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RWANDA'S AGENDA FOR ACTION

June 2008

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INTRODUCTION

Economic reform in Rwanda is actively underway, but much more must be done before the necessary legal and institutional framework is in place to support a sound and thriving business environment. This report addresses the challenges to Rwanda's business environment and the root causes behind the country's low *Doing Business* scores. It provides analysis and practical, actionable recommendations for each of the ten *Doing Business* areas. While some of these recommendations relate directly to improving *Doing Business* scores, others address challenges to the business environment more broadly in order to remedy deeper issues plaguing the business environment.

This report provides valuable information for both the donor community and the Rwandan government with regard to major challenges in the business environment. It is designed to inform assistance decisions by USAID and other donors in the area of commercial legal and institutional reform. Specific recommendations are included at the end of each chapter and compiled in full in an appendix to this report. A list of priority recommendations is also included at the end of this Introduction.

Rwanda: The Power and Potential of Good Governance

In the economic arena, so much is going well in Rwanda. Behind a growth rate of 6% in 2007, and realistic external projections for up to 6.5% growth in the near future, there is a remarkably intensive, informed, and carefully implemented agenda for reform. Together, Rwanda's government, private sector, professional communities, NGOs, and workforce – along with a large donor community – are striving to overcome a legacy of poverty, one that is uniquely complicated by the country's recent history of war and genocide.

Reform is taking place on several fronts. On a macro-level, the country's Economic Development and Poverty Reduction Strategy (2008–2012) (EDPRS) is the government's newly enacted "operational tool" that aims to push change forward.[1] The EDPRS reiterates the country's vision for growth and development (which encompass both the U.N.-established Millennium Development Goals and the country's own Vision 2020[2]) and then details a "medium-term" implementation strategy, one that emphasizes the contributions to be gained not only from government reform, but also from a vibrant and healthy private sector. As a core theme, the EDPRS emphasizes the importance of "soft" infrastructure – that is, a regulatory environment that is friendly to domestic enterprises and outside investors. The EDPRS also emphasizes the need for Rwanda to improve the skills of its citizens through better primary education, more opportunities in technical and vocational training, and stronger universities.

In addition, a host of targeted efforts are underway to achieve the overriding goal of a business-friendly environment, one that ultimately contributes to economic growth and reductions in poverty. For example, through a comprehensive legal reform program, Rwanda's key commercial laws are undergoing revision for the purpose, generally, of becoming more business-friendly and consistent with international best practice.[3] At nearly all levels, the national government emphasizes the importance of administrative transparency, efficiency, customer

[1] Formally implemented in September 2007, the EDPRS can be found at the website of Rwanda's Ministry of Finance, http://www.minecofin.gov.rw/en/inno-print_article.php?articleId=50&PHPSESSID=10f983d1fc1127c65db4c7c8458c886e.

[2] Around the turn of the millennium, Rwanda developed, through a cooperative, consultative national process, a "vision" for the next two decades, one that includes a number of aspirational "pillars": (a) national reconstruction based on good governance; (b) strengthened productivity of agriculture; (c) a healthy private sector; (d) comprehensive improvement of human resources through better education, health, and information and communications technology (ICT); (e) an infrastructure that supports an efficient and productive economy; and (f) meaningful regional integration. See Government of Rwanda, Ministry of Finance and Economic Planning, *Vision 2020* (July 2000). The Millennium Development Goals, which range from halving extreme poverty to halting the spread of HIV/AIDS and providing universal primary education, constitute the United Nations' blueprint for development throughout the world by 2015. *See* United Nations, *Millennium Development Goals*, *available at* http://www.un.org/millenniumgoals.

[3] Though mentioned at many points in this discussion, details of the commercial law reform program are set forth in this report's chapter on Enforcing Contracts.

service, and private sector partnerships. At the same time, a nationwide emphasis on environmental preservation, tax and land reform, and construction of "hard" infrastructure indicates that the country is facing with all due gravity the problems that stem from its geography and recent history. New and re-invigorated supporting institutions are also taking shape – or are envisioned for the near future – including the increasingly dynamic Private Sector Federation, a consolidated legal training center, and various other private and public institutions dedicated to strengthening professional skills and capacities.

In response to its efforts to achieve meaningful economic reforms, Rwanda has been recognized throughout the world as an example to other less-developed countries. Following his February 2008 trip to Rwanda, U.S. President Bush summarized the impressions that many international observers currently hold: "Rwanda has taken bold steps to foster reconciliation, rebuild its devastated infrastructure, and to grow its economy," he said. "It is a hopeful country." [4]

Yet enthusiasm for all that is going right should not obscure a number of reservations that arise when Rwanda's economic and political environments are scrutinized closely. Certain potentially detrimental dynamics exist that are at once plain to see *and* difficult to nail down. These are best confronted vigorously *and* now. As Rwanda continues to attract (and solicit) international interest in the role it can play as a stable, well-governed state at the crossroads of Africa, it must address certain significant challenges to its business environment and should avoid negative impressions that may present "red flags" against future engagement with outsiders.

