that “if Tanzanians sell these assets to foreigners, then only foreigners gain.” The Government should initiate a more informed dialogue on the benefits that can accrue from expanded foreign investment in these sectors, based on empirical evidence from every region of the world.

Recommendations

Legal Framework

- Reduce the number of tariff lines classified as “sensitive.”
- Substantially increase the number of bound tariff lines.
- Lower the average bound tariff rate.
- Reduce the modal tariff rate.
- Equalize the fees foreigners and citizens pay to get business licenses.
- Repeal the prohibition on the export of unprocessed fish.
- Review and rationalize local taxes on export products.
- Review and reduce licensing requirements for agricultural products.
- Prioritize and make service sector commitments; health, energy, engineering, and transport services should all be considered top priorities.
- Relax rules on work permits and streamline processes for short and long term business visas. Eliminate unnecessary steps, including the letter of introduction for business travelers.
- Donors should consider supporting the MITM by funding a trade analysis team inside of the Ministry. The team should include at least one trade lawyer and one trade economist and should report directly to the Permanent Secretary.

²⁵⁹ The Economist Intelligence Unit, Country Report 2007-2008.

²⁶⁰ Investment Climate Assessment, World Bank 2004.

²⁶¹ Investment Climate Assessment, World Bank 2004.

²⁶² See, for example: Integrated Framework, Tanzania Diagnostic Trade Integration Study (2005).

Implementing Institutions

- Increase participation of the Ministry of Health in services and IPR negotiations.
- Focus technical assistance for TBS on non-traditional exports and high risk imports.
- Strengthen training program for FDA on identifying counterfeit and expired pharmaceuticals.
- Invest in research and analytical capacity within MITM and MOF.
- Codify early consultation requirement for stakeholders in the trade policy-making process.
- Increase the budget for MNRT to allow for more and better regulation of the tourism industry.

Supporting Institutions

- Set aside a seat for an SME representative at decision-making bodies within chambers of commerce and industry associations.
- Make infrastructure service provision a key component of the EPZA. Add funding for a pilot project to test its ability to properly implement strategy.
- Initiate a series of seminars for media and NGOs on the principles of international trade policy and emerging trends.
- Create a functioning and user-friendly website for MITM and MOF, with relevant and up-to-date laws and trade data readily downloadable.
- Increase private sector participation in formulating trade policies.
- Form private sector working groups on key trade issues, including non-agriculture market access (NAMA), agriculture, subsidies, dumping, EPAs, WTO, etc.
- Engage in EPZA capacity development.

Social Dynamics

- Work with the competition authority and other relevant regulators to increase the efficiency of agriculture input markets.
- Begin a public outreach program focusing on increasing understanding of foreign investment in Tanzanian infrastructure projects.
- Educate stakeholders on the issue of “dumping”—what it is, what it is not, and what can be done if a dumping case is real.
- Expand education and outreach programs that discuss regional trade opportunities and risks

Annex: Inefficiency in Clearing Goods is the Main Cause of Corruption on the Northern Corridor (USAID Press Release)

NAIROBI, February 27, 2008 Clearing and Forwarding Agents (CFAs) handling goods on the Northern Corridor perceive corruption to be on the decrease, but inefficiency in clearing goods is the main cause of corruption. This is revealed in a survey carried out by The Steadman Group which visited fourteen clearance points in the five countries of the East African Community. The study, which was carried out in May 2007, was among the programs funded by USAID-East Africa under the auspices of COMESA.

Fifty two per cent of the 223 CFAs across the five countries felt that corruption along the corridor was on the decrease. These positive perceptions were evident across all the countries with the exception of Tanzania. It is encouraging that in the majority of countries, average clearance times range between 1 and 5 days, with Burundi and Uganda recording an average of one day, while Rwanda averages 2 days. The highest averages are recorded by Kenya and Tanzania at 4 and 5 days respectively. The port of Dar-es-salaam however, records the highest time of 11 days, while other points are within stated range of 1 to 5 days.

From their experiences, CFAs report that 33% of consignments were delayed, with varying proportions recorded across the countries (Tanzania 52%; Kenya 33%; Rwanda 31%; Uganda 23% and Burundi 9%). Across transit points, Akanyaru (Uganda/Rwanda border), Dar es Salaam, Horohoro (Kenya/Tanzania border) and Gatumba (Burundi/DRC border) recorded a consignment-delay of 50% and above.

Based on 1,115 consignments tracked during the study, 28% attracted a bribe. Across countries, Tanzania recorded 59%, Uganda 17%, Burundi 17%,

and Kenya 15%. Rwanda recorded the ideal, with none of the consignments attracting a demand for bribe. Individual ports record varying incidences of bribery, with Dar-es-salaam recording the highest at 65%.

Total bribes paid per 100 consignments are a good indicator of the extra costs CFAs operating on the Corridor incur. In Tanzania, out of 100 consignments, CFAs paid a total of \$ 1,920 as bribes, while in Uganda and Burundi they paid \$1,632 and

\$1,133 respectively. Kenya recorded the lowest bribery cost of \$360 per 100 consignments.

The categories of goods most prone to demand for bribe are motor vehicles and machinery: 47% of the consignments within these categories had a bribe request. For every two cars/machines in the East African Community one had a demand for a bribe.

Despite these statistics, the perception is that corruption on the Corridor is on the decline; a positive trend towards creating an enabling environment for trade in the region.

Viewed in the light of the efforts of USAID-East Africa and the Federation of East African Freight Forwarders Associations (FEAFFA), the study will be a useful instrument for tracking the impact of the Anti-Corruption Program whose objective is to reduce opportunities and incentives for corruption on the Northern Corridor. The program has supported the professionalization of the clearing and forwarding industry through training of CFAs, establishment of a system of accreditation and development of a strategy for advocacy. A key partner in the program is the Customs Departments in each of the countries.

Facilitation of International Trade

Tanzania recognizes that capable and responsible trade facilitation operations are a prerequisite for development. This includes the provision of high-quality state services at the borders, as well as predictability of outcomes, transparency, and an absence of corruption. Initiatives are underway to reduce bureaucratic delays and uncertainties and in ensuring integrity, rule of law, transparency, and regulatory consistency for their business community.

CED and the other border agencies play a vital role in these efforts. They work to provide expedited border clearance and implement controls that ensure proper revenue collection, compliance with national laws, and adequate security against crime and terrorism.

This section analyzes the legal, institutional, and operational constraints on trade facilitation in Tanzania and recommends practical steps to minimize those constraints. The analysis first focuses on Tanzania's and the EAC's legal frameworks for CED. Next, this section considers the institutional issues regarding management of CED, including its organizational capacity and operations. It also reviews other key public institutions involved in trade facilitation, including ports and ministries responsible for health and agriculture. It further reviews key supply-chain partnership groups such as Customs Clearance Agents, carriers, and other intermediaries or representatives of the trade community. Finally, after discussing the social dynamics specifically pertaining to trade facilitation, this section sets forth recommendations.

Legal Framework

Through its membership in the WTO, Tanzania has agreed to implement and adhere to the standardized WTO conventions and rules for free and fair trade, including the **GATT Valuation Agreement** and the **Agreement for Rules of Origin**. Accordingly, traders will ideally encounter the same Customs requirements in Tanzania as they find in other

WTO member states. Tanzania is also a longstanding, active member of the World Customs Organization (WCO), which it joined in 1964.

Unfortunately, Tanzania and its partners in the EAC have not yet become signatories to the **International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention--RKC)**. The RKC governs essential aspects of international trade: standard best practices for efficient and simplified processing of goods and conveyances. The RKC and its annexes have proven to be an effective means for countries and Customs Unions to harmonize and improve their basic business operations in a consistent way with other Customs Services.

Additionally, neither Tanzania nor its neighbors have utilized the international transit procedure (**TIR Carnet**) first initiated in Europe but now employed worldwide. The UN Economic Commission for Europe administers the **Convention on the International Transport of Goods Under Cover of TIR Carnets** (TIR Convention, 1975). This important agreement eases the movement (air, land, sea, or rail) of goods across borders for their transport and reduces intervention by Customs at intermediate borders.

Tanzania's Customs Law. Transparency, predictability, and fairness in its dealings with international trade community are the hallmarks of a modern Customs service. For a truly facilitative Customs environment, the laws and regulations governing the import and export of materials and goods must provide:

- The means to legally employ modern risk-management techniques utilizing selective inspections and post-release audits to accomplish their respective missions
- An adequate and coherent authority structure for the essential trade-related institutions
- Clearly stated regulations and procedures that form a basis for an adequate balance between facilitation and necessary controls essential for public health and welfare

- A productive environment of cooperation and procedural coherence with the other government agencies with border control responsibilities
- A cooperative and consultative atmosphere of dialog between government agencies, the international trade community, and the national legislature to accomplish goals and eliminate roadblocks.

The EAC Customs Union is the entry point to the economic integration process for Tanzania and its partners, Kenya and Uganda. (Rwanda and Burundi joined EAC in June 2007, and are expected to progress to the Customs Union status once they meet the basic requirements.)

The CED started implementing and applying the EAC legislation on January 1, 2005, including the previously discussed EAC Protocol and its regulations; the EAC Customs Management Act and its schedules; and the External and Internal Tariffs. The EAC is legally one Customs territory with a common Customs law for its members. Tanzania eliminated its previous Customs code and adopted the EAC inclusive regime through adoption of:

- A common Customs Management Act (EAC-CMA) applicable in the Partner States²⁶³
- A common external tariff (CET)
- A program for elimination of internal tariff within the Customs Union
- The removal of non-tariff barriers
- Common rules of origin
- Common standards for products produced and imported
- Common and harmonized trade policies.

The EAC Customs Union's goals are ambitious and, to date, only partially realized. As the Union matures and each individual Customs service makes necessary changes and improvements, a need for uniformity and congruity in operations will become paramount. The EAC has adopted the following principles as the organization moves forward:

- Harmonized commodity description and coding
- Production and exchange of Customs and trade information
- Uniform standard system of valuation
- Simplification and harmonized trade documentation
- Simplification and harmonization of Customs formalities/procedures
- Standard transit control
- Prevention, investigation, and suppression of customs offences
- Harmonized information system to facilitate sharing of customs and trade information
- Communication of Customs and trade information
- Trade facilitation
- Simplification, standardization, and harmonization of trade information and documentation
- Institution of a trade dispute mechanism
- Enhanced national security
- Promotion of foreign direct investment
- Provision of accurate and timely trade data across the EAC members.

The EAC's legal framework (and therefore Tanzania's) is well constructed and written in plain language. Its organization is logical and the sections are complete and generally meet the standards of the best Customs laws of other nations. The law provides a good set of definitions and supports such modern principles as post-release audit, risk management, and selectivity.

According to one high-level official at the CED, the penalty sections of the law are not strong enough to deter fraudulent practices and smuggling and need revision. In many of the provisions, penalties are charged as flat fees and not according to revenue losses. Tanzania and the other countries are pursuing amendments to strengthen these sections. Additionally, the EAC Customs group is now writing the implementing regulations for the law.

Implementing Institutions

In 1996, the **CED** was one of three revenue-collecting Departments of the **TRA** formed under the **Tanzania Revenue Authority Act No 11 of 1995**. The TRA, which is a semi-autonomous unit of the Ministry of Finance, provides overall executive leadership to the

²⁶³ The Tanzanian Revenue Authority (TRA) has an excellent website where the EAC Customs Code and other common legal documents are available under the Tanzanian CED's tab, <http://www.tra.go.tz/>. The TRA would serve well as a beacon of transparency to be emulated by other government agencies.

CED's departments as well as audit, legal, personnel, investigations, training, and administrative support to its component agencies.

The CED is a relatively small organization, with a staff of approximately 1,100 employees. The CED Commissioner reports to the Deputy Commissioner General of the TRA. CED staffs **five major seaports**; the port in Dar es Salaam is the busiest. Besides being the largest seaport for direct imports and exports, Dar es Salaam is also a major outlet for the landlocked neighboring countries of Rwanda, Burundi, the Democratic Republic of the Congo, Malawi, and Zambia.

CED also staffs Tanzania's major **airports** and numerous **border crossings**. The largest airports are Dar es Salaam, Kilimanjaro, and Zanzibar.

Modernization and reform efforts. CED has made a series of reforms and modernization efforts under the guidance of the IMF and the World Bank. A **Customs Modernization Plan** has ambitious elements that CED is following, including:

- Transform processes, reform administration, and instill stakeholder relationships marked by the value of a customer-service .
- Employ risk-management principles through stakeholder compliance and self-assessment with compliant companies receiving expedited processing.
- Use automated linkages to banks and other government departments through their existing system to improve processing and performance.
- Improve the professionalism of the clearing agents and other entities licensed by Customs.
- Make organizational changes within CED to reflect these priorities and to establish accountability.
- Use post-release audit to assess and encourage compliance.

Monitoring and evaluation (M&E) of these institutional reforms will be important to show whether the reforms are creating and maintaining the desired result. Unfortunately, M&E is not an integral part of the plan, nor is a

CED organizational element trained and devoted to M&E planned.

An interesting consequence of the rapidity and scope with which CED pursued reform is that the trade community now complains that new procedures require not only changes to CED procedures but also extensive modifications of other supply-chain partners as well. In the case of clearance agents with multiple customers to inform, program success hinges upon the full knowledge and cooperation of the trade community for these changes. One recent CED document has been issued that describes six major changes that were being implemented over the span of one month. Certainly, this reflects a strong commitment to change and process improvement by the CED, but it also requires significant outreach to stakeholders.

CED is moving from a "control" viewpoint, through which most articles are checked, verified, scrutinized, and go through a full documentation review, to a more modern mentality where most importers are trusted, once CED has verified their knowledge, professionalism, and high compliance rates through random examinations and post-release audit. To illustrate this paradigm shift, in June 2007, CED inaugurated a new "Gold Card²⁶⁴" program called the "Compliant Trade Scheme" for the largest 50 importers in Tanzania. In exchange for a series of guarantees and internal compliance measures, firms that have a faultless record are given a high percentage of "green line" designations for their shipments. A green line means there is no physical examination and document check, which accelerates a firm's release time.

Although it is in its infancy, importers and other members of the trade community are pleased with the program, citing faster port movements, increased predictability, and considerable cost savings in demurrage²⁶⁵ and extra handling

²⁶⁴ A "Gold Card" Program is a euphemism for a program that gives a higher status and more benefits to an importer if deserved. Egypt was named the number 1 reformer in the World Bank Doing Business report in 2007 largely because of a 60-place jump in the Trading Across Borders measurement. This improvement was due in large part because of a "Gold Card" program implemented beginning in 2005 by the Egyptian Customs Authority called the "Account Management Service".

²⁶⁵ Demurrage is a charge required as compensation for the delay of a container or freight car or other cargo device

charges. CED also benefits, since the Compliant Importer's Scheme eliminates fruitless and non-productive activities and frees officers to concentrate on less compliant traders and to detect and interdict contraband. Additionally, by eliminating inefficient and costly processing for larger importers, Tanzania's economy is given an important boost. And importers appreciate the trust that is CED has extended to them. CED deserves great credit for instituting this major reform effort.

Automated system. CED has an automated system that is not up to the level of other Customs service's systems for import or export transactions. The CED have installed the ASYCUDA ++ computerized customs management system but does not enjoy the full functionality of the system yet.

The CED has yet to begin to utilize the system to reconcile the carrier manifest bills of lading with importer's import declarations. Additionally, cleared bills of lading and released import declarations are not communicated electronically with the trade stakeholders. Therefore, the system constitutes merely another layer over the existing manual systems. Additionally, the other border agencies that exercise discretion over imports and exports are not integrated with the CED system.

In order for automation to be successful, business processes must also change in order to reach the full potential of the system. In the case of the EAC, all of the members' systems will need to be harmonized in the future and have the ability to interact, trade files, and communicate with each other. The agreed areas of concentration for the EAC systems are:

- Transit monitoring
- Risk management, risk profiling, and risk analysis and intelligence analysis)
- Post-release audit systems
- DTI/ EDI-Direct Trader Input of declarations
- GATT-compliant valuation processing and analysis
- Inventory control/warehousing and transit locations
- Processing of goods declaration
- Tariff and documentation control

beyond its ordained due date. Usual charges can be hundreds of dollars per day per container.

- Revenue accounting
- Accurate and timely trade statistics
- Monitoring and evaluation strategies
- Electronic payments
- Customs release notification
- Bond management systems/electronic bond retirement.

The EAC members view the application of Information and Communications Technology (ICT) in Customs as a key to business process improvement and as the focus of Customs modernization programs. ICT harmonization will be a huge challenge because the member states have different levels of sophistication, IT infrastructure, and Customs execution systems. The goals for the Union are to:

- Improve revenue collections
- Facilitate trade
- Protect the health and welfare of the population.

There are many possibilities for improvement of Tanzania's ICT operations. First, the CED's carrier manifest process needs to be automated fully, with the resulting data used for targeting or selectivity. Failure to activate and implement the manifest function means that import entries and export declarations cannot be reconciled automatically with the carrier's reports (bills of lading/airway bills) of manifested goods.

Additionally, goods or containers that have not received Customs declaration clearance can be identified and ordered to state-owned warehouses, which will ease port congestion. Besides improving the accuracy of matching, automation provides a large labor savings compared to the old-fashioned, manual processing of "red lining."²⁶⁶ Customs and other ministries can also use the source data from the carriers for targeting and selectivity.

Most importantly, analysis of the combined data set of entry and manifest can reveal potential integrity violations—for example, one officer who releases multiple shipments for a single shipper would not be a normal occurrence: usually, one officer would examine numerous importers, therefore the possibility for collusion would be high and the shipments may contain

²⁶⁶ "Redlining" is the marking of declaration numbers or other clearance information manually by Customs officers using red ink on the paper carrier manifest until all bills of lading are accounted for.

incorrectly declared merchandise for resale and even contraband. Automated manifest processing is the norm for most other countries' Customs administrations, and carriers are geared to provide and benefit from such automation. Another benefit is that a two-way communication between the carrier and CED can inform the carriers what goods can be released and have been cleared by Customs.

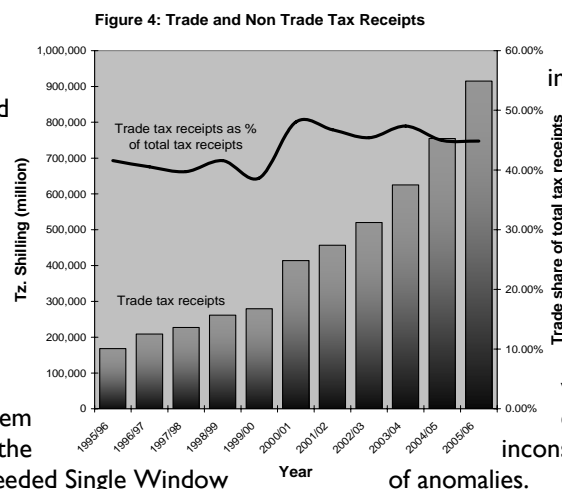
Second, ICT is an excellent mechanism for monitoring and evaluating the performance of the port personnel. For example, the number of declarations that are designated Red or Green can be monitored. Also, if the results of declarations are accurately recorded, the efficacy of the physical examinations can be measured and evaluated. The data can also be used for a variety of other purposes, such as targeting companies for post-release audit, analyzing trends, and measuring release times for various CED stations.

Third, an automated system within CED can provide the foundation for a much-needed Single Window concept²⁶⁷ in which all the central government agencies with the need can view standardized border information, or the system is used to perform required selectivity functions for the other ministries. The system can also be used to receive electronic licenses, permits, or certificates from the stakeholders, thereby eliminating paper filings for the other authorities. Implementation will also simplify import transactions and reduce costs for the trade. A more detailed discussion of the Single Window concept is in the Other Government Ministries section.

Fourth, enhanced ICT can improve collections, especially for the larger and more frequent

payers. Accumulating payments for multiple entries into lump sums on a daily or weekly basis instead of individual checks or payments for each declaration can ease the burden on the private sector, Customs' cashiers, and cooperating banks when combined with an Automated Clearing House payment feature. Additionally, a more sophisticated collections process could ferret out bogus surety bonds and guarantees presented by unscrupulous traders.

At this time, clearance agents and importers do not receive electronic release information from CED. Electronic submission of import declarations and electronic release is the norm for most Customs systems.



Lastly, better ICT would improve the accuracy of Tanzanian trade statistics. For reliable and timely trade statistics, edits and complete matches between carrier and importer/exporter data are essential. Complete port reporting is also critical. Raw data must be verified and analyzed for completeness, inconsistencies, and reconciliation of anomalies.

Emphasis on revenue collections. CED collections are, of course, important to the national revenue of Tanzania. For the past 10 years, Customs has consistently contributed over 40 percent of the national revenue. However, a heavy reliance upon CED collections for meeting national revenue targets concerns Tanzania's trade community. In a growing economy, too much concentration on increasing collections to meet revenue targets can cause Customs to arbitrarily take measures that raise collections: cease or delay refunds, increase the number of seizures and penalties, and encourage other poor practices such as misclassifying goods to achieve higher duty rates. These aberrant practices may raise revenue but also inhibit foreign trade. This runs counter to the principles modern Customs administrations follow.

Cargo examinations. Until the June 2007 institution of the Compliant Trader Scheme,

²⁶⁷ A 'Single Window' is a facility that allows parties involved in international trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once.

examination rates were high. Unfortunately, no data was available for this diagnostic that gives precise information. The Compliant Trader Scheme (discussed previously), with its membership of the largest firms with the highest number of imports, will have a positive effect on the CED's examination rate.

Customs duties. Duty is levied on the value of goods imported into the country under three tariff bands of zero percent, 10 percent and 25 percent. The zero rates are applied to capital goods to be used for investment and agricultural inputs. The 10 percent duty rate is applied to semi-finished goods imported in to the country, while the 25 percent rate is applied to finished goods. Additionally, excise duty is levied on certain other items, each having its own duty rate: beer, soft drinks, cigarettes, sport utility vehicles (SUVs), luxury cars and station wagon cars with engine capacity exceeding 2000cc, plastic shopping bags, wine, mineral water, spirits, and petroleum products.

CED also collects the national VAT that is levied on almost all imports.

As the economy matures, Tanzania has reduce duty rates in order to limit over-protection of home industries, encourage foreign direct investment, and implement a series of trade agreements.

The benefits of a national Single Window to the private sector are substantial:

- Simplified commercial framework for international trade
- Faster turnaround time (average approval within minutes)
- Improved convenience and efficiency
- Productivity improvement resulting in considerable cost reductions
- Faster border clearance enabling paperless and cashless transactions

Destination inspection program. The Tanzania Pre-shipment Inspection (PSI) system ended on December 31, 2003. In July 2004, CED introduced the replacement Destination Inspection (DI) Program. Pre-shipment inspection requires physical and documentary inspection by a contractor in the country of debarkation prior to import to the country of destination. The central issue in deciding whether to resort to PSI is the judged competence and efficiency of the national Customs authority. In the past, when a country decided to use PSI, the decision was based upon

the determination that Customs was unable to conduct its functions properly. The conditions that indicate the need for PSI are instances of smuggling, improper classification of imports, and under-invoicing of the value of imported shipments. The DI Program is a more relaxed version of PSI that requires that the overseas shipper to furnish a copy of the sales contract and invoice to the private sector vendor. Under DI, documentary verification of an importer's declaration is performed in Tanzania using the contractor's and Customs' systems while consignments requiring physical verification are inspected by CED upon arrival in the country.

Although DI is expensive, it improves the accuracy of classification and value of goods entering Tanzania, and thus improves revenue collection.

Customs integrity and professionalism. Border corruption can be particularly pernicious to the achievement of a healthy economy. Traders who collude with officials who smuggle become "free riders" who then are able to sell goods in the marketplace at greater profit than

their law-abiding competitors. Additionally, corruption at the border causes congestion at the ports, borders, and seaports, and adds to the cost of imported and exported goods.

Customs administrations face three main areas of corruption:

- Facilitating payments. Importers (or the Customs broker or a representative) pay bribes to obtain a normal or trouble-free release.
- Customs-complicit fraud. Importers try to pay less in duty, taxes, and fees than competitors that are following the law, or nothing or no tax at all, by circumventing procedures. This can involve other government ministry jurisdictions such as food purity and plant/animal quarantine strictures. Customs officers either ignore or are actively involved in the fraud.
- Criminal corruption. Operators pay bribes to permit an illegal, lucrative operation to use Customs channels for illicit purposes

(everything from drugs and other contraband to arms and munitions).

According to Transparency International's Corruption Perceptions Index, Tanzania ranked 96th out of 146 countries in 2004 (scoring 2.8 out of 10) and 96th out of 159 (also scoring 2.9) in 2005. The 2006 index shows Tanzania falling slightly to 98th out of 163 countries while again receiving a score of 2.9 out of 10. The average score for the five EAC countries was 122, giving Tanzania an edge of 24 places on the list over its partners.

Tanzania has an **Anti-Corruption Law** designed to strengthen the prosecution mechanism and bring Tanzania into compliance with international treaties. The relatively new **Prevention of Corruption Bureau (PCCB)** is the primary national body with overall responsibility for government integrity. This organization, although well known, is not currently viewed as a major deterrent to endemic corruption. The donor community is offering training and other assistance to the PCCB to improve its performance.

Importers and other members of the trade community report that CED personnel routinely solicit and receive facilitating payments (small bribes). Some firms refuse to pay and suffer the consequences of delays, excessive document checks, and physical examinations of their cargo. On the other hand, observers praise **TRA's internal affairs investigative unit**, which investigates allegations of misconduct agency-wide as well as conducting lifestyle financial checks on individual employees.

Counterfeit goods. CED does not routinely look for or detect counterfeit goods. CED officers receive no training in detection methods or legal responsibilities. Several sources stated that a substantial amount of contraband, including counterfeit goods, move around Customs via the expansive Lake Tanganyika as well as remote and unofficial border crossings. In addition, counterfeit fertilizer is said to hamper crop production, since it is inferior to the legitimate offerings. Also as another source of risk, counterfeit medicines threaten public health.

In Transit Leakage. Goods originating in one country often transit one or more countries

before reaching their ultimate country of destination. Despite poor road and rail transportation, Tanzanian ports are an alternative to other more efficient neighboring country port facilities. If Tanzanian ports, especially the overburdened Dar es Salaam port, improve their operations, growth in transit movements would be exponential. Counterfeit and smuggled legitimate goods not only are brought across maritime and land borders but also to some degree in offloaded transit goods. Customs uses paper controls although the EAC countries are planning a common automated solution.

Smuggled goods have a significant advantage over legitimate goods chiefly because they are cheaper due to non-payment of government levies and give free riders an advantage in the marketplace.

Other Government Ministries

Although Customs is the main implementing institution for the cross-border trade in goods, an efficient trading system relies on an interdependent process that includes other trade-related public sector institutions, trade service-providers, and the traders themselves—importers and exporters. Their respective capacities, honesty, and performance can result in significant costs (or savings) within the trading system.

Like the CED, trade-related public agencies need adequate funding, sound management, well-trained staff, modern equipment, modern facilitative procedures, and active dialogue with their stakeholders to respond timely and predictably to issues while guarding public safety and security.

Border agencies with responsibility for such responsibilities as consumer health and safety, trade statistics, environmental protection, and protection of endangered species must be receptive and be able to utilize increased Customs functionality through a sophisticated, automated platform.

