

# **Business Licensing Reform: A Toolkit for Development Practitioners**

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# Table of Contents

Executive Summary . . . . .	vii
I. Business Licensing: Definition and Principles . . . . .	1
II. The Stages of a Business Licensing Reform Project . . . . .	8
Stage One: Foundations . . . . .	10
Stage Two: Preparation . . . . .	15
Stage Three: Design . . . . .	19
Stage Four: Implementation . . . . .	27
Performance Monitoring and Evaluation . . . . .	32
III. Country Case Studies of Business Licensing Reform . . . . .	35
BELGIUM: Good Licensing Reform Practice in a High-Income Country . . . . .	36
THE NETHERLANDS: Good Licensing Reform Practice in a High-Income Country . . . . .	39
INDIA: Good Licensing Reform Practice in a Low-Income Country . . . . .	42
MEXICO: Good Licensing Reform Practice in a Middle-Income Country . . . . .	45
GEORGIA: Mixed Results in Business Licensing Reform . . . . .	47
KENYA: Licensing Reform in Progress . . . . .	52
HUNGARY: Sector-Specific Licensing Reform . . . . .	55
BELARUS: Unsuccessful Licensing Reform . . . . .	63
Annex 1: Licensing Law/Regulation Checklist . . . . .	66
Annex 2: IFC Business Licensing Reform Performance Indicators . . . . .	68
Annex 3: Sample Terms of Reference . . . . .	69
References . . . . .	77



# Abbreviations/Acronyms

<b>ABBREVIATION/ ACRONYM</b>	<b>TERM</b>
BEEPS	Business Environment and Enterprise Performance Survey
CIS	Commonwealth of Independent States
COFEMER	Mexico's Federal Regulatory Improvement Commission
DEUS	Single Electronic Start-up Declaration
EBRD	European Bank for Reconstruction and Development
EU	European Union
FIAS	Foreign Investment Advisory Service
ICA	Investment Climate Assessment
IFC	International Finance Corporation
IMF	International Monetary Fund
OECD	Organization for Economic Cooperation and Development
OSS	One-stop-shop
PEP	Private Enterprise Partnership
PMP	Performance Monitoring Plan
RFTS	Mexico's Federal Register of Formalities and Services
RIA	Regulatory Impact Assessment
SME	Small and Medium Enterprise
ToR	Terms of Reference
USAID	U.S. Agency for International Development
WBG	World Bank Group



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# Executive Summary

Business licensing is a prominent barrier to doing business in many countries. Relatively few regulatory reform programs have focused specifically on business licensing, so empirical evidence of licensing reform's benefits remains sparse. However, the evidence is clear that over-regulation and red tape are associated with lower levels of income, lower levels of productivity, higher levels of informality, and higher levels of corruption.<sup>1</sup> As licensing is a key potential bottleneck in the business start-up process, the gains from licensing reform stand to be significant.

This toolkit is a guide to business licensing reform on a national level in developing and transitional countries. It complements other WBG toolkits on sub-national simplification, business registration and inspections. The toolkit is intended to be a resource for managers and staff of donor-funded licensing reform projects, but will be of interest to others who intend to reform licensing and improve the business environment more generally.

The toolkit is divided into three parts: Definition and Principles, the Process of Business Licensing Reform, and Country Case Studies of Business Licensing Reform. Three appendices contain practical resources for project staff: a "Licensing Law Checklist," a menu of potential performance indicators for business licensing reform projects, and a sample project ToR. The toolkit's key points are summarized below.

## Definition and Principles

While the word "license" is used in common parlance to describe a variety of procedures, this toolkit focus specifically on *the permissions firms must obtain for their core business activities*. Licensing is related to, but distinct from procedures such as business registration, permitting, and inspections.

In good business licensing regimes, licensing is a means to fulfill legitimate regulatory purposes. These include protection of public health and safety, environmental

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<sup>1</sup> The broad and growing literature on this subject includes too many studies to list here. For a summary discussion of the relationships described here, see "Overview," *Doing Business in 2006*, World Bank/Oxford, 2006. See also Vincent Palmade, "Industry Level Analysis: the Way to Identify the Binding Constraints to Economic Growth" *World Bank Policy Research Working Paper 3551*, March 2005.

protection, national security, and allocation of scarce resources. Licenses should not be used to manage competition in the economy or to generate revenue—these regulatory objectives are more efficiently addressed through competition and tax policy.

Well-functioning licensing regimes usually rest on framework laws or other high-level legal instruments. Such instruments guard against constant and unjustified changes in the regulatory environment. The instruments typically specify the activities that shall be subject to licensing and the criteria for acquiring the licenses. Other features of sound licensing regimes include clear appeals procedures and validity of the licenses across sub-national jurisdictions. “Silence is consent” rules, which make licensure automatic when applications are not reviewed within predetermined time periods, are also often desirable.

## The Stages of a Business Licensing Reform Project

This toolkit assumes that initial studies of the licensing system have already been completed, and donors and some stakeholders have identified licensing as a reform priority. While the focus is on licensing specifically, the toolkit notes that potential synergies may exist between licensing reforms and reforms in other areas, such as registration, permitting and inspections. The toolkit describes four stages in the life of business licensing reform projects: Foundations, Preparation, Design and Implementation.

During the **Foundations** stage, the “core staff”—that is, the small group of individuals assigned to the project by a donor/implementing agency—review prior research on the licensing system, identify potential “champions” of the reform effort, and build stakeholders’ awareness of the need for reforms.

During the **Preparation** stage, the core staff expands into a full-fledged Project Team. The team conducts additional diagnostic work; holds workshops, seminars, and other public events to solidify stakeholders’ support for reform; works with the government to finalize a licensing reform Steering Committee, and organizes an event to launch the project.

The Project Team and the Steering Committee agree on the project’s intended outcomes and activities during the **Design** stage. In addition, the Team designs a Performance Monitoring Plan (PMP), and the Team and the Steering Committee establish formal ToRs and a project work plan.

The **Implementation** stage is when the Team drafts legal reforms and shepherds them towards ratification. The Team also works with the ministries and agencies involved in licensing to pilot and implement administrative simplification solutions.

**Stakeholder management** is a crucial aspect during all stages, but particularly during implementation. In this stage, the Project Team uses consultative forums, such as conferences and focus groups, to give supporters *and* opponents the chance to voice ideas, share concerns, and shape the reform proposals. The Team also uses a variety of media to educate the public about the benefits of reform.

**Performance Monitoring** is an ongoing task throughout the project. Progress towards the project's intended outcomes is tracked at regular intervals as well as at the project's conclusion. The project should conclude with an evaluation to assess the project's relevance, effectiveness, impact, efficiency and sustainability.

### **Country Case Studies of Business Licensing Reform**

The eight case studies represent a wide range of regions and income groups. They include two cases of successful reforms in high-income countries (Belgium and the Netherlands); successful reforms in low- and middle-income countries (India and Mexico); sector-specific licensing reform (Hungary); mixed reform results (Georgia); licensing reform in progress (Kenya); and unsuccessful reform (Belarus).



# I. Business Licensing: Definition and Principles

## DEFINITION OF BUSINESS LICENSING

What is business licensing? While there is no universally agreed-upon definition, the term is often used to describe an *ex-ante process of approval for a firm's core business activity*. This is the definition of licensing used in this toolkit.

*Permitting* is related to licensing—in some countries, the two terms are used interchangeably. This toolkit differentiates between the two as follows. Whereas a *license* authorizes a core business activity, a *permit* authorizes actions *related* to the core business activity.<sup>2</sup>

These distinctions may be easier to understand through a hypothetical example. Take the case of prospective operators of a private medical clinic. Depending on the applicable licensing and permitting rules, the prospective operators might need to obtain:

- A *license* to offer medical services.
- *Permits*, including:
  - A *construction permit* for construction of the clinic.
  - *Permits to install and operate sensitive equipment*, such as machines that produce radiation.

While this toolkit focuses specifically on licensing, many best practices in licensing reform may also be applied to permitting reform. Donors such as IFC have dedicated substantial attention to permitting reform,<sup>3</sup> and a separate World Bank Group publication addresses permitting reforms at the sub-national level.<sup>4</sup>

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<sup>2</sup>The World Bank Group's *Doing Business in 2006* publication includes "Dealing with Licenses" indicators that measure time and cost associated with gaining permission to construct a warehouse. Warehouse construction is not a "core business activity" for most firms. Thus, the procedure does not meet this toolkit's definition of a license (rather, it is a permit)

<sup>3</sup> See for example, the IFC Private Enterprise Partnership (IFC/PEP) SME Policy Development Project in Ukraine, which helped that country to prepare a new law on permitting in 2005, and which helps authorities at the national and local levels to implement the new law. Information on the project may be found at <http://www.ifc.org/ifcext/uspp.nsf/Content/Home>.

<sup>4</sup>The World Bank Group's Small and Medium Enterprise Department produced the toolkit referenced here. It is entitled *Simplification of Business Regulations at the Sub-National Level*, and is available at <http://www.ifc.org/ifcext/sme.nsf/Content/Publications>.

Table 1-1 summarizes the differences between licensing and permitting. The table also addresses business registration and inspections, which are also closely related to licensing and permitting.<sup>5</sup>

**Table 1-1: Differentiating Licenses, Registration, Permits and Inspections**

Ideal Practice	Registration	Licenses	Permits	Inspections
<b>Purpose</b>	To establish a business as a legal entity.	(1) To assure that operators have the qualifications necessary to carry out an activity in a way that safeguards public welfare, AND/OR (2) To allocate scarce resources.	To assure that structures and operations comply with standards that protect public health, safety and the environment.	Ensure that compliance with public health, safety and environmental standards is maintained on an ongoing basis.
<b>Distinguishing Characteristics</b>	A “generic” procedure that all businesses must complete (procedure may vary by type of legal entity).	An authorization for a core, continuous business activity.	An authorization to complete a single instance of an activity (e.g.—build a warehouse)	Periodic visits by inspectors to verify that standards of construction or operation are being upheld.
<b>Appropriate Jurisdiction</b>	National and/or local (there should be a single “entry point”).	National (or state in federal systems).	Local/municipal, (although state or national-level permits may be appropriate for specific, sensitive activities).	Local/municipal or national.
<b>Frequency</b>	One time only.	Requires periodic renewal.	Once per instance of activity.	Recur on regular schedule interspersed with random visits.
<b>Relation to Start-Up</b>	<i>Ex-ante</i>	Ex-ante: issued prior to business operation. Issuance is the “next step” after business registration.	<i>Ex-ante/ex-post</i> : for activities that occur both prior to and after start-up.	<i>Ex-post</i> : periodic inspections after start-up (Ex-ante if linked to initial issuance of licenses/permits).

Source: Nathan Associates Inc.

<sup>5</sup> The World Bank Group’s Small and Medium Enterprise Department has toolkits on business registration and inspections reform. See <http://www.ifc.org/ifcext/sme.nsf/Content/Publications>.

Developing countries have completed important reform projects on both topics. For example, the business registration toolkit profiles successful reforms in Jamaica, Turkey and Serbia. On inspections, IFC/PEP has sponsored recent projects in Uzbekistan and Tajikistan. Information on these projects is available at [http://www.ifc.org/ifcext/eca.nsf/Content/Uzbekistan\\_Home](http://www.ifc.org/ifcext/eca.nsf/Content/Uzbekistan_Home) and [http://www.ifc.org/ifcext/eca.nsf/Content/Tajikistan\\_Home](http://www.ifc.org/ifcext/eca.nsf/Content/Tajikistan_Home).

## A License or Something Else?

Many countries use the word “license” to describe procedures that conform only partially, or not at all, to this toolkit’s definition of licensing. We address a number of these here.

**Trade Licenses.** In some countries, such as Kenya and Hungary, the central government or subnational authorities require businesses to acquire “trade licenses” or “trading licenses.” Prerequisites for trade licenses vary from country to country. In Kenya, applicants must present eight different documents, including a certificate of incorporation, a lease agreement for the business’s premises, a “certificate of good conduct” from the Criminal Investigation Department, and a variety of other forms. The trade license is granted or denied on the sole basis of having acquired the prerequisite documents; thus, it is a bureaucratic hurdle that serves no regulatory purpose.<sup>6</sup> In such circumstances, trade licenses are redundant and should be eliminated.

**Licenses Based on Firm Characteristics.** Some countries, such as Laos and Saudi Arabia, require licenses for foreign investment, while countries such as India require licenses for firms with fixed capital or assets above a certain threshold. Such licenses are beyond the scope of this toolkit, as they focus on *characteristics* of firms rather than the firms’ core business activities.

**Concessions.** A concession is a “business operated under a contract or license associated with a degree of exclusivity in exploiting a business within a certain geographical area.”<sup>7</sup> Public service concessions give the concessionaire the right to carry out investment in a public utility or infrastructure system (e.g., water and electricity utilities, highways, and airports) for a fixed period. In some countries, laws and regulations use the terms “license” to describe authorizations that meet the definition of a concession. This toolkit only addresses concessions to the extent that they meet the narrow definition licensing provided above: an *ex-ante* authorization to carry out a core business activity. In some cases, licensing, narrowly defined, is one part of the concession-granting process (see the case study on electricity-sector licensing in Hungary in Part III for such an example).

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<sup>6</sup> Kenya: *Administrative Barriers to Investment*. FIAS, 2004, 50.

<sup>7</sup> “Concession (contract).” *Wikipedia*. Page modified February 22, 2006. [http://en.wikipedia.org/wiki/Concession\\_%28contract%29](http://en.wikipedia.org/wiki/Concession_%28contract%29), accessed March 20, 2006.

## Principles of Good Business Licensing

The principles of good licensing presented here are drawn from countries with well-functioning licensing regimes, such as Belgium, the Netherlands, and Mexico—all of which are profiled in Part Three of this toolkit.

- 1) **Licenses should fulfill legitimate regulatory purposes.** There are only two appropriate rationales for licensing—to safeguard the public interest and to manage limited natural resources. We explore these rationales below.
  - **Safeguarding the public interest: Public safety and environmental protection.** Certain activities must be regulated to guarantee the health, safety or security of consumers and to protect the natural environment. It is clear that such businesses should be required to comply with certain standards—neither governments nor citizens want to deal with rogue banks or unsanitary food manufacturers. Yet the preferred methods for ensuring compliance vary among sectors and among countries: in some cases the emphasis is on *ex-post* monitoring and punishment, whereas elsewhere it is on *ex-ante* approvals, including licensing.
  - **Safeguarding the public interest (national security).** Countries often use licenses in order to restrict and control production of potentially dangerous substances and products (e.g., weapons and nuclear materials), or to control entry into activities deemed vital to the country's security (e.g., operation of energy infrastructure).
  - **Limited resources.** Licensing is also appropriate in many limited resource-based sectors. These sectors include those where the resource is limited and non-renewable, (as in extraction of minerals or fossil fuels), or where careful management may allow regeneration or replacement of the resource, as in forestry. This justification is also appropriate in infrastructure service sectors such as telecommunications, where there is a limited supply of bandwidth.

There are two main *inappropriate* motivations for licensing:

- **To limit competition.** Countries sometimes use licenses for purposes including infant industry promotion, (purported) support for small scale enterprises, or preservation of existing monopoly or oligopoly situations.
- **To generate revenue.** This may result in several agencies issuing a similar permission, or indeed multiple sub-national governments issuing separate licenses to operate in each jurisdiction.

These two objectives are more efficiently addressed through explicit competition and tax policies, respectively, rather than through licensing. The use of licensing to pursue these objectives reduces transparency and increases oppor-

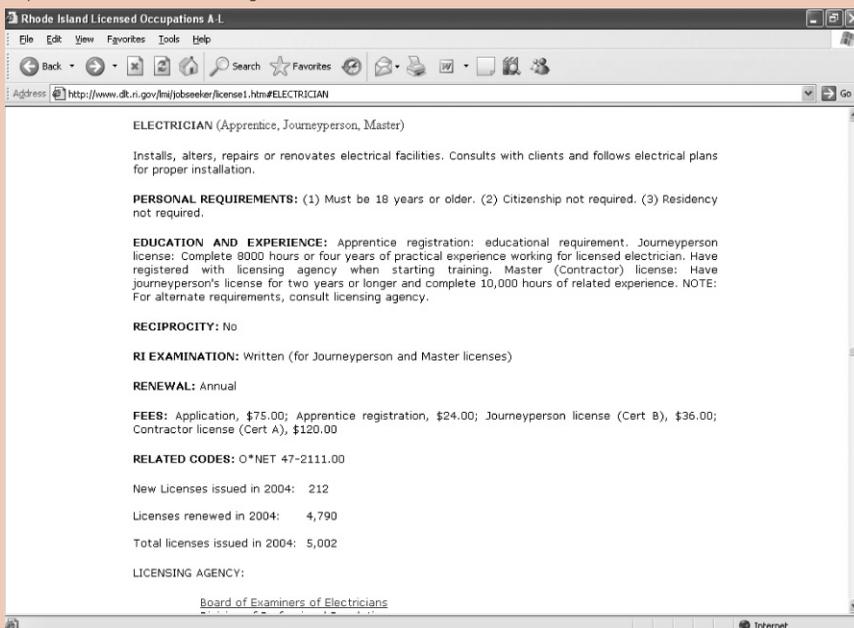
tunities for rent-seeking. It also may leave the public uncertain about the purposes of licensing and the conditions under which licenses will be issued.

For example, in the mid-1990s, Vietnam issued vehicle manufacturing licenses to a handful of joint ventures for the stated purposes of reducing consumer prices and developing the industry. Those companies that entered the market did so with the expectation that they would be able to supply the local market without facing competition from additional entrants. Yet after the authorities realized that licensing was a lucrative source of revenue, they allowed additional manufacturers to apply for the licenses. The further opening of the industry “shocked” incumbent licensees,<sup>8</sup> and at least one firm reversed its decision to invest in the country as the result of the government’s action.<sup>9</sup>

- 2) **Licenses should be granted on the condition of *ex-ante* fulfillment of qualifications.** Countries should use licensing to guarantee that businesses possess the qualifications to carry out their activities in a manner that safeguards public welfare. Governments should require proof of only the minimum qualifications necessary to ensure the competency of the operator.

### Figure 1-1: License Qualifications

The state of Rhode Island in the United States posts required qualifications for all licenses on the Web site of its Department of Labor and Training.



Source: <http://www.dlt.ri.gov/lmi/jobseeker.htm>, accessed July 14, 2006.

<sup>8</sup> Timothy J. Sturgeon. “The Automotive Industry in Vietnam: Prospects for Development in a Globalizing Economy.” *Globalization and Jobs in the Automotive Industry*. Research Note #4, July 1998. <http://ipc-lis.mit.edu/globalization/Vietnamese%20Autos.pdf>. Accessed March 19, 2006.

<sup>9</sup> *Vietnam: Motor Vehicle Market Overview*. International Trade Administration, United States Department of Commerce, n.d. <http://www.ita.doc.gov/td/auto/vietnam041.pdf>. Accessed March 19, 2006.

- 3) **For activities that require multiple licenses and/or permits, the sequence of procedures should be clearly articulated.** Some operations are bound to require multiple authorizations—for example, a mining operation is likely to require a land concession, a mining license, and an environmental permit at a minimum. In such cases, the sequence in which the permissions are to be acquired should be clearly articulated and communicated to entrepreneurs.
- 4) **Governments should minimize the number of permissions that must be acquired prior to start-up.** Regulatory procedures should be moved after startup rather than before, when doing so does not compromise the public interest. Doing so helps reduce the time and administrative burdens involved in starting a business. For example, prior to 1997, Mexico required most businesses to acquire sanitary licenses prior to startup. A series of reforms eliminated this requirement for most businesses. Those firms are now subject to sanitary inspections only *after* the businesses begin operating (see case study in Part Three).

### Characteristics of Good Licensing Laws<sup>10</sup>

#### Positive Lists vs. Negative Lists

A *positive* list names those sectors to which a law will apply while a *negative* list names those to which it will *not* apply. Neither approach is clearly superior to the other. For example, India has used a negative list approach: its 1991 Statement of Industrial Policy “abolished” licenses for all activities except those that appeared on the list (see case study in Part Three). In contrast, Armenia has used a positive list approach: its licensing law presents the principles and rules of the licensing regime, and then lists all sectors subject to the licensing. Either approach can be successful provided the law is clear and comprehensive.

The following are the chief characteristics of sound business licensing laws. The **Licensing Law Checklist** in **Annex 1** provides greater detail on best practice in licensing legislation.

- 1) **Activities subject to licensing should be identified in a framework licensing law or other high-level legal instrument.** The instrument should not be vulnerable to capricious amendments that increase regulatory uncertainty. While a framework licensing law is often the best solution, other instruments, such as presidential decrees, may be appropriate in some countries. Some common law countries, such as the United States and Great Britain, have broadly efficient licensing processes without such framework laws or decrees, but in most cases some such instrument is essential to successful reform.

In some legal systems, lesser measures—such as Cabinet resolutions—may be used to implement administrative procedures called for in the framework law.