This report sets forth six cross-cutting themes that identify these challenges. Addressing the following themes – detailed later in this section – will help Rwanda realize the power and potential of its remarkable steps to date:

1. Agriculture as the cornerstone of the Rwandan economy
2. Addressing the skills deficit: an imperative for long-term growth
3. Access, opportunity and connections: how more equitable treatment of all economic players would bolster the economy
4. The underplayed role of women in Rwanda's economic development
5. The growing significance of regionalism
6. Building foundations of trust through law, institutions, and freedom

The BizCLIR Diagnostic and Indicators

This report is grounded in a comprehensive methodology, established through USAID's Economic Growth Office, which has been used in over 30 countries since 1998. In 2007, incorporating lessons learned from its first-generation legal, institutional, and trade diagnostic tool, USAID sponsored the development of an updated and redesigned set of indicators through its Business Climate Legal and Institutional Reform (BizCLIR) project.[5] The indicators now substantially align with the structure of the World Bank's enormously influential *Doing Business* country reports.[6]

Rwanda's Rankings in the World Bank *Doing Business* Categories

	2008	2007	Change
Doing Business Overall *(178 countries surveyed)*	**150**	**150**	**0**
Starting a Business	63	55	-8
Dealing with Licenses	124	132	+8
Employing Workers	95	95	0
Registering Property	137	134	-3
Getting Credit	158	156	-2
Protecting Investors	165	165	0
Paying Taxes	50	52	+2
Trading Across Borders	166	178	+12
Enforcing Contracts	44	44	0
Closing a Business	178	178	0

[4] "President Bush Discusses Trip to Africa at Leon H. Sullivan Foundation" (February 26, 2008), *available at* http://www.whitehouse.gov/news/releases/2008/02/20080226.html.

[5] Detailed information about BizCLIR can be found at *www.bizclir.com*.

[6] *See generally*, World Bank, *Doing Business 2008* (2007), and accompanying literature at *www.DoingBusiness.org*. The BizCLIR indicators also cover infrastructure and agriculture.

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Since 2002, *Doing Business* has assisted countries in targeting where their regulatory environments may favor or interfere with economic growth. For each of the topics it examines, the World Bank considers a few key indicia of whether and how the environment for doing business is "working," measured by such means as the number of procedures involved in achieving a goal, the number of days it takes, and the costs of the procedures in relation to per-capita income. The World Bank now gathers data from 178 countries and ranks each, thereby demonstrating how their respective regulatory environments compare to others throughout the world. In the most recent *Doing Business* report, issued in late September 2007, Rwanda ranked 150th – a showing that the government has vowed to improve.

USAID's BizCLIR indicators take each subject covered by *Doing Business*, and delve deeper into their respective legal frameworks, implementing and supporting institutions, and social dynamics to better understand *why* a country is where it is. In short, BizCLIR regards the *Doing Business* findings as "the tip of the iceberg" and aims to assist countries in improving their *Doing Business* areas by addressing the *whole* iceberg. The BizCLIR indicators consider each subject from a variety of perspectives, illuminating, for example, how certain business processes apply to rural communities, micro-enterprises, and small and medium-sized enterprises (SMEs). The BizCLIR indicators further examine aspects of a subject-matter area that do not necessarily impact a country's ranking, but have considerable bearing on the business environment. The BizCLIR approach was chosen in light of recent demand for better understanding of the issues highlighted in the *Doing Business* initiative and the need to help donors and countries understand, with greater particularity, "how to reform."

This diagnostic took place in two parts. Three of the subject-matter areas in this report – Registering Property, Paying Taxes, and Trading Across Borders – were covered chiefly through a "desk study" approach. That is, rather than visiting Rwanda, the authors reviewed the extensive literature available on these topics and prepared their chapters accordingly. To a limited extent, the desk studies are supplemented with information that came to light when a team of professionals looking at the other *Doing Business* topics visited the country, as discussed below.

The second, in-country portion of this diagnostic took place from January 28 to February 8, 2008, when a consulting team traveled to Rwanda to study the country's business environment. With respect to the seven remaining *Doing Business* topics, the team conducted interviews across the business environment, including state and local officials, owners of SMEs, industrial and agricultural enterprises, business associations, NGOs, the banking and lending sector, and many others. Interviews and observations took place in and near Kigali, Butare, Nyanza, and Ruhengeri. The team's objective was to obtain the "whole picture" of Rwanda's enabling environment for business and trade. Questions elicited a variety of perspectives and viewpoints, and sought explanations for how a certain subject works in all pertinent communities, whether urban, suburban, or rural.