The border agencies in Tanzania do not coordinate well with CED—each border agency operates via separate and distinct procedures. According to interviewees, this process is a “nightmare”. As many as 10 representatives of central government, local, and port organizations must be present to examine and

release imported freight. All impose separate "holds" that must be satisfied for goods to be cleared and released at the gate. Importers, exporters, and clearance agents must negotiate an ever-changing series of hurdles, stampings, approvals, and fees to secure release of their goods. Additionally, many of the government agencies impose fees that they use to fund their salaries and expenses rather than rely upon nationally budgeted funds from the country's national treasury. The agencies achieve self-funding by having either taxation authority or by funding themselves through fees for services rendered. Besides adding to the cost of goods, these "off-budget" funds do not encourage delegation of authority, selectivity, or risk analysis because improvements would constitute self-imposed funding cuts. Off-budget fees are a major factor in the overly complicated Tanzanian import process.

Thus, the need for a Single Window process in Tanzania is great. Such a system offers:

- Increased effectiveness of control methods
- Access to import and export data regarding commodities in their jurisdiction
- More effective and efficient deployment of resources
- Improved trader compliance
- Automation of licenses, permits, and certificates, which can eliminate paper filing
- Accelerated economic development and foreign investment.

The **Tanzania Bureau of Standards (TBS)** provides ISO certification through its seven laboratories and provides quality assurance and compliance certification of international standards. It also contributes to export growth by providing certification of export commodities such as coffee, tea, and fish for consumption abroad. TBS staffs the Tanzanian ports with its own personnel for sample retrieval, a task usually delegated to Customs.

SUMATRA has received praise for its response to the serious problem of port congestion at Dar es Salaam port in early 2007.²⁶⁸ SUMATRA is the regulatory body for transportation services in the surface and marine sectors. Additionally, it makes the rules

for port operations and regulates charges and rates for port services. SUMATRA also chairs the **Tanzanian shipping forum** that meets four times a year.

The **Tanzania Atomic Energy Commission (TAEC)** has wide-ranging responsibilities for the safety and health dangers posed by radioactive devices and material in Tanzania. The agency has employees stationed at major airports, seaports, and border crossings to examine and to send to their laboratory samples of imported food and metal scrap. Of greatest concern are items that might come from areas contaminated by the Chernobyl disaster. Normally, the international practice is for Customs services or food and drug authorities to represent agencies with similar responsibilities.

Tanzania Food and Drugs Authority (TFDA). TFDA is a regulatory body responsible for controlling the quality, safety, and effectiveness of food, drugs, herbal drugs, cosmetics, and medical devices imported into Tanzania. TFDA was established by combining two legacy agencies: the Pharmacy Board and the Food Control Commission.

TFDA lacks a dedicated inspectional staff found in most other countries, instead using local health officers to perform its functions and release cargo on TFDA's behalf. The agency has the legal mandates to perform its duties. However, importers complain of overlapping jurisdictions between the various ministries, and the need to pay multiple permits and numerous fees to satisfy the multiple agencies.

Ministry of Agriculture, Food, and Cooperatives. The Plant Health Services section of the Minister of Agriculture provides plant health and pest inspection services at the border and ports, including fumigation services. The Ministry reports good cooperation from CED and provides cross-training for CED employees. The Ministry's representatives must clear every import declaration. The Ministry shares jurisdiction for food safety with the AEC and TFDA. A separate ministry, the **Ministry of Livestock Development**, conducts animal health and disease examinations at the ports. This Ministry also has some jurisdiction over imported food, including meats and by-products.

²⁶⁸ For a discussion of port congestion, see **Supporting Institutions (Ports)** following in this chapter.

Export Processing Zones Authority. As detailed in the first section of this chapter, Tanzania established Export Processing Zones in 2002 to attract industry and foreign investment. Substantial incentives are offered if 70 percent of the goods are exported. The zones have not been a great success in Tanzania, however. EPZA was created in 2006 to address the great number of remaining challenges. Many private sector representatives reported that although the EPZ law successfully created the institutional atmosphere, unreliable power and water supplies, undependable infrastructure, expensive administrative costs, and expensive raw materials have discouraged growth.

Supporting Institutions

Ports. The port at Dar es Salaam is overburdened and is not keeping up with the growth of Tanzanian and East African regional trade. The weaknesses in the port facilities are addressed in this report's chapter on Infrastructure.

In early 2007, the port was in extreme crisis. Ships, especially container ships, had to remain at anchor at sea for 7-10 days awaiting berths. With the port at a virtual standstill, this required immediate action. Under the leadership of SUMATRA, the port users convened a task force to address the situation.

The relief measures championed by the task force made changes that reduced the "at anchor" time to one to two days and relieved congestion. Such measures as extending gate hours, opening a new gate, and allowing smaller container ships to use the bulk shipment berths for loading and unloading helped considerably. Carriers also extended the "free time" from 10 to 20 days before demurrage is imposed. The trade community credits CED for establishing "dry ports"²⁶⁹ outside the Dar es Salaam port for Customs and other ministry inspections, thereby allowing a container to immediately leave the port under bond rather than waiting for full border clearance.

²⁶⁹A "dry port" is a specialized facility that has come about with the advent of the shipping container in international transport. Rather than goods being loaded and unloaded in the port of unloading, shipping containers are transferred immediately from the seaport to the inland facility for Customs and other border agency clearances.

Unfortunately, the reforms have only had a short-term effect. Rising cargo volumes are overwhelming the port once again. Carriers assert that anchor time has increased to around five days and many expect the situation to get worse. Despite the excellent response to the past crisis at the port of Dar es Salaam, those measures were only temporary fixes that are now insufficient to cope with the increasing volumes of cargo and vessel traffic. The lack of space, unnecessary and burdensome procedures by all port users (not confined solely to the border agencies and CED), and outmoded or derelict infrastructure issues are chronic.

Customs clearing agents are professional, well trained, and absolutely essential for anyone dealing in international trade in Tanzania. Clearing agents are the individuals and firms that must negotiate the complexities and difficult logistics of Tanzania. They are trained and licensed by the CED to perform their functions and have a good reputation among importers and exporters as well as the larger business community. The clearing agent test is difficult, with less than half passing. Additionally, many of the larger businesses use their own in-house staff of licensed agents to perform Customs business. Clearing agents report that CED pre-consults before implementing changes and is cooperative with the business community.

Social Dynamics

Tanzania has shown sustained economic growth over the past few years, averaging six percent in GDP, with seven percent GDP growth expected in 2008. Customs and other trade-related reforms have helped to achieve this growth.

The TRA and its subordinate CED have been lauded for their internal reforms, which they are well advised to continue. But these agencies, as well as SUMATRA, cannot on their own solve the profound issues of port congestion, transportation infrastructure weaknesses, and other border agencies' antiquated processing, confusing and expensive fee structures, and conflicting jurisdictions. Top-level attention to these issues is needed at the Presidential level and by Parliament to coordinate actions that are necessary but may attract opposition. The cost of *not* addressing these pressing issues will be to stunt the growth potential of the Tanzanian economy.

Recommendations

- Compliant importers (those who are honest, display good Customs knowledge, excellence in their operations, and are competent and compliant), pose little risk to Customs. The CED should continue to implement and expand its Compliant Trader's Scheme to allow qualifying large importers to speed their goods through Customs formalities. Numerous countries have adopted this approach to allow their limited Customs resources to focus on high-risk shipments while providing tangible benefits to legitimate businesses. A recommended enhancement would be to treat these companies as accounts, appointing Customs-employed account managers to assist them. Consideration should be given to adding a "problem resolution" capacity to the planned special Customs office for priority client coordination. Account Managers could act as focal points to resolve Customs issues these clients encounter at the ports. This customer service function has been a popular and effective aspect of Egypt's Gold Card program.
- Long term solutions to the Dar es Salaam port congestion must be sought, and the chronic issues of lack of space, outmoded and poor handling equipment and procedural difficulties should be addressed at the highest level. SUMATRA, CED, and the Tanzania Ports Authority are capable only of crafting short-term fixes and cannot effect long-term improvements on their own. Not addressing this issue will have a profound negative effect on sustained growth and Tanzania's competitiveness in the region and global arena.
- The Tanzanian government should consider acceding to the WTO's Revised Kyoto Convention (RKC). A gap analysis between the CED/EAC Customs Law and business procedures with those recommended by the RKC should be undertaken. This convention reflects the current economic and technological changes necessary for a modern Customs administration conforming to international standards and practices. The RKC also incorporates best practices of member administrations. The RKC is an excellent means for facilitating trade, ensuring economic growth, and improving the security of the international trade system. Such an effort is now underway by the Bureau of Customs in the Philippines.²⁷⁰ Reforms envisioned by the CED would be enhanced by a gap analysis prior to prioritization of changes.
- A new strategic plan for CED, building on the excellent work of the IMF and others, should be written, complete with an implementation plan for expected reforms that should be incorporated into the overall document. This plan would augment and expand the IMF plan that the CED is currently following and act as a road map for the CED's rapid pace of reform. A special group or reform unit should be created to implement and monitor and evaluate the plan's goals and targets.
- A Tanzanian Single Window Concept should be pursued. A special emphasis should be placed on integrating the border operations of the CED with the other control authorities especially health and agriculture. The other border authorities should have access to the CED automated system, the ability to place and remove holds, and the ability to use certain functions, such as the selectivity and collections functions. Good examples of the Single Window implementation exist in Ghana and Mauritius, as well as Singapore, Finland, and Hong Kong.
- Other border ministry (including local governments) overlapping jurisdictions, fee structures, and justification of their procedures should be explored, studied, and rectified. Many functions of other ministries could be delegated to CED, such as sample procurement and verifications.
- The TFDA has an important mission for food, drug, and cosmetic safety. Overlapping jurisdictions should be eliminated, and it should have its own

²⁷⁰ See <http://www.rkcphil.net/> for details on the gap analysis prepared for the Philippine's Bureau of Customs accession to the Revised Kyoto Convention.

dedicated border clearance staff, such as Agriculture and CED possesses.

notification of cargo releases to the trade community.

- The current CED website, although comprehensive, should be reviewed. Transparency and better public service would be enhanced by the addition of:
 - Procedures for joining programs such as Compliant Trader Scheme
 - Contact information for problem resolution
 - Links to other Tanzanian border agency websites
 - Links to International Customs websites, including the EAC
 - CED rulings
 - Audit procedures
 - Schedules of legitimate fees
 - Clearance agents, carrier, and importer's notices or bulletins
 - Other pertinent news, data, or information.
- CED should emphasize performance measures of efficiency, quality, and resource utilization. Revenue collection targets should not be ignored but should receive less prominence.
- The EAC should harmonize its members' Customs Clearance Agents' individual and firm licensing procedures.
- CED should train its officers in the detection and seizure of counterfeit goods and begin to enforce the laws pertaining to counterfeit goods and medicines.
- Transit procedures, in addition to a coordinated effort to interdict counterfeit goods as described above, warrant additional trade surveillance to prevent leakage and the subsequent distortion of the domestic marketplace. Besides increasing and strengthening Customs in transit procedure including EAC automation initiatives. Additionally, efforts to enlist and train the Tanzanian National Police (TNP) to verify seals, equipment, and drivers as they cross Tanzanian roads.
- CED should improve the functionality of its automated system to include

ENFORCING CONTRACTS

THE DOING BUSINESS RANKINGS (2006) Enforcing Contracts	
Tanzania / World	65 out of 175
Tanzania / Sub-Saharan Africa Region	7 out of 45

Introduction

The ability to create and enforce contracts under a clear, consistent legal framework is a critical component of economic growth. Where there is a widely held expectation that agreements freely entered into between businesses or individuals will be subject to enforcement by a court or other tribunal, a marketplace can be transformed. What was once mere hope for performance based on a personal relationship or vague insinuation becomes a legitimate expectation of delivery. When business partners are in fact *required* to do what they have said that they will do – pay money, deliver goods, provide services, and so forth – risk diminishes and the recipients of a promise can better plan for the future. With decreased risk, the cost of doing business goes down, thereby elevating the private sector's prospects for profit.²⁷¹

This chapter examines the laws and business practices underlying the use of contracts in Tanzania, as well as the institutional effectiveness of resolving and enforcing contract-related disputes. In fact, the World Bank ranks Tanzania's performance with respect to Enforcing Contracts extremely well – the country placed 35th out of 178 countries in 2007. This rosy picture does not seem accurate in practice, however. It likely reflects only the treatment of higher-value cases where more well-heeled actors may seek redress in Tanzania's relatively new commercial court. In fact, most commercial actors in Tanzania are rarely in a position to engage the formal mechanisms of the commercial court, or, for

that matter, any court, to resolve their contract disputes.

Reasons for avoiding the courts include the perception of high fees, slow processes, and frequent delay tactics used by lawyers. Even more significantly, a huge part of Tanzania's business community still operates informally. Contracts are typically formed with a handshake, a smile, and someone's word. It is rare for written contracts to be drafted and signed by the parties to a business transaction. As explained by one textile manufacturer, written contracts are not typically used for orders or deliveries. If someone wants to produce 500 Kongas – a traditional and colorful African cloth -- then he or she brings in a fabric design to the factory and the manufacture produces it. The customer does not pay in advance; rather, payment is generally rendered when the order is completed and received. In this business, if a customer fails to pay for the order then the manufacture will most likely cut his losses and simply refrain from doing business with that customer again.

Although this approach to doing business allows commerce to take place relatively unencumbered by the hassle and expenses of greater formality, it becomes much riskier when the customer and the manufacturer are strangers to one another. A strengthened legal system can diminish the risk of doing business with an unknown partner. That is, it can provide the manufacturer with more information about prospective customers and greater confidence that those customers will meet their obligations. With that greater level of confidence, business can grow.

Legal Framework

Access to laws. As established in most other chapters of this report, the laws of contract and the courts are not sufficiently accessible. Regular people as well as lawyers find it difficult to access the laws. The government website offers some limited information, but generally, lawyers pay a service to receive updates. Courts do not have good libraries; accordingly, judges substantially lack access to new laws. They often

²⁷¹ See World Bank, *Doing Business 2007, How to Reform* (2006) at 49 (discussing economic benefits that arise from improved systems of contract enforcement).

depend on the lawyers for copies of the law. Lawyers reputedly use a commercially produced CD containing laws – a useful resource under the circumstances.

The law of contracts. Freedom of contract exists without Government interference or overly burdensome regulations. The **1961 Law**

doing something. This definition differs from the common law system as practiced in the US, in that it does not require an exchange of valuable rights.

Another critical element for establishing a contract is mutual assent – there must be a meeting of the minds and the intentions of both

Low-risk environments are grounded in strong legal support systems. There are many aspects to such a system, including:

- A framework of sensible laws and regulations that allow for contractual freedom and smart, streamlined systems of self-help and judicial enforcement;
- Sufficient information that allows for an informed assessment of contract risks and obligations
- A willingness in the commercial sector to seek legal advice
- A well educated and continuously trained legal community that understands and applies legal principles in contract drafting and dispute-resolution
- An accessible efficient system of courts
- A judiciary and court enforcement mechanism that has earned the confidence of the public;
- Alternative dispute-resolution systems.

of Contract Ordinance (Cap. 433) (“Law on Contract”) outlines the rules for contract formation, obligations, partnership, and consequences for breach of contract. Although Tanzanian contract law is based on Indian laws from the British colonial administration in the 1880s,²⁷² its concepts are similar to those found in the United States’ Restatement (Second) of Contracts. Although dated, the contract law adequately addresses general contracting issues, concepts, and terminology, such that legal professionals generally understand what is expected of a fully enforceable agreement between two parties. However, the law would certainly benefit from revision. One of the most notable problems with the law is that several key terms are not defined, which has led to some inconsistency in interpretation.

In general, a contract is formed when the following elements are met: offer, acceptance, consideration, meeting of the minds, capacity, and legality. The first element discussed in the Law of Contract (Cap. 433) is the notion of “offer and acceptance” – the promisor offers something and the promisee accepts the offered goods or services. The law also includes the element of “consideration,” but that is simply defined as a promise to do or abstain from

parties must be clearly understood. This provision establishes a significant loophole to the enforceability of contracts: One lawyer complained that the threshold

for establishing a “meeting of the minds” is too high and that the law makes it easy for contracts to be voided. On the other hand, Part I of the Law of Contract states that the “communication of proposals” is complete when all of the relevant information is known to both parties (thus, satisfying the meeting of the minds). This may sound like a vague concept, but with appropriate and consistent judicial interpretation, it can be applied effectively.

Contracts must be completely voluntary arrangements. Consent is voluntary only if it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake (Law of Contract, Cap. 433, Part II). Fundamentally, a party cannot use violence or threats; dominate the will of someone else, like a subordinate; conceal facts; or misrepresent any facts. If both parties are mistaken about an essential fact then the contract will be void. The meaning of “essential fact” is not defined in the law, however, so judges are left to determine the meaning of this concept.

Tanzania’s Law of Contract is the main law governing contracts but there are numerous other sources of authority that concern contract-related issues and may create

²⁷² United Republic of Tanzania, President’s Office – State House, Property & Business Formalisation Programme (2005), Mkurabita Report, p. 289.

additional legal requirements. For example, the Law of Contract does not require contracts between private parties to be written, notarized, registered, or witnessed. However,

however, then the party who suffers the breach is entitled to receive compensation for any loss or damage caused.²⁷⁵

Sources of Law in Tanzania

The Constitution. The first source of law in Tanzania is the 1977 Constitution, including a Bill of Rights that sets forth fundamental rights and freedoms.

Statutes. The second source of law is the statutes or Acts of Parliament. Principal legislation and subsidiary legislation thereto are published in the Government Gazette and printed by the Tanzania Government Printers.

Case Law. The third source is case law from the High Court and Court of Appeal, which may either be reported or unreported, and are to be used as precedent and to bind lower courts thereto. Reported Tanzanian cases are found in the Tanzania Law Reports, High Court Digests, and East Africa Law Reports.

Received Laws. The fourth source is Received Laws, pursuant to Section 2.3 of the Judicature and Application of Laws Act (JALA). Received Laws include: Common Law, the Doctrine of Equity, and Statutes of General Application of England, applicable before the 22 of July 1920, which is deemed to be the Reception date for English Law in Tanzania.

Customary and Islamic Law. Pursuant to section 9 of the JALA, the fifth source of Tanzanian law is Customary and Islamic law. Customary law applies only when it does not conflict with statutory law. Islamic law applies to Muslims and empowers courts to apply Islamic law to matters of succession in communities that generally follow Islamic law in matters of personal status and inheritance.

International Law (Treaties and Conventions). Treaties and Conventions are not self-executing. Following ratification of a treaty or convention, an Act of Parliament is necessary to deem their provisions enforceable in the courts of Tanzania.

Source: Bahame Tom Nyanduga and Christabel Manning, Guide to Tanzanian Legal System and Legal Research (2006).

contracts involving land are valid only if the property is documented and registered as required under the **Land Tenure Act**. As another example, the 1999 Village Land Act provides statutory support for customary traditions, which govern most transactions in rural areas. Generally, the village leaders and elders facilitate a contract process by giving faith to the seller's possession of title, confirming property limits, and formalizing the contract.²⁷³

There are some justifiable reasons for breaching a contract. The Law of Contract provides the common law defenses for non-performance including impossibility and frustration. An agreement becomes void if the act is impossible or becomes unlawful to do.²⁷⁴ If a breach of contract takes place for some other reason,

The Law on Contracts does not anticipate "modern" methods of contracting, such as electronic contracts, e-signatures, etc. The law recognizes both written and verbal agreements, and uses generic language such as the "communication of a proposal" versus the written document, so electronic contracts are arguably viable under the law. But this question has not been tested.

Enforcement of contracts: Tanzania's system of dispute resolution

Tanzania's court system. Tanzania is a common law country, with some exceptions and modifications to suit the local circumstances, and drawing the form of laws substantially from its British colonial history. The Chief Justice heads the judiciary, with the Registrar of the Court of Appeal as the Chief Executive Officer.

²⁷³ Id. at 54.

²⁷⁴ Law of Contract, Cap. 433, Part IV, section 5.

²⁷⁵ Law of Contract, Cap. 433, Part VI, section 73.

The Principal Judge, assisted by the Registrar of the High Court, is in charge of the Administration of the High court and the Courts subordinate thereto.

The High Court is divided into zones, which are administered by Judges in Charge with the assistance of District Registrars. At Regional and District levels, the administration is under Resident and District Magistrate in Charge. District Magistrates in Charge also supervise Primary Courts in their respective districts.

The **Resident Magistrate Courts** are regional courts that hear some commercial cases of the first instance, as well as some appeals from the District Courts and Primary Courts. The **High Court** has jurisdiction to hear any case if it is not specifically assigned to another court by law. The **Court of Appeal** is the highest court in Tanzania and is vested with the power to hear appeals from the High Court and Magistrates Courts.²⁷⁶

In 1999, the Government established the **Commercial Division of the High Court of Tanzania** ("commercial court") to focus on business and commercial disputes. The goal was to provide fast and efficient commercial dispute resolution, improve investor confidence, and facilitate private sector growth.²⁷⁷ Initially, the court resolved cases quickly and effectively. However, an influx of cases created a case backlog and increased delays in the process. Four judges currently serve the court on a full time and exclusive basis – three work in Dar es Salaam and one is based in Arusha.²⁷⁸

The **Land Disputes Courts Act, 2002** provides clear lines of authority and jurisdiction for adjudication of land-related disputes. It precludes any jurisdiction by the Resident Magistrates Courts to hear civil matters involving land disputes (though they might still hear criminal matters brought under the Land

Act No. 4 and Village Land No. 5), and instead establishes and defines the jurisdiction of the following courts to adjudicate matters arising under the Land Act No. 4 and the Village Land Act No. 5:

- Village Land Councils (established in accordance with the Village Land Act No. 5)
- Ward Tribunals (established in accordance with the Ward Tribunals Act, 1985)
- District Land and Housing Tribunals (established in accordance with the Land Disputes Courts Act, 2002, in each district, region, or zone of Tanzania)
- The High Court (Land Division), exercising both original and appellate jurisdiction in certain land disputes
- The Court of Appeal of Tanzania, with jurisdiction to hear appeals from the High Court (Land Division).

Tanzania's law of civil procedure. Tanzania's Civil Procedure Code is old and, most observers agree, antiquated: it was enacted in 1966, essentially duplicating the same code used in India beginning in 1908. The code provides for general rules of procedure within Tanzania's various courts and also includes provisions for enforcement of judgments.

The civil procedure code was amended in 1994 to include provisions on pre-trial settlements through alternative dispute resolution. Under the new provisions, every case must go to a settlement conference within 21 days for the purposes of negotiation, mediation, or arbitration.²⁷⁹ In practice, other than in the commercial court, mandatory ADR rarely proves successful. Parties typically attend as a matter of procedure only and the lawyers and judges are not adequately trained in mediation techniques to make it a useful process.²⁸⁰ If an amicable settlement is not reached within a specified time, not to exceed 60 days, then the magistrate or judge sets a trial date. Order VIII C of the civil procedure code outlines the arbitration and mediation procedure to be followed, namely setting the schedule and record keeping.

²⁷⁶ United Republic of Tanzania, President's Office – State House, Property & Business Formalisation Programme, Mkurabita Report (2005) at 173-77.

²⁷⁷ David Finnegan, Applied Comparative Law and Judicial Reform, 8 Thomas M. Cooley J. Practical & Clinical Law (2005) at 98.

²⁷⁸ A detailed discussion of the history and jurisdiction of the commercial court is found at David Finnegan, Judicial Reform and Commercial Justice: The Experience of Tanzania's Commercial Court (background paper for World Development Report, 2004).

²⁷⁹ See CPC, Rule 3 of Order VIII A.

²⁸⁰ Business Environment Strengthening in Tanzania (2006), Civil Procedure Review Position Paper, p. 22.

Enforcement. The most important regulations pertaining to contract enforcement are the **Contract Decree, Chapter 149**, and the **Civil Procedure Decree, Chapter 8**. The enforcement procedure usually begins with a demand letter to the debtor informing him that if payment is not received by a specified date then a suit will be initiated. If payment is not received, then the next step is to file a civil suit with the registrar of the High Court. The case is assigned to a judge, a hearing is scheduled, and notice is given to the defendant. After the hearing, the judge will render a decision and, if there is a finding for the plaintiff, then the judge will issue a court decree announcing that decision.²⁸¹ Even if a plaintiff is successful in obtaining the court decree, however, there is no guarantee that payment will ever be received if assets are hidden and titles are not available.

Implementing Institutions

There are number of key institutions involved with the formation and enforcement of contracts, ranging from those who act at the beginning of the contractual relationship – that is, those who assess the risk of doing business or help prepare a soundly drafted contract – to those involved with the enforcement of contracts when the relationship breaks down. In Tanzania, this latter group includes lawyers, courts, judges, magistrates, and court brokers. This section discusses these implementing institutions.

Credit information. As detailed in this report's chapter on Getting Credit, the risks involved in doing business with an unknown party can be significantly mitigated if parties have access to reliable information on each other's past histories. Information about the prospective business partner's past credit history, including records of late or timely payment, bankruptcy filings, and litigation, provides a good indication of whether that party will make good on his or her end of a bargain in the future. Credit reference bureaus are entities that collect and package credit information for resale to banks and other credit providers for use in the credit application process. A credit information system works best when credit reference bureaus are able to provide vendors with up-to-date accurate information quickly and cost effectively.

Currently, there is only one small credit reference bureau operating in Tanzania. The Tanzania Bankers Association organized this bureau for its members' exclusive use. The bureau relies solely on information provided by commercial banks; accordingly, its effectiveness is limited. Moreover, the bureau is not accessible to businesses that need to weigh the risk of whether to enter into a contract for goods and services with a prospective customer.

The Bank of Tanzania has enacted an initiative to establish a more extensive credit information system. The Bank will collect information from banks and financial institutions and make it available to private credit information bureaus for packaging and resale to their clients.

Credit reference bureaus can prove particularly useful to small and medium-sized enterprises (SMEs) and women, who typically have limited credit histories and assets. Through the collection of information from microfinance companies, utilities, and other credit providers, reliable borrowers can establish positive histories, which they can use to access the trust of prospective providers of goods and services.

Notaries. As a common law country, Tanzania does not rely heavily on the notary profession to execute and otherwise validate contracts. This is fortunate, as notaries have been found in many countries to enormously increase the cost of formal business transactions, without much tangible benefit.²⁸²

Lawyers. In general, Tanzanian lawyers are generalists and do not specialize in a single practice area. If someone seeks and pays for a specialized service from a lawyer, they may not receive it. Concerns voiced about lawyers in Tanzania include their ability or willingness to provide effective legal services, charge reasonable fees, and refrain from abusing the legal system. For example, it is widely reported that lawyers use the multiple procedures permitted under the civil procedure code as a delay tactic to either continue to collect money from a client or to avoid going to court.

Courts – the commercial court. As previously noted, Tanzania's special commercial court was

²⁸¹ United Republic of Tanzania, President's Office – State House, Property & Business Formalisation Programme (2005), Mkurabita Report, at 297.

²⁸² World Bank, Doing Business in 2004 (2003) at 27.

established in 1999. Although it is generally a welcome addition to the system of commercial dispute resolution, significant challenges impede its effectiveness.

First, fundamental aspects of case management are not yet applied. For example, there is no formal record of the types of cases frequently filed in the court, or even a system for categorizing cases for reporting purposes. Even though the court has computers, there is no searchable case tracking system. Thus, for many commercial actors, the dispute resolution process in the commercial court is simply too slow. If a commercial case is appealed, it will likely take years to be resolved in the Court of Appeal. This is a problem the legal and business community acknowledges.