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<sup>10</sup> Or similar high-level legal instruments.

In such circumstances, the framework law should clearly specify the purposes such measures will be used for, the parameters that shall apply to their contents (e.g., fees not to exceed administrative costs), time limits for promulgating them (e.g., six months after ratification of the law), legal guidance for the period prior to their promulgation, and limitations on amendments (e.g., amendments not allowed more than once per year).

- 2) **Licenses should be valid in all sub-national jurisdictions.** A license attests to the operator's competency to carry out an activity in a manner that safeguards the public interest. To the degree possible, countries should make such licenses valid throughout the whole of their territories—for example, a business should not be required to acquire a separate license in each sub-national jurisdiction in which it operates.<sup>11</sup> That said, there may be sound reasons for creating licensing *application points* close to businesses throughout the country.
- 3) **Licenses should be priced to cover administrative costs.** Licenses should serve as regulatory instruments rather than fiscal tools. As discussed in the Definitions section above, public revenues should come principally from taxes. The cost of each license should not exceed the costs to ministries of collecting and reviewing applications.
- 4) **The law should clearly articulate the qualification criteria for each license.** The law should clearly state the requirements that applicants must meet to acquire a license, including the exact documents they must submit, credentials they must prove, etc. This information should be made available to the public via the Internet and/or printed publications.
- 5) **The law should contain “silence is consent” provisions.** Such provisions mandate time limits for the processing of applications. Applications not processed within those time frames receive automatic approval, or “consent.” Silence is consent may not be practical for sectors where the risks are simply too great to allow start-up prior to review of qualifications—for example, sectors in which businesses process radioactive materials.
- 6) **The law should specify clear reasons why applications may be rejected or revoked as well as procedures for appeals.**
- 7) **Licenses should be valid for unlimited periods, except when periodic review of qualifications is necessary to fulfill regulatory objectives.** Businesses should not have to apply for periodic license renewals unless such renewals are truly necessary to safeguard the public interest or ensure proper management of scarce resources.

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<sup>11</sup> The same principle does not necessarily hold true for permits. For example, it is reasonable that a business be required to gain permits for construction of buildings in each sub-national jurisdiction where they intend to operate.

## II. The Stages of a Business Licensing Reform Project

### Licensing Reform vis-à-vis Other Reforms

Licensing reform rarely occurs in isolation. Often, licensing is but one item on a country's agenda of reforms to improve the business environment. As the cases on Mexico and the Netherlands illustrate (see Part Three), broader business environment reform programs often provide propitious foundations for licensing reform projects. While this toolkit focuses specifically on the stages of licensing reform, project staff should always remain mindful of potential synergies with reform efforts in other areas, such as business registration, inspections, and permitting. For example, activities such as workshops and conferences may draw larger audiences if they focus on multiple reform topics rather than just one. If reforms are sequenced appropriately, success in one area may generate enthusiasm for reform in additional areas.

### One License, Many Licenses or All Licenses?

For this toolkit, we assume a default approach of “system-wide reform,” i.e. of a country's entire licensing regime. However, there may be instances where countries may prefer immediate results in specific sectors. For example, one may consider the hypothetical case of a country that depends upon mineral extraction for a large proportion of GDP, yet has cumbersome licensing procedures in the mining sector. The country may wish to focus specifically on licensing reform in that sector. Such an approach may address barriers in an exceptionally important sector in the near-term while setting a precedent for reform in other sectors.

### The Stages of a Business Licensing Reform Project

In this toolkit, we divide the licensing reform process into several stages:

- a) Foundations.
- b) Preparation.
- c) Design.
- d) Implementation.

**Table 2-1: Stages of a Business Licensing Reform Project**

	Foundations	Preparation	Design	Implementation
<b>Duration*</b>	Variable	3 months	2-4 months	12 months
<b>Objectives</b>	<ul style="list-style-type: none"> <li>• To preliminarily assess reform needs.</li> <li>• To assess potential “levers” of reform.</li> <li>• To identify reform champions.</li> <li>• To build stakeholders’ support for reform.</li> </ul>	<ul style="list-style-type: none"> <li>• To assemble the Project Team</li> <li>• To comprehensively assess reform needs.</li> <li>• To solidify stakeholders’ and champions’ support for reform.</li> <li>• To finalize the Steering Committee</li> <li>• To launch the project.</li> </ul>	<ul style="list-style-type: none"> <li>• To design the project.</li> </ul>	<ul style="list-style-type: none"> <li>• To draft, adopt, implement and monitor reforms.</li> </ul>
<b>Activities</b>	<ul style="list-style-type: none"> <li>• Review existing licensing studies.</li> <li>• Conduct stakeholder analysis.</li> <li>• Brief stakeholders on licensing best practices and potential benefits of reform.</li> <li>• Identify and build relationships with reform champions.</li> <li>• Identify potential steering committee members.</li> <li>• Formalize partnerships with government and other donors.</li> </ul>	<ul style="list-style-type: none"> <li>• Conduct detailed analysis and mapping of licensing procedures.</li> <li>• Assemble Project Team</li> <li>• Conduct activities (e.g. workshops, seminars and study tours) to solidify stakeholders’ and champions’ support.</li> <li>• Finalize Steering Committee.</li> <li>• Launch project.</li> </ul>	<ul style="list-style-type: none"> <li>• Agree on the project’s purposes.</li> <li>• Establish the project’s intended outcomes.</li> <li>• Specify the project’s activities.</li> <li>• Design the performance monitoring plan.</li> <li>• Draft the project’s Terms of Reference (ToR).</li> </ul>	<ul style="list-style-type: none"> <li>• Draft all reform legislation.</li> <li>• Consult stakeholders throughout and after the drafting of reforms.</li> <li>• Lobby Parliament/Executive to adopt reforms.</li> <li>• Use media to inform the public of reforms.</li> <li>• Provide support to licensing agency staff to pilot and implement new procedures.</li> </ul>
<b>Outputs</b>	<ul style="list-style-type: none"> <li>• Preliminary assessment of reform priorities.</li> <li>• Stakeholder analysis</li> <li>• MoUs with partners.</li> </ul>	<ul style="list-style-type: none"> <li>• Licensing performance assessment and legal, institutional and procedural assessments.</li> <li>• Workshops</li> <li>• Launch conference / workshop.</li> </ul>	<ul style="list-style-type: none"> <li>• Work plans.</li> <li>• Monitoring and assessment plans.</li> </ul>	<ul style="list-style-type: none"> <li>• Drafts of reform legislation.</li> <li>• Trainings for licensing agencies’ staff.</li> <li>• Operations manual on new procedures for staff of licensing agencies.</li> <li>• Brochures on new procedures for the public.</li> </ul>
<b>Performance Monitoring</b> .....				

\*Periods for each stage are rough estimates. They will vary according to the scope of the project and the “reform climate.” When officials are reform-minded, activities in each stage will proceed faster than when officials oppose reform.

Source: Nathan Associates Inc.

Performance monitoring occurs across all of these stages, and is discussed throughout the toolkit. We also present a separate section on performance monitoring and evaluation following the section on implementation.

Table 2-1 summarizes objectives, activities and outputs for each stage.

### **STAGE ONE: FOUNDATIONS**

We begin with the assumption that key parties—the government, donor agencies, and members of the private sector—have already identified licensing as an area in need of reform. Nevertheless, it is critical that the individuals initially assigned to the project (hereafter, “the core staff”) lay firm foundations for the proposed reform project.

During the Foundations stage, the core staff must:

- Preliminarily assess reform needs.
- Identify potential “levers” for reform.
- Conduct a stakeholder analysis.
- Identify and build relationships with reform champions.
- Identify potential steering committee members.
- Build stakeholders’ support for the project.
- Prepare memorandum of commitment/understanding.

The length of this stage will vary, depending on the robustness of the information one already has on the licensing regime and the strength of stakeholders’ support for the project.

#### **Preliminarily Assess Reform Needs**

Before the core staff launches the project, it should have a general idea of the proposed project’s scope. For example, will the project focus on reform in a single sector or across the entire licensing regime? Will its objective be elimination of unnecessary licenses, streamlining the licensing process, or both?

To answer this question, the core staff may review existing research on business licensing in the country. Sources could include (but are not limited to):

- International Finance Corporation business environment reports and surveys conducted by the Small and Medium Enterprise (SME) Department (e.g., IFC/Private Enterprise Partnership surveys in Belarus, Georgia, Uzbekistan, and other countries belonging to the Commonwealth of Independent States (CIS).

- World Bank Group Investment Climate Assessments (ICAs).
- Foreign Investment Advisory Service (FIAS) *Administrative Barriers* reports.
- FIAS/U.S. Agency for International Development (USAID) *Investor Roadmaps*.
- World Bank/European Bank for Reconstruction and Development (EBRD) Business Environment and Enterprise Performance Survey (BEEPS).

If data on licensing is scant, the core staff may need to conduct additional, preliminary studies using methods such as surveys and focus groups.<sup>12</sup> The core staff may wish to hire short-term survey experts or focus group moderators to carry out these tasks.

## Assess Potential Levers for Reform

Countries and donors need not wait for crises to initiate reforms. However, decisive social, political, and economic events often do serve as useful levers for reform, as the cases in the Part Three of this toolkit demonstrate. During the Foundations stage, the core staff should assess whether any such levers exist, and they should keep a constant watch for new ones throughout the life of the project. Typical levers include changes in government, macroeconomic crises, and new conditionalities in multilateral lending packages. We stress that such events are *not* prerequisites, but they may ease the way forward for wide-reaching reforms.

## Conduct a Stakeholder Analysis

Stakeholders are all the people and institutions that have an interest in the outcome of the reform process. Stakeholders include all of the following:

- The President and/or Prime Minister.
- Ministers and other heads of licensing agencies.
- Legislators (parliamentarians), particularly those on committees that address business licensing.
- Personnel at the licensing agencies, including lower-level functionaries and mid- and senior-level managers.
- SMEs and large/established companies (ideally represented through business associations or other groupings).
- The press.
- All other members of the public who will be affected by reform.

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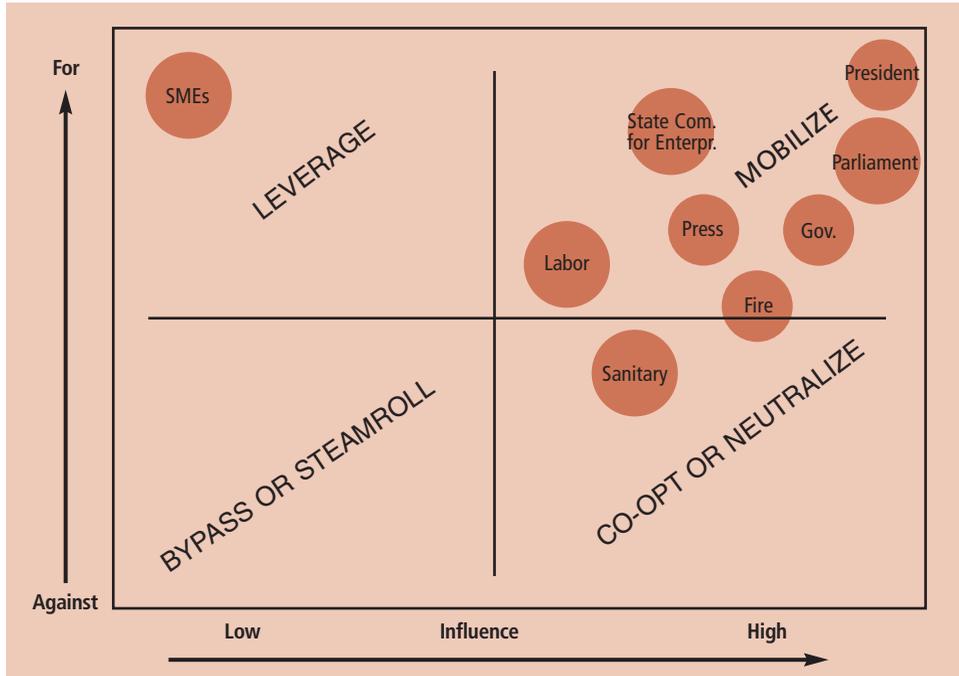
<sup>12</sup> For example, one might count the formal companies in each industry and compare these numbers with international benchmarks.

At the outset of the project, the core staff should conduct a stakeholder analysis that identifies opponents and supporters of reform, the intensity of their support or opposition, and the degree of influence they hold over the reform process. In their analysis, the staff may find it useful to categorize stakeholders among four categories:

- 1) **Powerful supporters**—*Stakeholders who strongly support reforms and have substantial influence over the policymaking process.* Licensing reform projects are unlikely to succeed unless they have a core of enthusiastic and influential supporters. It is essential that the project staff identify several **reform champions** among the strong supporters. Reform champions are the individuals who will do the “heavy lifting” necessary to overcome powerful opponents, and to maintain forward momentum on the reform effort. It is vital to identify and support champions at the highest levels of government (the President/Prime Minister or those that he or she listens to), as well as in the line ministries that will implement reforms.
- 2) **Less-powerful supporters**—*Stakeholders who strongly support reforms, but are less influential than the champions in policymaking.* While less influential than the champions, weaker supporters can still be vital for the success of the reform program. For example, in some countries, individual small and medium entrepreneurs strongly support reform yet have a weak voice in policymaking. If they can unite behind a single voice—for example, an SME business association—they may be able to exercise far more influence over policy than if they tried to act alone. Licensing reform project staff may be able to build into their programs strategies for leveraging weaker supporters’ strength.
- 3) **Powerful opponents**—*Stakeholders who strongly oppose reform and who have strong influence over policy.* Strong opponents are often those who have the most to lose from reform, such as power or lucrative rents (whether legal or illegal). Neutralizing or “converting” major opponents is one of the keys to the success of the reform program. Educating opponents about the benefits of reform and including them in consultations may cause some opponents to drop their resistance to reforms, but others may have to be compensated in some fashion. As a last resort, some—especially those representing particularly narrow interest groups—may simply have to be isolated and overpowered.
- 4) **Less powerful opponents**—*Stakeholders who oppose reform but wield less influence over policy.* In theory, weaker opponents can be ignored or “bulldozed,” but in practice total neglect of any stakeholders is dangerous. Opponents who seem weak at first glance may have unperceived channels by which to influence policy. Project staff should devise ways to engage and acknowledge the concerns of even the weaker opponents.

The following is a graphical illustration of a stakeholder analysis conducted by the staff of an IFC/PEP permitting reform project.

**Figure 2-1: Stakeholder Management / September 2005**



Source: Andrey Gurevich, IFC/PEP

The Project Team should monitor stakeholders' attitudes throughout the life of the project and adjust strategy accordingly. Stakeholder management is discussed in additional detail in this toolkit in **Section Four: Implementation—Legal Reforms**.<sup>13</sup>

## Identify and Build Relationships with Reform Champions

From the outset of the project, the core staff must build and nurture strong relationships with reform champions. Champions may include:

- *High-level government officials*, such as pro-reform ministers, members of parliament and regulatory agency heads.
- *Prominent private sector representatives*, such as heads of business associations.
- *Managers and senior civil servants* at ministries or agencies that will implement reforms.

<sup>13</sup> For a more detailed discussion of stakeholder analysis, see Kammi Schmeer, "Stakeholder Analysis Guidelines," *Policy Toolkit for Strengthening Health Sector Reform*, Health Systems Strengthening in Latin America and the Caribbean, 2000. <http://www.lachsr.org/documents/policytoolkitforstrengtheninghealthsectorreformpartii-EN.pdf>, accessed July 15, 2006.

Champions at the highest levels of government are vital for getting reform legislation passed, but the role of managers and senior civil servants is equally important—they are the lynchpins of support for reforms within the ministries and agencies responsible for licensing. Their support is critical to ensuring successful implementation of reforms.

During the Foundations stage, the core staff should draw up a list of known and likely champions and arrange meetings with them. The staff should offer the champions opportunities to participate in project planning activities, and should gauge the champions' interest in participating in the reform Steering Committee (see below).

### Identify Potential Steering Committee Members

At this stage, the core staff should identify potential members of a reform Steering Committee (see the case studies of the Netherlands, Mexico, and Kenya for examples of such committees). The information gleaned from the stakeholder analysis will inform the selection of individuals. The committee will ideally include representatives of the highest governmental offices as well as representatives of the licensing ministries and agencies. The final selection of Steering Committee members will likely be made in collaboration with the government.

### Build Stakeholders' Support for Reform

The core staff builds enthusiasm for reform by disseminating information on licensing best practices and the benefits of adopting them. Activities may include seminars, conferences, and dissemination of information via print media, radio, television and the internet. While these activities may not win over all reform opponents, they may strengthen proponents' enthusiasm and arouse the general public's interest in reform.

**Please see the section entitled Stage Four: Implementation—Legal Reforms for more information on stakeholder management strategies.**

### Prepare Memorandum of Commitment/Understanding

At the end of the Foundations stage, the core staff's agency should formalize its partnerships with government agencies and any other partners, such as other donor agencies. Memoranda of Commitment/Understanding establish clear terms on which the core staff's agency will cooperate with its partners.

## STAGE TWO: PREPARATION

Once the core staff has laid the foundations for reform, it begins in earnest to prepare for the project. Stage Two culminates in the public launching of the reform project.

Objectives during this stage include the following:

- 1) Assemble the Project Team.
- 2) Comprehensively assess reform needs.
- 3) Solidify stakeholders' support for reform.
- 4) Finalize the Steering Committee.
- 5) Launch reform program.

### Assemble the Project Team

During the Preparations stage, the core staff expands into a full Project Team. A suggested Project Team is described in the box below, but the exact composition of the staff should be driven by the objectives and scope of each project.

#### Suggested Licensing Project Team

- **Project manager** to oversee all operations.
- **Legal specialists (1 or 2)** to manage legislative reform activities, including drafting of new legislation. Lawyers may also lead administrative process mapping.
- **Economic analysts or process specialist (1 or 2)** to conduct impact analyses of potential reforms and collaborate with lawyers on policy design.
- **Communications specialist** to oversee production of publications and coordinate awareness-raising efforts (radio and television publicity, project Web site, etc.).
- **Public-private dialogue specialist** to coordinate dialogue with stakeholders in the public and private sectors.
- **Administrative assistant.**

#### *Additional Notes*

- The team might also include a **survey design specialist** if the project expects to carry out substantial survey work (see sub-section below entitled "Comprehensively Assess Reform Needs.")
- **Performance monitoring** is assumed to be the responsibility of each staff member for the various project activities they oversee. However, at least one staff member should be given responsibility for tracking indicators of progress towards project outcomes (see more on performance monitoring in the sections on Design and Implementation and in Annex 3).

The ratio between local and expatriate staff will depend in part on the depth of the local talent pool. In addition, one should consider that local consultants may possess particularly well-informed perspectives on a country's legal, economic and political environments, whereas international consultants may have broader exposure to global best practices.

## Comprehensively Assess Reform Needs

The project team must possess a comprehensive understanding of the current licensing regime to properly design the reform project. The project team will find previous studies useful, but it will likely need to conduct additional analyses to obtain a complete picture of the regime. In contrast to the broad, preliminary studies that the team might conduct during the Foundations stage, studies during the Preparations stage should be comprehensive. Analyses should include:

- *“Maps” of all licenses, licensing processes, and licensing laws/regulations.* Project staff will need to comb all legislation, decrees, and resolutions to draw a comprehensive portrait of the licensing regime, including:
  - A list of all activities subject to licensing.
  - Lists and explanations of the procedures that apply to licensing in each sector, including any legally-mandated time limits per procedure.
  - Exposition of the costs entrepreneurs incur (officially) at each stage.
- *SME surveys of costs and time involved in acquiring licenses.* It is important to compare the costs and time officially required to obtain licenses with those reported by SMEs. As discussed in the Foundations section, robust surveys of this nature may already exist and may not need to be duplicated.
- *Needs assessments of licensing agencies.* Licensing agencies may have limited capacity to implement licensing reforms. For example, a project to introduce electronic licensing applications would fail if licensing agencies’ staff did not know how to use computers, or if it were impossible to introduce a legal basis for e-signatures. Up-front assessments are necessary to identify such constraints.
- *Tracer studies.* As a complement to other research methods, the project might engage several individuals to “navigate” the licensing process. Under this method, pioneered by economist Hernando de Soto, the project engages volunteers who plan to start businesses in sectors that require licenses.<sup>14</sup> The volunteers record all procedures, costs and time incurred throughout the licensing process. Such studies do not employ random sampling, and their results should not be viewed as authoritative, quantitative estimates. Nevertheless, they may help the project staff locate potential problem points in the licensing process.

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<sup>14</sup> Hernando de Soto, *The Mystery of Capital* (Basic, 2000). de Soto used his own research team rather than entrepreneurs recruited from the general public.

## Solidify Stakeholders' Support for Reforms

During the Preparations stage, the Project Team should engage stakeholders in an ongoing stream of activities that educate stakeholders about the benefits of reform, and that give them ample opportunities to raise questions, share concerns, and participate in elaboration of the reform agenda. Educative and consultative strategies for managing stakeholders are discussed in greater detail in **Section Four: Implementation—Legal Reforms**, but such strategies are equally important during the preparations stage.