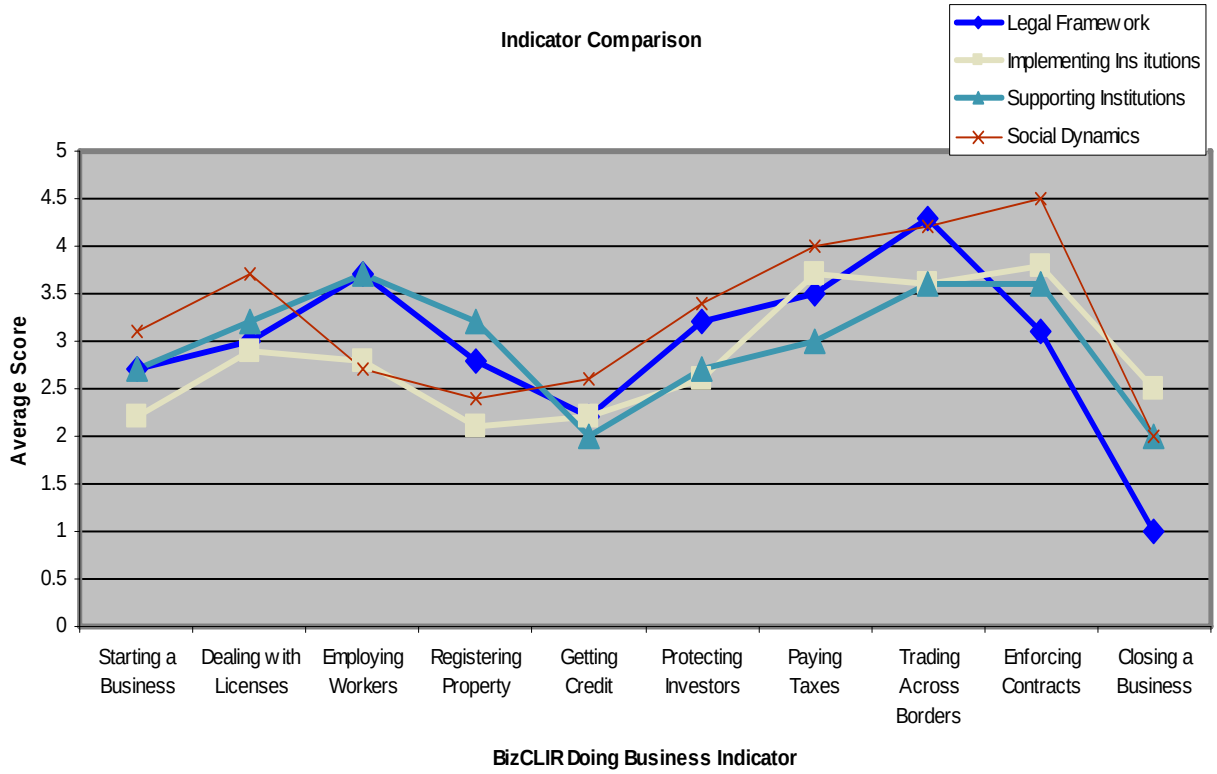
The diagnostic culminated in a roundtable presentation and discussion on February 8, 2008, which was attended by representatives from Rwanda's community of public and private sector reformers, as well as several donors. At the roundtable, team members introduced their preliminary observations, which were then subjected to feedback and elaboration from about 30 participants. This input helped shape the final conclusions of the team, which are now found in this report.

Each chapter of this report is structured the same way. Specifically, following an introduction, each has four substantive sections, which are themselves followed by recommendations.

Legal Framework. The chapters first examine Rwanda's laws and regulations that serve as the structural basis for the country's ability to achieve and sustain market-based development. They discuss the following questions: How accessible is the law, not only to elite, well-informed groups, but also to less-sophisticated actors, rural constituencies, or foreign investors? How clear are the laws, and how closely do existing laws reflect emerging global standards? How well do they respond to commercial realities that end-users face? What inconsistencies or gaps are present in the legal framework? In Rwanda, the team found that many key commercial laws are in the process of being updated or revised; accordingly, the team's analysis looked closely at the legislative process and the content of the new laws, and the prospects for implementation following the revision of certain laws.