The central complaint about the commercial court concerns the high threshold value of the cases it will consider. Since 1999, the court has changed the required value of cases three times to limit the cases it will hear. Initially, the value in dispute for an immovable property case had to be over US\$10,000. In 2002, as a result of the influx of cases, this value was changed to US\$100,000.

After the court was able to process some of the cases and had a better sense of the values in dispute, the value was changed again to US\$30,000 in 2005. Claims valued lower than the minimum must be filed in the lower resident magistrate or district courts.²⁸³

Courts – the resident magistrate courts and other lower courts. Subordinate courts in Tanzania include the resident magistrate courts, the district courts, and the primary courts. The district courts, unlike the resident magistrate courts, are found throughout Tanzania. They receive appeals from the primary courts, several of which are found in one district. The resident magistrate courts are located in major towns,

municipalities, and cities, which serve as the regional (provincial) headquarters. Each of these courts hears certain commercial cases, including small and mid-sized contract disputes. Systemic limitations in Tanzania's lower courts include lack of published law reports, some corruption, low magistrate salaries, a lack of adequate physical infrastructure, and inadequately funded operating budgets.²⁸⁴

Corruption is perceived to be a problem in the Tanzania court system. Some observers feel that corruption is rampant throughout the government, including the bribing of officials to expedite cases or issue a ruling in one's favor. Others assert that corruption is not as common as it used to be and the system is getting better. One business owner said that if he needs to access the court system, then he will file the

same case in his local court and the Dar es Salaam, High Court, Commercial Division. By filing in both courts, he feels that the local court is now on notice that it is being watched by the commercial court.

Judges. Judges staff Tanzania's High Court and Court of Appeals. They are appointed by the President under the constitution, and the position of judge is

considered honorable. Security of tenure is guaranteed. A person who can be appointed as a judge must have qualifications to become an advocate and at least 10 years of experience. Currently there are about 50 judges, several who previously worked as professional magistrates. There has been attempt to improve the remuneration paid to judges, but generally it is considered to be low compared to what advocates earn. This explains why advocates do not prefer being appointed to the bench. There is no prior training for a judge before he or she joins the bench; nor is there, in general, continuing education for judges.

The High Court of Tanzania Commercial Court Division Summary of Performance		
YEAR	CASES FILED	CASES DETERMINED
1999	11	33
2000	104	63
2001	344	227
2002	349	234
2003	164	254
2004	119	179
2005	173	126
2006	139	92
TOTAL	1403	1208

²⁸⁴ Finnegan, David Louis. Applied Comparative Law and Judicial Reform (2005), The Thomas M. Cooley Journal of Practical and Clinical Law, Vol. 8 (2), at 123.

²⁸³ Id. at 119.

One of the most daunting problems is that there are not enough qualified judges on the high court. As a result, there is a backlog of unresolved cases. The government is aware of the urgent need to increase the number of judges.

Magistrates oversee cases in the lower courts. Lay magistrates (about 700) oversee the primary and district courts. Professional magistrates (about 200) work in the Resident Magistrate Courts. Professional magistrates must be lawyers, while there is no such requirement for lay magistrates.

Court brokers collect on the judgments rendered. They do not receive any training on ethics or how to execute a court order, which is problematic. For example, some court brokers fail to provide the 14-day notice requirement before trying to collect payment/property.

In 1997, in response to a number of complaints regarding the disappearance of settlement funds and similar types of misconduct, the government enacted the Court Brokers and Process Servers (Appointments, Remuneration and Discipline) Rules. These rules impose standards for appointment, procedures for discipline, and numerous minimum requirements, including bonding.

Despite the enactment of these rules, the activities of court brokers are still subject to complaints regarding efficiency, effectiveness, and professionalism. The Business Environment Strengthening for Tanzania (BEST) program, discussed elsewhere in this report, will attempt to address these problems as part of its judicial reform efforts.

Alternative Dispute Resolution (ADR).

Notwithstanding the promotion of ADR in the legal framework, there is little use of ADR in Tanzania at this time. Several years ago, USAID provided training to judges and lawyers on ADR techniques. The training was enthusiastically received, but there has been virtually no follow-up. Promotion of ADR and training in the field has practically ceased.

Some lawyers complain that their colleagues are too adversarial and they do not know how to

effectively engage in ADR. It is also likely that the business community does not know of or sufficiently understand ADR options, and thus is not asking for it. Members of the bar association point out that lawyers are reluctant to utilize ADR as well because they receive less money if a case is resolved faster. Like in the US, lawyers in Tanzania bill their clients for their time (hourly). Currently, there is some discussion about promoting the use of ADR through public awareness campaigns and reinstating the ADR training for judges and lawyers.²⁸⁵

The need is great for ongoing mediation training, both in law school and for practicing advocates and judges. Many stakeholders complain that advocates and magistrates do not know how to mediate a dispute between two parties. If commercial actors are avoiding the court system because the process is too time-consuming, cost-prohibitive, or corrupt, then mediation presents a good alternative. If mediation is to be a viable alternative, then training needs to be incorporated into the university curriculum, and training provided for judges and lawyers.

Supporting Institutions

The **Tanganyika Law Society (TLS)** is the professional bar association, and it is compulsory for all practicing lawyers to join the TLS. Although continuing legal education is not required among lawyers, the TLS provides training programs twice a year. They also publish a small journal and engage in some policy discussions. Among its current initiatives is the development of a Code of Ethics for lawyers.

The TLS could become an influential player in legal reform initiatives with more active members. With appropriate funding and management, the TLS can play a significant role in providing training, enhancing education, and building a prominent network of lawyers.

A TLS member stated that a strong Code of Ethics should require lawyers to have certain skills or training before providing a specialized service. In addition, there should also be consequences for failure to provide the services requested. Currently, the Advocates Act (CAP 341 R.E. 2002) establishes a legal education

²⁸⁵ See Business Environment Strengthening in Tanzania, Civil Procedure Review Position Paper (2006) at 6.

council and provides the procedures for removing a lawyer from the roll. The roll is the equivalent to being admitted to the US bar and licensed to practice under the American Bar Association. In the Advocates Act, there are no clear standards of conduct, ethical guidelines, or even professional standards to uphold.

Other business and professional associations, such as the Chamber of Commerce, Tanzania Banker's Association, and the American People's Business Group are important players in legal reform and providing services. The **Chamber of Commerce** produces position papers on various issues such as the role of mediation in resolving contract disputes.

Currently, a **law degree** is earned from an undergraduate university rather than from a law school. After completion of the four-year undergraduate degrees, lawyers must serve a six-month internship with a law firm, followed by a two-year pupillage. Any LLB degree holder who has completed both the internship and the pupillage can apply to write the bar exam, which is held three times a year. The exam is an oral interview conducted under a panel of the **Council for Legal Education**, which is composed of representatives of the Chief Justice, the Attorney General, the Dean of Faculty of Law of the University of Dar Es Salaam, and two representatives of the Law Society. A successful candidate is sworn in and enrolled as an Advocate of the High Court of Tanzania and sub-ordinate Courts thereto.

The **Faculty of Law** at the **University of Dar es Salaam** is the oldest law school in the region and is most well known of Tanzania's law programs. The curriculum it lists on its website is diverse and reflects international trends – courses in competition, intellectual property, and ADR are said to be offered, for example – but how often these courses are actually taught is not clear. Surprisingly, a course devoted exclusively to civil procedure is not among the core courses offered at the University of Dar es Salaam.

The **Open University of Tanzania** is another option for aspiring lawyers. This school, which is located in various places throughout the country, requires students to take the following courses: Constitutions and Legal Systems in East Africa, Criminal Law, Law of Contract, Legal

Method, Administrative Law, Evidence, and Land Law. Currently, there is no meditation or arbitration class taught at the Open University.

Other law schools include those at **Mzumbe University, Tumaini University, and Ruaha University**. Most offer not only the basic LLB degree, but also post-graduate law degrees. But the resources of all these institutions are weak and their faculties suffer from the same lack of access to new laws and continuing education as do other legal professionals. Legal education in Tanzania would greatly benefit from further support. Long-term support to legal education is a critical component of the rule of law.²⁸⁶

The **Law Reform Commission (LRC)** is a law-drafting body in Tanzania. Established in the 1980s, it is a permanent, standing government body, staffed by four full-time and four part-time experts who review laws and drafts at the request of ministries and other agencies working on them. However, the LRC's involvement is not required when new or revised laws are proposed. After a period of relative dormancy, the LRC is now increasingly engaged in law reform. It recently recommended two donor projects that would have positive effects for the business environment generally: access to laws and publication of judicial opinions.

Social Dynamics

For the most part, Tanzania's business environment, particularly small business owners, continues to operate on an informal level. As previously noted, most owners of SMEs interviewed for this diagnostic do not utilize written contracts; they simply rely on someone's word. Although verbal agreements can be classified as contracts under the law, without written documentation it is hard to prove a valid contractual obligation was made. This is a significant cultural element that must be considered when conducting business as well as developing programs to strengthen the formal sector.

In addition, there remains in Tanzania continued confusion, lack of trust, and general suspicion in the formal justice sector. Even if someone

²⁸⁶ See Mark K. Deitrich and Nicholas Mansfield, *Lessons Spurned: Legal Education in the Age of Democracy Promotion* (East-West Management Institute Occasional Paper Series, 2006).

would like to utilize the formal mechanisms by filing a claim in the court, he or she may not be able to afford a lawyer.

An important development was the establishment of the BEST program in 2002. The purpose of BEST is to reduce the burden of doing business, enhance efficiency in service delivery, and promote and maintain a better partnership between public and private sectors.²⁸⁷ The five objectives of the BEST program include: (1) achieving better regulation, (2) improving commercial dispute resolution, (3) strengthening the TIC, (4) changing the culture of Government, and (5) empowering private sector advocacy. The BEST program on commercial dispute resolution have the potential to significantly enhance contracts enforcement because they focus on enhancing access to the commercial court, simplifying the CPC, enhancing the effectiveness of ADR, combating the injunction/adjournment culture, and reducing the backlog of commercial cases, among other goals.²⁸⁸

Significant progress has been made in legal reform that will ultimately support commercial activity. The well-coordinated Financial Sector Reform Program identifies the following key priorities: legal and judiciary reform, monetary policy reform, banking sector reform, financial market development, pension sector, insurance sector, long-term development finance, micro and rural finance, land issues, and the employment sector. For contract enforcement, the most relevant of these priorities is the legal and judiciary reform program, which focuses on issues from capacity-building to finding adequate courtroom facilities. The World Bank and the Millennium Challenge Account are developing the infrastructure to support zonal commercial courts. The BEST program is developing training programs for judges and a program to strengthen the commercial courts.

In December 2006, the BEST program published a position paper on the civil justice system that examined the court operations, private legal practice, and various procedural rules. The paper identifies the problems and gaps in

services, and provides recommendations for the most "efficient disposal of civil cases in keeping with public needs and expectations."²⁸⁹ The comprehensive proposals are designed with the intent to change the culture of civil litigation. Some of the proposals include developing a Code of Conduct for lawyers, promoting the use of ADR, and providing training to judges. At this stage, the Law Reform Commission is accepting comments and holding discussions about the recommended civil procedure reforms.

Recommendations

- Support continuing education for lawyers, magistrates, and judges.
- Support training in ADR and commercial law.
- Continue development and implementation of a Code of Conduct and Ethics for lawyers. TLS efforts to develop a code of conduct should be supported to ensure that viable standards are produced with clear consequences for ethical violations. The program should include wide public discussion with other stakeholders, including judges and the business communities.
- Support a court administration project focusing on one or all of the following areas: case tracking, recordkeeping, recording of court proceedings, and the publication of court cases. Such a project should utilize process re-engineering analysis to question the overall design of the system in order to eliminate (rather than accelerate) unnecessary procedures and opportunities for delay.
- Support legal education. Support can include faculty training programs; assistance with curriculum development; and establishment of clinical legal education programs, particularly in the rural areas.
- Create a commercial court in the Court of Appeals. Since the appeals process is slow, a specialized commercial court in the Court of Appeals would help expedite cases.
- Strengthen the system of court brokers. Court brokers are not adequately trained in ethics, roles, and responsibilities. Reform

²⁸⁷Business Environment Strengthening in Tanzania Civil Procedure Review Position Paper (2006), at.vi.

²⁸⁸ United Republic of Tanzania, President's Office – State House, Property & Business Formalisation Programme (2005), Mkurabita Report, at 105.

²⁸⁹Business Environment Strengthening in Tanzania, Civil Procedure Review Position Paper at vi (2006).

would include defining the court broker role, developing a general code of conduct, and providing training on how to properly issue a court order. This work should be accompanied by a public education campaign, targeting court users (the business community) as well as the bar and judiciary.

- Improve access to the laws.

CLOSING A BUSINESS

THE DOING BUSINESS RANKINGS (2006) Enforcing Contracts	
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Introduction

The law should have a clear, easy-to-use procedure for closing a business when it becomes insolvent and unable to pay its debts. The procedure should include understandable rules for orderly liquidation of the business's assets to pay its creditors, and understandable rules for establishing all creditors' rights and priorities. The law should also encourage starting the procedure early – before the business is “run into the ground” – to maximize recovery and to allow for reorganization and survival of the business when that is possible.

The Casualties of Delay in Insolvency Proceedings:

- Assets lose value over time
- Assets are worth more in a going concern than a shuttered plant
- Assets incur costs to maintain and safeguard
- Potential buyers become frustrated and lose interest
- Fees add up
- Time value of money is lost
- Courts get clogged with cases
- The public loses confidence in the system.

Without a reliable system to deal with insolvent businesses, assets and creditors' conflicting claims become hopelessly embroiled in prolonged proceedings that end in small distributions and recoveries. An unreliable system also prevents the redistribution of income-producing assets and employees, which hurts local communities in which previously solvent businesses once operated. It also deters lending. Lenders will not extend credit freely unless their rights as creditors are respected when their borrowers cannot or do not pay.

Tanzania has a new insolvency law, effective April 2006, which is not well known and which its few users have described as unclear and as not fulfilling international best practices. Other factors also make for an inefficient insolvency system in Tanzania. Lenders see the laws and practices dealing with commercial credit are seen as inadequate. There is a general perception in the business and banking community that the key implementing institution – the court system – is not effective; it is perceived as slow, costly, and not conversant with business issues, especially complex financial and insolvency issues. Just as important, an efficient registry for recording of liens on collateral has yet to be developed. There are also no specialized professional insolvency associations or other supporting institutions, such as workout and turnaround consultants experienced with the law's operation, or liquidating firms experienced in selling a business and monetizing its assets. These and other reasons have limited commercial credit in Tanzania.²⁹⁰

Reform of the insolvency law and its administration are needed, but these should accompany resolution of institutional problems with the court system, creation of an efficient collateral registry, and other steps that can lead to increased availability of commercial credit.

Legal Framework

The uncertain state of the insolvency law. The “insolvency law” is part of the Tanzanian Companies Act 2002 and its accompanying Regulations. That Act is unusual because it combines two subjects that in other countries are contained in separate free-standing laws: company law (which is the subject of the “Protecting Investors” chapter of this Report) and insolvency law (this chapter). The Tanzanian National Assembly passed the Companies' Act in April, 2002 but its coming into effect was delayed until March 2006 while regulations for both of those two areas were being prepared. Then, in April 2006, the entire Act and the

²⁹⁰ See the “Getting Credit” chapter in this Report.

Regulations relating to the company law became effective, replacing and repealing the former Tanzanian company law, the *Companies Ordinance 1932*. However the proposed regulations relating to the insolvency law did *not* then become effective and are still not in effect. The Ministry of Justice is still working on the current draft of these Regulations. There is no announced completion schedule; the Ministry and interviewees have indicated that more time is needed because the draft at this point is not consistent with the insolvency law. This leaves a hole in Tanzanian insolvency law since the regulations, when completed, are intended to fill open issues in the Companies Act 2002.

Prior to the Companies Act 2002 Tanzania did not have an insolvency law specifically for business companies. However, there was a law

for bankruptcy of individuals and partnerships, the Bankruptcy Act 1929.²⁹¹ That law is still in effect as the governing law for individuals and partnerships. The now-repealed Companies Ordinance 1932 contained reference to provisions in the Bankruptcy Act 1929, and business companies formerly used those provisions by analogy for cases involving insolvency and winding up of business companies. However, now those provisions may not be available to fill the hole, since the Companies Ordinance 1932, which provided the basis for using them, was repealed by the Companies Act 2002.

Making matters even less clear, the text of the insolvency law itself presents problems. All interviewees who have used it said that it is over-complicated, opaquely drafted, and difficult

CLOSING A BUSINESS: RULES FOR A GOOD SYSTEM

- The law should provide certainty and predictability appropriate for a mature credit market.
- Procedures should be simple, with the rights and duties of the stakeholders – debtor, creditors, court, and administrators – stated clearly.
- The law should promote reorganizing viable businesses but closing nonviable ones with prompt liquidation to maximize creditor payout.
- The law should aim to maximize the debtor's asset value. There can be tension between speedy liquidation and the need to preserve value and tension between secured creditors and unsecured creditors. The law should recognize and have rules for resolving such issues.
- The law should provide equality among similar creditors. It should have one single court-supervised proceeding – with the ability to stay litigation -- to prevent the “race to grab” when creditors go after the debtor separately.
- The process should be transparent with access to information for all participants. The debtor's obligation to provide information should be clear and enforceable.
- Priorities among different types of creditors should take account of local policy and culture and should be stated clearly.
- There should be a formal system of specialized education and training for all stakeholders, possibly with formal certification for judges and administrators.

-- Adapted from the UNCITRAL (UN Commission on International Trade Law) *Legislative Guide on Insolvency Law*.

²⁹¹ Tanzanian law follows the English practice of using the word “bankruptcy” for dealing with individuals and using the words “insolvency” and “winding up” for companies. This chapter will follow that practice. This is in contrast with the

to work with. (Its drafting is plainly more indirect and word-intensive than that of other Tanzanian laws and bankruptcy and insolvency laws in other countries.) One practitioner called the law “too legalistic and formalistic”; another called it “a monstrosity.” It is mostly copied from the English Insolvency Act of 1986, but does not include amendments that were adopted in England. Another practitioner, noting that transplant origin, called it an effort “to plant an oak tree in Africa where those don’t grow.” The history of the law suggests a basis for these comments. It was drafted by foreign experts under foreign donor sponsorship with – as yet another interviewee commented – the aim to “check a box” to show the world that Tanzania now had a modern new company law to replace its old (1932) one. All interviewees stated that the drafting involved minimal solicitation of comment from Tanzanian businesspeople or professionals, and that many comments that were given were ignored.

The contents of the law. The insolvency law provides for several types of proceedings (listed in section 235), the most important of which are:

Winding up by the court (sections 275-332). This includes liquidating a company’s assets and distributing the available proceeds among creditors, all under court supervision. It is the procedure closest to a Chapter 7 liquidation under the U.S. Bankruptcy Code. A company may be wound up if any of several tests is met, among them being that it is unable to pay its debts, that the number of its shareholders falls below two, or “the court is of the opinion that it is just and equitable that the company should be wound up” (279). Either the company, a creditor (notably including any contingent or prospective creditor), or an administrator may make the filing (281). A problem is that it is not clear when or whether separate litigation or claims enforcement against the debtor is stayed; there is no automatic stay when the case is filed (instead the company or a creditor must in each case apply for a separate stay of a case to the court where that particular case is pending (283)), but a stay is imposed when the court issues a winding up order at a time not clearly determinable under the law (287). There is also a lack of clarity about the status and powers of

the official receiver, a liquidator, a committee of inspection, and a creditors’ committee.

Administration order (sections 247-66). This is the procedure for cases where the debtor is not wound up (liquidated) but instead continues to operate either to be reorganized and ultimately survive, or to realize more on its assets than it would in a liquidation, even if survival is not the ultimate objective. This is the procedure closest to a Chapter 11 reorganization under the U.S. Bankruptcy Code. There have been no such cases under the 2002 law. An administrator is required in all cases; there is no provision for a “debtor in possession” reorganization as some other countries have. That issue is discussed in the Annex to this chapter.

Voluntary arrangement (sections 240-46) and *voluntary winding up* (sections 339-46). These procedures can be used when the company is able to pay or otherwise satisfy all its creditors. The rules for each are highly detailed and not parallel, making them difficult to compare but in each case requiring extensive participation and reporting by nominees, other administrators, and the court. The law should provide a simple procedure in which a solvent debtor can close its business itself (with no need for an outside nominee or other person and no need for court reporting or supervision), pay or settle with its creditors and get releases from them if wanted, publish notices for unknown or un-locatable creditors, deregister with the Registry, and, having done that honestly, distribute what is left to its shareholders who will have no personal liability. Other countries have such procedures.

Insolvency law in practice. In practice, many – perhaps most -- insolvent business-closing cases are handled as informal workarounds and workouts without the insolvency law’s formal procedures. When that happens, however, some creditors can (and do) exert undue influence over others, unconstrained by the kinds of overall, enforceable rules that a good system should provide. That was cited as being a result of the difficulty of using the law. Characteristic comments by practitioners were that handling a liquidation under the law “is a nightmare -- it takes years,” and that a reorganization is “much too complicated to actually do – the formalities alone add six months to it.” One lending institution officer stated that his institution is diligent in filing

U.S. practice of using the word “bankruptcy” for all types of persons and entities.

collateral liens with the registry but that in reality “our system can be grab and run” and the law, such as it is, “lets unsecured creditors drive the process too much.” Yet another said that the fees charged by administrators, who are required under the insolvency law, are not controlled and can be too high to leave enough for the creditors. All pointed out that there are no generally established procedures for selling, auctioning, or otherwise realizing efficiently assets, and there are no companies such as professional liquidators in that business. All also echoed comments made elsewhere in this chapter on the inability of the court system to manage complex cases (which most business insolvencies are).

It is not possible to tabulate the number and types of insolvency cases with any certainty because they are not publicly reported and court records are not a useful and easily accessible source for this. However, it is clear that most or all cases under the insolvency law are liquidations under sections 275-332 of the law described above. That is to be expected, since the alternative of reorganization is more difficult and, in reality, most insolvent business do not have easy prospects for survival. Indeed, most interviewees stated that they had never seen a reorganization case under the insolvency law.²⁹²

For the same reason it is not possible to compile hard statistics on how long a case takes, what it costs, what it recovers for creditors, or the typical case size. Interviewees offered ample anecdotal evidence, however. Most affirmed the rough accuracy of the conclusion in *Doing Business in 2007* report, which were that closing a business can take three years at a cost of 22 percent of the estate and a recovery rate of 22 cents on the dollar (this ranked Tanzania at 105th among the 175 countries surveyed in the World Bank report). Others, however, said that recoveries have been substantially higher than this, at least for well-represented secured

²⁹² Many of the largest liquidations and reorganizations in Tanzania have escaped the coverage of the insolvency law, as being privatizations administered by the Presidential Parastatal Sector Reform Commission (PRSC). The PRSC operates under the Tanzanian Public Companies Act, which grants the PRSC broad powers including those of an administrator under the insolvency law, but without being subject to that law. Interviewees stated that in practice the PRSC has sometimes used the rules for individual bankrupts contained in the 1929 Bankruptcy Act.

creditors; two cases were cited at over 70 percent. Some interviewees ascribed the low overall recovery rate to judges' tendency to side with underdog debtors, a prejudice also common in other countries. Regarding size, interviewees stated that there have been “quite a few” cases with total claims of US\$1 million equivalent or more, which are substantial cases in Tanzania.

Implementing Institutions

Courts. The courts are the primary implementing institution of the insolvency regime. In most cases this means the **High Court**, but the insolvency law states that in a particular case the High Court may, in its discretion, delegate essentially all of its powers to a the lower Magistrate's Court.²⁹³ Interviewees stated that this is most often done with cases arising in the bush or countryside, distant from the High Court locations in Dar es Salaam and Arusha.

The High Court has three divisions, the **Central Division**, which has general subject matter jurisdiction; the **Commercial Division**, which hears commercial cases; and the **Land Division**. An insolvency case may be filed in either the Central Division or the Commercial Division. The Commercial Division is usually chosen for larger cases because its judges are considered more knowledgeable in business issues and they have a lighter workload, which makes for quicker decisions than in the Central Division – one practitioner said “three times quicker.” The reason for the workload difference is that the Commercial Division charges a high fee for filing a case; in insolvency cases the fee is four percent of the claim, while the fee in the Central Division is nominal. The Commercial Division fee sometimes discourages filings altogether, since some practitioners do not consider the Central Division to be a useful alternative.

There are four judges in the Commercial Division, three in Dar es Salaam and one in Arusha. All interviewees said that the

²⁹³ This delegation power is so sweeping that it is worth quoting. Under section 276 of the law the High Court “may, if it thinks fit, direct all subsequent proceedings to be held in a Resident Magistrate's Court and thereupon such court shall for the purpose of winding up the company be deemed to be the court within the meaning of this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the High Court.”

Magistrates' Courts are generally much less acquainted with financial and insolvency issues than the High Court, and some referred to corruption as a problem in the Magistrates' Court (although this was not mentioned in discussing the High Court).

There are no specialized courts or judges for insolvency cases as there are in many countries, including the US, and the low volume of cases in Tanzania would seem not to justify a completely separate court. This lack of specialization combined with a perception that judges suffer from a lack of training adversely affects both the use and implementation of the insolvency law. In other countries, specialized courts and training help in dealing with complex commercial disputes. Insolvency cases should be assigned to an identified cadre of judges who have received training, and perhaps also certification, to hear such cases.

Other court participants in a typical insolvency system are not in place, particularly court clerks and other personnel specially trained in the administration of insolvency cases, which typically involve the processing of many, in some cases thousands, of claims.

Supporting Institutions

Lawyers and accountants. There is an experienced body of private business lawyers and accountants, especially in Dar es Salaam, but there are few lawyers – perhaps half a dozen -- who specialize in insolvency cases and are closely familiar with the insolvency law. Given the paucity of cases and the other difficulties mentioned earlier, this is not surprising. It is completely inadequate, however, for future needs. Interviewees commented that a good insolvency system should increase the demand for specialized lawyers, and when that happens increased supply should follow.

The **Tanganyika Law Society**, discussed elsewhere in this report, does not have specialized programs or activities for insolvency law. It could, however, have such program, particularly as a need for insolvency expertise grows with increased lending activity.

The big four **accounting firms** and many smaller accounting firms are active in Tanzania. They audit the larger public companies and many others. Insolvency is now only a small part of their overall practice, but within the firms

there are professionals with insolvency experience and expertise. Administrators and liquidators have typically come from these firms and, by all accounts, have been a great practical help. Such persons should be consulted in revision of the insolvency law and should be a source for insolvency education and training programs for judges and others.

Banks and other lenders. Lenders are a main beneficiary of a good insolvency system since it protects their interests as creditors, enabling them to make more loans, which helps their business and overall investment. Lenders who were interviewed were fully aware of the problems discussed above and identified most of the specific problems that this chapter cites. Lending institutions should be at the center of the consultation process for a revised insolvency law and system.

Others. Because the system is undeveloped, there is a shortage of supporting institutions of the kind present in many other countries. Such institutions would include persons who regularly serve as administrators, workout and turnaround consultants, appraisers of financially distressed businesses and properties, and professional associations dedicated to experience-sharing among insolvency professionals. There is currently no identifiable group of practitioners or other professionals who monitor the need for legislative reform and amendment and lobby for change. Law and accounting faculty are potential sources for education and training programs for judges and others.