*Study tours* may prove useful for building enthusiasm for reform among licensing agencies. The project might invite key licensing agency personnel to visit countries that have implemented good licensing practices. Seeing these “best practices in action” and interacting with host country licensing personnel may help the attendees envision improvements to their own licensing regimes and may stoke their enthusiasm for reform. However, such trips are costly. The Project Team should carefully weigh the benefits and costs of study tours before scheduling them. In addition, the Project Team must be sure to choose the “right” destination country for the tour. Officials may already have in mind particular countries that they wish to emulate (e.g. officials in a number of Balkan countries wish to emulate Ireland’s improvements to its investment climate). On the other hand, officials may take offense at comparison to certain countries. Clearly, study trips to those countries should be avoided.

The box on the next page describes a strategy used by a business environment reform project in Uzbekistan for consolidating stakeholder support during the Preparations stage.

### Motivating Reform: A Study Tour to Latvia for Uzbekistan’s Inspectors

In 2004, the IFC/PEP SME Policy Project in Uzbekistan organized a study tour to Latvia for Uzbek inspectorates. This study tour was organized to give Uzbek inspectorates a first-hand look at good inspections practice to inspire them to carry out the necessary reforms in Uzbekistan. The Project Team selected Latvia due to its success in inspections simplification and its heritage of Soviet rule, which it shared with Uzbekistan. The government of Uzbekistan supported IFC’s effort to organize the study tour.

Three representatives from each key inspecting agency (Tax, Sanitary, and Fire) were selected for the tour. The attendees were mostly “senior mid-level” officials (e.g., chief of departments and lead inspectors) rather than ministers.

The Project Team reported that the inspectors’ experiences on the study tour were vital to the project’s success. It was a great help to be able to work with inspectors who had witnessed best practices firsthand, had lived through a reform process from start to finish, and who clearly understood the goals of proposed reforms. The Team noted that inspectorates that had been represented on the tour gave more effective input into the implementation process of inspections reforms. Finally, the Project Team reported that the Study Tour’s effectiveness was augmented by the Team’s and the attendees’ decision to draw up the project’s action plan at the conclusion of the tour—*before* the team had returned to Uzbekistan. This step allowed the Team to capture the inspectors’ enthusiasm and ideas when they were freshest in their minds.

#### Lessons learned:

1. Study tours can serve a useful purpose in reform projects.
2. One should conduct the tours in countries that resemble the reforming country, while taking proper account of country sensitivities.
3. The tour group should include senior mid-level officials from the relevant agencies.
4. After completion of the study tour, the project team and the attendees should elaborate an action plan with further steps and responsibilities for each attendee.

## Finalize the Steering Committee

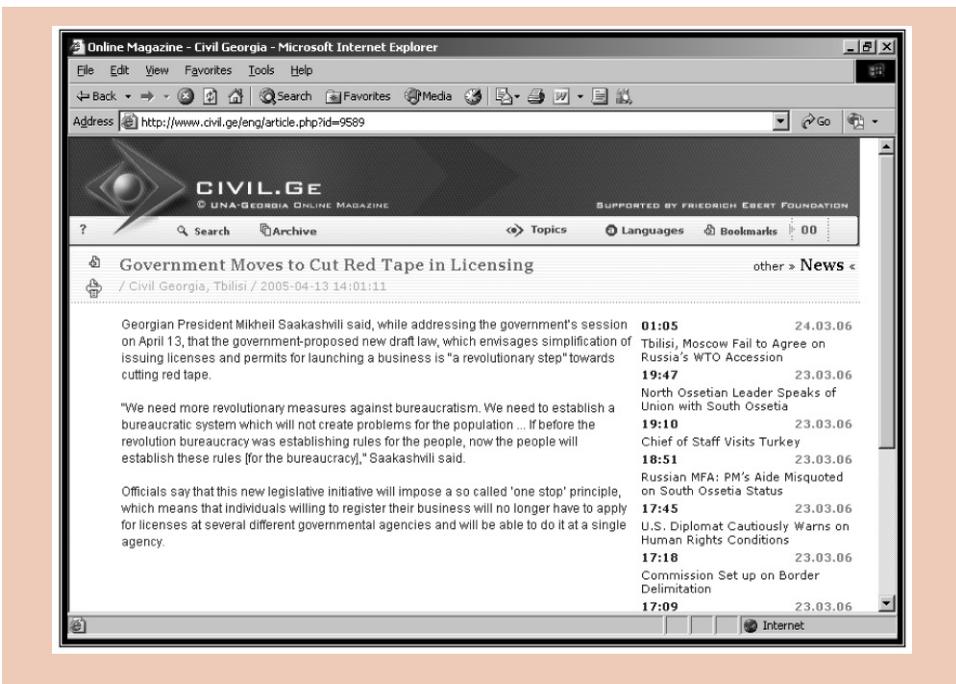
In the Foundations stage, the core staff identified potential members of the Steering Committee. The Project Team must gain these individuals' firm commitments during the Preparations stage. The selection of Steering Committee members may be made in collaboration with key government counterparts, and participation of certain individuals may be mandated by law. For example, in countries such as Mexico and Kenya, laws or Cabinet decrees required certain ministers or their representatives to participate in reform committees (see Part Three).

## Launch the Reform Program

The Committee and the Project Team conclude the Preparations stage with a formal announcement of the project's launch. The announcement need not specify all the details of the reform project, but should include an endorsement of good licensing principles and should broadly articulate the project's goals. The announcement might also name the members of the Steering Committee. Attractive vehicles for launching the project include speeches of the President or other high officials. Business environment reform conferences or workshops are ideal settings for such "kickoff" announcements.

Figure 2-2 features a press report of a speech given by Georgia's President, Mikheil Saakashvili, to announce a proposed draft law on licensing in 2005.

**Figure 2-2: Promoting a Draft Licensing Law**



Source: Civil Georgia, www.civil.ge.

## STAGE THREE: DESIGN

In Stage Three, the Project Team designs the reform project. The team's tasks during this stage include the following:

- 1) Agree on the project's purposes.
- 2) Establish the project's intended outcomes.
- 3) Specify the project's activities.
- 4) Design the performance monitoring plan.
- 5) Draft the project's ToR.

### Agree on the Project's Purposes

The Project Team and the Steering Committee should begin the design phase by agreeing on the project's purposes. In some countries, the number of licenses is the greatest problem; in others, red tape is the preeminent concern. Projects that do not address the actual deficiencies in the licensing system will not produce better licensing systems. For example, in Belarus, a Presidential Decree reduced the number of licenses but did not resolve the licensing system's core problem—burdensome and confusing administrative requirements. Entrepreneurs reported that administrative burdens were actually *worse* after the reforms (see case study in Part Three).

Equally important, the Project Team and Steering Committee must decide whether to focus on the “stock” of current licenses, the “flow” of future licenses, or both. A country that has a *stock* of inappropriate licenses at present may also have important deficiencies in the rules for creation of new licenses (a “flow” problem).

The Project Team and the Steering Committee should agree upon a concise statement of the project's purpose. The purposes may seem self-evident after the Preparations stage, but a clear purpose statement provides the Project Team and stakeholders an invaluable reference point. The following purpose statement appeared in the ToR of an actual licensing reform project:

The overall purpose of the reform is to substantially reduce the number of licensing requirements in (country) and to make the licensing regimes more simple and transparent, and focused on legitimate regulatory purposes.

### Establish the Project's Intended Outcomes

Outcomes are “changes in knowledge, behavior (new practices) and performance of direct and indirect beneficiaries.”<sup>15</sup> Once the Project Team and the Steering Com-

<sup>15</sup> *Guide to Core Output and Outcome Indicators for IFC Technical Programs*. IFC Monitoring and Evaluation Unit, December 8, 2005.

mittee agree on the purpose, they should specify the project's intended outcomes. These outcomes should be specific and measurable.

In December 2005, IFC published a set of standard outcomes for business enabling environment reform projects.<sup>16</sup> Those relevant to business licensing reform are summarized in the box below and described in greater detail in **Annex 3**. Teams should also feel free to specify outcomes that may be appropriate, but that do not appear on the list.

### **Outcomes for Business Licensing Reform Projects (from IFC 2005):**

- Licensing laws and regulations are improved.
- Relevant administrative procedures are improved.
- Official transaction costs are reduced for specific procedures.
- Unofficial transaction costs are reduced for specific procedures (i.e., corruption in the licensing process is reduced).
- The number of days required to complete specific procedures is reduced.
- Participants in trainings gain knowledge about new licensing regulations and administrative procedures.
- Business organizations increase involvement in policy advocacy.

## **Specify the Project's Activities**

Once the Project Team and the Steering Committee agree on outcomes, they specify how they will achieve them. The project may consist of legal reforms, administrative simplification solutions, or both.

### ***Legal Reforms***

As Part One of this toolkit discussed, a framework law or other high-level legal instrument is usually an essential component of well-functioning licensing regimes. Some common law countries have succeeded in creating well-functioning licensing regimes without such laws. However, even in these countries, some amount of reforms to laws governing licensing may be necessary or advisable. For example, India, a common law country, enacted sweeping reforms to its licensing regime through an official Statement of Industrial Policy (see case study in Part Three).

The Project Team should approach the subject of legal reforms by addressing the following questions:

- 1) Do we need to make legislative changes to achieve our reform purposes, or can we achieve them via other means? (e.g., changes to administrative procedures within the scope of current laws).
- 2) If legal changes are necessary, can we amend current laws or do we need to create new ones?

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<sup>16</sup> Ibid.

- 3) If we must amend old laws, what specific amendments must we make? If we will write a new law, what should its components be?

During the Design stage, the Project Team consults with the Steering Committee to identify potential components of legal reforms. Drawing on the principles of Regulatory Impact Analysis (RIA), the project team and the Steering Committee should analyze the potential economic impact of proposed reforms.<sup>17</sup> The analysis should show the benefits and costs of various reform scenarios.

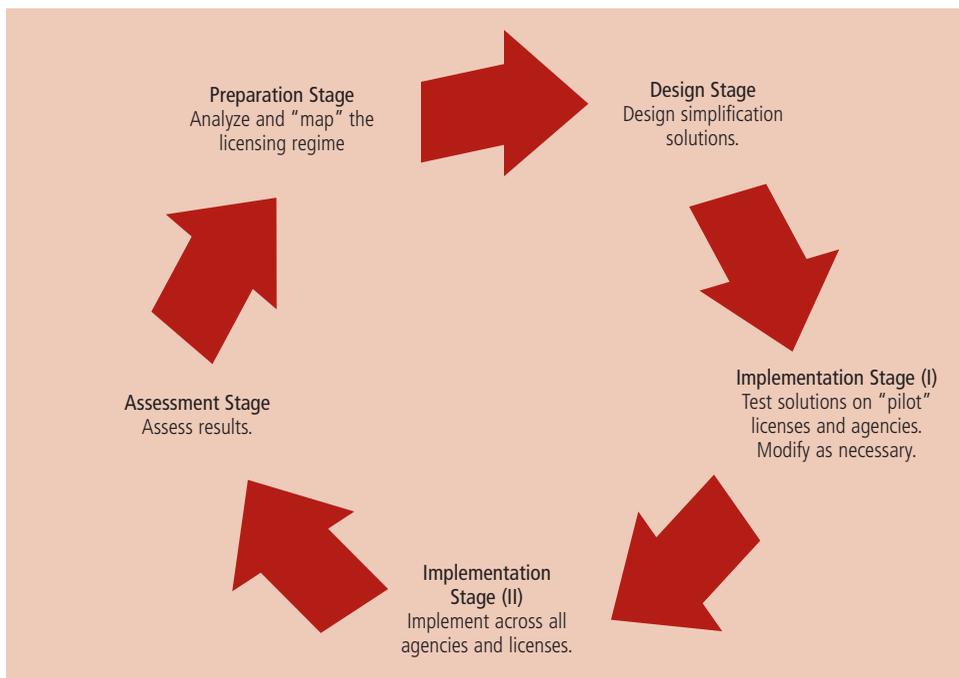
In the Implementation stage, the Team will facilitate consultations with the government and other stakeholders that will inform the drafting of the new law.

**Annex 1** presents a “Licensing Law/Regulation Checklist.” The Project Team should draw on the checklist and the principles articulated in Part One of the toolkit when considering its strategy toward legal reform.

#### *Administrative Simplification Solutions*

Administrative simplification solutions reduce the monetary and time costs of acquiring licenses. Such solutions often must be preceded by legal reforms, but in some cases countries may be able to implement simplification solutions without legislative changes.

**Figure 2-3: Administrative Simplification Project Cycle**



*Adapted from an illustration by Andrey Gurevich (IFC/PEP).*

<sup>17</sup> Much has been written about best practices in RIA. For one example, see Delia Rodrigo, *Regulatory Impact Analysis in OECD Countries, Challenges in Developing Countries*, OECD, June 2005. <http://www.oecd.org/dataoecd/21/52/35258511.pdf>, accessed August 10, 2006.

Figure 2-3 illustrates the “project cycle” for administrative simplification. The following section discusses a number of simplification solutions that Project Teams may consider during the Design Stage. Implementation and Assessment (performance monitoring and evaluation) are discussed in subsequent sections. The solutions presented here are illustrative—the Project Team may choose from them, or may design entirely different solutions.

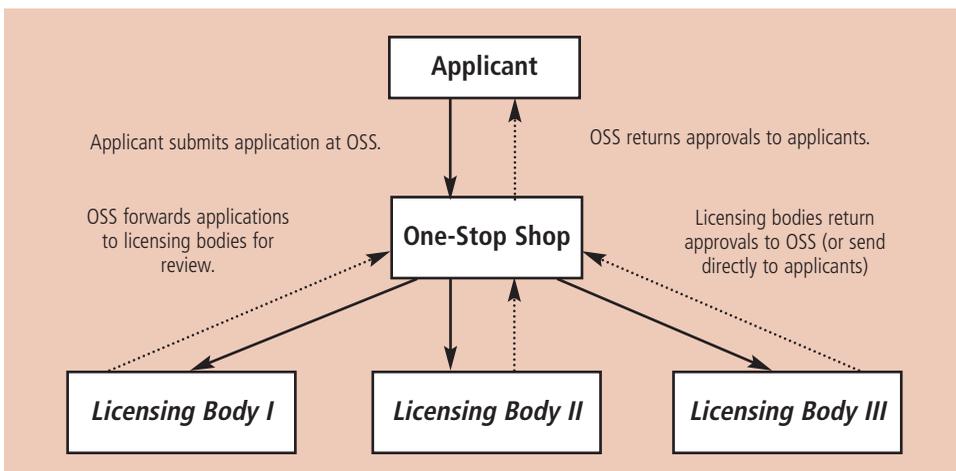
### Creation of One-Stop Shops

A “One-Stop-Shop” (OSS) is a single location—physical or electronic—where entrepreneurs can easily complete business formalities. While many OSSs deal only with business registration, a few, such as Italy’s, also process license applications.

Many observers have noted that one-stop shops often work better in theory than in practice. They are often plagued by struggles over bureaucratic turf, civil servants’ resistance to change, and poor interagency coordination. In such circumstances, the One-Stop Shop simply becomes “One More Stop.”<sup>18</sup> Project designers should carefully consider whether the circumstances in their countries favor the use of OSSs. Are mechanisms for interagency coordination good, or have agency personnel shown a willingness to make them so? Who would be likely to oppose OSSs, and how strongly would they oppose them? One might determine that OSSs are likely to create more costs than benefits in a given country’s circumstances.

Should the circumstances seem to favor OSSs, project designers might consider two licensing OSS models:

**Figure 2-4: One-Stop Shop for All Licenses**

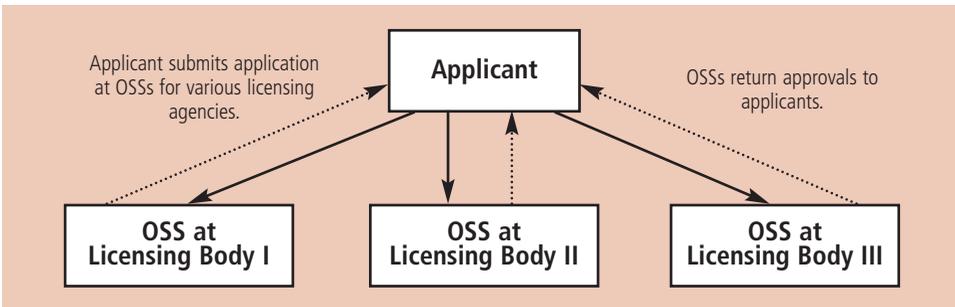


*Adapted from drawing by Bobir Taymetov, IFC/PEP*

<sup>18</sup> Frank Sader, *Do “One-Stop Shops” Work?* FIAS, 2000.

- 1) *An OSS for all licenses.* This type of OSS serves as the government's single application point for all licenses—or, as in Italy's case, as the single application point for all business formalities. The model makes formalities simple for entrepreneurs, but it demands high levels of coordination among agencies. This model would be most appropriate for countries where agencies have already shown a propensity to cooperate.
- 2) *OSSs for each licensing ministry.* Under this model, each ministry creates a single application point for all the licenses it issues. While this system creates multiple OSSs rather than just one, it requires far less coordination among ministries. If the country's licensing law names the ministry responsible for each type of license, each applicant will still have a clear path to a single application point.

**Figure 2-5: One-Stop Shops at Each Licensing Ministry**



*Adapted from drawing by Bobir Taymetov, IFC/PEP*

### **Electronic Simplification Solutions**

Electronic simplification solutions include online applications for licensing procedures and e-registries of licenses.

#### **Web-based License Applications**

Few countries have moved the business licensing application process to the Web. Even among developed countries, online licensing is rare. In Belgium, one of the few countries to offer an online license application portal, the Single Electronic Start-up Declaration (DEUS) is currently available for a limited number of business activities (see case study in Part Three).

Countries considering the creation of Web-based license application portals should carefully analyze the costs and benefits of doing so. In developing countries where Internet use and access is limited, the cost of creating Web-based application portals will likely exceed their value. The legal requirements for such a system may also be difficult or impossible to introduce.

### Online License Catalogs (“E-registries”)

A license catalog is a comprehensive list of all licenses in effect. Comprehensive license catalogs include vital information on each license, including:

- The law that makes the license legal.
- The activities the license applies to.
- The documents one must complete to acquire the license.
- The location where one may apply for the license.
- Costs associated with the license.
- The maximum number of days for processing of license applications.

Online license catalogs, or “e-registries,” offer the following benefits:

- *Increased regulatory transparency.* E-registries ensure that entrepreneurs can easily identify the licenses they are required to obtain, the documents they must submit to obtain them, and the costs they must pay for them. They also reduce opportunities for corruption, as they clearly indicate the fees and documents that authorities may legally ask entrepreneurs to submit.
- *Creation of a platform for future licensing reform.* The act of cataloguing licenses and licensing procedures in a single registry exposes redundant licenses as well as sources of red tape, such as unnecessarily burdensome demands for document submissions. The e-registry itself may thus serve as a point of departure for further reforms—and a visible way to chart progress of reforms already underway.

### Design the Performance Monitoring Plan

The Project Team should design a PMP to track progress towards the project’s intended outcomes. The PMP should indicate the following:

- *Indicators* that will be used to track progress towards each outcome.
- *Data Sources* that will be used to track progress toward each indicator.
- *Frequency* with which data for each indicator will be collected.

### Guidelines for PMP Design

- *Use IFC standard performance indicators for business-enabling environment projects, whenever possible and appropriate.* **Annex 2** presents a list of those indicators relevant to business licensing reform.

## Mexico's Federal Register of Formalities and Services (RFTS)

The RFTS is Mexico's comprehensive online catalog of all federal government-administered business formalities, including licenses. The RFTS is maintained by Mexico's Federal Regulatory Improvement Commission (Cofemer). The Mexico case study in Part Three of this toolkit discusses Cofemer's creation.

The RFTS is searchable by keyword. Each license listed in the RFTS includes the following information:

- Name of the license
- Law that mandates the license.
- A justification for the license, worded as a response to the question, "What would be the effect of elimination of this license?"
- Indication of which individuals and businesses must acquire the license.
- Contact information for the agency that issues the license.
- Application instructions, including detailed listing of all information and documentation that applicants must submit with the application.
- Application evaluation criteria.
- Period of validity for the license.
- Maximum processing time for applications.
- Contact information for complaints.