Implementing Institutions. Next, the chapters examine those institutions that hold primary responsibility for implementation and enforcement of the legal framework. These institutions include government ministries, authorities, and registries, or, in certain cases, private institutions such as banks and credit bureaus. In addition, courts are examined with respect to their effectiveness in addressing disputes that arise in the commercial arena. Again, the indicators seek to uncover how these implementing institutions function not only within the capital city, but also in rural communities and among less-empowered constituencies.

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



Social Dynamics. Finally, the chapters discuss key social issues. Roadblocks to reform, in particular, are considered, including those entities that may be undermining change. These indicators also seek to identify significant opportunities for bolstering the business environment – such as champions of reform or regional initiatives – as well as matters of access to opportunity and formal institutions. Social dynamics also concern such important matters of gender, human capacity, and public health, each of which may have a significant bearing on how the business environment truly functions. Indeed, often a full understanding of legal and institutional issues cannot be achieved without a nuanced consideration of a country's social dynamics.

Recommendations. Following this four-part analysis, each chapter sets forth a set of recommendations. These recommendations are drawn from the key findings in each chapter, and reflect current reform capacities, opportunities, and an evident will to reform. Some of the suggestions within the respective sets of recommendations may overlap – that is, some may be consolidated into a single reform initiative – and all turn on the priorities and preferences enunciated by the Rwandan government itself. The recommendations in this report are intended to serve, among other functions, as a threshold list for donor coordination of immediate initiatives and preparation of scopes of work. In light of Rwanda's professed interest in boosting its *Doing Business* scores, the Recommendations are divided into those that relate directly to the areas of the *Doing Business* inquiry, and those that are less directly related, but concern key aspects of improving the business environment.

With respect to each area of inquiry, this diagnostic uses a process of reviewing and scoring **key indicators** to develop a thorough analysis. Once as much relevant information as possible is gathered – from written sources, meetings and interviews, and consultation among colleagues – each of the key indicators was scored, based on the assessor's best estimate of the issue at hand. To help an assessor determine a score, between 5 and 20 **supporting questions** accompanied each key indicator. These questions themselves are not scored, but are intended to guide the assessor toward a consistent, fact-based judgment from which the key indicator score is then derived.

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

As the Indicator Comparison table in this section demonstrates, Rwanda presents an overall impression that the social dynamics in the country are relatively favorable – specifically, roadblocks to reform are being dismantled and access to economic opportunity is growing. Yet the indicators also show that Rwanda's major institutions – particularly those that are charged with implementing reforms – have not yet caught up with the practical implications of these trends. The country's legal framework and supporting institutions as a category fall in the middle of the indicators' overall scores. The need for enhanced institutional capacity, accordingly, is detailed throughout this report.

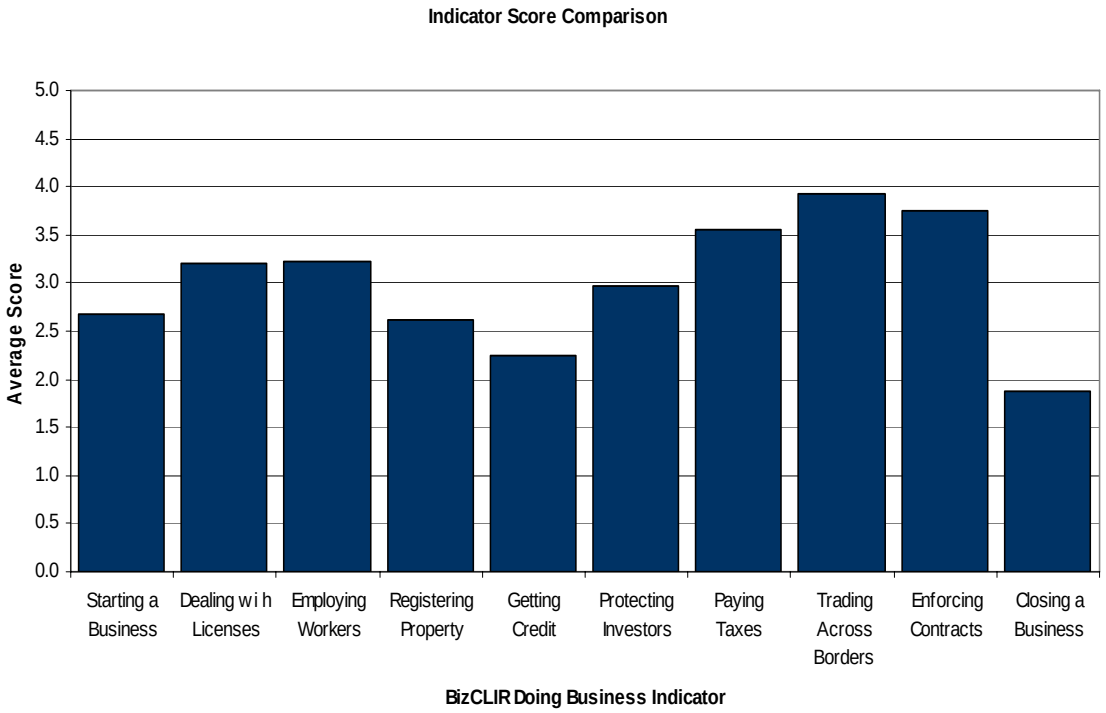
The score awarded key indicators aligns with the following conclusions:

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

Summary of Subject-Specific Findings

The findings of the 10 *Doing Business* subject-matter areas examined in this diagnostic are summarized below. In general, the areas that scored highest in the BizCLIR diagnostic – those with the most positive findings – were Enforcing Contracts (which chiefly concerns the courts), Trading Across Borders, and Paying Taxes. The weakest scores – indicating more negative circumstances than positive – emerge from the areas of Getting Credit and Closing a Business (insolvency). Beyond these trends, the general findings are as follows:

Starting a Business. Rwanda is in the process of addressing a variety of challenges pertaining to the start-up of new businesses. The company registration process is being overhauled, privatization of state-owned enterprises is well underway, and a legal framework for competition is being constructed. Resources to assist potential entrepreneurs, both large and small, in pursuing new



business in the country have also emerged. Each of these developments is a strong step in the right direction and is laying the groundwork for a welcoming environment for business start-up. The focus now must be on implementing the laws effectively, publicizing new processes and resources for entrepreneurs, and ensuring that the responsible institutions have sufficient staff and resources to meet their mandates. In the long run, the growth of entrepreneurial spirit should be encouraged: for the most part, it does not yet exist in Rwanda.

Dealing with Licenses. Rwanda is beginning to apply the best practices of licensing regimes found in other business-friendly countries, but it has not yet avoided certain pitfalls of the licensing function. For example, although blatant corruption among government inspectors and other officials is not widely regarded as a problem with respect to obtaining a license, there is some indication that "preferred" business initiatives get treated more favorably than others. With respect specifically to the licensing of construction projects, Rwanda is forging a promising balance between the need for economic development and the long-term preservation of its environment and other key interests such as public safety. The advent of local planning initiatives may have the effect, at least in the short run, of elongating the licensing process; once plans and procedures are in place, however, the licensing regime will be better poised to achieve the objectives it is intended to serve.

Employing Workers. In the near term, Rwanda is challenged with ensuring that its revised Labour Code – currently in draft form – both fulfills the country's obligations under international conventions and better supports economic efficiency and productivity. Legal and regulatory reform, however, will not be enough to pull Rwanda into a state of competitiveness with other dynamic African economies, let alone other states throughout the world that are vigorously seizing opportunities in productivity and competitiveness. Across Rwanda's business environment, institutions must continue to be strengthened to address Rwanda's critical needs in workforce capacity and productivity. Beginning with primary and secondary education, but concurrently emphasizing vocational and technical education, university education, and professional training, reforms must be both comprehensive and oriented toward long-term sustainability. Moreover, reforms should be mindful of the key place of agriculture in the Rwandan economy; that is, skills being taught should relate directly toward bolstering productivity and entrepreneurship in the agricultural sector.

Registering Property. Although a new Land Law was enacted in 2005, Rwanda has not yet moved to a fully operational and modern land-titling system. The duration for real property registration remains the most troublesome aspect of the country's system – it takes 371 days. At this time, a variety of national and local institutions are being put in place to address the difficulties people face in registering their land. There also remain questions about use of land, given the fact that, notwithstanding the clarification and strengthening of land-use rights, all land is ultimately owned by the state. Under the 2005 Land Law, the government has the right to reclaim land that is not being used in an "optimal" fashion – this term warrants clarification and outright assistance to landholders. The fact that there is not yet private ownership of land also causes concern to lenders – the risk of lending is greater when a debtor does not have the ultimate authority to transfer the land. Other major concerns over the use of land include the fragmentation of real property in Rwanda – namely, the proliferation of microplots that makes consolidation and efficient use of land difficult. The inheritance rights of women also remain a troubled area. Women have traditionally not been able to access wealth to which they are now unequivocally entitled, and strengthening their access to rights, through public education and education of judges, should continue.

Getting Credit. Like many developing countries, Rwanda's banks and other financial institutions do not lend at levels that meet the demands of the commercial sector, even though they have available funds to do so. Lending is constrained by costs and risks arising from five factors: high reserve requirements, defective legal and regulatory environments, crowding out by government bonds, asymmetrical information, and inadequate skills for assessing and managing risk. Many steps are underway to address these issues, including the improvement of lending-related laws, strengthening of court enforcement systems, and creation of credit information resources. At the same time, issues such as building trust in the economy (through, among other approaches, strengthened rule of law and court enforcement), insufficient competition (which contributes to lender risk), and specific sectoral concerns (particularly as they concern agricultural development) must be considered as reform moves forward.