There is no infrastructure of appraisers, used equipment dealers, auctioneers, and similar persons experienced in the liquidation of businesses. Until the system matures to a sufficient volume of repossessed collateral to provide a market for such types of professionals, the mechanics of liquidating collateral must be dealt with on a case-by-case basis.

Law Reform Commission (LRC). The LRC is a significant law-drafting body in Tanzania, although it had no involvement with the insolvency law. It is a permanent, standing Government body, staffed by four full-time and four part-time experts who review laws and drafts at the request of ministries and other

agencies working on them. However, their involvement is not required when new or revised laws are proposed. The LRC is currently recommending two donor projects that would have positive effects for investor protection: access to laws and publication of judicial opinions. Both would enhance the insolvency system. The LRC is also a potential contributor to writing a new insolvency law.

Donors and Non-governmental

Organizations (NGOs). Many donors are working on business-related projects in Tanzania but none deal directly with the issues covered in this chapter. One of the most active broad-range donor activities is the BEST project. BEST stated that its future plans include a “business exit” project but that it has not yet started it. Such a project could be undertaken as a part of the BEST program or by another donor as a free-standing project.

Social Dynamics

Closing a business occurs both when a business can pay its creditors, and when it cannot. Closing a business in the first situation could certainly be made easier in Tanzania than it is now, but the larger problem is with insolvent businesses, of which there are many in Tanzania. At least some of these businesses could be rescued, but are being run into the ground without their managers or their creditors realizing it.

Fixing that problem means fixing Tanzania's insolvency law and its administration by the courts. Those tasks should have the highest priority, although they cannot be done quickly. A positive dynamic can be found in the fact that the strong business and professional community – bankers, other financial players, lawyers, and accountants -- is fully aware of the need and has, within its ranks, considerable expertise. That warrants some optimism.

However, accomplishing that in isolation may be of only limited help because the insolvency system cannot be separated from what lies behind and around it -- the court system and court administration as a whole, the weak available means for enforcing judgments and seizing collateral, the undeveloped lien filing system, the absence of a credit bureau or a national ID system to identify borrowers, the lack of established firms and methods for

auctioning and monetizing assets in the market, the insufficiency of business education in schools and universities, and – above all – the limited availability of commercial credit in the market.

All of these issues are related. The social dynamics favoring reform of any one should be viewed as depending on reform of the others. Ultimately, the most important driver of the process will be increased availability of credit, which should result as investment and business development increase in the future. However, it is still important and possible to improve the insolvency system by itself.

Recommendations

- Review and revise or rewrite the insolvency law and regulations:
 - Taking account of the principles stated under “Legal Framework” and “Rules for the a Good System” above and the suggestions in the Annex below
 - Using input from and consultation with Tanzanian users of the law including lenders (both banks and other financial institutions), lawyers, accountants and other persons who may be administrators or liquidators, and judges, especially the judges of the Commercial Division of the High Court
 - Using plain legal English as is used in other Tanzanian laws
 - Stripping out the insolvency law and regulations from the Companies Act 2002 into a separate free-standing Act.
- It is essential to have input and buy-in from involved Tanzanian persons in the drafting of such an important law. Foreign experts should be involved but only as helpful resources, not as primary drafters.
- Provide education and training for all stakeholders on the law and practical (not theoretical) subjects such as:
 - Business and asset valuation

- Methods to “fix” failing businesses so that they can be successfully reorganized
 - Methods to preserve going concern value of businesses as an aid to sale or reorganization
 - Media relations and reporting in an insolvency case
 - Practical techniques for realization of value including through auction and other asset sale
 - Practical techniques for raising capital to aid in reorganizing insolvent businesses
 - How to prove a claim and establish its value
 - Techniques for supervision of a liquidation or reorganization
 - Employee and labor issues in a business shut-down or reorganization
 - Techniques for financing of a company in liquidation or reorganization.
- This kind of practical training is *especially* important for judges and for lawyers from whose ranks future judges will come. Programs should put them first in priority.
 - Organize and pursue a comprehensive donor project for insolvency law and enforcement strengthening. This should be done within the BEST project or in an independent project. Project components can include the law reform and the education and training which are described above and also:
 - Conducting a baseline needs assessment identifying, among other things, historical data, current demand, availability of court personnel and facilities, and availability and experience of administrators and other potential supporting institutions, including potential workout advisers and asset liquidation firms
 - Organizing and providing media and communication support, including press releases, publications, and surveys and opinion polls
- Assisting the court system in the administration of insolvency cases, including training court clerical personnel and the selection and regulation of administrators,
 - Developing licensing and certification procedures for administrators
 - Helping universities in training professors in insolvency concepts and designing curricula for educating students in them,
 - Holding one or more conferences and workshops with all stakeholders, including banks and other lenders, lawyers and accountants, administrators, and other stakeholders
 - Surveying the laws and practices of other countries, including neighboring African countries,
 - Assessing and strengthening the regime for enforcement of and execution on judgments
 - Assessing corruption and fraud vulnerabilities in insolvency proceedings and assisting in investigation and prosecution
 - Improving reporting of insolvency cases, including assisting with infrastructure, publication, and computerization.
- Make all the laws and regulations available on the internet at no charge. The Companies Act 2002 is available, but the draft insolvency regulations are not publicly available and are difficult to find.

Annex: Specific Suggested Revisions to the Insolvency Law

The following suggestions are respectfully made for consideration and discussion.

Drafting and Structure of the Law

- Split out the insolvency law into a separate free-standing Act
- At the beginning of the Act, have an understandable Table of Contents, and throughout the Act, for each section have a bold-face heading that states the section's contents,
- Draft the law in plain legal English, as many other Tanzanian laws use
- Define terms at the beginning – inconsistent word usage in the present law is confusing
- Reduce the types of proceedings, combine them when possible, and state clearly how one can be converted to another
- Clarify, and eliminate most of, the confusing multiple titles for functionaries – nominee, administrator, trustee, liquidator, supervisor, official receiver, receiver, manager, and others
- State the difference between the Act and the Regulations in authority and enforceability.

General Provisions

State clearly in one place, applicable to types of proceedings:

- The court jurisdiction, the relative authorities of each Division of the High Court, and the circumstances under and degree to which the High Court may refer the proceeding to a Magistrates Court
- That insolvency cases will be assigned only to judges who have received specified training and (it is recommended) certification in insolvency issues
- Precisely what documentation and proof of debt or interest is required for a debtor or creditor to initiate a case,

- The duties and authority of the court vis-à-vis administrators
- Duties and powers of administrators
- Required qualifications of administrators (education, certification, etc.) and rules for requiring their independence
- Clear rules on how to convert from one type of proceeding to another, such as a creditor vote to convert from reorganization to liquidation.

Protection of Secured Creditors

State clearly that secured creditors are protected, but also that they cannot abuse their position, with provisions that:

- If their collateral is not adequately protected, secured creditors are free to exercise their rights under general law and without any accountability to general creditors
- Secured creditors are subject to an automatic stay but only when the administrator demonstrates adequate protection to the court
- Secured creditors cannot vote in general creditor meetings (unless they have unsecured debt also)
- If secured collateral is sold by the administrator, the secured creditors are entitled to the net proceeds of the sale and are entitled to "bid" their debt at the sale
- Secured creditors who are contractually entitled to physical possession of collateral may keep that
- Secured loans can be restructured as part of a reorganization, but only if there is adequate protection of the collateral

Specific Provisions

- Automatic stay of lawsuits and other prosecutions
- General creditors can recover only through the proceeding – they may not collect separately "on the side"
- Rules for separate creditor groups and group meetings
- Rules for creditor voting, which can allow a majority or specified supermajority to bind the group
- Clear rules for preference claims and fraudulent conveyances,

- Clear rules for affirming or rejecting executory (partly performed) contracts,
- Right of co-debtors or grantors to participate in the proceeding
- Requirement that a creditor initiating a case must pay expenses and be liable for costs and perhaps other damages if the case was not justified
- Rules to allow a “debtor in possession” to administer a reorganization and receive compensation for doing so (subject to court and possibly creditor approval)²⁹⁴
- Emergency interim security measures to protect the debtor's assets
- Clear rules for leases both of land and equipment, giving a creditor-lessor the protection of a secured creditor and giving a debtor-lessor rights to reject
- Detailed and objective rules for converting a debtor's assets into cash, including rules for auction of property
- Detailed rules for proof of claim
- Rules for verification of a claim
- Detailed rules for a plan of reorganization in a restructuring
- Rules to establish priority of creditor claims, and to assure equal treatment of similar claims
- Rules for operating a business during the proceeding if reorganization is sought
- Rules for securing credit or loans to finance a reorganization
- Rules for paying administrators, lawyers, and other insolvency professionals
- Rules on financial and administrative reporting to add transparency to the process.

²⁹⁴ This is an important issue on which Tanzanian stakeholders should be consulted. On the one hand, creditors might do best if existing management manages the company during a reorganization (and is paid for doing so), because existing management is familiar with the business. Also, the possibility of this can motivate existing management to initiate an insolvency proceeding at an early stage of the business's deterioration. On the other hand, this procedure should be allowed only with court approval and perhaps also creditor vote, and it should be strictly regulated and monitored by the court and creditors. This “debtor-in-possession” procedure is often used in the US but not in most other countries.

INFRASTRUCTURE

Introduction

For any economy, physical infrastructure plays a critical role in enabling growth and development, not to mention supporting the daily lives of its citizens. Tanzania is no exception. This chapter focuses on the country's infrastructure in Tanzania, including its infrastructure for maritime, aviation, railways, roadways, information and communications technology, electricity, and water and sewage.

While certain infrastructure sectors are healthier than others and experiencing investment in their own right – such as ICT with its booming of cellular services – other sectors, such as water and wastewater, have yet to formulate modern laws. Still others are witnessing a resurgence of activity and interest, with notable improvements but with much progress yet to continue, such as in the maritime, rail, and roadway sectors.

Legal Framework

Maritime. The Port of Dar es Salaam, the largest of several oceanic and lake ports, is a critical component of Tanzania's economy, accounting for approximately 70 percent of its foreign trade, representing a critical node for commerce between Tanzania and other countries. The Port of Dar es Salaam is not only the primary oceanic port for Tanzania, but also serves as the closest major port for part of or all of the neighboring landlocked countries of Rwanda, Burundi, Democratic Republic of Congo, Zambia, and Malawi. The Port of Dar es Salaam, three other major seaports (Tanga, Mwatara, and Zanzibar), secondary seaports, and inland water ways ports are under the authority of the Tanzania Ports Authority.

The Tanzania Ports Authority is the owner of the port assets of the country and is charged with operating the ports. The Authority is an independent authority of the Government, and was established in 2005, through the **Ports Act, 2004**, and was effective in July 2006. The law establishes the Ports Authority, outlines its functions and powers, and repeals the predecessor organization, the Tanzania Harbours Authority, along with its establishing legislation, the Tanzania Harbours Authority Act, 1977. The predecessor organization

was charged only with seaports; the Ports Act and the new authority broadened this scope to “apply to seaports and inland waterways ports in Mainland Tanzania and Tanzania Zanzibar” (Ports Act, 2004, Part 1, 2 (1)).

The law is comprehensive and supports port efficiency. It empowers the Port Authority, as the owner of the ports, to regulate safety and security, administer lands and waters within port limits, regulate and control navigation, promote the use of lands, promote local and foreign investments in port services and facilities, ensure that port facilities are adequate and efficient, and to negotiate and enter into lease agreements with private sector operators and concessionaires to fulfill the Port Authority's duties at the ports. The container port operations at the Port of Dar es Salaam are currently managed and operated by a private concessionaire.

Economic regulatory powers are held by the Surface and Marine Transport Regulatory Authority (SUMATRA), which is charged with establishing terms and conditions of port and marine operations and services, facilitating the resolution of complaints and disputes, overseeing charges and rates at the ports, and promoting effective competition and economic efficiency. SUMATRA's charter is detailed in the SUMATRA Act 2001 and referenced in the Ports Act 2003.

Aviation. Civil aviation in Tanzania is regulated by the Tanzania Civil Aviation Authority Act, 2003, which incorporates and renames its predecessor, The **Civil Aviation Act, 1977**. The law establishes the Tanzanian Civil Aviation Authority (TCAA) as an independent corporate body within the Government no longer an executive agency under the Ministry of Communications and Transport. TCAA is responsible for the entire civil aviation sector, specifically organizations that provide air transport services, aeronautical airport services, and air navigation services. TCAA regulates all civil aviation activities, including safety, security, economic regulations, and consumer and environmental protection, and its jurisdiction is applies to both mainland Tanzania and Zanzibar. For maintenance of airports and marketing, Tanzania is governed by the Tanzania Airports

Authority and Zanzibar, by the Zanzibar Ministry of Communications and Transport.

The law allows for a liberalized aviation market. For example, owners of a Tanzanian registered airline need not be citizens of Tanzania, if either the persons in control of the airline are Tanzanian or the airline's principle place of business remains in Tanzania. Currently, Tanzania has bilateral agreements signed with 44 countries. Furthermore, the law requires that airports be maintained to specified safety and operational levels and that TCAA has the power to enforce the rules and take punitive actions for violations.

Regulations also allow for private sector participation in the airports market. For example, Kilimanjaro International Airport (JRO) is a privately operated airport and is successfully operating while reinvesting in facilities and undertaking airfield improvements. The Government is pursuing public-private partnerships for three other airports through which a private firm or consortium in partnership with the Government would operate the airport at a profit while making necessary capital improvements over the term of the agreement.

The laws also permits the divestiture of parastatals. Air Tanzania is a fully government-owned airline. An attempt at privatization of the airline in 2002 in a strategic partnership with South African Airways failed, and the Government recently resumed full ownership of the airline, with the intention of seeking a strategic partner again once the airline returns to a financial stability.



An Air Tanzania 737-200 at Kilimanjaro International Airport upon arriving from Entebbe, Uganda. After an attempt at privatization, Air Tanzania is back in Government hands, until a new strategic partner can be found.

Railways. Tanzania has two railroad systems, the Tanzanian Railway Corporation (TRC) network,

which operates wholly in Tanzania and is the larger of the two, and the Tanzam Railway (TAZARA), built and operated by the Tanzania-Zambia Railway Authority. TAZARA is jointly owned by the Governments of Tanzania and Zambia.

Each railroad system is governed by its own set of laws. The Tanzania Railway Corporation is governed by the **Railways Act (Rev. 2002)** and specifically excludes application to TAZARA; TAZARA falls under the **Tanzania-Zambia Railway Act** (1995, repealing and replacing the Act of 1975).

Tanzania Railway Corporation. The Railways Act allows for the fully government-owned owned and operated railroad to be split into two or more entities—an asset-holding company and one or more operating companies. The Act allows for and creates a new corporation, the Reli Assets Holding Company Limited, to own, control the assets of, oversee operation of, and, in the event of necessity, operate the railroad. The new company is charged with providing, developing, and managing rail infrastructure assets; as well as entering into agreements for rail service by “concession, joint venture, public, private partnership, and to this end to delegate its own function of providing rail transport services to one or more railway operators” (Railways Act, 2002, Part II, 6 (d)). The new asset holding company, Reli, has been established, and a 25-year concession agreement with a railroad operator, a consortium led by RITES of India, through a new company, Tanzania Railways Limited, has been established and commissioned.



Defunct Tanzania Railway Corporation equipment in Dar es Salaam. The railroad has been restructured under a new company, Tanzania Railways Limited, to take effect by December 2007, and will be run by a new operating company led by a concessionaire, RITES, in partnership with the Government.

The Act also allows for any operating company to operate rail service and the authority of railway operators to create, with the consent of the rail regulator, to make internal regulations for the management, control, and operation of the railway. The law also calls for a Railway Infrastructure Fund and stipulates the sources and uses of such funds.

Regulation of rail transport is the responsibility of SUMATRA to oversee, among other elements, railway safety and economic regulation, including regulation of tariffs and monopolistic behavior.

TAZARA. The Tanzania-Zambia Railway Act (Rev. 1995) effectuates the agreement between the Governments of Tanzania and Zambia for the railroad that operates between and within Tanzania and Zambia. The Act outlines the agreements between the two Governments and the responsibilities of the Tanzania-Zambia Railway Authority to operate, maintain, and expand the railroad and its assets.

The law identifies the Authority as the operator of the railroad and makes no explicit provision for concessionaire agreements, joint ventures, or other public-private partnerships for railroad operations, although it does say that the Authority may “enter into partnership or into any arrangement for sharing profits, union of interest, joint ventures, reciprocal concessions or co-operation with any person carrying on or engaged in, any business or transaction which the Authority is authorised to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the, Authority; and to take or otherwise acquire and hold shares or stocks in any securities and to sell, hold, re-issue with or without guarantee, or otherwise deal with such shares or securities” (Chapter 143, Act No. 4 of 1995, Part II, 7, (1),(I)).

Despite the lack of encouraging legislation, the Government is seeking private sector participation in, or privatization of, TAZARA, although the process is more complex than the private sector participation achieved in the Tanzania Railways Corporation because of the dual-state ownership of the Tanzam Railway.

Roadways. Laws and policies relating to the roadway system suggest a fresh realization of the importance of this sector. For years, a general lack of investment in paving and building new roads was compounded by a lack of maintenance of existing

roads. But in the past few years, improvements in the roadway system have been significant. As in the rail sector, the Government deems the rehabilitation and development of the country's roadway system as central to its economic development. As such, fuel taxes have been increasing each year. In the 2007-08 budget, fuel taxes have increased 30 percent to TZS539 per liter from TZS415 per liter last year. This is a substantial increase compared to the previous year's increase of only TZS10 per liter. Such funds have been earmarked for increased road maintenance.

Furthermore, in the nation's 2007-2008 budget, roadway spending represents the second largest spending group at 12.8 percent of the budget, indicating the Government's commitment to the roadway sector.

The Government is embarking on its first public-private partnership project with the Kingomboni Bridge in Dar es Salaam, to be built under a Build-Operate-Transfer (BOT) scheme. The Government has also identified other BOT opportunities and is discussing these with potential investors.

The policy of using permanent and movable weighbridges (or weight stations) to control the weight of cargo being transported on the roads is proving successful. As the railway sector has continued to deteriorate, an increasing amount of cargo is being transported by trucks, the weight of which is compromising the integrity of the roads. The weighbridges are now successfully keeping overweight trucks off the road (after initially being ineffectual), preserving the quality of pavement and the roadway system.



Roadway near Kabuku, between Dar es Salaam and Tanga. Roads between major cities are paved and in relatively good condition, as the Government is committing itself to improving roads. In the 2007-08

budget, the roadway network represents 12.8% of total spending, second only to the health expenditures.

The Energy and Water Utilities Regulatory Authority (EWURA) oversees, among other elements, petrol stations, including the economic regulation of them. As the new fuel tax went into effect on July 1, 2007, numerous petrol agents colluded and raised prices beyond that of the tax. At that time, EWURA's authority in economic regulation was not explicit and consequently, an amendment to the Energy and Water Utilities Regulatory Act was quickly drafted and swiftly passed into law to protect the road users from such illegal activity, allowing EWURA to respond to such collusion.

Information and Communications Technology.

The ICT sector is booming in Tanzania, particularly for cellular telephone companies. The sector is regulated by the Tanzania Communications Regulatory Authority (TCRA) through the **Tanzania Communications Regulatory Authority Act, 2003**, which applies to both Mainland Tanzania and Zanzibar, except with respect to broadcasting and content matters. TCRA, among other duties, is charged with promoting effective competition and economic efficiency; licensing and enforcing license conditions of broadcasting, postal, and telecommunications operators; regulating rates and tariffs; managing the radio frequency spectrum; promoting the availability of services; and protecting the interests of the general public.

Laws to support and regulate ICT require continual updates and amendments as technological innovations and the resultant industry changes are frequent. There are currently no laws or regulations on electronic commerce (e-commerce), the protection of data, unsolicited email, and cyber security. TCRA has developed drafts of amendments on these issues with plans to circulate them to industry stakeholders soon.

TCRA's approach is to, when possible, let the market self-regulate. It only regulates tariffs on cell phone usage for companies with over 25 percent of the market share, although it ensures that consumers are paying cost-oriented tariffs. TCRA only regulates the wholesale charges and the inter-market when operators fail to agree. The law also provides for a grievance process, with provisions for referring such cases to the Fair Competition Tribunal.

Cellular and internet companies can apply for any of four types of converged licenses: Network Facility, Network Service, Application Service, and Content Services, and are free to choose where, when, and what they will offer.

Generally, cell phone companies try to provide as vast a coverage area as possible. However, there are still areas lacking service or that have only poor reception. To address this, a Universal Customer Service Access Fund law was recently passed in early 2007, requiring all commercial operators to contribute to the fund, which will be used to subsidize and attract small operators to provide the needed services.

Electricity. Electricity in Tanzania is provided by Tanzania Electric Supply Company Limited (TANESCO), with power generation coming from TANESCO, Songas (a natural gas company in which TANESCO is a partial owner) and other private generators of power. The current law allows for independent private power generators to produce electricity and feed it into the national grid, and there are a few such providers.



A 132kV TANESCO transmission line. Having diversified to sources beyond hydro, Tanzania has sufficient generation of power at the moment, but suffers from antiquated and insufficient transmission and distribution systems.

There are plans to break TANESCO into three companies based on function: generation,

transmission, and distribution. The current law, however, which is based on a single company controlling power, does not allow such a disaggregation. A bill is currently being drafted to allow the power sector to be reorganized, as well as to allow for competition through additional market participants. Furthermore, the current law does not allow TANESCO to enter into partnership with other entities with regard to transmission and distribution.

Nonetheless TANESCO has used private sector participation to help its network grow. It is currently negotiating with a mining company to pay for the cost of a transmission line to its network. These costs would be reimbursed through credits applied against power consumption. Such a move underscores the strength of the mining boom in the northwest part of the country, as such an arrangement has been successfully undertaken in the past.

Water and Sewage. Water policy in Tanzania is governed by the National Water Policy (NAWAPO) of 2002, the guiding policy under which the legal and institutional framework for its implementation will be developed. The water laws are currently being rewritten. The current law is widely regarded as insufficient for the current structure of water provision and sewage services; it divides the country into autonomous water regions, one of which is further divided into an asset holding company and a service delivery company. For example, ownership of water assets by local water authorities are inherited from the Government, but the legislative process to undertake the transfer is not explicit. The new law aspires to:

Address cross-sectoral interests in water, watershed management, and participatory integrated approaches in water resources planning, development, and management

Lay a foundation for sustainable development and management of water resources in the changing roles of the Government from service provision to coordination, policy and guidelines formulation, and regulation

Ensure full cost recovery in urban areas with considerations for provision of water supply services to vulnerable groups through various instruments including lifeline tariffs

Ensure full participation of beneficiaries in planning, construction, operation, maintenance, and management of community-based domestic water supply schemes in rural areas.²⁹⁵

Until a new law is adopted, the EWURA sets guidelines for Dar es Salaam and 19 other water authorities and regulates tariffs. Water issues are a key priority for the Government as evidenced by the 2007-08 budget, where 5.1 percent of funds will be spent on the water sector, the fifth largest sector after education, roads, health, and agriculture.

Implementing Institutions

Maritime. The Port of Dar es Salaam is critical to Tanzania's economy, accounting for a majority of its foreign trade. At this time, severe congestion at the port is limiting commerce. Many businesses have moved their shipping functions to Mombassa, Kenya for more efficient port operations. Mombassa has become equally congested as well, and the Port of Dar es Salaam is now seeing the return of some of the business that had left for Kenya.

The congestion is the culmination of several factors:

- A complex and bureaucratic documentation and taxation process
- Insufficient railway services
- Limited space in the port
- Antiquated or insufficient port unloading equipment.

Clearance of incoming cargo, which represents approximately 80 percent of the bulk items and 60 percent of the container traffic entering the port, is constrained by complex and burdensome administrative processes. The clearing process requires joint inspections of containers involving seven agencies, as well as a lengthy documentation and payments process.

Insufficient railway infrastructure and rolling stock serving the port is requiring shipping agencies to use trucks to transport cargo. The large number of trucks entering the port contributes to the congestion in the port, and many trucks can be seen lined up outside the port waiting to enter. Refer to the section below on Railways for a deeper discussion about the railroads.

²⁹⁵ National Water Sector Development Strategy, I.3.1.

The Port of Dar es Salaam has been growing at approximately 13 percent per year and is expected to reach its capacity in the container port of 250,000 twenty-foot equivalent units (TEUs) per year within five years. Although container operations may be able to expand by taking land used for non-container handling, the overall land for the port to use is finite and expansion capabilities are limited. Aware of this issue, the port is planning to build a new port at Bagamoyo, 60 kilometers north of Dar es Salaam, which would be a complimentary port to Dar es Salaam. Upon commencement of operations at Bagamoyo, Dar es Salaam would become a container-only port, with non-containerized operations to be handled exclusively at the new facility. The Government hopes to develop this port as a BOT scheme. However, for the new port to be successful, infrastructure outside of the port must be developed as well: the rail system would need to be extended to serve Bagamoyo, and roadway access and widening would be required to support cargo traveling to and from the port.

Containerized cargo represents approximately 60 percent of all dry cargo moving through the Port at Dar es Salaam. Yet only three of the eleven berths are used for containerized cargo. As such, ships sometimes wait up to seven days waiting to enter the port, while other berths sit empty.

Additional unloading equipment in the container port should decrease unloading time and ease waterside congestion. Currently, container port operations are leased to a private company on a 25-year concession, which began in 2000 (under the Port Authority's predecessor organization, the Harbours Authority). The concessionaire is responsible for furnishing and installing new equipment to maximize efficiency of the port. However, the Port Authority lacks the power to require the company to procure and install additional equipment. This lack of enforcement stems from the Port Authority's contract with the private firm, not the laws overseeing the ports and their activities.



Port of Dar es Salaam. With heavy congestion at the Port, ships sometimes wait 7 days to enter the port, after which the cargo takes an additional 7-14 days to clear. As a result, some shippers used Mombasa instead, though congestion there has seen the return of some business to the Port at Dar es Salaam.

On non-container activities, the Government is investing in the port, spending US\$30 million last year for new equipment, though further investment is still needed. In the years of transition from the Harbours Authority to the Ports Authority, there was a lack of investment in infrastructure in the port system, during which time aging conditions worsened from a lack of new investment. But the Government is acutely aware of the congestion and clearance issues at the port and is committing itself through the procurement of additional equipment and the implementation of procedural actions by the TRA this past June to help streamline the clearance process.



Figure 6. Truck carrying cargo. As Tanzania's two railways systems are unreliable, with dilapidated infrastructure and outdated rolling stock, most cargo is transported via the highway system, which is more costly for shippers, less efficient, and adds wear and tear to the road.

However, it should be noted that despite the foregoing, conditions at the port are improving. Productivity at the container terminal averaged 555 moves per a 24-hour period for the year ending April 2005. For the preceding year, the terminal achieved 474 moves per 24 hours. The Government operated, non-container port productivity showed less improvement. For the year ending April 2005, productivity per shift per

306 tons, and for motor vehicles, 97 units. In the preceding year, productivity for break bulk was 181 tons, for dry bulk at 329 tons, and for motor vehicles, 190 units. Also, a new railroad operating contract to be implemented in late 2007 for the Tanzania Railways Corporation is expected to relieve congestion and traffic at the port, thus improving overall operations.