### RFTS entry for the License to Operate Radioactive Facilities

The screenshot shows a Microsoft Internet Explorer browser window displaying the Cofemer website. The address bar shows the URL: [http://www.cofemertramites.gob.mx/intranet/co\\_dialog\\_PublishedTramite.asp?coNodes=1196196&num\\_modalidad=1](http://www.cofemertramites.gob.mx/intranet/co_dialog_PublishedTramite.asp?coNodes=1196196&num_modalidad=1). The page content is titled "Trámite Publicado" and features the Cofemer logo (Comisión Federal de Mejora Regulatoria). The main information is presented in a table format:

		Homoclave: <b>CNSN-00-011 -A</b>
Nombre del trámite:	Licencias de Operación de Instalaciones Radiactivas.	
Dependencia u organismo	Comisión Nacional de Seguridad Nuclear y Salvaguardias	
Unidad administrativa responsable del trámite	Departamento de Evaluación y Licenciamiento	
Dirección de la unidad administrativa responsable	Dr. Barragán 779, interior Piso 2 Colonia: Narvarte Código postal: 03020, México, D.F.	
Otras oficinas en donde se puede realizar el trámite		
<b>Datos del responsable del trámite para consultas o quejas</b>		
Nombre del responsable:	Ignacio Jiménez Castro	
Cargo:	Jefe del Área de Rayos x y Aceleradores	

At the bottom right of the form, there are buttons for "Información RUPA" and "CANCELAR".

Sources: [www.cofemer.gob.mx](http://www.cofemer.gob.mx), and Carlos Garcia-Fernandez. "Regulatory Reform in Mexico." PowerPoint Presentation to the OECD dated September 28, 2005.

- *Benchmark performance against above-average performers.* The Project Team should compare the project country's baseline performance against leaders in the same income bracket or region, against world leaders, and against any particular countries that the host country wishes to emulate (for example, many

countries in the Western Balkans hold up Ireland as a model of rapid, investment-driven development that they wish to follow). The Team should set targets for the life of the project that are realistic yet ambitious.

- *Select indicators that compare “apples to apples.”* Different licenses face different legally-mandated procedures, costs, and processing times. For example, in Armenia, applications for the license to produce explosive materials must be processed within 30 days, whereas applications for the license to import, produce or trade fireworks must be processed within three days.

Appropriate benchmarks for licensing may include:

- *Aggregates of performance across all licensing categories against a comparable statistic:* e.g., the percentage of entrepreneurs whose license applications are not processed within the legally mandated, maximum time periods for each license.
- *Comparison of costs and time to acquire specific licenses, with costs and times associated with applications for the same licenses in other countries.* For example, one might compare processing times for a basket of licenses in Georgia (e.g., pharmaceutical production, alcohol sales, and forestry) with costs and processing times for the same licenses in the top performer in the entire Europe and Central Asia region.
- *Beware of overemphasizing reduction of the absolute number of licenses.* Countries that focus too strongly on reducing the *number* of licenses run the risk of neglecting potentially more important objectives, such as reducing costs and processing times. It may be more sensible to identify candidate licenses for elimination—keeping the public policy objectives in mind - and then measure performance as the percentage of targeted licenses that are actually eliminated.

### **Draft the Project’s Terms of Reference**

The ToR is a summary project planning document. It includes:

- Statements of the project’s purpose and intended outcomes.
- Description of the proposed project activities.
- A schedule for accomplishing the activities.
- The performance-monitoring plan.
- A project budget.

The ToR must be agreed upon by the Project Team, the Steering Committee, and the project's donors. It should also be presented to other stakeholders for comment prior to its finalization.

**Annex 3** presents a sample project ToR.

## **STAGE FOUR: IMPLEMENTATION**

### **Legal Reforms**

In the Design stage, the Project Team determined whether legal reforms to the licensing regime would be necessary. They also worked with the Steering Committee to identify the most important elements of new legislation. During the Implementation stage, the Project Team and the Steering Committee:

- 1) *Prepare initial drafts* of reform legislation in collaboration with the relevant legislative bodies (e.g. Parliament or the Cabinet of Ministers).
- 2) *Manage stakeholders* through consultations and use of media.
- 3) *Secure final passage of reform legislation.*

#### ***Prepare Initial Drafts of the Legislation***

To the greatest extent possible, the Project Team should collaborate with the Steering Committee and members of relevant legislative bodies to prepare the initial drafts of the new legislation. The Project Team's legal experts will play a more central drafting role when legislators or government officials do not have strong legal drafting skills. **Annex 1** is a Licensing Law/Regulation Checklist that drafters may find helpful.

#### ***Managing Stakeholders (I): Consultations***

Consultations are critical for producing better legislation and for stakeholder management more broadly. Consultations serve the following purposes:

- 1) *To educate stakeholders about the benefits of reform.* While the Project will have begun public outreach efforts in the Foundations stage, dissemination of information about the benefits of reform must continue throughout the life of the project.
- 2) *To highlight the most likely "stumbling blocks" to the success of the reform effort.* Consultations highlight the people and institutions most opposed to reforms, and provide those individuals and institutions the opportunity to identify the reasons why they oppose reform.

- 3) *To alleviate undue concerns about the consequences of reform.* Fear of reform may be driven by misinformation. Consultations provide opponents venues in which to air their concerns, and provide the Steering Committee and the Project Team opportunities to respond to them. For example, civil servants in certain licensing agencies may fear that proposed reforms will cause their bureaus—and their jobs—to disappear, when such cuts may not be under consideration.
- 4) *To illuminate potential responses to opponents' concerns.* There may be ways to preserve the most important elements of reforms while making adjustments that respond to the concerns of opponents. For example, if the reforms will result in reorganization of the licensing agencies, an alternative to laying staff off might be to offer them a choice of options: (1) preferred consideration for positions in the reorganized licensing bureaus, (2) reassignment to other divisions in their current agencies, or (3) reassignment to new agencies. Consultations provide avenues for solutions such as this one to emerge.

Potential consultative mechanisms include:

- *Focus groups.* Focus groups can be held separately for different types of stakeholders as well as in mixed groups. For example, the project might organize an initial series of focus groups in which each group is composed only of entrepreneurs or of civil servants from particular agencies. The Project Team would use these sessions to gauge prevailing opinions within each stakeholder group on proposed legislation. The Team could then hold “mixed focus groups” so that participants and the Project Team could exchange ideas.
- *Conferences.* Conferences may range from small “roundtables” to large, highly publicized gatherings.
- *“One-on-one” meetings with stakeholders (lobbying).* The Project Team may find it necessary to hold meetings with individual stakeholders—including legislators—to listen to their concerns, respond to their questions, and impress upon them the potential benefits of reform. Such meetings are time-consuming, yet often essential.
- *Online forums.* The Project Team, in collaboration with the government, may set up online mechanisms for comment on proposed legislation, including live “chat” forums. Such mechanisms are more appropriate in countries where the internet is widely accessible and use is widespread.

The project team must ensure that SMEs and their associations are able to participate fully in public-private consultations. All too often, these groups are exclud-

ed from dialogues on business environment reform. When this occurs, large firms may exercise disproportionate influence on legislation, and the legislation may be shaped to benefit those firms to the disadvantage of smaller ones. Even if large firms do not exercise such influence, the mere *perception* that they have done so may discredit the reform program among the wider public. In countries where ethnic conflict or discrimination exists, it may be important to make extra efforts to include minority entrepreneurs in consultations.<sup>19</sup>

**Figure 2-6: Consultation Conference Example**

**Young Economists Discuss Draft Law on Licensing**



On June 13<sup>th</sup>, IRIS grantee Association of Young Economists of Georgia (AYEG) hosted a conference in Tbilisi to discuss the new draft law on licensing and permits. State Minister Kakha Bendukidze spoke at the event, which was attended by various MPs, as well as representatives of license-issuing agencies and ministries, NGOs and the media.

Minister Bendukidze, who is the author of the draft law, discussed its major innovations. These include the conditions for license usage, post-licensing control procedures and the “one window” principle for issuing licenses and permits.

The “one window” principle allows for license and permit seekers to complete the process in one specialized place thus expediting the process. During the meeting participants had an opportunity to ask questions of Minister Bendukidze about the draft law. AYEG representatives also presented their recommendations on the draft law, many of which Minister Bendukidze shared.

The draft law is currently a topic of much discussion, because it will have a substantial impact on the Georgian business environment. It will also have a positive impact on corruption as it will remove many superfluous requirements that served as prime opportunities for extortion. Parliament is expected to adopt the new law in the near future.

Source: Inside IRIS Georgia 26, Summer 2005. [http://www.irisprojects.umd.edu/georgia/Newsletters/IRIS\\_newsletter%20summer%202005.pdf](http://www.irisprojects.umd.edu/georgia/Newsletters/IRIS_newsletter%20summer%202005.pdf), accessed April 22, 2006.

<sup>19</sup> Benjamin Herzberg and Andrew Wright. *Competitiveness Partnerships: Implementing Business Environment Reform through Public-Private Dialogue*. <http://www.publicprivatedialogue.org/papers/Competitiveness%20partnerships%20short%20version.pdf>, accessed April 22, 2006.

***Managing Stakeholders (II): Use Public Relations to “Make the Case” for Reform***

Public awareness of the need for reform strengthens the hand of reformists and places pressure on opponents. For example, IFC/PEP’s permitting reform project in Ukraine conducted a “massive PR campaign.” The campaign included some 250 media events in a single year. Project staff reported that the most effective media were articles in the country’s business press and televised information segments.<sup>20</sup>

***Finalize Legislation and Secure its Passage***

The final steps of the legal reform process are to:

- *Finalize the legislation.* The Project Team should work with drafters from the relevant legislative bodies to incorporate changes to the draft legislation arrived at during the stakeholder consultations.
- *Choose a propitious moment to introduce legislation.* The Project Team should strategize with reform supporters in the relevant legislative bodies to agree upon a moment to introduce the legislation. Factors such as elections, major policy speeches by senior officials, or the schedules of the legislative sessions may make some moments more propitious than others.

***Repeat the Steps Above for “Implementing Legislation”***

In some cases, particularly in civil law countries, framework licensing laws must be accompanied by “implementing legislation” that specifies how the framework law’s provisions will be implemented at the level of each agency. As the case studies on Georgia and Belarus illustrate (see Part Three), unclear or delayed implementing legislation can derail efforts to streamline licensing regimes. Vague legislation leaves civil servants and entrepreneurs alike unsure of the licensing regime’s rules, whereas delays in passage of legislation leave parties unsure of the extent to which the new law applies.

The Project Team must ensure that implementing legislation meets the same standards of quality and clarity as framework laws. Consultation with stakeholders is the surest means to prevent unclear implementing legislation from entering into law. Yet it is equally important that the implementing legislation be passed in a timely fashion (usually within periods mandated in the framework law). Success depends on the Project Team balancing the need for care in consultation and drafting with the need for speedy adoption of the legislation.

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<sup>20</sup> Andrey Gurevich, phone interview, March 28, 2006.

## Administrative Simplification

In the Design section above, we presented a project cycle diagram for administrative simplification and described several simplification solutions, including one-stop shops, Web-based license applications, and e-registries. During the Implementation Stage, the Project Team:

- *Pilots* the solutions.
- *Modifies* the solutions as necessary.
- *Implements* the solutions on a broader basis.
- *Trains staff* in new procedures.
- *Informs entrepreneurs* about the new procedures.

### *Pilot the Solutions*

The specifics of the piloting process depend on the shape and extent of the proposed solution. For reforms planned across the entire licensing regime, the Project Team might test them in a single licensing agency. For reforms that will be applied to a single license or agency, the pilot might involve agency-wide implementation, but for a specified “trial period.” If the agency has a number of regional offices, the Team might pilot the solution in a limited number of the regions.

Prior to the pilot, the Project Team will need to implement a careful training program for staff that explains:

- How processes will change.
- The expected benefits of the changes.
- The role of each staff member in new or realigned procedures.

The Project Team should prepare an Operations Manual detailing the new procedures that the staff of affected agencies may use for reference.

As the authors of IFC’s toolkit on sub-national simplification note, training fulfills narrower and broader objectives simultaneously:

While some employees should have been involved to some degree in the design phase, training serves as a vehicle to inform *all* managers and employees as to the final process design choices and their respective roles and responsibilities. It helps them to understand how things will change and where they stand.<sup>21</sup>

<sup>21</sup> Andrei Mikhnev, Michael Power et al. *Simplification of Business Regulations at the Sub-National Level*. IFC 2006, 51.

### ***Modify the Solutions as Necessary***

Throughout and at the end of the pilot, the Project Team should monitor performance using the indicators included in the performance monitoring plan (PMP). The performance data will indicate whether the new procedures are having the hoped-for effects, although the Team should expect that improvements will not be immediate. Performance (e.g. processing times for applications) should improve over time as agency staff gets accustomed to the new procedures.

The Team should also collect qualitative feedback on the new procedures from entrepreneurs and agency staff. Tools for collecting this feedback could include surveys, interviews, and focus groups.

Together, the performance data and qualitative feedback should reveal specific points for modification or improvement.

### ***Fully Implement the Solutions***

Once the Project Team has piloted and modified simplification solutions, it is ready to implement them to the full, planned extent (e.g. for a single license, for all licenses administered by a single agency, or across the entire licensing regime). The Project Team's first task is to train staff of the affected agencies. The training should follow the same steps described in the section on piloting above. Once training is complete, the solutions can be fully "rolled out."

### ***Inform Entrepreneurs about New Procedures***

The Project Team must inform entrepreneurs of the changes in the licensing regime. A method that has proven effective for business environment reform projects is to distribute brochures to entrepreneurs about the reformed procedures. Business associations are ideal channels for distribution of such brochures. The following text box describes an example from IFC/PEP's inspections reform project in Uzbekistan.

## **PERFORMANCE MONITORING AND EVALUATION**

### **Performance Monitoring**

In Stage Three (Design), we provided guidelines for PMPs. The Project Team should use its PMP to monitor performance indicators at regular intervals throughout the project's life, even before reforms are implemented. The Team should also compare performance to benchmarks and targets at pre-determined intervals after reforms are adopted. The Team should consider conducting measurement at the following intervals:

## Brochures on Inspections in Uzbekistan

IFC/PEP's experience producing brochures on inspections reform in Uzbekistan is instructive for other types of business environment reform projects, including licensing. The Project Team collaborated with the Ministry of Justice to produce a brochure entitled *What You Need to Know about Inspections*. The brochures included detailed explanations of the laws and regulations governing the inspections, but also a handy "pull-out" poster that described the inspections process using illustrations and clear, concise language. The Team distributed almost 40,000 copies of the brochure through regional administrative units, regional offices of the Ministry of Justice and business associations. The regional administrations and business associations were granted the right to reprint the documents. Several newspapers also reprinted the entire text of the brochures in regular editions of the papers. Finally, the Team promoted the brochure through regional seminars with the Department for the Protection of Entrepreneurs' Rights.

The team learned the following lessons from the process:

- The Ministry of Justice's co-sponsorship of the brochures assured entrepreneurs that the information was accurate and "official." The presence of the Ministry's logo on the cover of the brochure also curbed violations by inspectors, as entrepreneurs could literally "read them the book" on proper procedures.
- Some entrepreneurs had difficulty processing the detailed, legalistic language in the text of the brochure. The pull-out poster proved particularly useful for these entrepreneurs.

Source: *Reforming the Inspections System in Uzbekistan*. IFC/PEP, November 2005.

- Every quarter during the life of the project.
- Immediately after implementation of reforms.
- At quarterly intervals after the reforms are implemented.

Performance measurement at regular intervals after implementation is vital to determine whether the reforms are having their desired effects, and whether those effects are sustainable. Unsatisfactory results may point to the need for further reforms, or perhaps for more efforts to educate the staff of licensing agencies and entrepreneurs about the new procedures.

## Evaluation

If resources permit, the Project Team should commission an evaluation of the project after its conclusion. Whereas performance monitoring focuses on measurement of performance against a predetermined set of indicators, evaluations investigate broader questions. These include:<sup>22</sup>

- **Relevance.** The degree to which the project's activities and objectives were consistent with the donor's and the cooperating country's needs and priorities.
- **Effectiveness.** The extent to which the project's objectives were met.
- **Impact.** The project's actual contribution to outcomes—positive and negative, direct and indirect. Assessments of impact require use of rigorous experimental or quasi-experimental research methods. When such studies are infeasible, projects may need to rely on expert opinion and participant judgment.<sup>23</sup>

<sup>22</sup> Definitions of evaluation concepts based on OECD Development Assistance Committee (OECD/DAC), *Glossary of Key Terms in Evaluation and Results-Based Management*. OECD 2000. <http://www.oecd.org/dataoecd/29/21/2754804.pdf>, accessed April 24, 2006. The five items listed here are the DAC's five criteria for evaluation of development assistance.

<sup>23</sup> An excellent summary of impact assessment research options appears in IFC's *Guide to Core Output and Outcome Indicators for IFC Technical Assistance Projects*, Appendix C.

- *Efficiency.* The extent to which the project's benefits exceed its costs. Evaluators can examine efficiency narrowly—e.g. through one-off comparisons of reductions in monetary and time costs in the licensing process vs. the costs of the project—or they may use more sophisticated, analytical methods that capture indirect benefits and costs (e.g.—estimated increases in employment and national income due to a more open licensing regime), and that discount benefits and costs over time.
- *Sustainability.* The likelihood that the benefits from the project will persist after the conclusion of the project.

The Project Team should make provisions for an evaluation that addresses each of the above concerns to at least some extent, but the depth of the evaluation may ultimately depend upon the amount of resources available. To ensure objectivity, evaluations should be conducted by independent contractors rather than the Project Team.

# III. Country Case Studies of Business Licensing Reform

This section presents some case studies of business licensing reform in developing and developed countries. In selecting case studies, our objective was to represent as wide a range of world regions and income levels as possible.

## Business Licensing Reform Case Studies

<b>Good Licensing Reform Practice in High-Income Countries</b>
Belgium
The Netherlands
<b>Good Licensing Reform Practice in Low and Middle-Income Countries</b>
India
Mexico
<b>Sector-Specific Licensing Reform</b>
Hungary
<b>Mixed Results in Licensing Reform</b>
Georgia
Kenya
<b>Unsuccessful Licensing Reform</b>
Belarus

## BELGIUM: GOOD LICENSING REFORM PRACTICE IN A HIGH-INCOME COUNTRY

### Ex-Ante Situation

Until recently, Belgium's public sector was viewed as rigid, inefficient, and unresponsive to the needs of citizens and businesses. Business licensing was a microcosm of the problems in the regulatory system: the Establishment Law, dating from the 1950s, required entrepreneurs in 42 different professions to prove their "professional aptitude" prior to commencing business operations. Seventeen of those professions were in the construction sector, but others were in such areas as flour milling, laundry work, and photography.<sup>24</sup> A 2005 government publication noted that "many [licensing] regulations are not only complex, but obsolete and absurd."<sup>25</sup>

### Foundations for Reform

From the late 1970s through the late 1990s, Belgium moved from a centralized model of government to a federal system. Many observers feared that administrative burdens on businesses would increase under federalism. In response, the country's government launched a number of *ad hoc* reform programs in the 1980s and early 1990s, but the results of these efforts were disappointing.<sup>26</sup>

In the late 1990s, the government of Prime Minister Jean-Luc Dehaene recognized the need for more comprehensive reform. The *Law to Promote Entrepreneurship and Competitiveness*, adopted in 1998, created an Administrative Simplification Agency (ASA) in the office of the Prime Minister. The ASA serves as an independent and politically neutral focal point for administrative reform.

In 2003, the government of Prime Minister Guy Verhofstadt named a Secretary of State for Administrative Simplification, Mr. Vincent Van Quickenborne (hereafter, the Secretary of State). The Secretary of State leads the process of articulating the reform agenda while the ASA oversees implementation.

### The Reform Process

In July 2003, the government launched a comprehensive administrative reform program known as the "Kafka Plan." It charged the Secretary of State and the ASA with accomplishing twelve "Strategic Works" of administrative reform. The ASA also man-

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<sup>24</sup> "Assouplissement de la Loi d'Établissement." Press release, [www.kafka.be](http://www.kafka.be), April 15, 2005. <http://www.kafka.be/show-page.php?iPageID=121&LangCode=FR>.

<sup>25</sup> *Le Rapport Kafka II*. Federal Government of Belgium, 2005, 8. Translated from French by the author. [www.kafka.be/doc/1133208577-6406.pdf](http://www.kafka.be/doc/1133208577-6406.pdf).

<sup>26</sup> Kathy van Hoorn. "Better Regulation in Belgium (federal level): focus on administrative simplification." *Better Regulation International Seminar*, Valetta, Malta, November 2005.

ages an online portal, [www.kafka.be](http://www.kafka.be), where citizens and businesses can submit complaints about onerous bureaucratic requirements. The Secretary of State and the ASA draw upon these submissions when establishing reform priorities.

### ***Licensing Reform Under the Kafka Plan***

Under the Kafka Plan, the ASA has pursued two different types of licensing reforms: reduction in the *number* of licenses and streamlining of the licensing *process*.

1. *Reduction in the number of licenses.* The Kafka Web portal received numerous complaints from entrepreneurs about the Establishment Law. In response to these comments, the Secretary of State and the Minister of *Classes Moyennes*<sup>27</sup> evaluated whether certain professions should be exempted from the law. They based their review on the following principles:

- 1) There should be professional aptitude requirements *only* when such requirements are necessary to protect consumers' health, the environment, or the "social interest."
- 2) There should not be professional aptitude requirements if other legislation provides sufficient safeguards.
- 3) Fields in which adequate training opportunities do not exist should not have specific training requirements.
- 4) Training requirements are not appropriate if the required diplomas are not directly related to the activity concerned.