Protecting Investors. The World Bank ranks Rwanda nearly at the bottom compared to other countries for Protecting Investors. This ranking accurately reflects Rwanda's lack of an effective corporate governance regime or culture of investor protection. The existing Law on the Organization of Commercial Establishments covers corporate governance to some extent, but it does not create a comprehensive corporate governance framework in line with international best practices, and it provides no effective means of enforcing the provisions it does include. Continuing legal and institutional reforms, if successfully implemented, should place the country in a position to significantly improve its corporate governance regime and, as a result, its environment for protecting investors in the near future.

Paying Taxes. In 1998, the Rwanda Revenue Authority (RRA) was launched, and since then it has markedly improved Rwanda's system of tax collection and generated more revenues for the country. The RRA collected around US $100 million in its first year and around $480 million as of 2006. As a result of increased revenues, the national budget has grown, with more being spent on vital areas such as health, education, and sanitation. Rwanda fares well for taxes in the *Doing Business* 2008 assessment, ranking 50th in the world in terms of ease of paying taxes. One reason for its ranking is that the overall total tax rate has declined from 37.2% to 33.38%. Notwithstanding this promising backdrop, the tax rules are not yet sufficiently understood by businesses or tax collectors. Many of the rules are new, and few tax collectors have an adequate understanding of business to properly apply rules related to deductions and depreciation. As a consequence, numerous businesses and banks complain that tax liabilities are uncertain because it is difficult to predict what will be allowed or disallowed. This raises business risks, which in turn raises the risk premium charged by banks. Moreover, inappropriate tax assessments raise the costs of paying taxes, through both higher tax liabilities and the added cost of protesting the assessment.

Trading Across Borders. Multiple issues affect Rwanda's viability in the international trade arena. First, with 90% of the population dedicated to agriculture (mainly subsistence farming) contributing to roughly 40% of the GDP, Rwanda's economy clearly needs to diversify in order to reduce the exposure to commodity prices and weather uncertainty, as well as to fight the current account deficit caused by continuously growing demands for imports. In addition to poor export diversification, Rwanda's trade is negatively affected by production

and processing constraints, unfair trade practices, nontariff barriers to trade, and insufficient FDI. Though the country benefits from various duty-free and quota-free initiatives available to Least Developed Countries (LDCs), its vulnerability to international commodity prices and supply-side constraints limits such benefits. Further, government officials lack the necessary capacity to deal with complex trade issues. This impinges on successful participation in international trade negotiations and adequate implementation and observance of WTO and regional trade commitments in Rwanda. Rwanda will need continuous support to improve compliance with its multilateral commitments. Future assistance should focus on building capacity in trade negotiations, integrating trade into Rwanda's development strategy, transcribing the country's pre-Uruguay Round tariff commitments into the Harmonized System, and effectively implementing the WTO Agreements.

Enforcing Contracts. The legal framework and institutional environment for enforcing contracts in Rwanda is generally perceived as workable. Shortcomings remain, however, causing a perception that the enforcement of contracts in Rwanda is difficult. First, the framework laws dealing with contracts are archaic and ill suited to a modern commercial economy. Second, the court system is perceived neither to be efficient nor to have the necessary capacity to deal with complex commercial transactions. Both of these problems are the subject of ongoing progressive legal reform that should continue to be supported in future development efforts. The strengthening of supporting institutions, including associations of lawyers, bankers, and others, should contribute to a more robust regime for enforcing contracts, thereby increasing confidence in the rule of law and diminishing the perceptions of risk in the economy.

Closing a Business. While there are provisions of existing law in Rwanda that deal with insolvency and the liquidation of business enterprises, they are little used. In practice, bankruptcy is almost nonexistent as a viable method of dealing with insolvency in Rwanda. As current reform efforts are implemented and basic commercial laws such as those dealing with contracts, negotiable instruments, and secured transactions are enacted, commercial credit should become more available. This will inevitably result in an increase in business failures with a resulting need for an efficient insolvency system. Therefore, among Rwanda's commercial-law legislative priorities is a comprehensive law dealing with insolvency. Passage of the law, however, will only be a first step in the creation of a working insolvency system. Without a corresponding effort to develop the institutions to support such a system as well as the appropriate capacity among the parties involved in the insolvency process – judges, attorneys, accountants, and other bankruptcy professionals – the system will not be able to achieve its full potential.