There are two other major seaports in Tanzania besides Dar es Salaam, though these are significantly smaller: Tanga and Mtwara. Tanga is a shallow port and operates at approximately 75 percent capacity. Mtwara is a seasonal port, used generally for agricultural exports, and suffers from poor landside access. There is no railway serving Mtwara and the road leading south from the port is paved only for approximately 25 kilometers from the port. There are also smaller seaports and numerous ports inland.

Aviation. Aviation represents a fast growing sector of the economy. In 2006, Tanzanian airports served 2.4 million passengers, a nine percent increase from 2005. This level of annual growth is expected to continue. Aircraft movements increased approximately six percent to 164,000 at all airports.

Airports in Tanzania fall under the jurisdiction of the Tanzania Airports Authority (TAA). The country has a total of 62 airports, but only three can be considered major international airports—Dar es Salaam, Kilimanjaro, and Zanzibar, with Dar es Salaam carrying the most traffic on scheduled carriers and charters. These airports, as well as a fourth, Mwanza, have lights and can operate 24 hours per day.

Capital improvements are currently underway at Dar es Salaam International Airport. The shorter of two runways is being extended and an apron (airport ramp) is being expanded. This work will allow for a more efficient use of the airfield. The airfield currently has capacity to handle current and projected traffic levels; however, ground handling of aircraft suffers congestion at times due to constrained apron space and aprons being used as taxiways.

The main commercial passenger terminal is also constrained, and plans are underway for the main terminal to be expanded and rehabilitated. In addition, the airport plans to build a new third terminal to accommodate future growth. The first

terminal is used for charter and Government operations and will also be rehabilitated in the hopes of attracting a low-cost carrier to the airport.

The airport has cold storage facilities and on-site agricultural and customs inspections units. As with the Port of Dar es Salaam, the airport sees more imports than exports, and clearance delays are commonplace. Exports, on the other hand, do not suffer delays. Air traffic control services at Dar es Salaam, as well as at other airports in the country, is deemed satisfactory.

The airport at Kilimanjaro represents a different operating model for Tanzania. All airports in Tanzania and Zanzibar are managed and operated (as well as owned) by the Government's Tanzania Airports Authority, with the exception of Kilimanjaro. Kilimanjaro is managed and operated by the Kilimanjaro Airport Development Company Ltd (KADCO), of which the Government of Tanzania owns 24 percent and private interests 76 percent. KADCO has a 25-year concession at the airport, which went into effect in 2000.

Since assuming control, KADCO has made infrastructure improvements at the airport, including resurfacing the runways and rehabilitating electrical systems, roofs, and the terminal control tower. In the next 10 years, the company intends to resurface the apron and expand the taxiways to improve operational flexibility of the field. Airfield expansion work will be undertaken through Government-backed facility loans. The Government remains responsible for major capital investments at the airport, and retains title to the asset.

In addition to the airport itself, KADCO is responsible for developing the land adjacent to the airport, where recently a hotel was built and an export processing center may be developed for the agriculture produced nearby. In addition to fruits and vegetables, the area produces cut flowers, which Tanzania exports to Europe. The total land in KADCO's charge is 100 square kilometers.

The airport serves both domestic and international flights and domestic and foreign airlines, carrying mostly tourists traveling to the nearby national parks. Passenger levels are at approximately 400,000 per year. Capabilities at the airport include cold storage facilities and agricultural and customs inspections units. However, although the company

is talking with flower growers and seeking a cargo carrier, current volumes are insufficient to bring a cargo carrier to the airport.



Figure 7. An official Ugandan Government jet at Kilimanjaro International Airport (JRO). JRO is owned and regulated by the Government, but it is the only airport that is privately managed and operated, including its air traffic services. In addition, the concessionaire is responsible for developing the land surrounding the airport as well. The operator is in its seventh year into the 25-year contract and is turning a profit.

Beyond Dar es Salaam, Zanzibar, and Kilimanjaro, most of the other airports in the country are small and/or lack paved runways. As a result, only limited types (and sizes) of aircraft can serve them, and only limited types of flight operations may occur at those airports. In Mwanza, for example, there is a precedent of, exporting fish from Lake Victoria through Mwanza Airport. Smaller planes that once served this need no longer fulfill current economic models and larger aircraft are needed but cannot be accommodated on the existing runways at the airport. Thus until apron and runway expansion is complete, along with construction of new cold storage and a cargo facilities, this potential aviation market remains dormant and the fish, which once flew directly to Europe from Mwanza, will continue to be trucked to Nairobi for a flight to Europe.

The TCAA, which regulates civil aviation, is currently working with US Federal Aviation Administration's Safe Skies for Africa Program to acquire Category I status, meaning airport safety and security, infrastructure, technology, and regulations are in place ensuring the safest level of

aviation operations. Furthermore, Tanzania is a signatory to International Civil Aviation Organization (ICAO) and its rules and regulations on civil aviation.

Railways. Tanzania has two railroad systems, TRC, (soon to be the Tanzanian Railways Limited [TRL]), and TAZARA, the Tanzam railway. TRC is the larger of the two systems and represents the network of tracks from Dar es Salaam leading northward and westward. The system comprises approximately 2,700 track kilometers, operating on meter gauge rail. The Tanzam Railway operates from Dar es Salaam serving points to the southwest and into Zambia. TAZARA comprises approximately 1,800 track kilometers, with 980 kilometers in Tanzania (and the remainder in Zambia, terminating at Kapiri Mposhi), operating on 1067 mm gauge. Different gauges (as well as being separate operating companies) do not allow for the railroads to share or swap equipment. However, the two systems do meet at two locations, at Kidatu and at the Port of Dar es Salaam.

The railroads are in poor condition. Germany built the TRC prior to World War I. Both rail and wayside infrastructure and rolling stock are in poor condition. TAZARA was built in the 1970s, and as such, the rails are in working order, but like TRC, suffer from inadequate and insufficient rolling stock. As a result, both railroads have limited and unreliable service. These problems are particularly pressing at the Port of Dar es Salaam, where incoming cargo that can be more efficiently and more cheaply shipped by rail are instead shipped via trucks, adding additional pressure on the nation's roadway system. On the critical Central Line, which connects Dar es Salaam with Dodoma, TRC used to operate seven trains per week; currently there is no service between these cities, rather only between Dodoma and points north, and without freight capabilities. In addition to infrastructure in disrepair, TRC suffers from antiquated locomotives and rolling stock, limiting its ability to provide service. Where they once carried over 600,000 passengers annually between Dar es Salaam and Dodoma, they currently have no scheduled passenger service.



Figure 8. Dar es Salaam Station on the Tanzania Railway Corporation. Once frequent, TRC service is now sporadic and slow, running old equipment on rails built before the First World War. A railway concession is in place to begin soon to pump life back into the system.

Earlier this year, TRC has finalized negotiations and recently commissioned a concessionaire, a consortium led by RITES of India, who will manage and operate the system under a newly formed operating company, TRL. The new contract should be in effect for 25 years. The International Finance Corporation is financing the conversion. RITES owns 51% of the shares of TRL, while the Government of Tanzania owns the remaining 49%.

Under the terms of the contract with RITES, the concessionaire is to replace a total of 648 kilometers of track over 25 years, including 173 kilometers in the first five years. RITES is also responsible for track maintenance. Minimum passenger service levels are also written into the contract, guaranteeing such services. No minimal freight requirements were established; as cargo remains the greatest source of revenue for a railroad, the operator will naturally maximize this service offering without needing the prodding of contractual service minimums.

In addition to the formation of TRL, a new Government-owned asset holding company, the Reli Asset Holding Company (RAHCO), was formed to act as landlord of the Government-owned infrastructure. Reli is also mandated to expand the network. The need for new rolling stock is critical and will be procured under the new concession agreement. Per a condition of the lender, TRL will own 90 percent of rolling stock.

The rail of TAZARA is only 30 years old, but the system suffers from insufficient and antiquated rolling stock. Unlike TRC, the move towards private sector participation in the rail system has proven more complex as the Tanzam is owned in equal shares by the Governments of Tanzania and Zambia, meaning that any agreements or negotiations undertaken must be approved by both parties, in addition to the concessionaire or other participants. As a result of equipment deterioration, service on the Tanzam, like TRC, is limited and unreliable, operating at capacities and frequencies below demand. Incoming cargo at the Port of Dar es Salaam that would be more efficiently move by train is instead moving by truck, creating additional pressure on the roadway system and increased landside congestion at the Port.

Roadways. Tanzania has a limited network of roadways connect the various cities and regions of the country. The condition of many roadways is poor, particularly after heavy rains, as many roads are not paved. As long as the roadway system is substandard, it forces manufacturers and other investors to surround Dar es Salaam, especially if they produce perishable goods.

The country has suffered many years of insufficient investment in the paving and building of new roads, compounded by inadequate maintenance of existing ones. The road network comprises approximately 85,000 kilometers, though only 4,000 kilometers are paved. Most roads between major cities are now paved.



Figure 9. Dirt road not far from the center of Arusha, Tanzania's second largest city. There has been a recent commitment to the roadway system, though addressing the sector's needs is a tremendous task. Less than 5% of the country's 85,000 km of roads are paved.

There has been increased spending on road maintenance and development (and a recent 30 percent increase in fuel taxes to fund such maintenance and development), and road users have noticed these improvements. For the country's 2007-2008 budget, roadway spending represents the second largest spending group, at 12.8 percent of the budget, indicating the Government's commitment to the roadway sector.

The Tanzania National Roads Agency (TANROADS), a semi-autonomous Government agency responsible for the management of major roads in Tanzania, is currently overseeing numerous paving projects throughout the country as well as road widening projects in Dar es Salaam.

Information and Communications Technology.

Tanzania enjoys a healthy and robust mobile telephone sector. The price of services for consumers continues to fall as the number of subscribers continues to grow. There are currently seven million cell phone customers in the country, served by six cellular operators. In 2003, there were 1.3 million customers served by four companies. In late August, it was announced that four new mobile phone companies are expected to enter the market. As elsewhere in the developing world, mobile telephone technology has revolutionized communications. The number of landline phone customers remains relatively flat at around 250,000 (though with that group, digital subscriber line (DSL) subscriptions are growing), while the number of mobile accounts is booming, increasing over 400 percent between 2003 and August 2007.

In general, there is excellent cellular coverage throughout the country, as a healthy and profitable market supports this. However, there are pockets in some rural and remote areas that either lack service or receive poor reception. To respond to this, the Government has created a universal access fund, requiring mobile operators to pay into the fund, through which the Government will subsidize service in the lesser-served areas.

Internet coverage is still limited and the country has approximately one million users. Internet access can be found in all cities and major towns, but it is not universal, though the Ministry of Education is aggressively pushing the use of the internet in schools. All mobile companies have Global System for Mobile Communications (GSM) or Code Division Multiple Access (CDMA) internet

and all areas that have landline phone service have access to DSL. But overall, despite numerous internet service providers (ISPs), the costs remain prohibitively high for most individual users. In remote parts of the country where internet is required, it is attainable, though very expensive using digital satellite technology. Many mining companies use this approach.



Jionee tofauti. "See the difference." Vodacom billboard in Arusha. Vodacom is the largest of six mobile telephone companies in Tanzania, where the industry is booming, and four new carriers will be entering the market soon. At the end of 2003, Tanzania had 1.3 million cell phone users. By August 2007, there were 7 million subscribers—a 438% increase in less than four years.

The Government is considering building a national ICT backbone, which could reduce costs significantly for end users. The foundation of this backbone would be linking existing fiber optic systems currently operating in Tanzania, owned and operated by various utilities: TANESCO, the electric company, has a loop running in the northern part of the country; Tanzania Railways has fiber to Tabora in the west; and Songas, a natural gas company, has a fiber to Songo Songo in the south. All three systems meet at Dar es Salaam. This backbone would then link to the Eastern Africa Submarine Cable System (EASSy), a system currently underway with construction planned to begin in late 2007, which would link the countries of Eastern Africa to a submarine cable running from South Africa to the Sudan. The cable would improve internet connectivity and speeds, reduce costs for ISPs and end users, and improve access between Tanzania and the rest of the world. Alcatel recently won the tender to construct the project, and the cable is planned to be operational by late 2008.

Electricity. The power sector remains in need of major investment in Tanzania. Currently, based on existing users connected to the power system, there is excess capacity, though the electricity-intensive mining sector has been growing rapidly, increasing demand. The mining sector grew 16.4 percent in 2006, after growing 15.7 percent in 2005. Approximately 11 percent of the population has access to reliable electricity.

The pressing issues in power are transmission and distribution, not generation. Electricity generation is currently from both hydro (55 percent) and thermal (45 percent) sources. Previously, electricity was sourced primarily from hydroelectric sources, but droughts and lower river water levels resulted in scarcity of power and power outages. The national power company, (TANESCO, has since diversified its generation sources and is no longer predominately dependent on hydro power. In addition to coal sources, natural gas from the Songo Songo gas field in Kilwa District is now piped to Dar es Salaam for generation.

Furthermore, TANESCO allows for the private generation of power, which can be fed into the national grid, and which several companies are doing. Also, TANESCO has a new coal plant under construction in Kiwira that will open next year and will produce 50 megawatts in 2008 and 200 megawatts per year by 2009. A new hydro plant will also be built near Kigoma, and a gas plant at Mtwara will be completed around 2010, both providing 300 megawatts per year.

Transmission and distribution of power are problematic. Much of the infrastructure is old and in need of rehabilitation. Historically, most electricity was generated around the areas of Iringa and Mbeya, with 220kV transmission lines to Dar es Salaam and northward. But since 2004, power—using natural gas—is generated in Dar es Salaam. Power is still generated in the south, but there is an increasing level of demand around Mwanza to supply the growing mining industry. Numerous foreign donors are providing funding to improve transmission and distribution. The distribution system in the city center of Dar es Salaam will be upgraded from 11kV to 33kV, and lines will be moved underground. In addition, TANESCO is looking to build a ring around Dar es Salaam to accommodate for future growth of the city.

Water and Sewage. In Dar es Salaam, water provision and water delivery are handled

separately. The Dar es Salaam Water and Sewerage Authority (DAWASA) is a Government-owned corporation that owns the water assets, while Dar es Salaam Water Supply Company (DAWASCO) is a public-private operator and water delivery company.



Dar es Salaam. Water for residents of the city is provided by a public-private company, while water assets are held by a separate Government-owned company. This city receives its water from a single source—the Ruvu River—which is insufficient during low water levels.

The water distribution network in Dar es Salaam is antiquated and some water is lost between pumping and the customer delivery point. Also, the city has only a single source of water, the Ruvu River. During dry seasons, shortages are experienced and DAWASCO wants the authority to use the Rufiji River, approximately 100 kilometers away, as a secondary source. DAWASA is currently working with donors to obtain funds for its distribution network.

The city's sewage system is also operated by DAWASCO and owned by DAWASA. The network, built 50 years ago, is also in need of repair, serves only seven percent of the water system in Dar es Salaam, and exists only in the city center. DAWASCO operates nine sewage treatment ponds for the city.

Outside of Dar es Salaam, the country is divided into 19 water regions, each under the auspices of an autonomous water authority, which receive varying amounts of Government funding. Until recently, water was free, and revenue collection and enforcement are relatively new concepts.

The use of water for irrigation is limited. There are nine water basins, and each has a Water Basin Officer to regulate the water. If one wants to

extract water from any river or well, he or she first needs to obtain a water right permit from the Ministry of Water Affairs.

Supporting Institutions

Maritime. SUMATRA regulates the terms and conditions of port and marine operations and services, facilitates the resolution of complaints and disputes, ensures safety, and oversees charges and rates at the ports. SUMATRA monitors, enforces, and audits to the standards of the International Maritime Organization.

SUMATRA hosts regular industry stakeholder meetings every one or two months to discuss and resolve current issues at the port and set benchmarks for improvement. SUMATRA, as a regulatory authority, balances the interests of the Government—to ensure service at the cheapest prices—with those of the industry—to operate at a profit.

Tanzania also has a small merchant marine with a program to train others, and two cargo ships registered in the country that carry the Tanzanian flag. However, despite the limited number of Tanzanian-registered vessels, the port serves ships from all over the world and maintains a sufficient level of shipping services for goods. Passenger services are also abundant, providing services between the mainland and islands in the sea and lakes, as well between coastal and lakeside communities.



Zanzibar International Airport (ZNZ). ZNZ is one of three international airports serving Tanzania. Air traffic services are provided by Tanzania, while airport management is governed by the Zanzibar Government. The airport is served by several domestic (Tanzania) and foreign carriers providing domestic and international service. Dar es Salaam and Kilimanjaro are the other two international airports, and all three are capable of 24-hour operations.

Aviation. There is a need for additional domestic passenger capacity among commercial carriers that serve Tanzanian cities. There are several airlines currently operating, the largest of which is Precision Air, which has a fleet of six ATRs (turbo-prop) and one LET (turbo-prop), followed by Air Tanzania, with a fleet of two 737-200s. Air Tanzania, which is owned by the Government after a failed attempt at privatization, is likely to remain owned by the Government until it returns to greater service levels and financial stability, at which point the government will seek a private strategic partner.

There are also smaller carriers operating charter and some scheduled domestic services throughout the country. However, capacity is limited, in part, by not only a lack of carriers or limited fleet sizes, but also by restrictions in service hours at many domestic airports due to infrastructure restraints. With respect to scheduled commercial services, there is by far more international air service to and from Tanzania than is operated domestically. From the country's three primary international airports there are 17 foreign flag carriers providing international service at least one of these airports.

There is insufficient capacity among carriers. Two main exports, fish from Lake Victoria and cut flowers from the northern part of the country, travel by truck to Nairobi, where there is a healthy cargo market to Europe, where these items are destined. Although there are cold storage facilities and agricultural inspection services available at both Kilimanjaro and Dar es Salaam, there is a lack of service provided by private carriers. From the northern region of the country, only one carrier provides direct service to Europe—KLM—and this service has limited capacity, and first travels south to Dar es Salaam before heading north. Outbound cargo capacity is a function of inbound cargo requirements, as airlines need to carry a profitable load in both directions. As Kenya has a greater volume of imports than Tanzania, Nairobi has a greater outbound capacity. Furthermore, the outbound capacity from Nairobi offers more destinations than does either Kilimanjaro or Dar es Salaam.

Domestic passenger fares are reasonable. The Tanzania Civil Aviation Authority (TCAA) oversees fares between cities and has the right to regulate fares between cities to promote fair prices. TCAA also has the authority to address instances of collusion between airlines or any violation to the Fair Competition Act, 2003 if it deems the action

detrimental to the public. Also, for commercial complaints against an airline or other participants of the aviation system, TCAA has an investigation and dispute resolution process, with a provision for appeals, if required, to the Fair Competition Tribunal.

Railways. As the owners of infrastructure at the time of this assessment are the same as those providing rail services (though one railway system will be operated by a concessionaire by year-end), and as the issues related therein are closely intertwined, please refer to the discussion of Railways in the Implementing Institutions section for a discussion of the sector's supporting institutions.

Roadways. Although the roadways themselves are improving, secondary services, such as tow trucks and other supporting elements of roadway operation remain limited. For example, in areas where an accident occurs or a truck becomes stuck in the mud (in an



Fuel stop. To help pay for extensive road improvements, fuel taxes have increased 30% effective July 1, 2007, from Tshs 415 per liter to Tshs 539 per liter (approximately USD 0.43). unpaved area), resolution of such incidents have taken many hours, as response units are few and may have to travel long distances to reach the incident site.

As the railway system has continued to fall into disrepair there has been an increasing demand for moving cargo by trucks, despite this being more costly for shippers. As a result, the amount of road transport capacity has increased over the years, providing shippers with a sufficient source of road transport operators.

Information and Communications Technology. In ICT, as in the railways, the owner of infrastructure and networks is often the provider

of that network service. As the information on the implementing and supporting institutions are so tightly intertwined, please refer to the Implementing Institutions section for information on ICT service providers.

Social Dynamics

Maritime. The Government recognizes the importance of the nation's port system and has recently invested money to improve their operations and efficiency, including US\$ 30 million last year to improve the Port of Dar es Salaam.

The Government is also pursuing other port and infrastructure projects, such as the Mtwara Development Corridor. The plan calls for improvements at the southern port of Mtwara, and an expanded roadway and newly built railroad to be constructed across the southern portion of Tanzania, which is rich in minerals, to the port at Mbamba Bay on Lake Nyasa. At Mbamba Bay there is connecting freight and ferry service to Malawi.

Finally, the Ministry of Infrastructure Improvement is currently developing guidelines on public-private partnerships, with the intention of developing the Bagamoyo port, which will serve exclusively as a non-container port to complement and accommodate growing container needs at the port of Dar es Salaam, through a BOT scheme.

To coordinate and guide port development, the Ports Authority is in the process of developing a Master Plan, which is being financed by the World Bank, with an expected completion date of June 2008.

Aviation. The Tanzania Airports Authority is currently seeking private partners to invest in three of its airports; such investment will allow for increased air capacity through expanded infrastructure and services. TCAA is attempting to raise the aviation fuel throughput charges to cope with inflation and the tremendous growth in the sector, which is using aviation infrastructure (such as runways and terminals) and services (such as navigation services). Aircraft operations increased 34 percent between 2001 and 2005. The current tax of US\$ 0.005 per liter has been in place since 2003. Under the proposed increase, the fuel tax will increase incrementally per year to reach US\$ 0.072 per liter by January 2009.

The Government is also in the process of developing a civil aviation master plan to guide

future investments in the aviation system, accounting for current growth trends and future demand.

Plans are underway to privatize Air Tanzania again. The first attempt in 2002 failed, and now the Government fully owns Air Tanzania. Through the current entity, the Government will assume the airline's debt as the airline works towards financial stability. Upon reaching financial stability, the airline will seek private investment or a strategic partner, building upon lessons from its previous privatization experience.

Railways. Aware of the importance of the railroads to the national economy, the Government moved to revive this sector, particularly as congestion at the Port of Dar es Salaam, an important economic node for the country, can partly be attributed to insufficient rail services. The Tanzania Railway Corporation is being restructured from a fully Government-owned rail operating and asset company to two new companies: one, a Government-owned asset-holding company, the Reli Asset Holding Company; and a new operating company, the TRL, managed and operated by a consortium led by RITES of India under a 25-year concession. RITES will own 51 percent of the new company and the Government will own the remaining 49 percent.

While TAZARA, the other railroad in Tanzania, has become unreliable with antiquated equipment and insufficient service levels, the Government is aware that this railroad would benefit from private investment as well, and as such, is pursuing such schemes. However, as the railroad is jointly owned with the Government of Zambia, this pursuit requires both Governments to work to make this a reality.

Roadways. The Government has demonstrated a commitment to the road sector to redress years of limited maintenance and development work. A 30 percent increase in fuel taxes to support the road system has been implemented for the 2007-08 budget year, compared to a 2.5 percent increase in the previous year. Also, the roadway system is allocated 12.8 percent of the 2007-08 budget' only health is allocated a larger share of the budget. The Government is also advancing public-private partnerships in the road sector, and the first BOT project has been selected with the Kingomboni Bridge project in Dar es Salaam.

In addition, plans are being developed for the Mtwara Development Corridor, which would connect the seaport of Mtwara and the lake port of Mbamba Bay with a newly built railway and rebuilt roadway.



Road project in Dar es Salaam. To help ease traffic congestion in Dar es Salaam as well as improve the national road network, certain roads in Dar es Salaam are being widened to accommodate the growth in traffic.

Information and Communications Technology.

There are currently six mobile telephone providers, and TCRA announced in August that four new companies will soon enter the market. As the success of this sector is critical for organizations to function and flourish, as well as to attract additional economic development, the Government's 2007-2008 budget eliminates the customs duties on cellular and wireless devices to further stimulate development in ICT.

The Government is also pursuing development of a national ICT backbone, building upon the three fiber optic systems already in place. This approach will improve internet connectivity and should lower user costs significantly, which for many are still prohibitively high. Upon connection of this backbone with the eastern Africa marine cable, interconnectivity, access, and speed would improve further, and more importantly, end user costs should decrease substantially.

Recommendations

General

- **Create new incentives for private sector participation, and consider all infrastructure sectors as candidates for private investment.** In general, the laws allow for private sector participation in

infrastructure, usually as an operator or concessionaire, while the assets themselves remain in Government ownership. Almost all sectors by now have had some experience with public-private partnerships. Sectors should build on successes and examine failures, and create more attractive incentives for private sector participation in areas where investor interest and action have proven insufficient.

- **Require and adequately fund authorities to develop and meet infrastructure initiatives and system maintenance programs.** Insufficient maintenance in numerous sectors has led to periodic system failures. The Government should mandate specific maintenance and development minimums by sector and fund the initiatives accordingly.
- **Ensure continued investment and maintenance of an agency or system despite on-going negotiations or discussions of privatization.** Numerous sectors have suffered from an apparent unwillingness to continue current maintenance or investment levels during talk of an ownership or operations transfer. For sectors where maintenance was inadequate historically, deferred maintenance has led to additional service interruptions.

Sector-specific

- **Revise the contract between the Port Authority and the container port operator.** Since the operator enjoys exclusivity for all container operations and since the tonnage of container cargo handled at the port is disproportional to its physical footprint at the port, the contract should be revised to expand the operator's business (and thus profits) through increased capacity by converting additional berths to container operations in exchange for specified equipment to be purchased and installed. To ensure that new equipment is installed and remains functional, appropriate enforcement actions should be written into the new contract at this time.
- **Contract out operations for dry, non-containerized cargo.** Learning from the lessons of the container port contract, solicit a vendor to operate non-cargo activities, and

include productivity targets in the contract, along with enforcement capabilities.

- **Streamline port procedures, developing a "one-stop" payment center for customs.** TRA should lead this initiative. See details in the Trading Across Borders chapter.
- **Continue to pursue private participation at the airports.** The Kilimanjaro Airports Development Company, which manages and operates the Kilimanjaro Airport, is turning a profit, fulfilling its contract, and providing a benefit to a critical part of the country. The Government should look at this model for elements of what should or should not be replicated for other airports. As the Government has had difficulty finding a strategic partner for the other airports, it should review the incentives it offers to a potential investor; as although the airport authority has received interest from the private sector, none has materialized into a working partnership. The incentives may be different per airport, as the Government's needs and priorities differ by airport. For example, private participation at Dar es Salaam, say to build a new terminal, may outweigh airfield improvements and cargo facilities at Mwanza, though both are important.
- **Continue with privatization plans for Air Tanzania.** If one airline in an economy has the ability to receive Government subsidies or receive preferential credit terms because of the government's shareholder's status, it creates an unfair advantage and may discourage new entrants into the marketplace. As soon as the new Air Tanzania is financially stable, privatization negotiations should begin with suitable parties.
- **Modernize the legislation and agreements with Zambia governing the Tanzania-Zambia Railway Authority and the Tanzam Railway to encourage private sector participation and investment.** Tanzania already has a bilateral air service agreement with Zambia, and this agreement may provide a model for transportation agreements already established in this sector. Under TRC's concessionaire agreement with RITES, minimum passenger service levels will be

supplied and the company will replace a specified amount of track over the contract life. Similar or better terms should serve as a model for TAZARA in its pursuit of privatization.