On the basis of their review, the Secretary of State and the Minister proposed eliminating licensing requirements for the following eight professions:

- 1) Milling.
- 2) Domestic grain trading.
- 3) Solid fuel retailing.
- 4) Liquid fuel trading.
- 5) Commercial Photography.
- 6) Feed and hay trading.
- 7) Clock repair.
- 8) Commercial laundry services.

According to the government, more than 10,000 businesses are active in these sectors and more than 700 start up each year.

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<sup>27</sup> The Ministry of *Classes Moyennes* addresses the concerns of SMEs, self-employed persons, and practitioners of "liberal professions."

The Royal Decree of Sept. 1, 2005 eliminated licensing requirements for these professions as of Jan. 1, 2006. In the near future, the Secretary of State and the Minister for *Classes Moyennes* will review the requirements for non-construction professions still subject to licensing in order to determine whether the requirements should be eliminated.<sup>28</sup>

2. *Administrative streamlining: the Single Electronic Start-up Declaration (DEUS).* In numerous professions, entrepreneurs must acquire multiple licenses and authorizations prior to beginning operation. The DEUS (the French acronym for *Déclaration Electronique Unique Starters*), launched in September 2004, allows entrepreneurs to apply for all relevant licenses using a single form. They may submit the form electronically via the Belgian Federal Government's Web site ([www.belgium.be](http://www.belgium.be)). Prior to using the DEUS, entrepreneurs must have already registered their businesses, but Kafka Reforms have significantly streamlined this process.

For the moment, entrepreneurs in only two sectors—"horeca" (hotels, restaurants and cafes) and consumer credit provision—may apply for licenses via the DEUS. ASA is currently evaluating DEUS's user-friendliness, cost-effectiveness, and frequency of use. The decision whether to extend the DEUS to other sectors will depend on the evaluation's findings.

3. *Online list of required licenses and authorizations by profession.* The federal government has created a comprehensive list of the licenses and authorizations required for each business activity. Each listing explains where one applies for the licenses, what documentation is necessary, and how much the licenses cost. The list is accessible on the Federal Government's website ([www.belgium.be](http://www.belgium.be)) free of charge.

## Lessons Learned

- *Licensing reform may be easier if it occurs within the framework of a broader administrative reform program.* Belgium has carried out its licensing reforms within a comprehensive red tape reduction program. Licensing reform enjoys a number of benefits as a result of its inclusion in the broader reform program:
  - *Enthusiastic, well-publicized backing from vital stakeholders.* The Prime Minister's office and the Secretary of State bill the licensing reforms, along with associated business registration reforms, as components of a well-publicized plan to streamline the business start-up process.
  - *Greater sustainability* due to leadership from institutions with permanent legal status (the ASA and the Secretary of State for Administrative Simplification).

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<sup>28</sup> Information on reduction in the number of licenses from "Assouplissement de la Loi d'Établissement."

- *A strong public constituency for reform* due to the public's ability to participate in the reform policy-setting process via the [kafka.be](http://kafka.be) portal.
- *A country need not choose between reducing the number of licenses and streamlining the licensing process—it may do both.* The Secretary of State and the ASA recognized the need to reduce both the number of licenses and the complexity of the licensing process. They are addressing both objectives simultaneously via separate reforms.

## THE NETHERLANDS: GOOD LICENSING REFORM PRACTICE IN A HIGH-INCOME COUNTRY

### Ex-Ante Situation

Prior to the late 1990s, the SME start-up process in the Netherlands was “difficult, time consuming, and costly.”<sup>29</sup> The 1954 Establishment of Businesses Act was a major source of entrepreneurs’ frustration. This Act, which was established to “foster the quality of entrepreneurship,”<sup>30</sup> required more than 80 types of businesses to acquire licenses prior to start-up. As late as 1993, businesses faced criminal prosecution if they failed to acquire the requisite licenses.<sup>31</sup>

### Foundations for Reform

In the mid-1980s, high unemployment, fiscal difficulties, global competitive pressures, and the imperatives of European integration drove the Netherlands to begin examining avenues for regulatory reform.<sup>32</sup> At the same time, the government recognized that the SME sector in the Netherlands was underdeveloped—entrepreneurs played a smaller role in the Dutch economy than in other European countries and the United States.

When Prime Minister Willem Kok’s liberal-left government took power in 1994, it sought to advance regulatory reform in general and SME-policy reform in particular. The Market Function, Deregulation, and Quality Legislation Program (the “MDW”), launched that same year, was a driving force behind regulatory and SME policy reform. There were two bodies at the heart of the MDW Program. The first was a Ministerial Committee, which was chaired by the Prime Minister and which

<sup>29</sup> Lois Stevenson and Anders Lundström. “The Case of the Netherlands,” *Patterns and Trends in Entrepreneurship: SME Policy and Practice in Ten Economies* [book online]. Swedish Foundation for Small Business Research, 2001, available from [http://www.fsf.se/patterns\\_download.html](http://www.fsf.se/patterns_download.html).

<sup>30</sup> *The Entrepreneurial Society*. Netherlands Ministry of Economic Affairs, Entrepreneurship and Small and Medium-Sized Businesses Department. 2000, 21. [http://www.exist.de/kooperation/dateien/8\\_nletr.pdf](http://www.exist.de/kooperation/dateien/8_nletr.pdf).

<sup>31</sup> *Ibid.*, 24.

<sup>32</sup> OECD, *Regulatory Reform in the Netherlands*, 1999, 7; Steven and Lundström, 253.

included the Ministers of Justice and Economic Affairs. The second was an independent Civil Service Commission, which suggested key areas for reform and convened public-private working groups to craft reform proposals.<sup>33</sup> The bodies identified the Establishment Law as a priority area for reform.

## Reform Process

The Netherlands reformed the Establishment Act in two stages: a first stage of reforms in 1996 and a second set in 2001, after an evaluation pointed to remaining problems with the Law.

The 1996 Reform to the Establishment Act included the following provisions:

“Free” professions did not require business licenses. These professions included law, accountancy, architecture, and consultancy services.

Those professions subject to licenses were grouped in three tiers:

**Tier 1:** *Entrepreneurs in most retail areas.* These entrepreneurs had to acquire a diploma of proficiency in general business skills, known as the AOV (*Algemene Ondernemers Vaardigheden*).

**Tier 2:** *Entrepreneurs in the construction, electromechanical installation, transport, and food and drink sectors.* These entrepreneurs had to acquire both the AOV and certification of more specialized business management skills (the *bedrijfstechniek*, or BT).

**Tier 3:** *Bakers, butchers, and electricians.* In addition to the AOV and BT requirements, these entrepreneurs had to meet technical skills requirements (*vaktechniek*, or VT).

In an open market, consumers decide if they need quality products. Only the most able and experienced entrepreneurs survive in this 'battle.' —from a licensing reform case study prepared by the Dutch government

The Ministry of Economic Affairs had promised to evaluate the 1996 reforms after five years. However, in late 1997, the Minister of Economic Affairs promised Parliament that the Ministry would carry out the evaluation three years ahead of schedule. The evaluation found that despite the reforms, the law was “not an effective, efficient and essential element in fostering the quality of entrepreneurship,” and that it “act[ed] as a barrier to entry for potential new businesses.” The evaluation found that startups had increased by 30 percent in sectors where licensing regulations had been relaxed, but had dropped by 50 percent in sectors where the regulations had become more stringent.<sup>34</sup>

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<sup>33</sup> OECD, 13.

<sup>34</sup> *Entrepreneurial Society*, 21.

On the basis of the evaluation, the government decided to further reform the Establishment Act. The new measures, implemented on 1 January 2001, also proposed to abolish the Establishment Act entirely by Jan.1, 2006.<sup>35</sup>

The new measures included the following:

- All AOV, BT, and VT requirements unrelated to “health, safety, or environmental aspects” eliminated.
- All AOV requirements eliminated for many “retail-trade, catering, and craft” enterprises. Under the new legislation, these businesses only needed to complete general business registration with the Chamber of Commerce.
- Firms in the following sectors still had to meet BT and VT requirements: construction firms, electrical and mechanical installation, transport and food preparation (e.g., bakeries and butcheries). However, these requirements would be reviewed to verify that they did not overlap with similar measures contained in other legislation. If overlap did exist, the BT and VT requirements would be eliminated.
- Establishment requirements would not be stricter in any sector than they were prior to the reforms.

## Continuing Reforms

The government planned to repeal the Establishment Act by Jan. 1, 2006. Under this plan, all measures necessary for health, safety, or environmental reasons would be covered by other legislation, implemented by business associations, or maintained on a “self-regulatory” basis by businesses. While the government did not meet its target date, it still hopes to obtain Parliament’s approval for repeal of the Act in 2006. In this respect the consultation has been completed and the proposal of total repeal was sent to Parliament at the beginning of September 2006. Due to the upcoming elections in November 2006, the Parliament has postponed the process until December 2006.<sup>36</sup>

## Lessons Learned

*A wider regulatory and SME-sector reform program is often a valuable foundation for licensing reform.* As in other countries, a wider drive towards regulatory reform and a desire to reform the SME enabling environment in particular were major drivers of licensing reform in the Netherlands.

<sup>35</sup> Bruce Ballantine, Bethan Devonald, and Richard Meads (Centre for Strategy and Evaluation Services). “Netherlands (Reduction in Business Qualifications). *Benchmarking the Administration of Business Start-Ups*. CSES/European Commission Enterprise Directorate, January 2002, 133. [http://europa.eu.int/comm/enterprise/entrepreneurship/sup-port\\_measures/start-ups/bench\\_admin\\_business\\_start-up\\_final\\_2002.pdf](http://europa.eu.int/comm/enterprise/entrepreneurship/sup-port_measures/start-ups/bench_admin_business_start-up_final_2002.pdf), Accessed January 16, 2006.

<sup>36</sup> Annemiek Hautvast, Netherlands Ministry of Economic Affairs. E-mail received 16 February 2006.

*Monitoring and Evaluation is a vital part of the reform process.* The government's evaluation of the effects of its initial licensing reforms highlighted remaining problems and highlighted the need for additional reforms.

## **INDIA: GOOD LICENSING REFORM PRACTICE IN A LOW-INCOME COUNTRY<sup>37</sup>**

### **Ex-Ante Situation: The “License Raj”**

After India's independence in 1947, it pursued a socialist-inspired development strategy in which the state intervened heavily in economic activities. The Indian statesman Chakravarti Rajagopalachari (Rajaji) coined the term “License Raj” to describe the regulatory Web that governed the economy.

Under the License Raj, firms in almost every line of business needed licenses for start-up and operation. All firms with fixed capital greater than Rs. 3.5 million were subject to licensing, and firms with assets greater than Rs. 200 million were subject to further restrictions under the Monopolies and Restrictive Trade Practices (MRTP) Act.

The license application process was exceedingly slow and rife with corruption. License applications passed through multiple levels of bureaucracy, including local and regional bodies, the administrative ministry, an interministerial licensing committee, and a senior minister (for decision on final approval).

Many observers believe that India's onerous licensing requirements dampened economic growth. India's economy grew annually by roughly 3.5 percent between 1950 and 1980, a rate derisively termed the “Hindu Rate of Growth.”

### **The Reform Process**

Most of India's licensing reforms occurred in two phases: an “incrementalist” phase in the mid-1980s and a sweeping reform in 1991.

#### ***Phase I: Incremental Reform***

By the mid-1980s, many policymakers, academics, economists and intellectuals recognized the need for economic reforms. Yet anti-reform constituencies remained strong, including private enterprises that benefited from protection, these companies' political patrons, and the many Indians who remained sympathetic to left-wing ideologies. Prime Minister Rajiv Gandhi's government recognized that the time was

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<sup>37</sup> This case study is based primarily on the following sources: (1) Arvind Panagariya, “India in the 1980s and 1990s: A Triumph of Reforms.” IMF Working Paper WP/04/43, March 2004; (2) “All Tied Up: India Under the License Raj: The Triumph of Red Tape.” Asia Now, Issue 3, 2004; (3) Chander Mohan Vasudev, “A Perspective of Economic Reforms in India – Past, Present and Future.” Presentation at Duke University, November 9, 2005; and (4) Montek S. Ahluwalia, “India's Economic Reforms: An Appraisal.” Government of India Planning Commission, August 1999. <http://planningcommission.nic.in/reports/articles/artf.htm>. Other sources are cited in specific instances.

not ripe for sweeping reforms. Instead, it pursued incremental reforms that economist Arvind Panagariya calls “liberalization by stealth.” As Panagariya notes, the licensing reforms during this era were substantial:

- 25 industries were de-licensed in 1985<sup>38</sup> and six more between 1985 and 1990.
- The “investment ceiling” above which firms were required to obtain licenses was raised from Rs. 3.5 million to Rs. 500 million in economically depressed regions and Rs. 150 million in other areas.
- MRTP regulations were applied only to firms with investment over Rs. 1 billion instead of the prior ceiling of Rs. 200 million. Twenty-seven industries were freed completely from MRTP rules. The reforms waived additional MRTP firms from licensing if the firms were located at least 100 km from large cities, and freed all MRTP firms from licensing in industries in which they were not “dominant.”
- 27 industries remained subject to licensing at any firm size and geographic location (e.g. coal, electrified textile operations, automobiles, steel).

### ***Phase II: Comprehensive Reform***

India experienced a balance of payments crisis in 1991, and the International Monetary Fund (IMF) extended the country a bailout package to avert financial meltdown. Observers debate whether the reforms were “home-grown” and merely “endorsed” by the IMF, or whether the Fund “imposed” them on the government. In either case, it is clear that the then Finance Minister, Dr. Manmohan Singh (now India’s Prime Minister) used the crisis as a breach through which to introduce sweeping reforms. He did so with the crucial support of Prime Minister Narasimha Rao.<sup>39</sup>

While India has implemented many post-1991 economic reforms gradually, it reformed the licensing regime with dramatic swiftness. The government promulgated the “New Industrial Policy,” officially titled the Statement of Industrial Policy, on July 24, 1991. The NEP declared that “industrial licensing will henceforth be abolished for all industries, except those specified, irrespective of levels of investment.” As Panagariya notes, this was a critical shift from an incremental, “positive list” approach to a comprehensive “negative list.” Only the industries on the negative list remained subject to licensing, for reasons of health, safety, and environmental protection.

Licensing reform continued after 1991 at a faster pace than reform in other areas. Montek S. Ahluwalia, Deputy Chairman of India’s Planning Commission, noted in 1999 that the easing of government controls on private investment “enjoys the

<sup>38</sup> Panagariya notes that 16 of these industries had been delicensed in 1975.

<sup>39</sup> “Democracy’s Drawbacks.” *The Economist*, October 27, 2005.

widest possible political support across parties.” The government eventually trimmed the list of industries subject to licensing to just five:

- Arms, ammunition, explosives, and defense equipment.
- Atomic substances.
- Narcotics, psychotropic substances, and hazardous chemicals.
- Alcoholic drink production.
- Tobacco products.

### Results

One cannot attribute outcomes exclusively to licensing reforms because they occurred amid a host of other reforms. However, it is likely that the licensing reforms contributed, at least in part, to a number of salutary results.

- *Strengthened industrial growth*: annual industrial growth increased from 4.5 percent in 1985-86 to 10.5 percent in 1989-90.<sup>40</sup>
- *Increased foreign investment*. India’s FDI inflows increased from \$106 million in 1985 to over \$2 billion ten years later.<sup>41</sup>
- *Increased GDP growth rates*. Whereas annual GDP growth averaged 4.1 percent from 1978-79 to 1987-1988, it averaged 7.6 percent between 1988-89 and 1990-91 (the incremental reform era) and 6.1% from 1992-93 through 2001-02 (the post-comprehensive reform era).<sup>42</sup>

### Future Reforms

Licensing reform has progressed further than many other needed reforms, due in large part to its wider acceptability across the political spectrum. As Ahluwalia has noted, de-licensing “enjoys the widest possible political support across parties. Major progress has been made.” In October 2005, *The Economist* captured the positive outlook for licensing reform despite grimmer prospects in other reform areas: “Many important reforms—especially trade liberalization, but also the dismantling of the ‘licence raj’ of bureaucratic obstacles to enterprise—are well in train and not in reverse.”<sup>43</sup>

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<sup>40</sup> Ashok Desai, “The Economics and Politics of Transition to an Open Market Economy: India.” *OECD Working Papers, Vol VII, No. 100, quoted in Panagariya.*

<sup>41</sup> UNCTAD, FDI Database.

<sup>42</sup> Panagariya, 10.

<sup>43</sup> “Democracy’s Drawbacks.”

## Lessons Learned

- *Incremental reforms can produce significant results.* Before 1991, the Indian public and large sections of the political class were not willing to support sweeping reforms to the licensing regime. But the government still found ways to advance, bit by bit, meaningful reform of the licensing regime.
- *Crises may open reform windows—would-be reforms must stand ready to seize them.* Reform-minded Finance Minister Singh and Prime Minister Rao immediately recognized the balance of payments crisis as a rare opportunity for dramatic reforms. Their example shows that, while one need not always wait for crises to make meaningful reforms, alert reformers always stand ready to seize the unique reform opportunities that crises provide.

## MEXICO: GOOD LICENSING REFORM PRACTICE IN A MIDDLE-INCOME COUNTRY<sup>44</sup>

Mexico is recognized as being one of the first OECD countries to tackle regulatory reform and to reduce red tape. Its sweeping reform programs of the 1990s and the first years of the twenty-first century are widely viewed as reform models. This case study highlights the effects of these reforms on business licensing.

### Ex-Ante Situation

From the 1930s through the 1980s, Mexico's government intervened extensively in the Mexican economy. During this period, state-owned enterprises controlled significant portions of the economy, and heavy-handed regulation, price controls, and layers of red tape stifled private enterprise.

### Reform Foundations, Drivers, and Champions

At the beginning of the nineties, a number of economists in Mexico recognized the need to create a friendlier business environment.<sup>45</sup> In 1989, the government created an Economic Deregulation Unit (UDE) within the Ministry of Trade and Industry. The UDE was given the power to review regulations and propose regulatory reforms. In the aftermath of Mexico's late 1994 peso devaluation and subsequent financial crisis, Mexican business associations pressed the government to provide them relief in the form of smaller government and reduced taxes. During this same

<sup>44</sup> Sources for this case study include: (1) OECD, *Regulatory Reform in Mexico*, 1999; (2) OECD, *Mexico: Progress in Implementing Regulatory Reform*, 2004; (3) Fernando J. Salas, *Mexican Deregulation: Smart Tape on Red Tape*, February 2004; (4) Fernando J. Salas, *Improving Regulation: The Mexican Experience*, August 2004; (5) Fernando Salas and Sunita Kikeri, "Regulatory Reform," *Public Policy for the Private Sector*, Note 282, January 2005; (6) Carlos Garcia-Fernandez, *Regulatory Reform in Mexico*, presentation to the OECD, September 28, 2005; (7) Carlos Garcia-Fernandez, *Competitive Mexico*, presentation on the Cofemer website dated September 29, 2005.

<sup>45</sup> Salas, *Mexican Deregulation*, 8.

period, the UDE proposed to expand its mandate to reduction of red tape, particularly in the area of business start-up procedures. President Zedillo supported UDE's proposal, and in November 1995 he issued a decree titled the "Agreement to Deregulate Business Activities," known by its Spanish acronym as the ADAE.

## The Reform Process

The ADAE:

- Ordered 12 ministries to submit to the UDE lists of all business start-up formalities under their purview, and to indicate the legal bases of each formality.
- Gave the UDE the authority to review the lists to determine if the measures were efficient. If they were not, the UDE would determine if they should be streamlined or eliminated.
- Created a Deregulation Council (CDE) composed of the Secretaries of Labor, Trade and Industry, and Finance; the Governor of the Bank of Mexico, the Comptroller General, and several representatives of business associations, agricultural organizations, major universities, and organized labor. The Council lent institutional clout to the review process and allowed the CDE and UDE to draw upon the expertise of a variety of actors, both governmental and non-governmental.<sup>46</sup>

After the UDE and the Council reviewed each agency's submissions, they sent a reform proposal back to each agency. The agencies had several weeks to prepare their responses, and then negotiated with the UDE and the Council over a final reform package. The Deregulation Council then proposed a package of reforms to Congress.

In 2000, reforms to the Federal Administrative Procedure Law gave the UDE a more permanent legal status by transforming it into the Commission for Regulatory Improvement (Cofemer), an autonomous unit within the Ministry of Economy (formerly the Ministry of Trade and Industry).