Crosscutting Themes

The instant diagnostic is organized so that 10 components of a healthy and prosperous economy are considered discretely and in relation to each other where appropriate. This format represents much of the Western construct about economics, civil society, and the individual's relationship to the state and other institutions. Certain issues and dynamics are so prevalent across this analytical framework, however, that they warrant special mention. These can be thought of as crosscutting themes or topical "layers" falling over all areas of review. In this diagnostic, the themes include the following:

1. Agriculture as the cornerstone of the Rwandan economy

The importance of agriculture in Rwanda's economy cannot be overstated. Agriculture is by far the dominant sector not only for basic livelihood, but also for entrepreneurial growth. Throughout this report, the significance of the agricultural economy – and agriculture-oriented solutions – is a common theme. At different junctures, the following points arise:

- There is need for demonstration centers to help farmers better understand what is necessary to succeed in business. Short-term training on basic farming issues such as seed selection, planting, production, cultivation, process transformation, and distribution would also be beneficial. For example, the development of an agency that supports cooperatives could ensure that agricultural issues, particularly those of small-scale farmers, are properly represented and championed.

- For the foreseeable future, Rwanda's workforce will depend on opportunities in the country's agricultural sector, including the growth of the specialty coffee sector, value-added processing of agricultural products, and the advent of new products such as sericulture. Business education and science education at the university level are

critical aspects of seizing such economic opportunities.

- Access to credit in the agricultural arena implicates a number of issues that call for agriculture-specific solutions, including with respect to land reform, insurance, microlending, and technical assistance directly targeted to specific agricultural products. By working through local counterparts such as the Ministry of Agriculture and farming cooperatives, development partners can supply technical assistance to create new credit and insurance products, identify additional constraints in the agriculture arena, and assist in formulation of policy solutions.

- Rwanda's main agricultural exports (tea and coffee) are of high quality, but transport constraints and the distance to ports undermine some of the trade efforts. The same issue impacts such nontraditional exports as horticulture. Trade solutions will need to consider the special issues associated with agriculture – such as spoilage and special infrastructure needs– as they go forward.

In short, the Rwandan government and donors alike must promote opportunities in agriculture that go beyond subsistence farming and allow for growth from increased productivity, entrepreneurship, and trade.

2. Addressing the skills deficit: An imperative for long-term growth

To a debilitating extent, the Rwandan workforce lacks skills. This point was stressed throughout the diagnostic, particularly by business people who are concerned with completing projects and attracting new business.

To address the skills deficit, the Rwandan government has placed education on the "front burner" of its development activities. For example, school fees for primary education have been abolished and efforts have been made to build more schools and improve school curriculums. Strengthening higher education and vocational training is part of the 2008–2012 Economic Development and Poverty Reduction Strategy. Nonetheless, constraints on accessing education at all levels remain a problem for many. The percentage of students that finish primary school remains low – current estimates hover at about 50%. The percentage of children ages 13 to18 proceeding to secondary school is even lower – although rates are increasing, only between 15% and 25% reportedly make this transition. And less than 3% of Rwandans attend university. Critical skills are therefore lacking throughout the economy, with tangible consequences including the following examples:

- Entrepreneurs often do not adhere to good bookkeeping and business management, and intermingling of business and personal funds is common. This fact undermines access to credit as well as the ability of SMEs to attract outside investment.

- Business and finance graduates often do not have the necessary skills in business, accounting, and finance that Rwanda's degree programs should bestow. Sophisticated or creative financial products are less likely to take root in this environment than if the graduates had more relevant skills.

- Employers in Rwanda must often rely on skilled professionals from neighboring countries to fill the professional and technical skills gap. This drives up the cost of doing business in Rwanda.

- Women continue to be deprived of their land inheritance rights, due significantly in part to their weak access to education and poor ability to absorb information.

- Corporate governance is an unfamiliar topic to the majority of business people in the country. For the foreseeable future, the possibility of shareholder derivative suits will not provide any benefits or contribute to investor protection if they are not used or understood.

All these issues, and many more noted in this report, relate to Rwanda's skills deficit. In Rwanda, "more training" is the unequivocal answer to the question of how donors can help. This request is usually accompanied by requests for books, materials, and other equipment that are necessary components of effective educational and training programs.