- **Develop the use of “indefinite quantity” procurements for TANROADS.**

Currently, road maintenance projects for a particular year are developed before the beginning of that fiscal year, limiting flexibility to use the contract to fix new or acute roadway problems, which must be addressed under a separate and lengthy procurement action. Through the use of “indefinite quantity” procurements, road maintenance companies may be selected to be on standby for specific projects that may arise within the period of the contract. Companies would still bid against each other, but would be “pre-cleared” and follow a quicker selection process having been already short-listed. Although careful oversight would be required for these more flexible procurements, the benefit to the Government would be faster roadway repairs, particularly for problems requiring immediate attention.

- **Continue to pursue private participation in the roads sector, as a means to develop safe, paved roads, despite limited Government funds.** Road projects should include a maintenance provision and should balance profitability for the operator with the benefit provided to, and user fees required of, the public.

- **Develop the national ICT backbone currently under discussion.** Allow TCRA to guide its development, assign a system of maintenance responsibilities and compensation for system use to the system's landlords, and manage a fair process to lease space to private service providers using the network.



Ubungo Bus Station. A few kilometers from the central business district of Dar es Salaam, the Ubungo Bus Station teems with ‘dala-dalas’—privately operated minibuses that serve as public transit in Tanzania. A few meters away is the Ubungo Bus Terminal, where long distance coaches from other parts of the country terminate in Dar es Salaam.

- Develop modern water and wastewater laws, aligned to the recently adopted National Water Policy (NAWAPO). Include stakeholder involvement.

AGRICULTURE

Introduction

Agriculture accounts for nearly half of Tanzania's GDP²⁹⁶ and employs the vast majority of Tanzania's rural population, which accounts for 80 percent of Tanzania's total population.²⁹⁷ Subsistence farming continues to dominate the rural sector and is the primary source of livelihood for approximately 45 percent of the population.²⁹⁸ The average plot size ranges from 0.9 to three hectares, and 90 percent of agricultural land is non-mechanized, cultivated by hoe (70 percent) or ox (20 percent).²⁹⁹

Staple crops are the centerpiece of rural production, although cash crops are growing at a faster rate, indicating that they will become an increasing source of income in the rural sector. Corn is by far the most important crop, accounting for 20 percent of Tanzania's GDP. Other staple crops include rice/paddy, beans, cassava, sorghum, and wheat. Cash crops, predominantly coffee, cashew, cotton, tobacco

and tea, account for approximately five percent of Tanzania's GDP.³⁰⁰

Tanzania has far from reached its agriculture potential. There are 43 million hectares suitable for agricultural production, but only 6.5 million hectares are under cultivation.³⁰¹ Although agriculture exports have increased over the last few years, much of Tanzania's production never reaches market, in great part due to poor infrastructure.

²⁹⁶ The Economist Intelligence Unit, Tanzania Country Report June 2007, p. 9

²⁹⁷ US Department of State. "Background Note: Tanzania," <http://www.state.gov/r/pa/ei/bgn/2843.htm> (September 18, 2007)

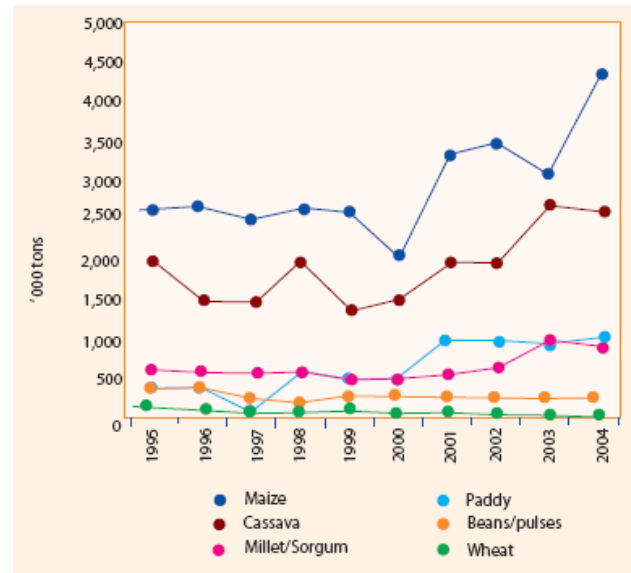
²⁹⁸ "President Kikwete's Hard Road Ahead," The Economist online, August 30, 2007, http://www.economist.com/world/africa/displaystory.cfm?story_id=9725792

²⁹⁹ Tanzania National Website, <http://www.tanzania.go.tz/agriculture.html>

³⁰⁰ The United Republic of Tanzania Government Programme Document, Agriculture Sector Development Program (ASDP), May 25, 2006, pp. 2-3.

³⁰¹ "Statement by United Republic of Tanzania to the 24th Session of IFAD's Governing Council," <http://www.ifad.org/events/gc/tanzania.htm>

Production Trends in Major Food Crops, 1995-2004



Source: Tanzania Poverty and Human Development Report 2005

General macroeconomic reform efforts to liberalize Tanzania's agriculture sector occurred predominantly between 1986 and 1995. In parallel with its withdrawal of control over the agriculture sector, however, the Government withdrew much its support funding. As a result, the agriculture sector has in many ways declined over the last 15 years.³⁰² The current administration has placed significant emphasis on rural and agricultural reform with the goal of reversing this trend.

This chapter discusses the major laws, institutions, and social dynamics pertaining to agriculture in Tanzania. It is intended to supplement the many points relating to agriculture and the needs of rural communities found throughout the remaining chapters in this report. In short, the importance of agriculture in Tanzania's economy cannot be understated.

Legal Framework

Like most Tanzanian laws, the legal framework for agriculture has undergone significant changes and improvements over the last twenty years. Many of

³⁰² World Bank, "Agriculture in Tanzania since 1986: Follower or Leader of Growth?"; June 2000, p. xiv-xv.

the changes were designed to liberalize and privatize agriculture. Jurisdiction for the numerous laws governing the agriculture sector are for the most part clear and predominantly fall under the Ministry of Agriculture, Food and Cooperatives (MAFC) and the Ministry of Livestock Development (MLD), although several other ministries play supporting roles.

Access to laws varies significantly. Most primary agriculture legislation can be found on the MAFC's website of the. The government has also created a website – www.TanzaniaLaws.co.tz – that is designed to provide access to all of Tanzania's laws, although it is currently under construction. The Parliament of Tanzania's website (www.bunge.go.tz) provides access to legislative amendments. Hard copies of laws are frequently unavailable from the Government printing shop and appropriate government ministries. In rural areas a lower Internet prevalence further reduces access to laws. Additionally, many of the laws are published in English only. While the majority of Tanzanians speak English, those with particularly low education levels are likely to face difficulty understanding the laws if they are published in English only.

Decentralization. The **Local Government (District Authorities) Act** was passed in the mid-1980s and provides the basis for the decentralization of state functions. The law delineates responsibilities at the central and local government levels. Much of this law is based on Tanzania's history with local governance during colonial times, prior to its abolishment from 1972-1984, when legal authority was entirely shifted to the central government. The **Regional Administration Act No. 19** of 1997 provides for the restructuring of the regional government to conform to the Local Government Act and eliminate overlapping functions between the regional and local governments. Oversight of the decentralization process generally falls under the Prime Minister's Office, Regional Administration and Local Government (PO-RALG).

Land markets. The **Land Act of 1999** is the primary legislation pertaining to all land other than village land. The Land Act was amended in 2004 as part of a broader effort to improve the investment climate, and it makes several changes to facilitate the use of land by investors. The **Village Land Act of 1999** specifically addresses village land – about 70 percent of land in the country – and takes

into account customary rights as they pertain to land use and occupancy.

Land rights are clearly outlined in the law, although formal ownership is not. Land titling is permissible for surveyed land. To date, however, most rural land has not been surveyed, and thus titling is rare. Despite poor ownership rights, the law provides for the right of occupancy, sale of the right of occupancy, and leasing and mortgaging of land, which has permitted an active informal land market. The law thoroughly addresses land disputes, and reinforces the equal rights of women to access and inherit land.

One central issue for small farmers is the absence of provisions for movable property, such as current and future crops and livestock, as well as agricultural equipment. As detailed in this report's chapter on Getting Credit, the inability of farmers to use movable property or a formal land title for collateral purposes severely limits their capacity to access credit.

Dispute Settlement. Legal provisions for land dispute settlement are found under the **Village Land Act of 1999** and **Land Act of 1999**. The Village Land Act provides guidelines for the development of village land councils and their use for mediation in village level disputes. In cases where disputes can not be resolved through the village land council, the Land Act outlines several courts with jurisdiction to oversee land disputes, including the Court of Appeal, Land Division of the High Court, District Land and Housing Tribunals, and Ward Tribunals.

Financial Sector. The **Banking and Financial Institutions Act, 1991** led to a major overhaul of the banking sector and spurred the recapitalization of the Co-operative and Rural Development Bank (CRDB). The Cooperatives Act of 1991, superseded by the **Cooperatives Act, 2003**, lays the groundwork for the development of Savings and Credit Cooperatives (SACCOs), which currently provide the primary source of rural financing. The **Bank of Tanzania Act, 1995** vests the Bank of Tanzania with oversight responsibilities for the banking sector. The Rural Development Strategy, Agricultural Sector Development Strategy, and National Micro-Finance Policy collectively lay the policy foundation for rural finance, in conjunction with the Cooperative Development Policy of 2002.

Input market. While the input market has been largely liberalized, numerous constraints impede an openly competitive market.

The **Seeds Act, 1973** was superseded by the **Seeds Act, 2003**, which provides a solid framework for a competitive seed market. The Seeds Act permits the use of Quality Declared Seeds among small-scale farmers, which facilitates the use of improved seed at the grassroots level. Competitiveness within the international seed sector is primarily constrained by a lack of funding for land and lab research, as well as limited participation in international seed organizations essential for participation in the international market, rather than by the legal framework.

The **Fertilizer and Animal Foodstuffs Act, 1962** has yet to be updated to ensure a freely competitive market for fertilizers. Most notably, it lays the groundwork for government regulation of licensing, which has allowed the government to control the number of companies operating in the fertilizer sector, as well as the quantity of fertilizer permitted for import by each of the companies, thereby restricting free and fair competition.

The **Tropical Pesticides Research Institute Act, 1979** provides for the establishment of the Tanzania Pesticide Research Institute (TPRI) and guides the research and registration of pesticides. The law requires considerable revision to encourage a competitive market in pesticides. Currently, excessive registration cost and a prolonged testing period discourage market entry and reduce farmer's access to appropriate pesticides.

The **Agriculture Input Trust Fund Act, 1994** ensures sufficient funding and provides loans for the purchase of agricultural inputs.

Cooperatives. As detailed in this report's chapter on Starting a Business, cooperative law underwent two revisions in 1991 and 1997, providing the basis for the significantly improved **Cooperative Societies Act, 2003**. The law encourages and supports the development of cooperative societies, both agricultural and non-agricultural. In 2005, the government developed the Cooperative Reform and Modernization Programme (2005-2015) to encourage the formation of cooperatives and facilitate implementation of the 2003 Act. Despite such work, cooperatives are slow to develop (with

the exception of SACCOs), primarily due to their spotty history under the socialist era.

Commodity boards. Significant progress has been made in the privatization of commodity boards to transform them from public sector entities to self-regulatory private bodies. The **Public Corporations Act, 1992**, as amended in 1993 and 1999, provides the legal framework for the privatization of the boards. The legal frameworks for each of the boards are found in a series of commodity-specific acts for cashew, coffee, cotton, pyrethrum, sisal, sugar, tea, and tobacco. The Parastatal Sector Reform Commission (PSRC) was created to oversee the privatization of the commodity boards, currently in progress. Additionally, the National Dairy Development Board (NDDDB) was developed in 2002 as a temporary measure to replace the public controlled National Dairy Board. Although significant progress has been made, full liberalization of commodities has yet to be realized.

Implementing Institutions

Governance. Tanzania's government readily acknowledges the importance of agriculture for the overall development of the economy, and has worked hard to create a related strategy and policy framework. While the ensuing framework is complex, it focuses on broader inclusion of the private sector and decentralization. Agriculture sector development within the broader framework of economic development has been guided by:

Agriculture Sector Development Strategy (ASDS), which provides guidance for the short- and medium-term. Implementation of the ASDS is outlined in the *Agriculture Sector Development Programme (ASDP)*, which was approved in June of 2006.

The Poverty Reduction Strategy Paper (PRSP), which subsumes prioritization of both the ASDS and the Rural Development Strategy (RDS) and provides guidance over the medium-term.

Tanzania Development Vision 2025, which provides long-term guidance on Tanzania's development strategy, including agriculture.

In addition, several complementary policies play a supporting role in the Government's agricultural development vision:

The **Policy Paper on Local Government Reform of 1998** and **Local Government Reform Programme (LGRP)** provide guidance for broad-scale decentralization. The Programme outlines the development of District Development Plans (DDPs), which include a mandatory component of District Agriculture Development Plans (DADPs). While they must be in line with the aforementioned central government priorities and policies, DADPs are designed to allow districts to formulate their own agricultural development planning processes.

The Cooperative Development Policy of 2002 and the **Cooperative Reform and Modernization Programme (2005-2015)**, which provide the policy framework and implementation guidance, respectively, for cooperative development. This is an essential component of increased rural finance through the SACCOs and holds great potential to encourage farmer organization, which is notably lacking.

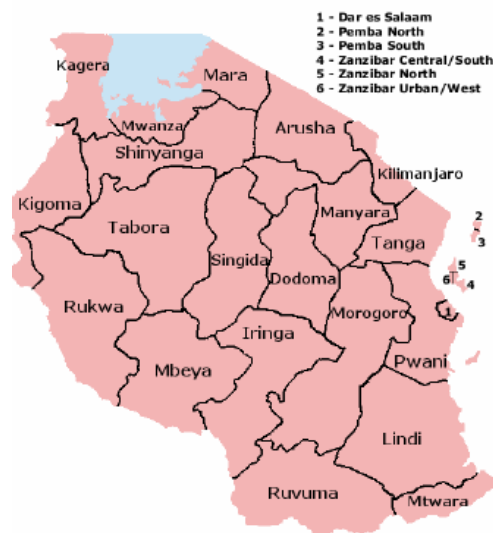
Business Environment Strengthening for Tanzania (BEST) program, which is broadly designed to improve the business and investment climate in Tanzania. This includes a land registration component under which the Government proposes to provide land titles.

Decentralization. In the movement from a strong central socialist state to a modern free-market-oriented democracy, there has been a major shift toward decentralization of powers. This includes budget and policy formulation as well as implementation of central government and district-level policy. Specifically:

The **Central government** is responsible for policy decisions and oversight. It also audits district budgets and provides the districts with central government grants based on a fixed formula, which takes into account population and economic potential.

Regional governments function as middle actors, primarily for administrative issues. They are charged with passing down policy and other instructions from the central government to the district level. They do not have any autonomy from the central government.

Regional Map of Tanzania



Source: Wikipedia

District governments fall under central government framework laws but are semi-autonomous, run by locally elected officials and their own parliaments. While they are required to follow all policy priorities and decisions from the central government, they may largely determine how such policy should be enacted. They are also responsible for the development and execution of the DDPs and DADPs in line with their respective priorities.

Although the concept of decentralization is viewed positively and broadly supported, there are widespread concerns with respect to its implementation. Central is the issue of capacity. When the Government was centralized during socialist times, most technical expertise migrated to Dar es Salaam. While responsibility is now being re-shifted to the district levels, individuals with extensive experience in policy formation, budgeting, and management remain based at the ministerial level level.

Capacity concerns exist at the ministerial level level as well. Under the new framework, the Prime Minister's Office is responsible for oversight. This includes ensuring that the appropriate central ministries are providing staff and training to the district level and that district governments are complying with central government policies and mandates. Additionally, the Prime Minister's Office is responsible for auditing district level budgets annually. While there is clear progress toward this

goal, the Office has not shown itself to be fully capable of these tasks, creating significant accountability issues.

Additionally, there is a clear communication disconnect between central government expectations and those at the local level. The central government passes down its extensive and growing policy regime for agriculture through the regional administration to the district level. Unfortunately, no clear process exists for districts to provide feedback on implementation issues to the central government. This paradigm creates an environment in which the private sector and local governments are increasingly frustrated and the central government sector has little room to improve the implementation environment. This is particularly problematic as budgets are arguably inadequate to fulfill growing district level responsibility. For example, while the central government is responsible for training extension agents, the district governments are charged with paying their salaries and providing transport. If the district government does not or cannot budget accordingly, extension service will cease to function.

It is yet to be seen how agriculture will perform under decentralization. While DADPs offer districts significantly more opportunities to control programs and resources, districts are equally free not to focus on agriculture related development. Thus, budgets for agriculture may in fact decrease. This is of particular concern, given low levels of agriculture education among locally elected officials and slow returns on agriculture investment.

While such concerns exist, the decentralization process shows great potential. As a new process, it is not unreasonable to expect a several-year gestation period for decentralization to function smoothly.

Land markets. The Tanzanian government is currently undertaking a major effort to survey and ultimately title land. The impetus for this movement was generated primarily by the Tanzania Investment Centre (TIC) and Ministry of Planning, Economy and Empowerment (MPEE) as part of a broader effort to increase investment in Tanzania. Specifically, the TIC identified difficulty for foreign investors to acquire land as one of the top eleven impediments to attracting foreign investment. As a result, TIC has undertaken several initiatives. First, the Land Act of 1999 was amended in 2004 to

address legal impediments for the acquisition of land by foreign investors. Second, TIC has committed to creating a land bank, which will categorize land available for investment for use by foreign investors. It is currently working on this process, but faces major constraints as most land is not surveyed.

Complimentary to the TIC, the MPEE is implementing land registration reform through the BEST program. Under BEST, land registration was identified as one of the five priority areas of reform to encourage business development. The government views it as the most difficult and important of the reform areas and has been allotted approximately half of the overall BEST budget to date. The overall predicted cost is US\$200 million, although to date the MPEE has only secured US\$35,000.

According to BEST, the formalization of land will take place in a series of steps:

1. Create aerial maps
2. Draw maps of the village level
3. Provide certification of occupation at the village level (a temporary solution to encourage lending, as banks will accept a certificate of occupation in lieu of a land title)
4. Allow people to apply for land titles.

BEST is currently conducting pilots in 15 of the 121 districts. In each, BEST picked 10-15 villages and a sample of farmers to work with. Based on the preliminary reading from the pilots, BEST has high hopes for the full enactment of its program.

Although land registration reform is a top priority for both the TIC and MPEE, the Ministry of Agriculture appears to play a secondary role. This paradigm clearly reflects the overall focus of land reform, which is above all to attract international investment, rather than improve the capacity of the domestic agriculture community.

Broadly speaking, smallholders and the rural community perceive land titling as less than a priority. Land demarcation between families is clear and generally does not arise as an issue. An active informal land market exists, regardless of the absence of land titles. The value of a title as collateral for loans is only relevant when access to credit exists. With the exception of the recent growth in SACCOs, access to formal credit for small farmers has historically been virtually absent.

In the case of the SACCOs, titles may be useful as they expand beyond the immediate community. To date most SACCOs are community based. As a result, much of the impetus to pay of the loan is based on community dynamics rather than the threat of loss of property.

Movable property. Tanzania has recently begun experimenting with several types of movable property as collateral, including the use of future crops, livestock, and warehouse receipts. Future crops thus far have achieved little support. The use of livestock as collateral is not possible for Tanzania's numerous pastoralists. Rather it exists only for commercial farms, but is often difficult to use even in this case as the banks tend to shy away from making any type of agricultural loan. Initial experiences with warehouse receipts have been mixed. While some farmers have successfully used and understand the potential gains from warehouse receipts systems, others have lost their crops as a result of poor management and inadequate facilities, a significant issue as no form of insurance exists. The development of a comprehensive system of warehouses and use of warehouse receipts shows great potential, but requires a complementary program to educate farmers on proper crop handling and system management.

Disputes. Land disputes at the community level do not appear to be a significant issue. The Village Land Act outlines the process for dispute settlement that substantially incorporates customary practice. For disputes that cannot be resolved at a lower level, however, the formal court system is highly inefficient.

Extension services. A fully functioning extension service, often affiliated with a state agricultural ministry or university, delivers critical information about agricultural productivity and management to farmers. The extension service in Tanzania is weak and under-funded. There should be, at a minimum, an extension agent in each village with ample means of transportation and agricultural knowledge to provide technical assistance to farmers. Last year, the Deputy Minister for Agriculture announced plans to improved extension services by increasing the availability of extension agents. The Ministry will dispatch 500 and 2,500 new officers to the district and village level, respectively, upon completion of their two-year training. The Ministry plans to continue training an additional 3,000 agents per year with the goal of dispatching an extension officer to every village, ward, and division

by 2011-12. The government also plans to dispatch 9,000 bicycles and 2,500 motorcycles to current extension officers, who are often unable to provide services due to a lack of transportation.



The MAFC also plans to increase the provision of training. They have two training wings: one for farmers and another for extension agents. Farmer training is designed to teach basic skills such as production, storage, and utilization and marketing of crops. Extension trainings for current agents are designed to share insights on new crops or technologies. Additionally, the MAFC is currently working on extension guidelines to facilitate the work of their agents.

Despite these developments, there remain several logistical issues, which will likely impede the success of the Ministry's plans to improve the extension service. These include:

Budget. The extension service is severely under-funded at both the central and district level. At the central level, while the government hopes to carry out the aforementioned improvements in the extension service, funding levels are currently insufficient. Even if the central government is able to make all improvements, they may not be supported by district-level funding commitments. Under decentralization, district governments are responsible for paying extension agents' salaries and providing for their transportation needs. As the central government dispatches new extension agents, the district governments must specifically set aside funding for them in the DADP, or they will be left without salary or means of transport. Transportation is of particular concern as existing transportation was previously funded by the World Bank and is now falling into disrepair.

Private v. public. The Privatization Act of 1995 distinguishes public extension services from those the private sector manages. Specifically, extension services for the "public good" are the responsibility of the public sector, leaving the private sector to fill

the gaps. Such language creates ambiguity, thus exacerbating gaps in Tanzania's extension services.

The policy reflects the government's expectation that the private sector will provide specialized extension services through outgrowing schemes. This has worked for established crops such as sugar, tobacco, and tea, most likely due to Tanzanian farmers' extensive base-level knowledge of these crops. It is also occurring to a limited extent in horticulture. For the most part, however, the private sector is not yet filling the gap in extension services. First, agriculture investment is relatively difficult and thus investment levels are low. Second, many companies face an uncertain regulatory and infrastructure environment, including local tax, transportation, and utility challenges, which discourage investor expansion and the anticipated inclusion of local farmers. Third, price instability, particularly in commodity crops, stifles the use of outcropping as companies are unable to guarantee out growers a fixed pay for their crops. Finally, it is in the financial interest of many private companies to outcrop only to farmers with a base-level knowledge of the particular crop. Often it is financially preferable to import well-educated foreign labor than to train Tanzanians.

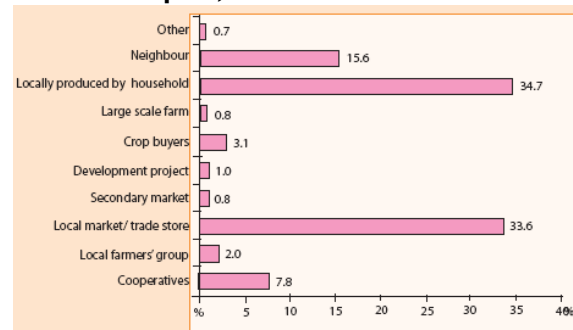
Curriculum. The curriculum for training extension agents is outdated. The primary focus is on basic farming techniques. The use of modern technology, marketing, and methods to encourage farmer organization are largely absent in the two-year training. As a result, the private sector, particularly foreign investors, complain that farmers' knowledge is insufficient to meet their needs. For example, sugar is an area that has received a great deal of investment. Technical expertise in sugar does not exist in Tanzania, however, and has resulted in the import of foreign labor. Additionally, extension training is not well linked to the university system, which generates much of the Tanzania's farming technology.

Input markets. Despite liberalization and a slow increase in competition, cartels continue to dominate the input market, to the detriment of the agriculture sector. First, there remains a large problem with input quality. Often small farmers have access only to inputs that are of such low quality as to render them nearly useless. In addition, imitation inputs, primarily transported from countries on the southern border, are widely sold. Imitations are of low quality or may be entirely fake. This issue further reduced small

farmers; interest in investing in inputs, as use of the imitation inputs does not produce the desired effect on their crops.

Proper utilization of inputs is another common problem. Small farmers generally lack basic education regarding the effective application of inputs. For example, farmers frequently purchase small quantities of fertilizer, but rather than concentrating it on one portion of their crops, they spread it so thinly that it does not improve production. Ministry of Agriculture training on this matter does not appear to be effective. The extension service also fails to fill this gap.

Source of Inputs, 2002-2003



Source: Tanzania Poverty and Human Development Report 2005

The cost of inputs impedes their use by small farmers. Although the transport cost of fertilizer is subsidized to the district level, cost dramatically increases for those farmers living further from district centers. Much of the cost impediment is based on secondary factors, particularly poor road quality and the high cost of transport from the district to the village and ward. In addition, the tax regime (detailed in the Supporting Institutions section) and cost of transporting goods to market leave small-scale farmers a small profit margin that is often insufficient to justify the use of inputs.

Seed. The government liberalized the seed industry in 1990, major components of which were formally run by the parastatal Tanzania Seed Company Ltd (TANSEED). Following liberalization, seed organizations developed the seed trade association, which has been instrumental in communicating with the government, chambers of commerce and research institutions on seed issues. The association has 29 members, representing 98 percent of the registered seed producers.

On several fronts, the Seed Traders' Association has facilitated significant progress in the seed industry and secured government support for further reforms. The importation of seed is common and duty free. The seed testing process has become highly efficient. The Association negotiated with the government to join several international seed organizations, which will facilitate their participation in and access to the international seed market, including the International Seed Testing Association (ISTA), the Organization for Economic Co-operation and Development (OECD), and the International Union for the Protection of New Varieties of Plants (UPOV). The Permanent Secretary for Agriculture has agreed to facilitate linkages between fertilizer and seed distribution by setting aside a small fund to subsidize seed and distribute it with fertilizer.

Several NGOs are also active in the seed industry, particularly the informal seed sector. Additionally, there is active use of Quality Declared Seed, which, while of lower quality, provides small farmers with greater access to seed and related seed extension services.

Despite progress in the liberalization of the seed industry, several roadblocks remain. Until the government joins the aforementioned international seed organizations, the process of exporting will be incredibly restrictive. For example, five of the 29 seed producers are Dutch export companies. In order to export seed, Tanzanians must cover the expense of shipping seed to the Netherlands for testing and certification, as Tanzania's certification is not recognized internationally. Additionally, the government does not have a policy to set aside land for seed production, nor are laboratories sufficient for seed development and testing.

Fertilizer. Transportation of fertilizer is subsidized to the district level. While this lowers the cost to farmers, it also leads to reduced quality as it is purchased, packaged, and transported at a lower cost without regard for quality implications. Specifically, fertilizer is imported in bulk and then bagged at port, which often results in considerable drying and quality reduction prior to the fertilizer even entering the country. Large 50-kilogram bags are used, which are too large for small farmers who generally purchase between five and 10 kilograms. As a result, the fertilizer is re-bagged at the local level or a portion simply purchased from a larger bag, which leads to further drying and reduced quality. Additionally, transportation

subsidies go only to the district level. Further transportation to the ward and village level is not subsidized. As a result, small farmers are forced to pay a premium for poor quality fertilizer, often without accompanying instruction for proper usage.

