



AMCHAM
KENYA

AMCHAM ADVOCACY CHALLENGE

PRIORITY AGENDA 2019

1. ISSUE: IMMIGRATION AND EMPLOYMENT LAWS

Lack of clarity and insufficient coverage of foreign workers under the current Immigration and Employment Law.

DESCRIPTION

Many of our members are multinationals headquartered in the United States with operations across many jurisdictions in the world. It is the usual practice for these companies to transfer their employees from one country to another to ensure skills transfer, cultural exchange and depending on the project being undertaken in each country. There are Kenyans too that work for these companies and are transferred to work elsewhere in the world.

The problem faced by these companies is the fact that the current work permits regime does not recognize intra-company transfers and treats such moves same as new hires relocating to work specifically in Kenya. This means they are subjected to same requirements and in some instances denied work permits thus affecting the company plans of skills transfer.

Companies with regional hubs: Many American multinationals have their regional hubs for Africa based in Nairobi. Such companies often have many senior employees overseeing operations around Africa based in Nairobi. There are Kenyans too that, although based here, are running Africa-wide operations. The challenge being faced by such companies is that in applying for work permits, they are being treated in the same manner as companies with operations in Kenya only while, most of their expatriate staff are only based here but run their business across Africa.

IMPACT OF THE PROBLEM

These policies (or lack thereof) result in significant delays and increased costs that negatively impact the effective operations of businesses affected.

OPPORTUNITY FOR RESOLUTION

Amendment of the law to create work permit categories or exemptions for:

- a. Intra-company transfers and
- b. Regional hubs as has been recognized by the Special Economic Zones Act of 2017.

OUR PROPOSAL: U.S. Government support in advocating for a more predictable and favorable immigration policy in Kenya that will enhance and attract more investment by U.S. companies into Kenya.

2. ISSUE: GOVERNMENT PROCUREMENT

Lowest bidder policy, lack of transparency and graft in public procurement processes making it virtually impossible for American companies to compete for public projects.

DESCRIPTION

Government procurement remains a major challenge with corruption being the major factor that creates an uneven playing field that is designed to corruptly inflate contract values and steer procurement in favor of vendors who are ready to pay bribes through deeply vested political connections. U.S. companies often stand limited chances of success in such compromised procurement environments.

IMPACT OF THE PROBLEM

1. U.S. companies are locked out of significant and lucrative projects/opportunities.
2. Denies Kenya the benefit of great American quality, solutions and innovation.
3. Negative perception reduces Kenya's competitiveness as an investment destination.

OPPORTUNITIES FOR RESOLUTION

1. Change in Kenya government procurement policy to consider the following factors:
 - Quality
 - Project lifetime value
 - Incorporation of local resources both material and human
 - Opportunity for skills transfer
2. Technology adoption such as Blockchain and Artificial Intelligence that hold the promise of curbing graft and instilling trust in government procurement processes.

OUR PROPOSAL: U.S. Government support in providing relevant technical assistance towards strengthening Kenya's procurement processes and systems to be at par with global standards for improved accountability, reporting and enforcement. USTDA's Global Procurement Initiative (GPI) could be a good starting point.

3. ISSUE: LAWS AND GOVERNANCE

Significant non-payment risk for contracts fully delivered to the Government of Kenya coupled with lengthy commercial dispute resolution processes, occasioning business revenue losses.

DESCRIPTION

Slow payment or non-payment risk on government contracts (both National and Country level) is a key area of vulnerability for companies doing business with government. Secondly, lengthy commercial dispute resolution processes compromise commercial contacts and potentially result in significant revenue losses.

IMPACT OF THE PROBLEM

1. Compromises income, cash flows and lowers the credit rating of affected companies.
2. Long commercial dispute resolution cycles negatively impact contracts resulting in loss of revenue, compromising service delivery and increases risk aversion.

OPPORTUNITIES & PROPOSALS FOR RESOLUTION

1. U.S. Government support in strengthening government of Kenya financial disbursement systems and processes to ensure timely payment of suppliers and contractors.
2. U.S. Government support in strengthening of the local judicial commercial dispute resolution mechanisms to effectively address contract enforcement.
3. U.S. Government support on commercial diplomacy (when necessary) in resolving contract enforcement issues and payment risk challenges.