## Major Achievements Related to Business Licensing

- *Sanitary License Reforms* (1997, 1998, 1999, 2000). Before 1997, the Health Ministry required most businesses to acquire a sanitary license prior to beginning operations. Businesses had to undergo *ex-ante* inspections to acquire the license. A series of four reforms exempted all activities from the licensing requirement except for those in the chemical, pharmaceutical and medical sectors. 81 percent of activities formerly subject to sanitary licensing became exempt. Enterprises in many lower-risk sectors may simply notify the Health

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<sup>46</sup> Salas, *Mexican Deregulation*, 15.

Ministry that they are beginning operations, and then undergo random inspections *after* start-up.<sup>47</sup>

- *The Federal Registry of Formalities and Services (RFTS)*. Cofemer maintains the RFTS, an online registry that lists all federal business formalities, including licenses. In most cases, authorities may not require any formality not included in the RFTS.
- *Transparency Law*. Cofemer drafted the Transparency Law, which went into effect in June 2003. The law guarantees the public the right to view the records of federal agencies. It also requires agencies to disclose (via the Internet) all firms that are awarded licenses.

## GEORGIA: MIXED RESULTS IN BUSINESS LICENSING REFORM<sup>48</sup>

### Ex-Ante Situation

Prior to 1999, Georgia required entrepreneurs to obtain licenses for more than 900 business activities. Problems included long processing times, unclear and excessive documentation requirements, and widespread corruption. In addition, entrepreneurs outside the capital, Tbilisi, found compliance difficult because they were required to visit Tbilisi to apply for licenses.

### Reform Process

Georgia has pursued licensing reform in two “waves”: a first wave under President Eduard Shevardnadze (the late 1990s through 2002) and a second wave under President Mikheil Saakashvili (2004-2005).

#### *First Wave of Reform*

Georgia adopted its first framework licensing law in 1999, but the law did not greatly reduce the problems in the licensing system. Georgia’s Parliament recognized the need for further reforms and adopted the Law on the Bases of Issuance of Licenses and Permits in May 2002. The law included a “positive list” of all activities sub-

<sup>47</sup> OECD, *Regulatory Reform in Mexico*, 31.

<sup>48</sup> Giorgi Gelovani and Givi Petriashvili (IFC/PEP) authored a significant portion of this case study. Other sources for the case study include: (1) *Assessment of Administrative Procedures for Doing Business in Georgia*, FIAS, June 2004; (2) IFC, *Business Environment in Georgia, as Seen by Small and Medium Enterprises*, 2004; (3) “Government Moves to Cut Red Tape in Licensing,” *Civil Georgia* [online magazine], April 13, 2005; (4) “Georgia Moves to Cut Red Tape in Licensing,” *Civil Georgia*, June 11, 2005; (5) “The New Law on Licenses and Permits,” *Legal Newsletter (Mgaloblishvili, Kiptiani, Dziridzigiuri (MKD) Law Firm)*, Issue N11, August 12, 2005; (6) “A New Dawn for Licensing and Permits,” *AmCham News Magazine*, Issue 3, 2005; (7) “Young Economists Round Table on State Licensing Reform” *Inside IRIS Georgia*, Issue 24, May 31, 2005; (8) Email correspondence with IFC staff, including Irina Kokaia of IFC Georgia and Xiaolun Sun of FIAS.

ject to licensing and the agencies that would issue those licenses. FIAS analysts wrote that the law “creates a framework for consistently implementing and enforcing the licensing regime in Georgia.”<sup>49</sup>

While the 2002 law improved the licensing regime on paper, significant problems remained. A 2004 FIAS study found the following problems:

- *“Legislative vacuums.”* The 2002 law required that Parliament pass additional, implementing legislation soon after the law’s passage, but Parliament waited many months to adopt these laws. For example, Parliament did not adopt the Law on Licensing of Food and Tobacco Production until May 7, 2003—just short of a year after passage of the framework law—and it waited until September 2003 to adopt the Law on Licensing and Permit Fees. Businesses continued to open and operate during this period even though licensing procedures remained unclear.
- *Difficulty in applying for licenses outside the capital.* The law did not change the need for entrepreneurs outside Tbilisi to travel there to apply for licenses.
- *Slower procedures and greater unofficial costs.* A December 2002 survey found that businesses needed 11 more days to get a license compared with two years earlier—up to 23 days from 12.<sup>50</sup> Unofficial payments per license rose over that same period by an average of \$21. The IFC’s August 2004 survey of SMEs found that more than 80 percent of businesses complained of long wait times for licenses. The IFC suggested that the wait times were due in part to the lack of a “silence is consent” rule. Such a rule automatically grants licenses to businesses if authorities do not process their applications within mandated time limits.

### ***Second Wave of Reform***

The reform-minded government of President Mikheil Saakashvili assumed power after Georgia’s November 2003 “Rose Revolution” and January 2004 elections. President Saakashvili’s government declared its commitment to improving Georgia’s business climate and streamlining its regulatory regime.

State Minister for Economic Reforms Kakha Bendukidze was the lead drafter of the 2005 Law on Licenses and Permits. Civil society groups, such as the Association of Young Economists of Georgia (AYEG) also participated in the drafting process, and AYEG held roundtables during the process that included government representatives, entrepreneurs, and civil society groups.

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<sup>49</sup> FIAS, *Assessment of Administrative Barriers for Doing Business in Georgia (2001)*, quoted in the 2004 *Administrative Barriers* report.

<sup>50</sup> The 2004 IFC survey found that the time to acquire a license varied significantly by sector. For example, the survey found that a wait time of 14.5 days for a design and construction license and 33.6 days for an education institutions license.

President Saakashvili publicly backed the new law, and in April 2005, described it as a “revolutionary step.”<sup>51</sup> Parliament adopted the new “Law on Licenses and Permits” (or “Framework Law”) on June 24, 2005.

### ***Features of the Framework Law***

The 2005 law requires licenses (and permits) only for activities that involve “significant state and human interests or are connected with the use of natural resources.”<sup>52</sup> Prominent features of the law include the following:

- *Reduction in the number of licenses.* The law reduces the number of activities subject to licensing and permitting from 909 to 159.<sup>53</sup> Like the 2002 law, it includes a “positive list” of all areas subject to licensing.
- *Creation of different categories of licenses.* The list groups the licenses into the following categories:<sup>54</sup>
  - *Use Licenses* that permit exploitation of natural resources. These licenses are awarded through auctions to parties that fulfill a set of specific operating requirements.
  - *Activity Licenses* for most other activities. Fees for these licenses are set by the Law on License and Permit Fees.

All use and activity licenses are then categorized as either *general* or *specific*. General licenses allow entrepreneurs to carry out a range of activities within a given category. Specific licenses allow a more specific activity. Examples include the following:

License for Use:

*General* License for Utilization of Forest Resources, which comprises:

- a) *Special* License for Forest Harvesting.
- b) *Special* License for use of Forest for Setting a Hunting Infrastructure.

License for *Activity*:

*General* License for General Education:

- a) *Special* License for primary general education.
- b) *Special* License for basic general education.
- c) *Special* License for secondary general education.

<sup>51</sup> *Civil Georgia*, April 13, 2005.

<sup>52</sup> *Legal Newsletter*, 5.

<sup>53</sup> Statistics counting licenses and permits separately were not available.

<sup>54</sup> Information from Givi Petriashvili, IFC/PEP Georgia, emails dated December 27 and 28, 2005.

- *One-Stop Shops.* Applicants for a license interact with a single office in the agency that issues the license. That office—*not* the applicant—is responsible for any and all necessary coordination with other government agencies.
- *“Silence is Consent.”* The law stipulates that agencies must issue licenses within one month for most licenses. If agencies fail to issue licenses within the stipulated period, businesses may begin to operate as if the licenses were granted.
- *Clear explanations for rejections.* Agencies must provide clear explanations when they reject applications. Applicants may challenge rejections in court.

***Other important provisions:***

- Old licenses remain valid (for sectors still subject to licensing).
- An enterprise’s branch offices are not required to hold licenses.
- The law necessitates changes to some 100 other laws as well as elaboration of implementation procedures. To prevent “legislative vacuums,” temporary state decrees are to provide guidance to enterprises until the changes are complete.

**Implementation and IFC Assistance**

IFC’s SME Policy Project seeks to help Georgia successfully implement the Framework Law. The Project has identified numerous problems in the implementation process. A principal source of difficulties is the Georgian Parliament’s failure to promptly pass implementing legislation. The Framework Law provides for the adoption, by Nov. 15, 2005, of a wide variety of specialized legislative acts to regulate issuance of licenses and permits under the new Framework Law. The Framework Law allows the Georgian government to issue temporary provisional decrees regulating licensing until Parliament passes the implementing legislation.

As of summer 2006, Parliament had failed to produce any of the implementing legislation mandated by the Framework Law, so the provisional resolutions remain in effect. These resolutions contain references to old specialized licensing laws that contradict the Framework Law. For example, in the environment sector there are more than 20 active specialized statutes that relate to license issuance processes, yet these laws need to be heavily amended to meet the requirements of the Framework Law. For example, fishing licenses are regulated by the government’s provisional Regulation #138 on Issuance of Fishing License. The fishing license remains partly regulated by the “Law on Wildlife,” which is still in force and has more detailed guidelines for measuring the quantity of the fish subject to licensing, detailed descriptions of vessels, and special equipment for fishing specific species, and other

specificities. Yet according to the Framework Law, the applicability of the specialized Law on Wildlife to the licensing regime depends on the resolution of the government.

In the absence of implementing legislation, licensing authorities are arbitrarily demanding different documentation from different license applicants. They possess undue authority over the decision to grant licenses, and their decisions are less open to challenge by applicants or scrutiny by third-parties.

Other problems include the following:

- *Inability to meet processing deadlines and failure of “silence is consent.”* Governmental agencies cannot physically comply with the “silence-is-consent” principle due to time limitations. For instance, the Framework Law establishes a limit of 30 days for the Ministry of Environment’s processing of license applications, yet the Ministry always misses this deadline. Unjustified delays legally entitle the applicants to demand licenses under the silence-is-consent rule. In an attempt to neutralize such complaints, the Ministry prepares official letters to applicants describing the reasons for the delays. While the Framework Law envisages such “letters of notification,” it is clear that the delays are the result of systemic problems rather than exceptional circumstances. On the other hand, the probability of granting the license/permit to an inadequate applicant is also increasing.
- *Failure to implement one-stop shops.* The Framework Law briefly mentions the need to create one-stop shops, but no steps have been taken to implement them.
- *Threats to protection of public safety.* Auctioned licenses (licenses for use) may be sold or transferred to third parties subject to the licensor’s approval. If not made with due diligence, such a transfer may compromise public safety. This is due in part to the presence of the silence-is-consent principle: if the new owner does not receive a re-registration confirmation from the licensing agency within three days, he or she may invoke silence-is-consent and start operating under the terms of the transferred license, barring the government grounds for later intervention.
- *Unnecessary medical licenses.* The licensable activities listed in the Framework Law include an extensive list of various medical professions and specializations. The Ministry of Health issues 114 licenses (this number includes both general and special licenses) for various medical practices and specializations. As the best world practices demonstrate, professional medical activities are mostly regulated by professional associations setting specific and often quite stringent cri-

teria (graduation from recognized institution, qualification certificate, professional standards, etc.) for admission of its members.

- *No guides to licensing procedures.* As our discussion on implementation of administrative simplification mentioned (see Part Two, Stage Four above), entrepreneurs need access to detailed, yet clear explanations of licensing processes. Guidebooks or brochures are useful for this purpose, but no such guides currently exist.

The IFC's Georgia office is addressing these problems through its three-year SME Policy project. The project's goals include reducing regulatory barriers to enterprise development and improving SMEs' access to information. The project is selecting "pilot agencies" for which it will assess current licensing procedures, prepare "process maps," train staff, and help draft implementing legislation. In addition, the project will conduct follow-ups to IFC-Georgia's August 2004 SME survey.

### **KENYA: LICENSING REFORM IN PROGRESS<sup>55</sup>**

#### **Ex-Ante Situation**

Numerous observers have cited Kenya's poor business environment as a barrier to investment in the country. FIAS's<sup>56</sup> 2004 *Administrative Barriers to Investment in Kenya* report portrayed the country's licensing regime as "archaic, inefficient, costly, and unreliable." As of 2005, there were over 1,300 licenses and permits in effect in Kenya.<sup>57</sup>

#### **Foundations for Reform—Preparation/Drivers/Champions**

The FIAS study captured the government's attention. In March 2005, a Cabinet Decree established the Working Committee on Regulatory Reform for Business Activity in Kenya. The Cabinet Decree invested the committee with strong powers to guarantee regulatory agencies' cooperation. Senior officials emphasized to ministers the importance of the committee's work.

The committee includes representatives of the Ministries of Trade and Industry and Finance, the Kenya Law Commission and the Attorney General's Chambers. It is led by Mr. Ben Musau, a private-sector lawyer with experience in regulatory reform.

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<sup>55</sup> Sources: "Kenya: Business License Reform and Regulatory Institution Building," FIAS, October 2005; and correspondence with World Bank Group staff (Vyjayanti Desai, Peter Ladegaard and Roy Pepper).

<sup>56</sup> FIAS is a donor-funded, joint facility of the World Bank and the IFC that specializes in investment climate analysis and reform.

<sup>57</sup> This figure includes some sub-national procedures that this toolkit defines as permits. We use the term "licenses" in this case study in reference to all the procedures reviewed under the project, as project documents do not differentiate between licenses and permits.

Observers report that the link—even if indirect—between reform and future disbursements of World Bank funds has provided the government additional motivation to ensure that reform proceeds. Observers also point out that the personal capacity and leadership of the Working Committee’s Chair has played a decisive role in pushing the reform through an administrative and political environment that is very difficult at times.

## **Reform Process**

The Working Committee seeks to “substantially reduce the number of licensing requirements in Kenya and to make the licensing regimes more simple and transparent, and focused on legitimate regulatory purposes.”<sup>58</sup> FIAS is working closely with the committee on a reform program that will:

- Identify and review Kenya’s business licenses.
- Establish a permanent unit to review the quality of new licenses.
- Create an electronic registry of business licenses.

### ***Component One: Review of Licenses***

The Working Committee, with the assistance of international experts, reviewed Kenya’s licenses using the “Guillotine Approach.” The approach applies the principle that all licenses which cannot satisfy predetermined criteria should be automatically eliminated. Unlike typical reform efforts that place the onus on reformers to defend their proposed changes, the guillotine approach demands that regulators prove the necessity of existing regulations. Under the review, the Committee and FIAS tested all licenses against the following criteria:

- Is the license legal?
- Does it advance an appropriate environmental, health, or safety objective?
- If it advances an appropriate objective, is a license the most efficient way to achieve that objective?

Those licenses that did not meet the criteria were recommended for elimination. Remaining licenses were exhaustively reviewed against the same three criteria and additional ones:

- Can the target groups be reduced?
- Can the license be converted into notification?
- Can the frequency with which licenses are renewed be reduced?

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<sup>58</sup> Kenya: Business License Reform and Regulatory Institution Building.

- Can the license be amalgamated with other licenses?
- Can time-limits be established for government responses?
- Can the “silence is consent” rule be applied?
- Can information requested in licenses be obtained from other authorities?

Finally, the Committee and FIAS also reviewed the budgetary effects of each proposed reform.

The review proceeded in two phases:

*Phase I:* The committee conducted an initial review of 86 licenses. It recommended eliminating 20, simplifying 32, and retaining 34. The recommendations were included in the 2005-2006 budget and in a draft law, the “Statute Law (Miscellaneous Amendments) (No.2) Bill.” Parliament had not yet passed the law at the time this case study was prepared.

*Phase II:* The Working Committee reviewed an additional 1,347 licenses. Throughout the process, the committee held consultative workshops that included government ministries, donors, businesses, business associations and other civil society groups. In late March 2006, the committee prepared its recommendations, but they are not yet public.

### ***Component Two: Establish a Permanent Quality Review Unit***

The proposed Permanent Quality Review Unit will review new licensing regulations prior to their enactment to ensure that they meet the criteria described above.

FIAS worked with the Working Committee to draft an Action Plan for establishing the Quality Review Unit. Preparatory work for the Action Plan included a best practices review and consultative workshops with stakeholders.

Consequently, the Working Committee has been drafting:

- A draft “Business Licensing Regulation Bill” that would create a permanent Business Regulation Quality Review Committee.
- “Subsidiary legislation” to create an interim Business Regulation Quality Control Unit. The legislation need not pass through Parliament, which could permit set-up of the Unit prior to passage of the Business Licensing Regulation Bill. The Unit intends to guard against reversal of licensing reforms under the Statute Law should Parliament enact that law prior to the Business Licensing Regulation Bill.

### ***Component Three: Establish Electronic Registry of Business Licenses***

- The Electronic Registry's purpose is to increase regulatory transparency. The draft Business Licensing Regulation Bill provides for establishment of the registry, and states that no license will be legally valid unless it appears in the registry. The bill also calls for concurrent publication in print of the registry's list of licenses.
- Technical consultants will work with the government, the Working Committee, and FIAS to establish the E-registry and train registry staff.

### **Lessons Learned:**

- *FIAS staff emphasize that Kenya's licensing reforms are still in progress, and the country cannot yet be considered a licensing reform "success story."* Project staff emphasized that additional interventions are planned, and that the ultimate success or failure of the project will only become clear over the coming year(s).
- *Strong support for reform from the highest levels of government is a prerequisite for launch of a system-wide licensing reform program.* Senior officials' willingness to emphasize the importance of the reform effort to the relevant ministries was the critical impetus for the launch of the project.
- *The Steering Committee's power to hold ministers accountable for progress is a valuable tool for advancing reform.* Ministers who have been unwilling to proceed expeditiously with components of the reform processes have been held to account by the Steering Committee.

## **HUNGARY: SECTOR-SPECIFIC LICENSING REFORM<sup>59</sup>**

### ***Overview of Licensing Reform in Hungary***

After the breakup of Communism, Hungary launched the first of a series of efforts to deregulate and improve its regulatory system including the licensing regimes, driven largely by the desire for European Union (EU) accession. Objectives of the

<sup>59</sup> Bela Bukta is the primary author of this case study. Other sources include:  
 EU Commission Report [COM(2003) 675 FINAL-SEC(2003) 1205-Not published in the Official Journal]  
 Hungarian Energy Office: Mr. Vajdovich Arpad, Dr Grabner Peter  
 Hungarian Investment and Trade Development Agency: Mrs. Agnes Henter, Head of Department  
 Hungarian Trade Licensing Office: Dr. Várhegyi Istvánné, Head of Industrial goods Department  
 Lammers, Gudrun. "Background Report on Regulatory Reform in the Electricity Industry." OECD/IEA, 1999.  
 Ministry of Justice, Hungary: Dr. Kovacsy Zsombor, Head of Department and Dr. Kadocsa Ildiko  
 OECD (1999): Regulatory Reform in the Electricity Industry  
 Hungarian Investment and Trade Development Agency: Dr. Kiraly Odon  
 Ministry of Economy, Hungary: Mr. Leskó Tamás, Head of SME Department  
 Ministry of Finance: Mrs. Weidlich Edit, Commissioner of the Minister of Finance  
 Ministry of Justice, Hungary: Dr. Kovacsy Zsombor, Head of Department and Dr. Kadocsa Ildiko  
 National Communications Authority Office (2005): Dr. Racz Zsolt, Vice President.

EU Licensing Directives include eliminating all barriers to entry except for objective, transparent, non-discriminatory and proportionate restrictions relating to the availability of scarce resources, such as numbers, spectrum, and right of way; simplifying and harmonizing licensing processes across the EU; and establishing license conditions that are transparent and constitute “the lightest possible regulation, compatible with the fulfillment of applicable requirements”.

The Guillotine scheme was authorized by the omnibus *Deregulation Act of 1990*. The Deregulation Act of 1990 eliminated or reformed more than 150 laws and regulation. One important achievement of the first round was a dramatic simplification and reduction of licenses and permits.

**Figure 3-1: Licensing Reform Scheme**

	Reform Types	Champion	Goal	Context	Means	Time Period
Hungary	“Guillotine”	Cabinet of Ministries	Eliminate unjustified regulations	EU Accession	Inter-ministerial committee, Justice Ministry review	Medium Term

The process involved the following steps:

- The Ministry of Justice prepared a full inventory of existing regulations.
- Next, each line ministry was required to present a 3-year schedule for the assessment.
- Over the 3-year period, Ministries had to submit justifications to be retained, along with those to be repealed or amended.

Commissioners evaluated the proposals and either approved or rejected the justifications. The commission’s work was bundled into an omnibus package, and a second round of guillotine reviews took place in 1994-1995 aiming at improving the administration, efficiency and effectiveness of regulations. In 1999 *Government Resolution No. 1052/1999 (V.21.)* provides the terms of reference for further development of public administration. Main goals were the achievement of citizen friendly administration and the improvement of the internal operating efficiency of public administration. The Hungarian licensing regime is not regulated by a licensing framework law. Every sector is regulated and supervised by its line Ministry.

**Other Relevant Legal Reforms Related to Licensing:**

- *Act V of 1990 on private entrepreneurship*

The privatization resulted in a more simplified licensing process compared with the former Communist system.