Additionally, the market for fertilizer has yet to be fully liberalized. The government still provides import certification, limiting the number of companies who may enter the market, as well as the quantity of fertilizer they may import, which serves to hinder competition. However, the private sector is slowly working its way into the fertilizer market. Recently Yara, one of the largest fertilizer producers in the world, entered the Tanzanian market. Yara offers high quality and lower prices, which may help re-align the market. Private sector companies are also beginning to provide smaller fertilizer quantities in five- and ten-kilogram bags to meet market demand.

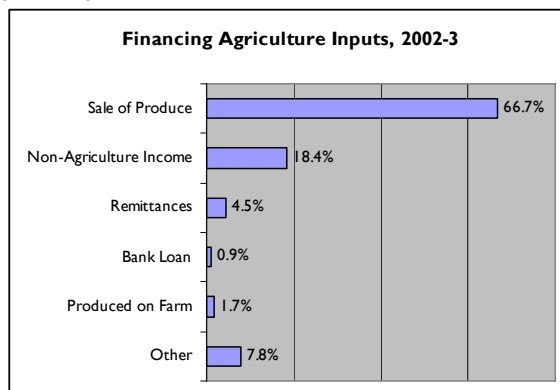
Pesticide. The pesticide industry faces major constraints, primarily due to a poor policy regime and mismanagement on the part of the oversight agency, Tropical Pesticides Research Institute (TPRI). TPRI is responsible for testing and certifying all new pesticides entering the Tanzanian market. Each trial lasts two years and costs US\$5,000, which discourages and delays access to the Tanzanian market. Although such testing is necessary, the majority of pesticides being imported are coming from the EU, US, or Kenya, where they have already been tested. As a result, Tanzanian farmers face long unnecessary delays in accessing the most up-to-date pesticides.

Market access is discouraged by logistical issues TPRI faces. For example, the institute does not have vehicles or regular access to transport. As a result, companies that wish to import pesticides face a difficult process of shuttling between offices for various approvals. Additionally, there is no comprehensive list of those registered by the TPRI, which creates difficulties for both selling and purchasing companies. The Netherlands, in conjunction with the Tanzania Horticulture Association, is working to create such a list.

The government recognizes the problems facing TPRI and the need for policy reform. The Plant Protection Act was reviewed and some of TPRI's responsibility was given to the Ministry of Agriculture. However, there remains an ongoing

battle between the two agencies, hindering effective reform implementation.

Agriculture finance. While the legal and policy framework permits rural financing, until recently it was almost non-existent for small-scale farmers. Recently, the government has been encouraging two forms of rural finance, with varying degrees of success. The first is outgrowing schemes, which have succeeded primarily with a few specific crops, most notably SACCOS, which have become popular among both individual farmers as well as farmers' organizations. Technically they fall under the Cooperative Act of 2003, but they are subject to a separate set of regulations and are regulated by the Ministry of Finance. While regulatory concerns do exist, such groups are common and provide micro-loans to the underserved rural sector. Additionally, micro-finance institutions, many funded by donors, have a small presence, but primarily serve urban areas.



Source: Tanzania Poverty and Human Development Report 2005

Surprisingly, medium- and large-scale commercial farming and agricultural investment also face major financing constraints. Agricultural lending is negatively viewed by Tanzania's financial institutions and broadly avoided, which has resulted in few banks locating in rural areas. Although a few commercial banks are increasingly interested in serving the agriculture sector, most notably FBME from Cyprus, they have yet to offer significant loans. As a result, it is difficult for medium- and large-scale Tanzanian farmers to expand. International investors face similar constraints and are generally forced to seek funding from their home countries or surrounding countries, most notably Kenya. By default, international investors' greater access to credit places them at an advantage over Tanzania investors, with broad negative implications for the strengthening of the domestic agriculture industry.

Irrigation. Lack of irrigation use is a major problem among small-scale farmers. Historically, farmers had widespread access to furrow irrigation. The furrows have fallen into disrepair, however, causing excessive water loss. As a result, only those farmers close to the source have regular irrigation, leaving the vast majority of small-scale farmers without access. Recently, private sector companies have begun to promote use of drip irrigation, which shows considerable potential. The cost remains prohibitive, however, in great part due to the current taxation system. Unlike large commercial irrigation systems, which are not subject to import taxes, drip irrigation systems are currently not classified by customs as complete irrigation systems. As a result they are subject to a 20 percent value-added tax (VAT) and 25 percent import tax.

Industrial farmers have better access to irrigation, although they still face significant barriers. Large commercial irrigation systems are most popular, although bore holes are also used. While importation of the commercial irrigation systems is relatively easy, consistent access to water poses a problem. For example, a private company in Arusha was forced to negotiate with the local government to have a private pipe installed in order to ensure a reliable supply of water.

The government is aware of irrigation issues. It recently completed a National Irrigation Strategy and the Prime Minister's Office, Regional Administration and Local Government is working to draft irrigation legislation. While to date this movement has not increased farmers' access to water, it does demonstrate the government's awareness and focus on irrigation issues.

Supporting Institutions

Private sector integration. Private sector involvement in the formation and implementation of agriculture development is mixed. Despite the government's claim that agricultural policy and strategy are developed in close consultation with the private sector, most private sector companies complained of a broad lack of participation in policy development. The private sector decried its inability to effectively communicate concerns with the public sector, both district and central. In addition, small-scale farms, as a result of their low level of formal organization, have been almost entirely excluded from any form of policy development or implementation.

Rural taxation. In accordance with the Local Government Finances Act, local governments may tax agricultural exports between zero and five percent. While such a tax seems reasonable, implementation has had a negative affect on the agriculture sector. First, while contrary to central government policy, several farmers and private sector firms noted that it is commonplace for the local government to change the export tax rate within a district without due process. As a result, farmers and firms may base their budget on one rate of tax, but ultimately be charged more. Second, given the districts' low budget levels and the increased level of responsibility from the central government, there is a constant scramble for resources. As a result, various district-level offices may levy arbitrary taxes by setting up roadblocks and collecting on the movement of goods.

For larger agriculture operations, increased tax rates are a greater impediment than arbitrary taxes, which are generally smaller. However, for small farmers, the export tax, in addition to any taxes which may be levied arbitrarily en route to market, reduces cross-district trade and incentives for subsistence farmers to commercialize. Profit levels are low enough that such taxes may consume the farmer's entire profit, or actually cost more than the farmer will earn.

Universities and research institutions.

Agricultural research is primarily conducted by the agriculture university, Sokoine University, and the government's seven zonal research centers. Sokoine University, in addition to being the sole academic facility for agriculture, plays a role in conducting agricultural research and provides consulting services to government and private sector interests. It is a member of regional agricultural research organizations, such as the Association for Strengthening Agricultural Research in Eastern and Central Africa (ASARECA) and the National Agricultural Research Systems (NARS).

Sokoine University, as with most other major components of the agriculture sector, is drastically under-funded. Currently 95 percent of its budget comes from donors and only five percent from the government. The zonal research centers are better financed in terms of research equipment, but remain constrained. Levels of collaboration between the university and research centers are high, although the university and central

government each set their own research agenda, which are not necessarily complementary.

Despite the university's close collaboration with the government research centers, it does not have a good system for the extension of new technologies. Surprisingly, it is only weakly linked to the government's extension service, although it is able to access the service in certain cases. If the university is conducting research for a private sector company, it can tap into private sector agents. In addition, the university's incentive structure does not encourage the students to work toward implementing their findings. Rather, research is often published, but does not become integrated into practice.

Agriculture infrastructure. Tanzania faces major constraints in agriculture infrastructure. Portions of road infrastructure, primarily in the south, are impassible for months during rainy season. Throughout the country road quality is poor, even for main roads. As a result, trucks transporting agricultural goods are subject to weight restrictions and may only be filled to approximately half their capacity. In addition to high fuel taxes, this increases the cost of transport for farmers.

Cold-storage facilities are practically non-existent. Those that do exist face electricity shortages and increasing electricity rates. Warehouses are also limited, although basic warehouse receipt programs have been introduced recently with a fair degree of success and demand for this service is likely to expand. The programs notably lack any form of insurance or contract enforcement.

Fortunately, the government is emphasizing infrastructure. It has been supported by the EU, which has helped boost Tanzania's 2007-2008 infrastructure budget, and is the focus for the upcoming MCC) compact with Tanzania. In the agriculture sector, the government is working on a major project to construct market structures and rehabilitate and build connector roads and bridges. The project was started by the International Fund for Agricultural Development (IFAD) and the UN, which conducted a feasibility study examining produce type, volume, and area, and made recommendations as to the location of the markets, prior to passing the project to the Prime Minister's Office for implementation. According to private sector representatives, the government made several changes to the plan, including market locations, which may diminish the effectiveness of

the infrastructure to facilitate agricultural development and trade.

Farmer organization. Cooperatives carry baggage from Tanzania's post-colonial socialist era. During the colonial era, cooperatives competed with private sector entities with significant success in major crops such as coffee and cotton. On the other hand, during socialist times, government-run cooperatives were highly unsuccessful due to mismanagement, corruption, and over-reaching.

Today, those cooperatives that were successfully affiliated in colonial times with major crops such as coffee and cotton, have survived. Cooperatives formed in socialist times have generally not survived.

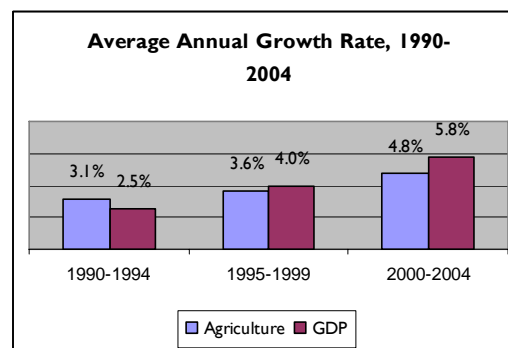
As a result of the negative image of cooperatives, many farmer organizations are formed as associations, of which there is an extensive network. The Dairy Producers and Processors Associations present a particularly interesting case, as the dairy sector was subject to the parastatal privatization process. While the dairy sector faces extensive challenges, it has successfully created a network from the farm to central government level and is engaged in improving the environment for dairy sector growth.

National food safety board. The Tanzania Food and Drugs Authority (TFDA) was created in 2003 to ensure food safety, including the certification of agricultural dealers and regulation of imports. TFDA is housed under the Ministry of Health (MOH). As a relatively young organization, it is struggling with several issues. First, its work is similar to the Tanzania Board of Standards (TBS). The agencies are in the process of delineating responsibility and reducing duplication. Secondly, TFDA is struggling to fulfill its mandate. Its responsibility to certify agricultural dealers should occur on an annual basis based on a review of the respective facilities. The agency faces staff shortages in conducting the reviews, which has resulted in the provision of certification without examination. Staffing shortages also impede its ability to staff each of the border posts to regulate imports. In addition, as TFDA falls under the MOH, many of its officers are health officers rather than agriculture officers, and are thus ill-equipped to perform their jobs.

Despite its current challenges, the outlook for TFDA is positive. The agency is rapidly adjusting as

it better understands its constraints and relationships with other agencies. In addition, it has demonstrated some early successes. Most notably, it became involved in the recent dairy and meat bill drafting process and was instrumental in streamlining and simplifying the legislation.

Media. Access to media information relating to agriculture is limited. Small farmers generally do not understand the extended market and do not have access to fair market prices. While some information is published in the newspapers, it often relates to the goals of new government initiatives, rather than to ways that would benefit the farming community directly. There are academic publications relating to the agriculture sector, but they are primarily oriented toward academia and are not useful for farmers.



Source: Tanzania Poverty and Human Development Report 2005

Social Dynamics

Government prioritization of the agriculture sector is clear and undisputed. There have been positive changes in the legal and policy regime relating to the agriculture sector. The major budgetary thrust of such efforts has focused on increasing investment, which is relevant to the continued development of the agriculture sector. While offering promise, investment is conceptually and practically insufficient to transform the agriculture sector without concurrent efforts to strengthen the capacity of the domestic agriculture sector, particularly for small-scale farmers.

Efforts to focus on domestic agricultural strengthening are evident, particularly in the governments focus on decentralization. Such efforts, while to some extent evident in policy development, are not matched by budgeting decisions. This is demonstrated in areas of research and extension, critical components of a well functioning agriculture sector, which both face daunting budgetary constraints. Additionally,

inadequate attention has been focused on managing problems with markets for basic inputs. Issues such as agricultural infrastructure and rural credit are being addressed, but whether they are sufficiently directed to the needs of the agriculture sector remains to be seen.

Such prioritization clearly reflects the government's confidence that by increasing investment, the private sector will have the interest and capacity to strengthen the domestic market and facilitate small holder participation in the formal economy. To date this has not been the case, demonstrating the public sector's continued responsibility to support the development of a basic, functioning agriculture sector.

Budgetary decisions also reflect the desires of the parties with the greatest voice in Tanzanian politics. While the government touts the extensive policy formation process over the last several years as highly inclusive of the private sector and local-level individuals and organizations, this perception is not supported by these groups, with few exceptions. It appears that participation was limited to large private companies, well-organized predominant agricultural groups (of which there are few), and donors. This may explain why encouraging foreign investment has received the primary attention of policy makers, rather than those issues highlighted by enterprises, non-governmental organizations (NGOs), farmers, and university staff in the rural sector. This remains a significant issue as the government moves forward with its agriculture agenda.

Small-scale farmers are almost entirely excluded from the process of policy formation and implementation. There is a broad view, from government down to individual producers, that farmers must organize themselves in order to have a voice in policy formation, as well as to negotiate lower prices on inputs and facilitate better access to services. There is a sense of complacency toward the matter, however, and governmental efforts to encourage farmer organization are limited.

For the vast majority of farmers operating outside of the formal economy, the impediments to joining the formal economy remain overwhelming. Their base level of farming knowledge, particularly the use of inputs, modern equipment, and innovative farming techniques, is low. Additionally, poor access to irrigation, inputs, credit, and

infrastructure, as well as taxation practices, further impede farmers from entering the formal market. Although many reforms address these problems, much more attention must be directed to facilitating small farmers' entrance and active participation in the formal economy.

Recommendations

- Identify and support or replicate those efforts that have been successful in encouraging farmer organization.
- Work with counterparts in the EU and MCC who will be involved with infrastructure investments over the next several years to ensure that their efforts take into consideration measures to improve agriculture infrastructure, particularly that which is necessary to facilitate greater trade in agricultural products.
- Encourage the Ministry of Agriculture to improve the training curriculum for extension agents to meet private sector needs and provide financial backing.
- Change the customs classification of drip irrigation systems to exclude them from existing VAT and import taxes, and encourage their use by small scale farmers.
- Reduce or wave the US\$5,000 fee to register pesticides with TPRI and create a system that allows those pesticides approved under EuroGap standards (and potentially under Kenyan standards) to be imported without testing from TPRI.
- Provide or encourage the provision of grants to private sector firms that are actively working with small-scale farmers to draw them into the formal economy.
- Amend the Land Act to make provision for the use of movable property as collateral.

ATTACHMENT I: COMPILATION OF RECOMMENDATIONS

STARTING A BUSINESS	
No.	Recommendation
1.	Continue to assist in the timely development of implementing regulations for the new Business Activities Registration Act. Other donors should consult with the BEST Program to identify discrete areas where they may be able to provide assistance.
2.	Facilitate the restructuring and modernization of BRELA as reflected in an April 2006 needs assessment, including, but not limited to, computerization of the registration and record keeping systems, the establishment of regional offices, and use of electronic filing. All relevant laws, regulations, forms, and instructions (including sector-specific licensing and permit requirements not within the legal mandate of BRELA) should be posted on the BRELA and TIC websites to reduce search costs and uncertainty for businesses.
3.	Establish regional BEST program offices at TIC's zonal offices in the Kilimanjaro and Mwanza regions, thereby making BRELA more accessible to persons outside Dar es Salaam. BRELA should plan to add additional regional offices as needs dictate and resources allow.
4.	Develop more uniform general business licensing and approval requirements at the local level (i.e., Schedule B licenses). Local authorities should post all necessary forms, a list of required document and information, and instructions on their websites. BRELA's and TIC's websites should reference and contain hyperlinks to the websites of local authorities and other relevant agencies, thereby improving users' access to necessary information and improving inter-agency coordination. Local authorities responsible for Schedule B business licenses should be required to link their registries with the main registry under the new Business Activities Registration Act.
5.	Through public education and information programs, continue to support the efforts of small farmers to understand the advantages of processing and selling their goods collectively through cooperatives.
6.	Endeavor to re-claim trust in the cooperative structure through continued support of improved governance of cooperatives.
7.	Through local supporting institutions, including universities and local chambers, provide skills training to improve cooperative management capacities and cooperative competitiveness.
8.	Work with cooperative advisors to identify where the process of cooperative formation and implementation can be streamlined and improved.
9.	Work with cooperative officers to identify how they can best promote the mission of the Cooperative Reform and Modernization Program.
10.	Work with the Tanzania Federation of Cooperatives to build lobbying and rural representation capacity.
11.	Analyze and develop a "map" of government licensing and regulation regimes affecting agricultural producers, and work with cooperatives to press for streamlining and simplification of these regimes.

12.	Support the warehouse receipts system. As discussed in this report's chapter on Getting Credit, the new warehouse receipts system has enjoyed initial success, particularly in the coffee industry. But its usefulness to the agricultural sector is diminished due to a current lack of accredited warehouses, as well as a lack of technical knowledge on how to organize and manage warehouses at the local level. Additional warehouses are necessary to meet the existing and the anticipated needs. Technical assistance pertaining to the management of an accredited warehouse is also needed. Cooperatives serve as a major facilitator of continuing development in this area.
13.	Encourage informal producer organizations to formalize under the cooperatives law or associations law so they will be able to take advantage of the various benefits that come with business formality.
14.	Expand TIC's efforts to assist SMEs. The financial threshold for a Certificate of Incentives for domestic investors should be revised to make the package of fiscal and non-fiscal benefits available to SMEs.
15.	Expand TIC's website to include all relevant laws, regulations, forms and instructions, including sector-specific licensing and permit requirements, and local authority licensing requirements. TIC should work more closely with local authorities to improve users' access to information and to improve inter-agency coordination.
16.	Add staff to TIC's zonal offices in the Kilimanjaro and Mwanza regions from other essential agencies (e.g., Ministry of Lands, Tanzania Revenue Authority, Immigration Department, Ministry of Labor, Ministry of Industry, and BRELA) to facilitate the investment process and to make these agencies more accessible to persons in areas outside of Dar es Salaam.
17.	Business groups such as the chambers of commerce should encourage the government to eliminate unnecessary and overly burdensome rules and regulations (e.g., licensing – see this report's chapter on Dealing with Licenses) that inhibit entry and expansion of businesses.
18.	Extend PPSRC's mandate to allow it sufficient time and staff to properly complete the remaining divestiture work. Provide technical assistance with respect to the divestiture of the major public utility and infrastructure companies as needed.
19.	Develop long-term internal training programs for FCC staff and FCT, including, but not limited to, training in (a) substantive competition law; (b) antitrust economics; (c) investigative techniques (including interview techniques, drafting document requests, planning an investigation, etc.); (d) legal and economic analysis; (e) remedies; and (f) report writing.
20.	Develop internal operating and procedural manuals for FCC.
21.	Develop websites for FCC and FCT.
22.	Develop appropriate educational materials for industry and consumers.
23.	Place long-term (one-year) resident legal and economic advisors from foreign competition authorities at FCC to consult on all phases of investigations.
24.	Place FCC staff at foreign competition agencies for long-term training (three to six months).
25.	Develop a competition law curriculum for law schools, including both competition law and economics. Add competition law to the business school curriculum.
26.	Develop specific competition law training programs, materials, and brochures for other stakeholders, including (a) continuing legal education programs for practicing attorneys; (b) corporate compliance programs for businesses, trade associations, chambers of commerce, etc.; and (c) training for Ministers, Parliament, and other officials whose duties and responsibilities may affect competition. Training programs must be affordable and accessible to persons located throughout Tanzania.

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| 27. | Develop training opportunities for members of the media. |
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DEALING WITH LICENSES	
No.	Recommendation
1.	Continue to move forward with broad-based licensing and regulation reform.
2.	In the course of reform, emphasize not only streamlining and reducing regulation, but also enhancing the capacity of implementers.
3.	Focus in particular on the institutional capacities of local and regional licensing authorities.
4.	Increase opportunities for organizations representing less powerful constituencies, such as farmers and small businesses, to participate in public dialogue pertaining to licensing and regulatory reform.
5.	Through outreach and training, increase the capacities of organizations representing less powerful constituencies, such as farmers and small businesses, to participate in public dialogue pertaining to licensing and regulatory reform.

EMPLOYING WORKERS	
No.	Recommendation
1.	Improve public availability of labor and employment laws and regulations. As noted in this report, it is difficult to obtain copies of the labor laws and regulations. Although ELRA and LIA are sometimes available at the official government bookstore, the regulations seem unavailable from any government source. The ATE privately printed sets of the new laws, but exhausted its supply and could not predict their availability. It is essential that stakeholders have easy access to the labor laws and regulations. That will require regular printing, seeing that they are distributed to stakeholders and others, and that they be made available on the internet.
2.	Strengthen public awareness of basic labor market regulations. MOL officials report that the new labor laws grant statutory authority to prepare and distribute posters to workplaces setting out the most important worker protections and employer requirements, but add that there is no plan or funding to implement it. As improved compliance with the new laws is a high priority, MOL should undertake such poster distribution as soon as practicable. MOL should consider including the posters information pertaining to: the sectoral minimum wage and overtime levels; rights to join and participate in trade unions; protections from discrimination in hiring, disciplinary actions and dismissals, especially on the basis of gender or HIV/AIDS; grounds for dismissal; severance pay protections; child labor prohibitions; and where to find assistance to vindicate these rights.
3.	Re-work the current approach to mediation and arbitration of labor disputes. As described in this chapter, because the law and regulations on CMA's alternative dispute resolution process conflict with international standards, such as with the mistaken merging of mediator and arbitrator roles, MOL should proceed with corrections, and, in the meantime, CMA should utilize its own discretion to separate these roles in its day-to-day operations.
4.	Correct and clarify ELRA and LIA. Because of the serious conflicts and confusing provisions in these new laws and the implementing regulations, MOL should plan, in collaboration with its employer and labor social partners, to systematically review the early experience with them and issue

	appropriate corrections and clarifications based on that review. Industrial relations issues should receive high priority in that process.
5.	Strengthen and support the Law Reform Commission. The Commission should be designated as an expert review agency, drawing on outside academic and other experts as needed, and responsible to the President, the Attorney General, and Parliament, for ensuring that the labor market regulatory reforms are consistent with the best international standards, the state of economic and social development, and the ongoing civil justice reforms under its purview. This should be developed in collaboration with the Labour, Economic and Social Council, on a tripartite basis.
6.	Continue emphasis on privatization and worker retrenchment. In cases of business transfers, including privatization of parastatal industries, where there is a business need to retrench unionized workers, rules should be developed to promote stability in trade union representation and collective agreements. The rules should turn on such factors as the degree of continuity, the proportion of carryover employees, and the need for increased flexibility in terms of employment in the successor enterprise. There should be set time limits on required advance consultation with trade unions and employees after which successor employers should be able to implement retrenchment plans in order to achieve viability of the successor enterprise.
7.	Strengthen and expand opportunities for vocational education and training. In light of the low levels of educational attainment and vocational skills in the workforce, VETA should be authorized to receive a greater share of the skill training levy assessed on employer payroll, and employers should be encouraged to provide increased formal and on-the-job training by receiving either a portion of the levy fund from VETA, or a credit, up to 50 percent, on the amount of their payments otherwise owed to the fund. Information on available skills and on available skill training resources should be made known to new investors through coordination of VETA with TIC.
8.	Reform system of immigration and work permits. Investors unable to find workers with the skills they require should be allowed to employ foreign workers that meet the needed skills. This calls for eliminating the arbitrary limits on employing foreign employees, while at the same time providing more training to local employees to increase their skill sets.
9.	Reform social security. The fragmented and uncoordinated system should be harmonized, preferably with a new single agency, to establish consistent contribution, eligibility, and benefit standards. Short of that, rules should be adopted permitting portability of benefits across plans. There is an additional need for an independent regulatory authority to enforce transparency and accountability in fund administration.
10.	Continue attacks on HIV/AIDS. In light of the devastating impact of HIV/AIDS and the inadequacy of prevention and treatment available to workers and others, employers should be encouraged and assisted to carry out plans for educating workers and, within their capacity, for providing prevention and treatment measures. Employer, union, and employee education and enforcement should be improved in order to mitigate discriminatory treatment of workers based on their actual or perceived HIV/AIDS status.

REGISTERING PROPERTY

No.	Real Property Recommendation
1.	Implement a centralized uniform land registration system with district registries.
2.	Update all land records into information and communications technology (ICT) databases, with cross-referencing, so that users can find information in minutes and read it on a computer screen, including eventually remote on-line internet access and searching.

3.	Physically upgrade the land registration facilities, including sorting, cleaning, and restoring documents, and placing them in secure (fireproofed) storage
4.	Digitize (scan) and index deeds, mortgages, and other land instruments and link them to the surveyed land plots they relate to, so that users can find such information in minutes and read it on a computer screen.
5.	Conduct land tenure/titling education and training programs for courts and land disputes tribunals, with emphasis on transparency and case management, and create more effective dispute resolution mechanisms.
6.	Conduct land tenure/titling education and training programs for state officials involved in land registration processes, coupled with stakeholder consultations on areas where improvement is needed.
7.	Offer land tenure/titling education and training programs to the general public to create greater awareness of land tenure rights.
8.	Expand to a national scale a uniform system of land mapping, using aerial photography and satellite surveying on a large scale, and modernize geodetic control and mapping systems.
9.	Formalize property rights in land settlements areas.
10.	Fully implement the Village Land Act and create formal structures to support the legislation.
11.	Analyze and support activities underway by such programs as the BEST program, and ensure harmonization and coordination among the various programs.
No.	Intellectual Property Recommendation
1.	A national IP policy needs to be developed, with input from Parliament, ministries and agencies, industry stakeholders, academic institutions, NGOs, and international experts; the policy should be harmonized with regional and international interests, as well.
2.	A centralized IP regime, with enabling legislation and regulations – residing operational authority in one ministry or agency – needs to be created, with regional or branch offices in key strategic locations, such as Mwanza and possibly Arusha.
3.	A centralized IP regime should create consolidated and harmonized operational authority and procedures with respect to patents, trademarks, service marks, copyrights, and industrial designs.
4.	A study should be undertaken to determine the current extent of TRIPS compliance in the IP laws and regulations of Tanzania; consolidated and harmonized IP laws and regulations need to be drafted to replace the existing laws, as needed, with input from Parliament, ministries and agencies, industry stakeholders, academic institutions, NGOs, and international experts.
5.	Modern Tanzania-based industrial designs laws and regulations need to be enacted, with authority for registration and enforcement established in the same ministry or agency as with all other IPR.
6.	All patents, trademarks, service marks, and copyrights registries need to be microfilmed and/or scanned into a computerized database for preservation and ease in indexing and searching.
7.	All state and parastatal organization offices with responsibility for IP – including BRELA, COSTECH, COSOTA, Registrar of Plant Breeders' Rights (MoAg), BASATA – should undergo substantial physical upgrading of facilities, including sorting of paper documents and ensuring that all registries and applications are stored in secure (fireproofed) facilities.