4. **ISSUE: CUSTOMS AND BORDER MEASURES**

The challenges with customs clearance processes specifically relating to:

- a. The 4-day timeline for Customs Clearance Completion past which storage charges are incurred, as the current processes need 10 days lead time end to end.
- b. Kenya Medical Supplies Authority (KEMSA) which is the major government purchasing body for healthcare products' lack of sufficient capacity for technical evaluation of non-pharm products (medical devices).

DESCRIPTION

Customs Clearance Process Overview:

The process starts prior to container arrival at ICD with entry registration and duty payment. Agents face challenges with same-day duty payment at the bank as KRA system goes down at times.

- Container arrives at ICD via SGR.
- Entry presented to KEBS office at ICD for local COC issuance for diamond mark products.
- Entry lodged for verification officer allocation at ICD.
- Verification is initiated and completed within 2 days.
- This is mainly due to container placement challenges at port as well as relocations required for the physical verification to happen.
- Verification message lodging takes around 1 day after physical inspection is complete.
- Entry is then taken to COMESA/Valuation officers for approval at ICD.
- Entry is then pending pass from DPC which can take anywhere from 1 day to 4 days.
- Agent faces some challenges pushing entries to pass; today the official DPC system is used for pushing communication.
- Entry is then eligible for customs release.
- KPA charges are then paid and container is ready for loading.
- Due to new payment system, payment has been slower than usual as well on ground.

IMPACT OF THE PROBLEM

1. The 4-day timeline for customs clearance completion past which storage charges are incurred is costing companies significantly and increasing their operating costs.
2. The lack of sufficient capacity for technical evaluation of non-pharm products is causing supply delays in healthcare service delivery.

OPPORTUNITIES FOR RESOLUTION

1. A verification officer can be allocated at the point of container arrival at ICD to avoid delays in allocation – this can save 1 day
2. Adequate equipment handling devices and sufficient officers on ground to enable all verification to happen within 24 hours of container arrival to port. Officers should also be provided with smart phones or note pads to enable real time data entry on the field once verification is completed – This can save 2 days
3. Process for COMESA, valuation and entry pass approvals should be simplified to happen in parallel and completed within 24 hour – This can save 3 days
4. Approval for loading and actual loading can be planned same day as entry pass – Saves 1 day
5. In general, if there is only one software application and database for managing all processes for container clearance in ICD, with the above-mentioned steps, customs clearance and loading out of container can still happen in 4 days.
6. Temporary extension of the timeline back to the previous 11 days during which time the suggested measures to increase efficiency of the clearance processes to meet the preferred 4-days are implemented.

OUR PROPOSAL: U.S. Government support in strengthening efficiency of customs clearance processes.

5. **ISSUE: REGULATORY ENVIRONMENT**

Challenges in existing regulation specific to:

- a. Product quality standards.
- b. Lack of clarity and communication on applicable regulation in various sectors and County versus National requirements.
- c. Ad hoc changes to regulation and a lack of communication of the same.
- d. Treatment of technicalities as non-compliance.

DESCRIPTION

- a. **Product quality standards** - Outdated standards are still in use and there is a lack of technical capacity to formulate, adapt/adopt or implement standards that are at par with internationally recognized standards.
- b. **Lack of clarity and communication on applicable regulation in various sectors and County versus National requirements** – There is a general lack of clarity and communication on applicable regulation in various sectors coupled by double requirements to satisfy National and County governments particularly in business licensing and taxation.
- c. **Ad hoc changes to regulation and a lack of communication of the same** - There is lack of engagement with the private sector in determining regulation and a lack of communication of changes or delays in such leading to cases of non-compliance.
- d. **Treatment of technicalities as non-compliance** – Technicalities still endure the same punitive penalties that are levied on cases of non-compliance without consideration or concession.

IMPACT OF THE PROBLEM

1. Business revenue losses due to punitive penalties applied to technicalities and non-compliance.
2. Challenges in expanding operations to different areas of the country with specific difficulties in making inroads in the counties.

OPPORTUNITIES FOR RESOLUTION

1. Review of the current Kenya Bureau of Standards (KEBS) processes and requirements e.g. for energy drinks and for labelling of medical devices and consider extension or waivers to allow adequate time for compliance.
2. Review and harmonization of existing regulation and penalties.
3. Development of a sector-based engagement platform for use in review of existing regulations and in gathering private-sector input during formulation of new regulation.

OUR PROPOSAL

U.S. Government support in advocating for harmonized regulation and implementation of a system for private sector engagement and communication.

U.S. Government support in providing technical assistance for adoption of internationally recognized product standards and efficiency in the quality check processes at the Kenya Bureau of Standards.