■ *Amendment of the Act V of 1990 in 1998*

The government established the network of licensing offices (288 offices) in every micro-region administration centers in 1998 and introduced the first limited “one-stop shop” method. The term micro-region is defined as a group of neighboring settlements that have strong, functional relationships and are organized around one or more centers. Such groupings, based on the relationship between member settlements, are suitable for the provision of regional responsibilities.

■ *The Act of CXL of 2004 on Public Administration Process.*

The new act introduced an advance “one window service” model, which makes it possible for private entrepreneurs to obtain all necessary licensing through only one official state licensing authority.

***Sectors in Which Licenses are Required***

Much of Hungary’s regulatory regime corresponds with EU standards. The Hungarian Ministry of Justice’s interpretation of business licenses covers business registration in the IFC BEE definitions. A business license is required for some activities, and the government has streamlined the process for obtaining a license. However, regulations are not always transparent or evenly applied. Line Ministries sometimes list concessions under licenses because the same regulatory body issues and conditioned to each other as part of the same licensing-regulatory process.

These are the sectors in which licenses are required:

1. Commerce

- Retail trade: *Outlets must receive an operation license for carrying out retail sales activities. Retail businesses still encounter a web of regulations that make it difficult to open a store.*
- Wholesale trade.
- Vehicle and petrol trade.
- Consumer goods.
- Tourism.
- Waste materials.
- Precious metal.
- Farm stocks.
- Spices.
- Mail order businesses.

2. Environment issues (must be renewed every 5 years).
3. Mining.
4. Telecommunication frequency.
5. Gambling.
6. Energy and utility service.

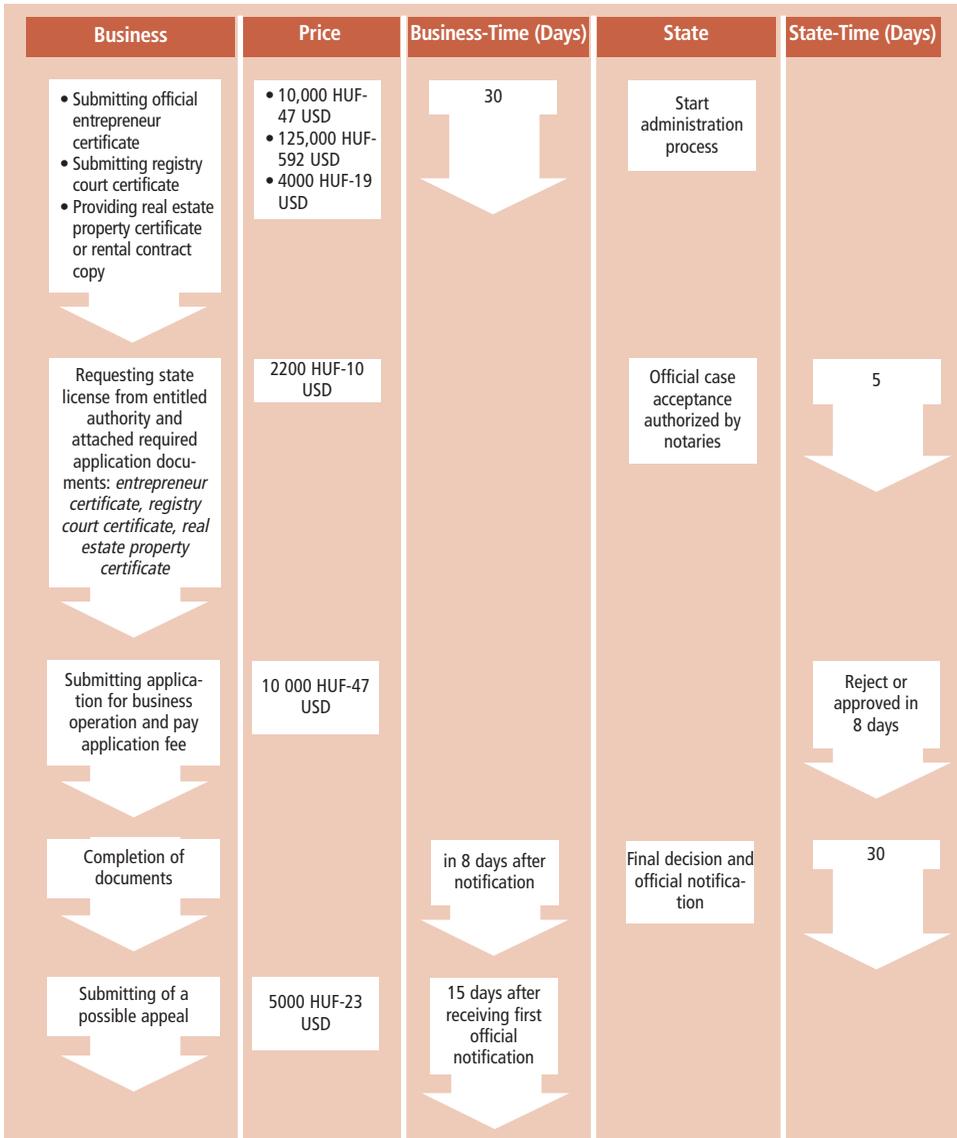
**List of state licensing authorities:**

- State Public Health Service (ANTSZ).
- Animal Health and Food Control Stations.
- National Fire Brigade Command.
- National Police Command.
- Trade Licensing Office.
- Hungarian Energy Office.
- National Communications Authority Office.
- Line Ministries in each sector.

## **Sector-Specific Licensing Reform: The Electricity Sector**

### ***Ex-Ante Situation***

Hungary's electricity sector was nationalized after World War II. The state-run Hungarian Electricity Board (known as MVM T., its Hungarian acronym) owned and operated all components of the electricity sector from 1963 until Jan. 1, 1992. On the latter date, MVM T. was divided into MVM Rt. (Hungarian Electricity Companies, Ltd.), which retained ownership of the transmission grid as well as broad management responsibilities for the sector, and fifteen subsidiary, joint stock companies in the areas of power generation, distribution, and retailing. MVM T. retained 50 percent ownership in the subsidiaries while the government held the remaining shares. In 1994, the government decided to pursue privatization of all generation, distribution, and supply companies with the exception of Paks, the company that owned Hungary's nuclear power plant.

**Figure 3-2: Obtaining a Commercial License (Steps-Price-Days) in 2003**

Source: Hungarian Ministry of Justice

## Reform Process

### *Stage I: Creating the Licensing Regime*

The 1994 Electricity Act (Act XLVIII of 1994), and the 1994 Natural Gas Act (Act XLI on Natural Gas Supply) created the Hungarian Energy Office (Magyar Energia

Hivatal, MEH). The government oversaw MEH via the Ministry of Economic Affairs. MEH managed the new electricity licensing process.

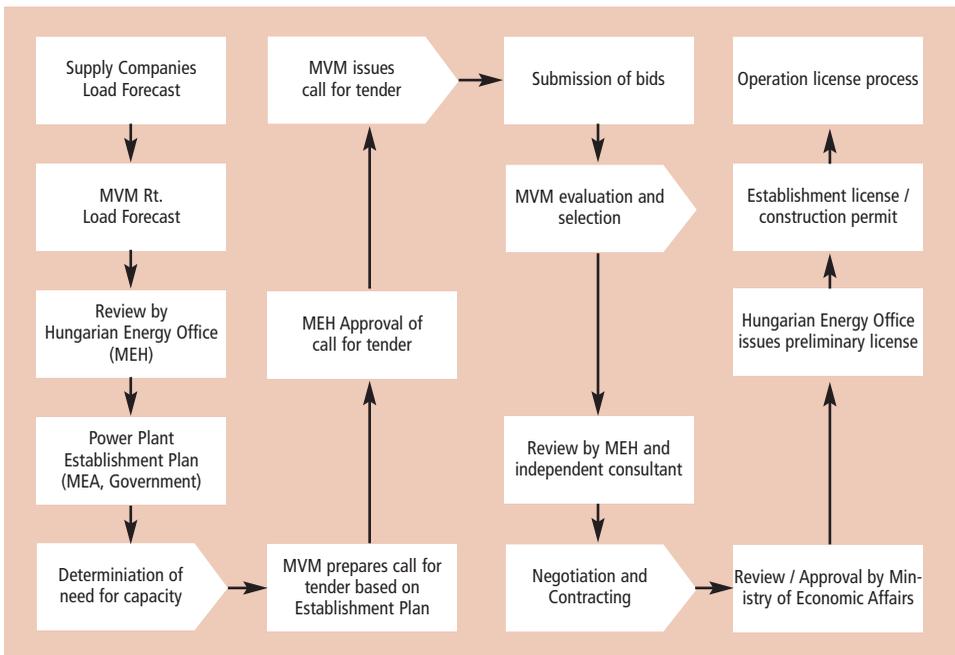
### **Main Features of the 1994 Electricity Act**

The 1994 Act mandated licenses for establishing and operating power plants with capacities over 20 megawatts (hereafter, “establishment licenses” and “operational licenses”). It also demanded “licenses” for a number of other activities, such as extension of capacity and change of input fuel, but these procedures conform more readily to this toolkit’s definition of *permits* (see Section I).

- Companies could apply for establishment licenses at any time, but the granting of licenses typically occurred in concert with the Ministry of Economic Affairs’ bi-annual power plant establishment plan. Companies that had already submitted suitable applications might be granted “preliminary licenses” after the release of these plans. If suitable applications had not already been received, the MVM, MEH and the Ministry would solicit license applications through open tender processes.
- Applicants through the tender process had to submit the following documents:
  - A feasibility study covering technical operation of the proposed plant and a financial viability analysis.
  - A staffing plan.
  - Past performance records.
  - Letter of support from a future customer.
- Applications were to be evaluated on the following criteria:
  - MVM must consider the additional capacity generated by the plant to be necessary.
  - The plant must fulfill environmental regulations and must comply with the principle of “lowest cost increase” (lowest increase in cost to maintain an agreed upon rate of return).
  - The plant’s construction must not render the country overly reliant on a single supplier of electricity or a single type of fuel.
- MEH and the Ministry approved plants with capacity between 20 and 200 MW. Plants with capacity between 200 and 600 MW required approval from the government as a whole, while plants above 600 MW required approval from Parliament.

- If an application received a favorable review from the above-named bodies, a special committee would hold public hearings to solicit feedback from communities adjacent to the proposed plant.
- Once applicants were granted an establishment license, they had to apply for an additional operational license. Operational licenses were granted for already existing power stations and those newly constructed under establishment licenses. Operational licenses were issued for other activities such as transport, distribution and supply as well. On the basis of the operation licenses, the licensees were entitled to produce, transport, distribute and supply electrical energy. These licenses stipulated the obligations and rights of the licensees.

**Figure 3-3: Licensing Process under 1994 Electricity Act**



Source: MEH, in Gudren Lammers, "Background Report on Regulatory Reform in the Electricity Industry" (IEA/OECD, 1999).

### **Stage II: Streamlining the Licensing Regime**

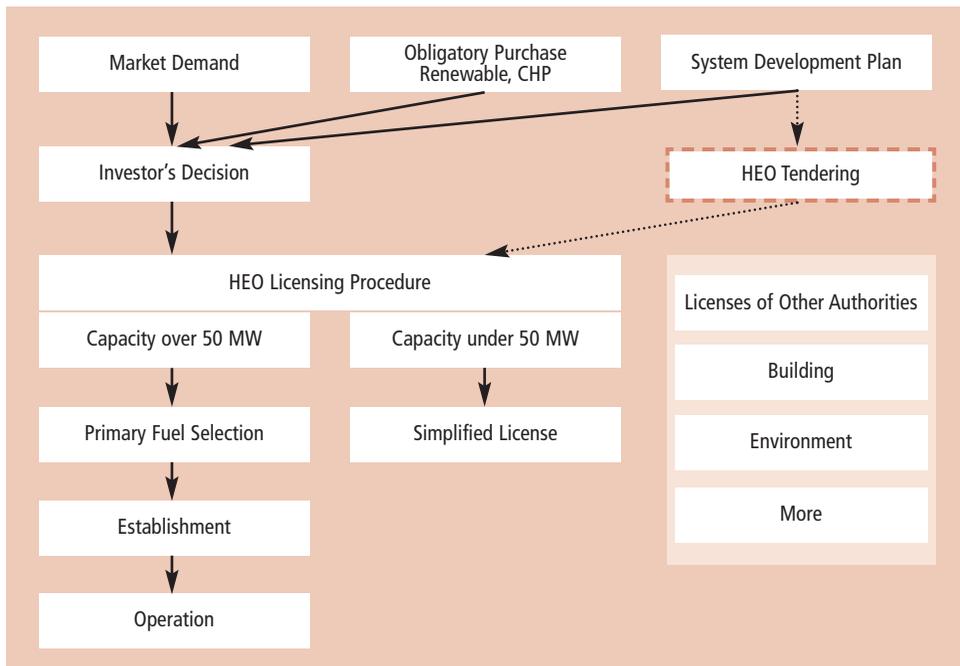
While the reforms of the early and mid-1990s advanced privatization, they did not create a viable competitive market for electricity. As the licensing process described above makes evident, MVM still largely controlled the entry of firms into the power-generating market. Hungary's desire to accede to the EU compelled it to comply with the EU Electricity Directive, which required that Hungary create a more competitive electricity sector.<sup>60</sup>

<sup>60</sup> Lammers, 6 and 46.

The 2001 and 2005 Electricity Acts moved Hungary closer to a fully liberalized electricity market. These laws also brought about important changes in the licensing regime:

- The 2001 Act (Act CX of 2001) raised the capacity limit of the licensing requirement up to 50 MW, and introduced new license types necessary for the partially opened competitive market.
- The 2005 Act (*Act LXXIX of 2005*) was based on the *EU 2003/54/EC*, an additional EU directive regarding liberalization of electricity markets. Hungary’s EU accession in 2004 made it essential that Hungary comply with this directive. The Act introduced the so called “licensing procedure (instead of tendering), and created a simplified procedure by which small plants could use a single form to apply for establishment licenses, along with fuel selection and operational approvals.

**Figure 3-4: Licensing Procedure in the Hungarian Electricity Sector on the Base of the 2001/2005 Electricity Act**



Source: Hungarian Energy Office

### Future reforms

Hungary plans to fully liberalize its electricity sector by 2007. The government plans additional reforms to the licensing regime, which intend to promote the competitive market, but improve the level of customer protection at the same time.

## Lessons Learned

- *For some sectors in some countries, it may make sense to undertake licensing reform separately from other sectors.* Hungary created and streamlined the electricity licensing regime within the context of comprehensive structuring of that sector. Licensing procedures formed an essential part of the privatizing and market-opening reform plan for the electricity sector, and as such had to be planned within that larger reform strategy.
- *The goal of EU accession was a driving force behind the creation and streamlining of the electricity licensing regime.*

## BELARUS: UNSUCCESSFUL LICENSING REFORM<sup>61</sup>

### Ex-Ante Situation<sup>62</sup>

- Prior to July 2003, 50 agencies issued licenses for 165 business activities and 1,500 activity “subtypes.” The relevant legislation spanned more than 20 acts.
- There was little stability in the licensing regime. For example, Ordinance N386, “Temporary Regulation on the Procedure for the Issuance of Licenses for the Implementation of Certain Lines of Business (1991) had been amended 14 times and Ordinance N456 (1995) had been amended 80 times through 2003.
- The average business required 5.5 licenses compared with 1.6 in neighboring Ukraine, 0.9 in Georgia, and 3 in Moldova. The time required to get a license was almost three times as long as in Ukraine (30 days vs. 11 days).
- Official costs per license totaled \$135 and irregular costs per license totaled \$67.

### Foundations for Reform-Preparation/Drivers/Champions

- World Bank regulatory cost surveys and other reports pointed to profound weaknesses in the Belarusian business climate. The country gains notoriety as a difficult place to do business.
- A January 2003 World Bank study noted that “Belarus can benefit significantly from a reduction in the number of licenses required while reducing. . . the unofficial payments.”

<sup>61</sup> This case study draws on information from the following sources: *Improving the Business Environment: Belarus*, World Bank, January 2003; Valeri Fadeev, “Will the Decree on Licensing Make Life Easier for Entrepreneurs?” *Small and Medium Business in Belarus, Analytical Bulletin* (15: 2003); *Business Environment in Belarus*, IFC, 2005.

<sup>62</sup> Statistics in this section from 2001, reported in *Improving the Business Environment: Belarus*.

## Reform Process

President Lukashenko issued Presidential Decree N17 on July 14, 2003, entitled “On Licensing of Certain Lines of Business.” The decree, which was enacted on Nov. 1, 2003, included the “Regulation on Licensing of Certain Lines of Business.”

The decree provided for the following reforms:

- Reduced the types of business activities subject to licensing from 165 to 49 and “subtypes” from 1,500 to 350.
- Clearly stated that the decree’s provisions take precedent in case of conflict with other statutes.
- Articulated the reasons why licenses may be refused and revoked.
- Deprived the various license-issuing agencies of the right to issue licensing regulations and transferred this responsibility to the government.

## Results

Entrepreneurs reported that licensing became *more* onerous after the passage of Decree N17, not less. IFC’s March 2004 “Cost of Doing Business” survey of 600 Belarusian businesses and entrepreneurs found the following:

- 51 percent of respondents believed licensing conditions had worsened in 2003. Only 8 percent thought they had improved.
- The average cost of securing a single license rose to \$260 in 2003.
- The average time required to get a license rose to 39 days.
- The average irregular payment per license more than doubled compared with 2001 (\$170 vs. \$67).

The shortcomings of the various decrees and regulations made the licensing environment worse rather than better. Key problems included:

- *Burdensome re-licensing requirements.* The decree states, sensibly, that businesses that already possessed licenses valid through May 2004 would not need to acquire new ones. However, the government issued an ordinance<sup>63</sup> in October 2003 that required such businesses to obtain a new form that confirmed their licenses were valid through May. The ordinance required businesses to “submit documents to the registration authorities after Nov. 1, 2003 and, in compliance with the established procedure, to amend foundation documents of legal entities and state registration certificates of individual entrepreneurs

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<sup>63</sup> N1390 “On Additional Measures to Implement Presidential Decree N17 dated 14 July 2003,” dated October 20, 2003.

and/or modify the title of licensed activities in compliance with the List of Licensed Activities, *if need be*" (Italics added). On the basis of this clause, some licensing agencies demanded that companies modify their registrations to list all lines of licensable business they engaged in, even if this was not required at the time of registration.

- *Additional documentation.* The decree lists all documents that applicants must submit and bars licensing agencies from requesting additional documents. However, the decree does not prevent the government from revising the list of required documents. The Cabinet of Ministers issued Ordinances in October 2003 that imposed additional documentation requirements on applicants for alcohol, tobacco, precious stones and retail sales licenses.<sup>64</sup>
- *Unclear and contradictory provisions.* The regulation permits issuing agencies to revoke licenses for "flagrant violations" of the conditions of issuance but does not always clearly define those violations or the processes by which agencies review them. The lack of clarity leaves entrepreneurs uncertain of the conditions they must uphold to maintain their licenses and exposes them to potentially inconsistent treatment by the licensing agencies.

## Lessons Learned

- *Reducing the number of licenses is not a panacea.* As Belarusian lawyer Valeri Fadeev notes, "The problem [in Belarus] is not the excessive number of licensed activities. . . but rather fluid legislation and overly complex procedures."<sup>65</sup> Decree N17 and the associated Regulation on Licensing dramatically reduced the number of business activities for which licenses were required but did not address the core problems of the Belarusian licensing regime: complexity and instability of the rules. A new, less easily amendable law on licensing could more successfully address these problems.

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<sup>64</sup> Cabinet of Ministers Ordinances N1350 and N1346, October 17, 2003 and N146, October 24, 2003.

<sup>65</sup> "Will the Decree on Licensing Make Life Easier for Entrepreneurs?"

## Annex 1: Licensing Law/Regulation Checklist

### GENERAL PROVISIONS

- Is the purpose of the law clearly stated?
- Does the law state who is subject to it (e.g., *Businesses, physical persons, NGOs*)?
- Does the law contain all necessary definition(e.g., *definitions of license, licensing, licensing bodies, violation, etc.*)?
- Does the law state the objectives of licensing (e.g., *a limited list of legitimate regulatory purposes*)?
- Does the law prohibit the use of licensing for certain purposes (e.g., *fiscal policy/revenue generation*)?
- Does the law state the principles of licensing (e.g., *simplicity, impartiality, transparency*)?
- What are the rights and duties of the licensing authorities?
- What are the rights and duties of an applicant?

### THE ESTABLISHMENT OF A LICENSE

- Under what circumstances may the government establish new licenses?
- Under what circumstances shall the government not establish licenses (e.g., *a prohibition against licenses for the following activities: those can be effectively regulated by the market competitions mechanism; those subject to certification by trade organizations or intermediary institutions; those where regulatory objectives can be met by ex-post supervision or through other administrative methods e.g. permitting*)?
- Does the law provide for mechanisms for review and evaluation of existing or new licenses?