8.	All registries of patents, trademarks, service marks, copyrights, industrial designs (eventually), and plant breeders' rights should be updated into ICT databases, with cross-referencing, so that such information can be found in minutes and read by any member of the public on a computer screen, including eventually remote on-line internet access.
9.	There should be increased public education and awareness of IP rights, especially regarding the national economic harm and the personal and economic injury caused by counterfeit products and piracy.
10.	There should be increased IPR education and training programs for general and commercial court judges (including magistrates), coupled with establishment of specialized IPR courts or tribunals.
11.	There should be IPR education and training programs for all state officials involved with IPR processes.
12.	There should be better coordination of IPR enforcement activities.
13.	There should be close coordination and stronger input from industry and trade representatives in the reforming of IP laws and regulations.
14.	A study should be undertaken to determine whether the rights of indigenous peoples in Tanzania are being protected under the current IP legal and institutional framework, and whether reforms need to be undertaken to ensure protections and benefits to indigenous communities.
15.	Implementing legislation and regulations need to be drafted with respect to folkloric rights, as administered by BASATA – including a funded regime and facility for registration of folkloric expressions.
16.	More IP centers need to be established and funded in Tanzanian universities.

GETTING CREDIT	
No.	Recommendation
1.	Review Government's bond policy. The Government's bonds provide commercial banks with a high-yield, tax- and risk-free investment that may be raising interest rates and limiting bank lending. In this regard, the policy should be reviewed and recommendations should be prepared to address any negative impacts on the availability of credit in Tanzania, both in terms of the high cost of funds, and the commercial bank's willingness to lend.
2.	Provide guarantees for banks' funding to microfinance institutions. As a means of reaching borrowers who are not typically included in their credit policies, many banks extend loans to microfinance companies, which in turn lend these funds to small businesses and households. As these loans are deemed to be "unsecured," they are limited to the five percent of capital limitations contained in the Bank of Tanzania's prudential regulations. A loan guarantee program, designed specifically for these types of loans, could dramatically increase the amount of credit commercial banks extend to microfinance lenders.
3.	Invest in new technologies, including electronic banking and telephone banking. Tanzania is in the process of adopting a new electronic transactions law. Telephone banking is a relatively new concept, but there has been it has had some success in Kenya. It permits payments to and withdrawals from a bank account via mobile phone. This new technology holds promise for low-end banking because it allows for branchless banking and low transaction costs.

4.	Support development banking. While many commercial banks complain about the lack of qualified borrowers, development banks provide additional services to prospective borrower and to improve their changes of business and financial success. Throughout the course of this diagnostic, the importance of capacity-building and training were reoccurring themes. As development banks are already providing these extra services, their efforts should be supported through a national strategy geared toward improving the conditions for entrepreneurship, coupled with efficient credit guarantee entities.
5.	Strengthen the SACCO industry. SACCOs and other semi-formal sector entities are expected to play key roles in the Government's poverty alleviation strategies. In this regard, they are expected to provide the rural and poor populations with financial and credit management skills. Unfortunately, there are weaknesses in both the supervision and administration of these entities at all levels, which raises special concerns due to the fact that SACCO members are typically the poorest segment of society. In light of their importance to the Government's plan, there is a need for a detailed analysis of the best approach for: (i) providing oversight and regulation of these entities (self-regulation, cooperative structure, national vs. local regulations); (ii) providing initial and ongoing technical and administrative support; (iii) insuring against unavoidable failures; and (iv) financial assistance.
6.	Evaluate microfinance. Microfinance lenders are expected to provide financial services to the poor and poorest members of society as a means of improving their standard of living. A successful lending program allows responsible borrowers to move up the credit ladder, thereby receiving larger loans at better rates for longer durations, with the ultimate graduation to the formal sector. Some of the microfinance lenders in Tanzania are not fulfilling this role, and many microfinance borrowers remain stuck in a difficult cycle of repaying high-priced loans without the advantage of moving up the credit ladder. An analysis of the loan terms and conditions afforded repeat borrowers is necessary. If there is no indication of improved circumstances of borrowers, incentives currently offered to microfinance lenders should be revisited.
7.	Develop a comprehensive secured transactions regime. In addition to reform efforts pertaining to land, the Government should place a high priority on the development of a secured transaction regime on movable property, complete with a modern law and electronic registry.
8.	Support the warehouse receipts system. The new warehouse receipts system is enjoying initial success, particularly in the coffee industry. Unfortunately, a current lack of accredited warehouses, as well as a lack of technical knowledge on how to organize and manage warehouses at the local level, diminishes its usefulness to the agricultural sector. Additional warehouses are necessary to meet the existing and the anticipated needs. Technical assistance pertaining to the management of an accredited warehouse is also needed.
9.	Promote credit guarantee initiatives. Although Tanzania's experience with credit guarantee schemes has been varied, their previous introduction may have been premature in light of the status of the banking and lending industry. As competition has increased and lenders are being forced to take greater risks, the conditions are ripe for these programs to play a key role in facilitating access to credit. Recommendations regarding the type of guarantee facilities that would be most useful are beyond the scope of this report; accordingly, a separate analysis should be undertaken.

PROTECTING INVESTORS	
No.	Recommendation
1.	<p>Review and revise the company law:</p> <ul style="list-style-type: none"> → Taking account of the suggestions in the Annex below and the points made in the Legal Framework section → Using input from and consultation with lawyers, businesspeople (including both entrepreneurs and company directors and officers), other professionals including accounting firms, judges, investor funds such as those cited above, CMSA, the Stock Exchange, TIC, and BRELA, as well as appropriate ministries. → It is essential to have input and buy-in from those Tanzanian groups in the drafting of a law that is this important. Further, the law should be in plain legal English, similar to the Investment Act and other Tanzanian laws. The insolvency provisions of the companies Act should be moved into a separate free-standing Act.
2.	<p>Strengthen TIC and other foreign investment encouragement by:</p> <ul style="list-style-type: none"> → Enhancing education and training, particularly in the area of investment promotion and recognizing the activities of neighboring and regional African countries → Putting added emphasis on TIC's function as an advocate throughout a company's life, not only at its inception <p>Possibly revising the Investment Act 1997 to formalize and give explicit recognition to the role of NISC.</p>
3.	<p>Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:</p> <ul style="list-style-type: none"> → Strengthen the CMSA <i>Guidelines on Corporate Governance Practices</i> by (1) adding strict rules for disclosure and approval of conflict of interest transactions with directors, officers, and other controlling and related persons, consistent with the suggestions in the Annex below for revision of the company law, and (2) regularly reviewing and seeking comment on the <i>Guidelines</i>, and regularly reviewing other countries' codes, with a view toward possible changes and additions to the <i>Guidelines</i>.
4.	<p>Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:</p> <ul style="list-style-type: none"> → Update and establish a procedure for continually revising the regulations of CMSA and the Dar es Salaam Stock Exchange to incorporate (and be consistent with) provisions of the <i>Guidelines</i> and other best practices. Among other things, consider requiring all public companies (or at least all with more than 50 shareholders) to "comply [with] or explain" any noncompliance with the <i>Guidelines</i> and to publish their statements on this at least annually

5.	<p>Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:</p> <p>→ Clarify and make more specific CMSA's and the Stock Exchange's enforcement powers, including the power to levy fines, issue cease and desist orders, suspend trading in a particular stock, delist a particular company, bring litigation in court, and publicly "expose" defaulting companies by public announcement or press release. This might be done through further stock exchange rules or through amendment of the <i>Capital Markets and Securities Act</i>.</p>
6.	<p>Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:</p> <p>→ Increase attention to corporate governance in (1) closely held, small, and family companies, which are the bulk of Tanzanian companies but are not subject to CMSA or Stock Exchange regulation, and (2) state-owned companies. Regarding closely held companies, the company law can be revised and strengthened as suggested in the Annex below. Also consider expanding the CMSA Guidelines with specific provisions for private and family companies, as is done in some other countries. Regarding state companies, the Guidelines can be revised to incorporate or adapt provisions of the OECD Principles of Corporate Governance for State Owned Enterprises (SOEs).</p>
7.	<p>Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:</p> <p>→ Make basic information on all registered companies easily and freely available to the public. This should include at a minimum the types of information described in this section. This should have the highest priority and it should include, at a minimum, reorganizing Registry procedures, storing its data electronically, and providing an attractive website where users can view such information immediately on any registered company, whether listed, public and unlisted, or private.</p>
8.	<p>Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:</p> <p>→ Strengthen the dispute resolution system as it relates to investor protection. As noted earlier, having access to independent, prompt, and knowledgeable court resolution of disputes is almost as important as having good laws and codes in the first place – and is essential for the laws and codes to be implemented. For this, increase education and training of judges in business matters, streamline court procedures and case reporting, encourage the use of arbitration and mediation, and clarify the courts' power to enforce arbitration awards.</p>
9.	<p>Put more teeth into monitoring and enforcing good corporate governance. Do or consider the following:</p> <p>→ Encourage and establish more non-governmental bodies to support and refine the elements of good corporate governance, and to liaise with similar bodies in neighboring countries including Kenya and Uganda that have corporate governance codes comparable to the CMSA <i>Guidelines</i>. Tanzania appears to have a relative scarcity of such private organizations. In other countries, such organizations include:</p> <ul style="list-style-type: none"> ◦ Shareholder organizations, such as organizations of funds and institutional investors of which there are several in Tanzania, ◦ An institute of corporate directors that provides training and certification of prospective directors ◦ Lawyers' and other professional organizations that provide workshops and forums on investor protection ◦ University law faculty activities concentrating on investor protections and corporate governance matters <p>Organizations, including corporate executives, that draft codes and could collaborate with the CMSA's revision of its <i>Guidelines</i>. These could be comparable to the Kenya Private Sector Initiative for Corporate Governance, which developed the Kenya corporate governance code.</p>

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| 10. | Make all of the laws and regulations referred to earlier available on the internet at no charge. Most are available on the internet, but some, such as the Companies Act Regulations, are not. |
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PAYING TAXES

No.	Recommendation
1.	Analyze the 18 different tax laws TRA administers and determine whether there is too much centralization of administrative responsibility within that one agency.
2.	Analyze the zero-rating, exemptions, and relief schedules to the VAT Act as to scope and consistency between the schedules. This analysis should include a careful study of whether the tax relief those schedules provide actually generates a net fiscal/investment benefit to the country.
3.	Analyze the overall tax incentives given in Tanzania, especially with respect to consistency with regional norms and whether they result in a net fiscal/investment benefit to the country.
4.	Develop a comprehensive and regionally harmonized tax policy for Tanzania, with significant input from TRA, Ministry of Finance, professional tax advisors, investment stakeholders, chambers of commerce, business groups, economists, non-governmental organizations (NGOs), and other stakeholders; the resulting tax policy should focus not only on revenue collection, but more importantly on supporting other areas of social/Government concern – such as environmental issues, industrial research and development, and promotion of targeted sectors of the economy.
5.	Analyze specific sectors of the economy with respect to how tax and investment policies affect them. For example, study the mining sector, in particular the interplay between the Mining Act 1998 and the Income Tax Act 2004, the impact and harmonization of VAT applicable VAT schedules, and other areas of concern mining sector operators, NGOs, and the Government express.
6.	Conduct more frequent and inclusive stakeholders' fora, expanding upon the quarterly "Stakeholders' Forum" held with representatives of TRA, Customs, freight clearing and forwarding agents, and other related stakeholders.
7.	Expand the Annual Task Force on Tax Reform as a permanent standing group, eliciting input on an ongoing basis from Government, NGO, private stakeholders, and the public, and providing quarterly input and annual recommendations to the Minister of Finance and Parliament.
8.	TRA's mandate and mission should not be tied to revenue projections and needs the Ministry of Finance targets, but should instead be the revenue-neutral administration of tax laws and policies established by the Ministry.
9.	Issue clearer guidelines for tax administration, minimizing inconsistencies and subjective discretion by TRA personnel, and enhancing transparency and predictability in the tax regime. The first area that should be more clearly defined in the regulations is the area of tax deductions, credits, exemptions, and reliefs.
10.	Develop TRA corporate plans with more frequency – at least every three years, with careful and on-going review as to the impact of each such plan.
11.	Provide more training to TRA personnel, including advanced training and education in areas affecting international trade, such as transfer pricing.
12.	Request that the Parliament, with input from TRA, NGOs, tax professionals, the international business community, and other stakeholders, establish transfer pricing guidelines.

13.	<p>Replace or substantially modify the Tax Revenue Appeals Act to accomplish, at least, the following:</p> <ul style="list-style-type: none"> →A specialist tax court needs to be established, replacing the administrative Tax Revenue Appeals Board and Tax Revenue Appeals Tribunal, exercising expertise and independence from stakeholders such as TRA and Ministry of Finance. →A reasonable deadline needs to be established by which TRA Commissioner General must decide objections lodged by aggrieved taxpayers. →The requirement that a taxpayer lodging an objection with the Commissioner General must pay either the amount of tax which is not in dispute or one third of the assessed tax, whichever amount is greater, needs to be eliminated in favor of a more reasonable requirement, such as a tax lien or bonding provision.
14.	<p>Replace or substantially modify the Tax Revenue Appeals Act to accomplish, at least, the following:</p> <ul style="list-style-type: none"> →A specialist tax court needs to be established, replacing the administrative Tax Revenue Appeals Board and Tax Revenue Appeals Tribunal, exercising expertise and independence from stakeholders such as TRA and Ministry of Finance. →A reasonable deadline needs to be established by which TRA Commissioner General must decide objections lodged by aggrieved taxpayers. →The requirement that a taxpayer lodging an objection with the Commissioner General must pay either the amount of tax which is not in dispute or one third of the assessed tax, whichever amount is greater, needs to be eliminated in favor of a more reasonable requirement, such as a tax lien or bonding provision. →Conduct CLE and similar continuing professional education and training in tax law through law societies and other professional organizations, with either NGO or even Government funding and sponsorship, possibly through the auspices of a university law faculty. →Encourage professional and business organizations to engage in lobbying, advocacy, and education activities on behalf of their memberships. →Analyze the informal economy, focusing in particular on the overall causes (and the demographic/geographic spread) and the law and regulatory policy reforms that are needed to minimize the informal economy.

TRADE ACROSS BORDERS	
No.	Recommendation
1.	Compliant importers (those who are honest, display good Customs knowledge, excellence in their operations, and are competent and compliant), pose little risk to Customs. The CED should continue to implement and expand its Compliant Trader's Scheme to allow qualifying large importers to speed their goods through Customs formalities. Numerous countries have adopted this approach to allow their limited Customs resources to focus on high-risk shipments while providing tangible benefits to legitimate businesses. A recommended enhancement would be to treat these companies as accounts, appointing Customs-employed account managers to assist them. Consideration should be given to adding a "problem resolution" capacity to the planned special Customs office for priority client coordination. Account Managers could act as focal points to resolve Customs issues these clients encounter at the ports. This customer service function has been a popular and effective aspect of Egypt's Gold Card program.
2.	Long term solutions to the Dar es Salaam port congestion must be sought, and the chronic issues of lack of space, outmoded and poor handling equipment and procedural difficulties should be addressed at the highest level. SUMATRA, CED, and the Tanzania Ports Authority are capable only of crafting short-term fixes and cannot effect long-term improvements on their own. Not addressing this issue will have a profound negative effect on sustained growth and Tanzania's competitiveness in the region and global arena.
3.	The Tanzanian government should consider acceding to the WTO's Revised Kyoto Convention (RKC). A gap analysis between the CED/EAC Customs Law and business procedures with those recommended by the RKC should be undertaken. This convention reflects the current economic and technological changes necessary for a modern Customs administration conforming to international standards and practices. The RKC also incorporates best practices of member administrations. The RKC is an excellent means for facilitating trade, ensuring economic growth, and improving the security of the international trade system. Such an effort is now underway by the Bureau of Customs in the Philippines. ³⁰³ Reforms envisioned by the CED would be enhanced by a gap analysis prior to prioritization of changes.
4.	A new strategic plan for CED, building on the excellent work of the IMF and others, should be written, complete with an implementation plan for expected reforms that should be incorporated into the overall document. This plan would augment and expand the IMF plan that the CED is currently following and act as a road map for the CED's rapid pace of reform. A special group or reform unit should be created to implement and monitor and evaluate the plan's goals and targets.
5.	A Tanzanian Single Window Concept should be pursued. A special emphasis should be placed on integrating the border operations of the CED with the other control authorities especially health and agriculture. The other border authorities should have access to the CED automated system, the ability to place and remove holds, and the ability to use certain functions, such as the selectivity and collections functions. Good examples of the Single Window implementation exist in Ghana and Mauritius, as well as Singapore, Finland, and Hong Kong.
6.	Other border ministry (including local governments) overlapping jurisdictions, fee structures, and justification of their procedures should be explored, studied, and rectified. Many functions of other ministries could be delegated to CED, such as sample procurement and verifications.
7.	The TFDA has an important mission for food, drug, and cosmetic safety. Overlapping jurisdictions should be eliminated, and it should have its own dedicated border clearance staff, such as Agriculture and CED possess.

³⁰³ See <http://www.rkcphil.net/> for details on the gap analysis prepared for the Philippine's Bureau of Customs accession to the Revised Kyoto Convention.

8.	The current CED website, although comprehensive, should be reviewed. Transparency and better public service would be enhanced by the addition of: <ul style="list-style-type: none"> →Procedures for joining programs such as Compliant Trader Scheme →Contact information for problem resolution →Links to other Tanzanian border agency websites →Links to International Customs websites, including the EAC →CED rulings →Audit procedures →Schedules of legitimate fees →Clearance agents, carrier, and importer's notices or bulletins →Other pertinent news, data, or information.
9.	CED should emphasize performance measures of efficiency, quality, and resource utilization. Revenue collection targets should not be ignored but should receive less prominence.
10.	The EAC should harmonize its members' Customs Clearance Agents' individual and firm licensing procedures.
11.	CED should train its officers in the detection and seizure of counterfeit goods and begin to enforce the laws pertaining to counterfeit goods and medicines.
12.	CED should improve the functionality of its automated system to include notification of cargo releases to the trade community.

ENFORCING CONTRACTS

No.	Recommendation
1.	Support continuing education for lawyers, magistrates, and judges.
2.	Support training in ADR and commercial law.
3.	Continue development and implementation of a Code of Conduct and Ethics for lawyers. TLS efforts to develop a code of conduct should be supported to ensure that viable standards are produced with clear consequences for ethical violations. The program should include wide public discussion with other stakeholders, including judges and the business communities.
4.	Support a court administration project focusing on one or all of the following areas: case tracking, recordkeeping, recording of court proceedings, and the publication of court cases. Such a project should utilize process re-engineering analysis to question the overall design of the system in order to eliminate (rather than accelerate) unnecessary procedures and opportunities for delay.
5.	Support legal education. Support can include faculty training programs; assistance with curriculum development; and establishment of clinical legal education programs, particularly in the rural areas.
6.	Create a commercial court in the Court of Appeals. Since the appeals process is slow, a specialized commercial court in the Court of Appeals would help expedite cases.

7.	Strengthen the system of court brokers. Court brokers are not adequately trained in ethics, roles, and responsibilities. Reform would include defining the court broker role, developing a general code of conduct, and providing training on how to properly issue a court order. This work should be accompanied by a public education campaign, targeting court users (the business community) as well as the bar and judiciary.
8.	Improve access to the laws.

CLOSING A BUSINESS	
No.	Recommendation
1.	<p>Review and revise or rewrite the insolvency law and regulations:</p> <ul style="list-style-type: none"> →Taking account of the principles stated under “Legal Framework” and “Rules for the a Good ---System” and the suggestions in the Closing a Business Section Annex →Using input from and consultation with Tanzanian users of the law including lenders (both banks and other financial institutions), lawyers, accountants and other persons who may be administrators or liquidators, and judges, especially the judges of the Commercial Division of the High Court →Using plain legal English as is used in other Tanzanian laws →Stripping out the insolvency law and regulations from the Companies Act 2002 into a separate free-standing Act.
2.	It is essential to have input and buy-in from involved Tanzanian persons in the drafting of such an important law. Foreign experts should be involved but only as helpful resources, not as primary drafters.
3.	<p>Provide education and training for all stakeholders on the law and practical (not theoretical) subjects such as:</p> <ul style="list-style-type: none"> →Business and asset valuation →Methods to “fix” failing businesses so that they can be successfully reorganized →Methods to preserve going concern value of businesses as an aid to sale or reorganization →Media relations and reporting in an insolvency case →Practical techniques for realization of value including through auction and other asset sale →Practical techniques for raising capital to aid in reorganizing insolvent businesses →How to prove a claim and establish its value →Techniques for supervision of a liquidation or reorganization →Employee and labor issues in a business shut-down or reorganization →Techniques for financing of a company in liquidation or reorganization.
4.	This kind of practical training is <i>especially</i> important for judges and for lawyers from whose ranks future judges will come. Programs should put them first in priority.

5.	<p>Organize and pursue a comprehensive donor project for insolvency law and enforcement strengthening. This should be done within the BEST project or in an independent project. Project components can include the law reform and the education and training which are described above and also:</p> <ul style="list-style-type: none"> →Conducting a baseline needs assessment identifying, among other things, historical data, current demand, availability of court personnel and facilities, and availability and experience of administrators and other potential supporting institutions, including potential workout advisers and asset liquidation firms →Organizing and providing media and communication support, including press releases, publications, and surveys and opinion polls →Assisting the court system in the administration of insolvency cases, including training court clerical personnel and the selection and regulation of administrators, →Developing licensing and certification procedures for administrators →Helping universities in training professors in insolvency concepts and designing curricula for educating students in them, →Holding one or more conferences and workshops with all stakeholders, including banks and other lenders, lawyers and accountants, administrators, and other stakeholders →Surveying the laws and practices of other countries, including neighboring African countries, →Assessing and strengthening the regime for enforcement of and execution on judgments →Assessing corruption and fraud vulnerabilities in insolvency proceedings and assisting in investigation and prosecution →Improving reporting of insolvency cases, including assisting with infrastructure, publication, and computerization.
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INFRASTRUCTURE

No.	Recommendation
1.	Create new incentives for private sector participation, and consider all infrastructure sectors as candidates for private investment. In general, the laws allow for private sector participation in infrastructure, usually as an operator or concessionaire, while the assets themselves remain in Government ownership. Almost all sectors by now have had some experience with public-private partnerships. Sectors should build on successes and examine failures, and create more attractive incentives for private sector participation in areas where investor interest and action have proven insufficient.
2.	Require and adequately fund authorities to develop and meet infrastructure initiatives and system maintenance programs. Insufficient maintenance in numerous sectors has led to periodic system failures. The Government should mandate specific maintenance and development minimums by sector and fund the initiatives accordingly.
3.	Ensure continued investment and maintenance of an agency or system despite on-going negotiations or discussions of privatization. Numerous sectors have suffered from an apparent unwillingness to continue current maintenance or investment levels during talk of an ownership or operations transfer. For sectors where maintenance was inadequate historically, deferred maintenance has led to additional service interruptions.
4.	PRSP to monitor and evaluate privatized enterprises and draw lessons for sustaining badly performing enterprises.

5.	Revise the contract between the Port Authority and the container port operator. Since the operator enjoys exclusivity for all container operations and since the tonnage of container cargo handled at the port is disproportional to its physical footprint at the port, the contract should be revised to expand the operator's business (and thus profits) through increased capacity by converting additional berths to container operations in exchange for specified equipment to be purchased and installed. To ensure that new equipment is installed and remains functional, appropriate enforcement actions should be written into the new contract at this time.
6.	Contract out operations for dry, non-containerized cargo. Learning from the lessons of the container port contract, solicit a vendor to operate non-cargo activities, and include productivity targets in the contract, along with enforcement capabilities.
7.	Streamline port procedures, developing a "one-stop" payment center for customs. TRA should lead this initiative. See details in the Trading Across Borders chapter.
8.	Continue to pursue private participation at the airports. The Kilimanjaro Airports Development Company, which manages and operates the Kilimanjaro Airport, is turning a profit, fulfilling its contract, and providing a benefit to a critical part of the country. The Government should look at this model for elements of what should or should not be replicated for other airports. As the Government has had difficulty finding a strategic partner for the other airports, it should review the incentives it offers to a potential investor, as although the airport authority has received interest from the private sector, none has materialized into a working partnership. The incentives may be different per airport, as the Government's needs and priorities differ by airport. For example, private participation at Dar es Salaam, say to build a new terminal, may outweigh airfield improvements and cargo facilities at Mwanza, though both are important.
9.	Continue with privatization plans for Air Tanzania. If one airline in an economy has the ability to receive Government subsidies or receive preferential credit terms because of the government's shareholder's status, it creates an unfair advantage and may discourage new entrants into the marketplace. As soon as the new Air Tanzania is financially stable, privatization negotiations should begin with suitable parties.
10.	Modernize the legislation and agreements with Zambia governing the Tanzania-Zambia Railway Authority and the Tanzam Railway to encourage private sector participation and investment. Tanzania already has a bilateral air service agreement with Zambia, and this agreement may provide a model for transportation agreements already established in this sector. Under TRC's concessionaire agreement with RITES, minimum passenger service levels will be supplied and the company will replace a specified amount of track over the contract life. Similar or better terms should serve as a model for TAZARA in its pursuit of privatization.
11.	Develop the use of "indefinite quantity" procurements for TANROADS. Currently, road maintenance projects for a particular year are developed before the beginning of that fiscal year, limiting flexibility to use the contract to fix new or acute roadway problems, which must be addressed under a separate and lengthy procurement action. Through the use of "indefinite quantity" procurements, road maintenance companies may be selected to be on standby for specific projects that may arise within the period of the contract. Companies would still bid against each other, but would be "pre-cleared" and follow a quicker selection process having been already short-listed. Although careful oversight would be required for these more flexible procurements, the benefit to the Government would be faster roadway repairs, particularly for problems requiring immediate attention.
12.	Continue to pursue private participation in the roads sector, as a means to develop safe, paved roads, despite limited Government funds. Road projects should include a maintenance provision and should balance profitability for the operator with the benefit provided to, and user fees required of, the public.

13.	Develop the national ICT backbone currently under discussion. Allow TCRA to guide its development, assign a system of maintenance responsibilities and compensation for system use to the system's landlords, and manage a fair process to lease space to private service providers using the network.
14.	Develop modern water and wastewater laws, aligned to the recently adopted National Water Policy (NAWAPO). Include stakeholder involvement.

AGRICULTURE	
No.	Recommendation
1.	Identify and support or replicate those efforts that have been successful in encouraging farmer organization.
2.	Work with counterparts in the EU and MCC who will be involved with infrastructure investments over the next several years to ensure that their efforts take into consideration measures to improve agriculture infrastructure, particularly that which is necessary to facilitate greater trade in agricultural products.
3.	Encourage the Ministry of Agriculture to improve the training curriculum for extension agents to meet private sector needs and provide financial backing.
4.	Change the customs classification of drip irrigation systems to exclude them from existing VAT and import taxes, and encourage their use by small scale farmers.
5.	Reduce or waive the US\$5,000 fee to register pesticides with TPRI and create a system that allows those pesticides approved under EuroGap standards (and potentially under Kenyan standards) to be imported without testing from TPRI.
6.	Provide or encourage the provision of grants to private sector firms that are actively working with small-scale farmers to draw them into the formal economy.
7.	Amend the Land Act to make provision for the use of movable property as collateral.

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