### ACTIVITY SUBJECT TO LICENSING AND LICENSING AUTHORITIES

- Does the law contain a list of all activities that shall be subject to licensing (i.e., *a positive list*)?
- Does the law specify a justification for each license?
- Does the law specify the licensing body responsible for issuing each license?
- Does the law categorize activities subject for licensing according to level of potential impact on health, safety, and the environment?
- If yes to the above question, does the law include different types of procedures for activities with high and low impact to health, safety and environment?
- Licenses can be issued by simple procedures and compound procedures depend on level of impact licensing activity to health, safety and environment.*
- Does the law specify terms of validity for the licenses?
- Does the Law specify procedures for obtaining extensions to validity periods?

### PROCEDURE FOR ISSUANCE OF LICENSES

- Does the law provide an exhaustive list of documents required for each license?
- Document requirements may differ for different categories of licenses.*
- Does the law contain a disclaimer stating that the licensing agency may not ask the applicant to submit other documents other than those specified in the law?
- Does the law specify reasons for which the licensing authorities may deny applications for licenses and their extensions?

### TIME LIMITS

- Does the law specify limits for the amount of time agencies may take to process applications?
- Does the law establish the “silence is consent” principle?

## Annex 1: Licensing Law/Regulation Checklist (continued)

### COST OF LICENSE

Does the Law clearly indicate the cost of each license?

Do licenses have fixed costs or do costs depend on the lengths for which the licenses are valid?

If the Law does not precisely specify license fees, does it contain a "cost-only" provision (e.g., "Licensing fees may not be more than all expenses that the licensing bodies incur during the processes of application review and license issuance")?

If licensing fees are to be fixed in lesser legal instruments (e.g., presidential decrees or cabinet of ministers resolutions), does the law include a provision limiting the number of times fees may be changed within a one year period?

Does the law specify whether fees will go to the state budget or to individual licensing agencies?

### THE APPELLATE PROCEDURE

Does the law specify procedures by which applicants may appeal the decisions of licensing authorities?

Does the law specify detailed hearing procedures?

What kind of authority is responsible for examining appeals cases?

What is the time limit for hearing cases?

In what cases may the appellate authority reject appeal requests?

What forms of legal redress does the appeals process offer successful appellants?

### LEGAL LIABILITIES

Does the Law contain specify legal liabilities for license holders (for violations of the terms of their licenses) or for the licensing bodies (for violations of the terms of the licensing law)?

### Specific licensing laws consulted:

- Administrative License Law of the People's Republic China adopted on August 27, 2003.
- The Law of the Republic of Armenia on Licensing adopted on May 30, 2001.
- The Law on General Procedures for Granting Business Licenses and Permits, Republic of Georgia, 2002.

## Annex 2: IFC Business Licensing Reform Performance Indicators

The following indicators have been adapted from IFC's list of indicators for business environment reform. The indicators are described in the *Guide to Core Output and Outcome Indicators for IFC Technical Assistance Programs*, IFC, December 2005.

Construct	Indicator	Data Source	Population
<b>Changes in the law and regulations related to the licensing regime</b>	Number of business licensing laws and regulations promulgated (new or amended) during the year where IFC or third-parties under contract to IFC played a role in the process.	Program Records	N/A
<b>Changes in relevant administrative procedures</b>	Number of administrative procedures in the licensing regime changed during the year where IFC or third parties under contract to IFC played a role in the process.	Program Records	N/A
<b>Transaction cost for specific procedures</b>	Official cost of each licensing procedure (as a percentage of income per capita)	Doing Business*	N/A
	Average cost borne by companies to complete specific licensing procedures, including government fees, payments to attorneys and other third-parties, and unofficial payments to government officials.	Enterprise Survey	Enterprises that completed procedures in the last 12 months
<b>Days required to complete specific procedures</b>	Average time, in calendar days, spent to complete each licensing procedure	Doing Business*	N/A
		Enterprise Survey	Enterprises that completed procedures in the last 12 months
<b>Corruption</b>	Percentage of firms that say that corruption is a major or severe obstacle to the operation and growth of their businesses	Investment Climate Survey	N/A
	Percentage of firms that made unofficial payments to public officials during the licensing process	Enterprise Survey	Enterprises that completed procedures in the last 12 months
<b>Policy advocacy by business organizations</b>	Number of participating business organizations playing an active role in licensing policy advocacy during the year	Business Organization Survey	Participating Business Organizations
	Proportion of participating business organizations playing an active role in licensing policy advocacy during the year	Business Organization Survey	Participating Business Organizations
<b>Learning in terms of knowledge and skills (as a result of trainings)</b>	Percent of participants agreeing with the statement that they have obtained new knowledge and skills as a result of training.	Training participant survey	Training Participants
<b>Impact</b>			
	Percentage of enterprises reporting that the business licensing regime is conducive to their productivity and growth	Enterprise Survey	Enterprises that completed procedures in the last 12 months

\* The "dealing with licenses" indicators in the 2006 Doing Business report focused on permits rather than licenses.

## Annex 3: Sample Terms of Reference<sup>66</sup>

### BUSINESS LICENSE REFORM AND REGULATORY INSTITUTION BUILDING

#### TERMS OF REFERENCE

##### 1. Background and Summary

\_\_\_\_\_ experienced significant economic decline in the 1990s, raising the poverty level to some 55 percent in 2001. Domestic investment and savings dropped, and foreign direct investment inflow plunged to one of the lowest in the \_\_\_\_\_ region. A poor and deteriorating investment climate has been a major contributor to decreased interest from both domestic and international investment communities and even encouraged some existing investors to disinvest. Several studies have identified excessive and cumbersome licensing to be among the most critical constraints to business development in \_\_\_\_\_. FIAS' 2004 report on Administrative Barriers to Investment concluded that current licensing procedures in \_\_\_\_\_ were archaic, inefficient, costly and unreliable.

Prompted by FIAS' Administrative Barriers study, and supported by continued assistance from the IFC \_\_\_ Regional Facility, the \_\_\_\_\_ government in March 2005 established "the Working Committee on Regulatory Reform for Business Activity in \_\_\_\_\_", and charged it with reviewing all business licenses in \_\_\_\_\_. Preliminary results of the Committee's work were presented as part of the Finance Minister's 2005/2006 budget speech in June 2005, putting forward the Government's decision to eliminate 17 and simplify another 30 out of the 86 licenses reviewed by the Committee. The Committee has now embarked on a review of all remaining business licenses in \_\_\_\_\_. The \_\_\_\_\_ Government has requested IFC's continuing support to this work, including the establishment of institutional mechanisms that can ensure continued high quality of future licenses.

The license reform differs from other ongoing business climate reforms by focusing on very concrete and manifest obstacles (licenses), and by applying a fast-track approach that can deliver short-term results (the "guillotine approach"). This combination of simplicity and speed, and the results already achieved, provide a relatively promising foundation for the reform, and for using its achievements as a stepping stone for further regulatory reforms.

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<sup>66</sup>This Terms of Reference is adapted from an actual licensing reform project. Its objectives and activities reflect the particular problems in the licensing system of that country, as well as its legal system and reform environment. It is intended to serve as an example of a thoughtfully crafted TOR rather than a generic blueprint for all licensing projects.

The project is part of the wide range of investment climate reforms launched by the Government of \_\_\_\_\_. The reform also supports performance under the World Bank's Economic Recovery Strategy Support Credit (ERSSC).

Total costs of the project, running from July 2005 to December 2006 are estimated to be around USD 880,000. The World Bank, IFC, and the Government of \_\_\_\_\_, together with one or two national development agencies active in \_\_\_\_\_ (pending on-going discussions), will co-fund the project.

## 2. Rationale and Objectives

The overall purpose of the reform is to substantially reduce the number of unnecessary licensing requirements in \_\_\_\_\_ and to make the licensing regimes more simple and transparent, and focused on legitimate regulatory purposes. As part of this, the reform will develop appropriate institutional arrangements that can ensure the quality of and accessibility to business licenses over time. The three specific objectives are:

- To identify and review all remaining business licenses in \_\_\_\_\_.
- To establish an electronic registry of all business licenses in \_\_\_\_\_.
- To establish a permanent unit responsible for the quality review of new licenses.

As indicated above, the rationales for embarking on the business license review are twofold. Firstly, license practices impose significant costs and constraints on business activities in \_\_\_\_\_, and constitute a critical barrier for business development, investment, and trade. Secondly, simplifying business licenses is a relatively simple and very tangible reform effort, which, with less opposing interests than many structural reforms, can generate quick wins and high returns on invested political capital. As has been seen in other countries, these gains may then be utilized to support larger and more long-term regulatory reforms.

The rationales for establishing the electronic registry are also twofold. Firstly, by creating an accessible, comprehensive and central registry of business licenses in \_\_\_\_\_, regulatory transparency will be significantly enhanced. Secondly, the registry will reduce regulatory risk and uncertainty for businesses: By way of its legal setup, the registry will guarantee that only business licenses in the registry are legal and enforceable.

The rationale for establishing a permanent unit responsible for the quality review of new licenses is closely related to the above. A successful review of existing licenses and the creation of a safe and accessible registry will ensure the quality of

the current *stock* of licenses. A quality review unit will ensure that the future *flow* of new licenses—prior to their enactment - also complies with regulatory quality standards. The objective of this project component is to develop a detailed action plan for the establishment of a regulatory quality review unit, including the unit's immediate and medium term objectives and priorities and the strategy to achieve them.

### 3. Approach and Scope of Work

The three objectives are interrelated and mutually supportive, but different approaches are required for each of them. The Working Committee's Chairman and the Ministry of Trade and Industry Secretariat, with the support of the IFC Facility, will ensure coordination between the various activities and provide frequent briefings to key stakeholders on project progress.

#### (i) The License Review

The Working Committee<sup>67</sup> will be leading the *review* component of reform. International and local experts will participate as needed under the supervision of the Working Committee. The international experts will participate as needed. The review will involve the assessment of an estimated 514+ business licenses in \_\_\_\_\_. The review will be based on the Guillotine Approach. Licenses were initially reviewed by the following criteria:

- Is it legal?
- Is it necessary?
- Is it necessary from an environmental, health and safety perspective?

Licenses not complying were put forward for elimination. All remaining licenses will be reviewed according to the above criteria in addition to following review criteria:

- Can the target groups be reduced?
- Can the license be converted into notification?
- Can the frequency with which licenses are renewed be reduced?
- Can the license be amalgamated with other licenses?
- Can time-limits be established for government responses?
- Can the silence-is-consent (or denial) rule be applied?
- Can information requested in licenses be obtained from other authorities?

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<sup>67</sup> The Working Committee was established on 11 March 2005 by Cabinet Decree. The Committee is mandated to review and provide recommendations on licensing reforms. The Committee is composed of members from the Ministries of Trade and Industry (Secretariat) and Finance, as well as representatives from the \_\_\_\_\_ Law Commission and the Attorney General's Chambers. The Committee is chaired by \_\_\_\_\_, a private sector lawyer.

Where such simplifications are possible, suggestions to that effect will be put forward by the Committee. The Committee's findings will be presented to and discussed with regulating ministries as well as business organizations through a series of workshops. The Committee's final recommendations will be implemented through the budget process.

### (ii) The Permanent Quality Review Unit

A team of international and \_\_\_\_\_n experts will prepare a technical report and an Action Plan for the establishment of a Permanent Quality Review Unit. The Committee, supported by the IFC Facility, will take charge of the essential consultative meetings with stakeholders feeding into and guiding the report and Action Plan. Based on a review of relevant international practices, a mapping of existing practices in \_\_\_\_\_, and consultations with stakeholders the report will include considerations and recommendations on the following issues:

**Institutionalization of the quality review.** Where should the permanent unit be located, and with what reporting mechanisms to other parts of government and Cabinet? The report should recommend an appropriate institutional structure for the review function, including a sustainable budget proposal;

**Review processes.** The report should suggest review processes within the ministries for the review and quality control of new regulations. The objective would be to make those processes conducive to the evaluation of impacts and regulatory alternatives during the early stages of the decision-making cycle, and to ensure an efficient and effective dialogue with stakeholders;

**Review standards.** What should be the quality criteria against which to assess new licenses and business regulations? The formulation and broad accept of explicit and clear standards for business licensing and regulation is essential for the functioning, legitimacy and evaluation of the quality review unit. Current evaluation criteria may have to be supplemented with additional criteria;

**Public consultation.** Related to the above, the proposal should include suggestions for the design and integration of public consultation mechanisms within the regulatory development process;

**Targeting of review efforts.** Which regulations should be subject to review under the new review system? One option would be to start with licenses effecting businesses, and then gradually expand to regulation with significant impact on businesses, and possibly—in the long run—towards a review system looking at broader impacts (social, budgetary, environmental) of proposed regulation. The proposal should include a plan for possible gradual expansion of review efforts;

**Methodologies and data collection strategies.** A permanent review of licenses and business regulation will require the availability and awareness of methodologies to assess economic and other impact of proposed regulation, as well as strategies to collect relevant data. The proposal should identify different impact assessment methodologies and data collection strategies, and define how data needs can be prioritized and met cost-effectively;

**Staffing & Training.** The establishment of a permanent review function will have implications for the skills of civil servants, particularly those directly involved in drafting of business licenses and regulation. The report should advise on how to fill skills gaps, and advise on how to use a combination of training, strategic reassignments, fast track staff development schemes and outsourcing with adequate quality control arrangements;

**Guidelines for regulators.** Without operational guidelines on how to develop and assess business licenses and regulation, there is little likelihood that the review strategy will have any real impact. The report should advise on the contents and form of a short and easy accessible set of guideline for regulators;

**Communication and monitoring mechanisms.** The report should suggest mechanisms to monitor performance of the Quality Review Unit's activities, and to communicate this to policy-makers and other stakeholders. Possible performance targets include: number of licenses and regulations reviewed, revised and abolished; licensing authorities' compliance with government guidelines for regulatory quality; stakeholder appreciation of the Unit's activities, etc.

#### (iii) The E-Registry

The IFC Facility will assist the Working Committee and the Ministry of Trade and Industry Secretariat in preparing a technical report and action plan for the establishment of the E-registry. This component of the reform is expected to be more of a technical exercise, once the processes have been improved (see Section 4).

#### (iv) Co-ordination and reporting mechanisms

It is essential for the successful outcome of the reform that senior ministers and government officials remain well informed and supportive. Activities must also be communicated to and coordinated with other on-going investment climate reform activities. Without strong political support, the Committee is likely to face difficulties in the collection and verification of data from licensing authorities, and in countering complaints about its recommendations to repeal and simplify licenses. The IFC Facility's role will be to provide technical assistance in the design of consultation procedures, etc.

The following approaches to ensure coordination and continued political support are expected to be employed or explored:

Frequent reporting to the ICAP Technical Committee.

Frequent bilateral meetings with key stakeholders.

Frequent reporting to the National Economic and Social Council (NESC).

Frequent reporting to a selected group of permanent secretaries.

Bi-monthly reporting by Working Committee's Chair, in co-ordination with the IFC Facility, to IFC, the World Bank, and other donors.

#### 4. Process, Main Deliverables and Timing

Following the agreement on the TOR, the IFC Facility will assemble a team of international experts already familiar with the licensing reform in \_\_\_\_\_. In addition, 1-3 international consultants (to be determined on the basis of specific project needs) will be identified to provide further technical support throughout the project.

The Government of \_\_\_\_\_ will appoint a local team of counterpart experts to work with the World Bank Group team on a full-time basis during missions and for preparation of the E-registry and Quality Review Unit report and draft action plan. The local team should include at least one individual from a non-governmental organization (e.g., broad-based business association) on at least a part-time basis.

Consultations and preparation of technical reports and actions plans should be planned so that implementation of the E-registry and the Quality Review Unit is possible by no later than December 2006.

	Main Activities and Deliverables	Deadline	Responsibility
License review	Review of licenses "left over" from the April-June 2005 review; submission of recommendations and the required statutory amendments to the MoF.	Sept 30, 2005	Working Committee
	Design of license information data base and license data collection templates	September 20, 2005	Working Committee
	Reminder to all license issuing bodies about obligation to submit information about licenses to the Working Committee	Sept 2005	Working Committee
	Preparation of list of all business licenses in force	October 1, 2005	Working Committee
	Establish and communicate criteria for the prioritisation of review efforts	Sept 30, 2005	Working Committee
	2-4 consultative workshops with Government agencies and external stakeholders to discuss preliminary findings and recommendations	Oct 2005 – April 2006	Working Committee
	Assessment of revenue implications	November 2005	Working Committee

	Main Activities and Deliverables	Deadline	Responsibility
	Carry out studies to assess identified licenses, and draw up specific recommendations and justifications as to which licences are to be retained, amended or abolished	On-going, until April 2006	Working Committee
	Submission of recommendations and required statutory amendments to the Ministry of Finance for inclusion in the 2006/7 budgetary process	22nd April, 2006	Working Committee
	Co-ordination / general support to Working Committee	On-going	MTI, Committee Chair / IFC Facility
	Assessment of business compliance costs implications	February 2006	Working Committee/ IFC Facility
<b>E-registry</b>	Commission of legal strategy report (what legal measures are required to establish an E-registry with possible legal security?)	October 2005	MTI/IFC Facility/Working Committee
	Submission to Committee of draft legal strategy report	December 2005	MTI/Go_ / Working Committee
	Final legal strategy report	January 2006	ATO/Go_ / Working Committee
	Review of international practices	January	IFC Facility / Working Committee
	Specification of hardware, software and training requirements	January 2006	IFC Facility / Working Committee
	Procurement hardware, software and training services	February 2006	IFC Facility / Working Committee / Go_
	Technical reports: Software specification, operations manual (sub-contracted)	March 2006	IFC Facility / Working Committee
	Draft report submitted to Committee/GO_ for comments	June 2006	IFC Facility / Working Committee
	Comments on first draft returned to the IFC Facility no later than three weeks after receipt of first draft	June 2006	MTI/Go_
	Consultative meetings with affected stakeholders	November 2006	Working Committee/IFC Facility
	Final report and action plan for implementation of e-Registry	November 2006	IFC Facility / Working Committee
	3 days training seminar for staff in the new E-registry (sub-contracted)	December 2006	IFC Facility / Go_ / Working Committee
<b>Quality Review Unit</b>	Review of relevant international practices	February 2006	IFC Facility / Working Committee
	Questionnaire to _____ team about current regulatory and licensing practices in _____	February 2006	IFC Facility / Working Committee
	Filled out questionnaires returned to IFC	March 2006	Working Committee / GO_
	Fact finding mission to Nairobi involving meetings with relevant policy-makers, stakeholders, and regulators	April 2006	IFC Facility / Working Committee
	First draft submitted for factual comments to the GO_	June 2006	IFC Facility / Working Committee
	Comments on first draft returned to IFC no later than three weeks after receipt of first draft	June 2006	MTI/Go_
	Consultative workshops	July 2006	Working Committee / IFC Facility
	Second draft, based on input from consultative workshops	August 2006	Working Committee
	Final report and Action Plan	October 2006	IFC Facility

\* The "dealing with licenses" indicators in the 2006 Doing Business report focused on permits rather than licenses.

After the report and Action plan has been finalized and adopted by the \_\_\_\_\_ Government, it will be possible for Go\_ to request an IFC project to implement the proposed Action Plan.

## 5. Implementation Arrangements

The principal partner and counterpart from the Government of \_\_\_\_\_ is the Ministry of Trade and Industry. Co-funding donors are invited to participate in planning activities, and will be informed regularly about project status and progress.

## 6. Costs and Funding

The table below summarizes expected total costs and funding.

Funding from a \_\_\_\_\_ amounting to \$190,000 is available and committed to this work for 2005. \_\_\_\_\_ contributions for 2006 cannot be committed unequivocally at this stage, but US\$ 150,000 is expected to be made available in 2006.

\_\_\_\_\_ has indicated willingness to co-fund the project, possibly in the range of US\$ 180-200,000, however formal commitment has not yet been made.

IFC's contribution and activities may be modified if additional funding from other donors becomes available, or if or contributions from \_\_\_\_\_ are not realized.

Estimated costs	2005	2006	Total (US\$)
Phase I: Component I: License review April - June 2005 (completed)			
<b>Component II: Review of all remaining business licenses</b>	340,000	220,000	560,000
<b>Component III: Establishment of an E-registry</b>	60,000	60,000	120,000
<b>Component IV: Creation of the permanent quality review unit</b>	–	200,000	200,000
<b>Grand Total</b>	<b>400,000</b>	<b>480,000</b>	<b>880,000</b>
Tentative funding plan	2005	2006	Total (US\$)
<b>Government</b>	90,000	50,000	140,000
<b>Donor 1</b>	–	200,000	200,000
<b>Donor 2</b>	190,000	150,000	340,000
<b>IFC</b>	120,000	80,000	200,000
<b>Total</b>	<b>400,000</b>	<b>480,000</b>	<b>880,000</b>

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