While basic literacy and quantitative skills are critical, higher education cannot be neglected. As noted in a recent report that underscores the vital relationship between higher education and economic development, university education supplies "the human capital that in turn builds the very institutions that are regarded as an indispensable factor of

development – the accountants, doctors, engineers, lawyers, teachers – that comprise the middle class."[7]

3. Access, opportunity, and connections: how more equitable treatment of all economic players would bolster the economy

Any perception that economic opportunity is limited to political insiders, or that powerful local players receive the most favorable treatment from the government, can be harmful to a country's prospects for future development. For example, if local citizens feel that their government is not equally concerned for the prospects of their business success as it is for those controlled by powerful insiders, they may resist entrepreneurial impulses and fail to seek meaningful support. Similarly, if they believe they cannot get a loan without "connections," they may not even take that first trip to the bank. Moreover, if foreign investors believe that the government will reserve for its top players the best chances for commercial success, they will steer clear and look for sounder investment opportunities.

There is a stubborn perception in Rwanda that business success turns substantially on ties to the country's ruling party – the Rwandan Patriotic Front (RPF) – or strong "connections" generally. This perception is exacerbated by structural difficulties experienced by smaller business interests in access to public services, including poor signage at public agencies (so that only people with special knowledge know where to seek the assistance they need) and other issues of access, such as inadequate distribution of critical laws and regulations. Examples from this diagnostic include the following:

- The RPF substantially controls a large investment company, Tri-Star Investments. Although Tri-Star is adopting certain best practices in corporate governance, the bottom line is that there are unusually strong connections between government officials and business opportunities arising from the government, including construction and development projects. The leadership of RIG, another large investment company, also has close ties to the government.

- The extent of the ties between the large local investment companies and the government is not subject to significant, rigorous scrutiny, due to the government's heavy restrictions on press freedom.

- Mayors in Rwanda wield strong influence over their local business environments. Although they are not reputed to take bribes or engage in the type of corruption found elsewhere on the continent, one mayor reportedly "has his own business and his friends have their own businesses," and a mayor can "find a way to stand in the way of a project" if he or she chooses.

- Certain high-level ministry officials have been known to throw up roadblocks – such as with respect to the employment of foreign workers – when a company's actions conflict with the official's personal interests.

- The extent of government intervention in construction projects, according to one construction company representative, may turn on who the project is *for*. That is, labor inspectors are more likely to "show up" at projects that are privately sponsored, he said, rather than launched by the government.

- There is an unacceptably high rate of non-performing loans in Rwanda's banks. This fact suggests that individuals or companies may have been loaned money based on their connections, rather than on sound considerations of risk.

- Many public buildings lack the critical indications that all citizens are welcome to partake of their services. For example, it is often difficult to find basic information about where ministry offices are located and what public servants are available to assist with a certain government function or task. Access to information through the internet is also not well maintained and rigorously updated.

To embrace the promise it holds, Rwanda must revisit issues of real and perceived conflict of interest; competition law and policy; financial disclosure of the income and assets of government officials; government procurement; and freedom of the press. It also needs to improve the extent to which it provides information, including through accessible services beyond the capital city; clear information posted in government buildings; and

[7] Devesh Capur and Megan Crowley, *Beyond the ABCs: Higher Education and Developing Countries*, Center for Global Development Working Paper 139 (February 2008), at 4–5.

Women and the Business Environment

Women in Rwanda play a significant but understated role in their country's economy. After the 1994 genocide, the need for women to become more active participants in the labor market was evident as women far outnumbered men throughout Rwanda. However, the existing legal and cultural structures did not facilitate women's involvement in the business environment, a great loss in potential economic growth. As one study on Kenya, a neighboring country, showed, incorporating females into agricultural programs could increase females' yields by more than 20 percent.[1] Women in Rwanda continue to face impediments in the business community today, though the government has been actively working to mitigate these obstacles.

At the time of the genocide, women in Rwanda did not have inheritance rights to their husband's land. Widows could not claim land that was once theirs and were effectively left to the will of their dead husband's family.[2] Lack of land access impeded women from any form of farming, subsistence or commercial, hindering their ability to support their families. In addition, the lack of official rights to land restricted women from obtaining loans from banks because women could not provide the necessary collateral. Without loans, women faced major challenges in starting and building a business.

The government took action in 1999 by passing the Inheritance Law granting women the right to inherit land.[3] However, the impact of this law and others like it is minimized because women are not aware of them or the rights they provide. Women do not know that they have the right to their husband's land, so when it is taken from them, women do not know they can prosecute. Many women are also unaware that there are laws to protect them from sexual abuse or discrimination, so few offenders are brought to justice. Thus, though they technically have rights, women are unable to exercise them due to a lack of knowledge.

Another traditional impediment to Rwandan women is culture. A woman's day is consumed with time-intensive family tasks, such as working the fields and cooking for the family. A study from the 1990s showed that women in sub-Saharan Africa spent an average of 2 hours and 20 minutes per day on domestic transport activities alone (e.g., carrying produce in from the fields and collecting water).[4] This number may have improved somewhat since the time of the study, but household chores remain a major time commitment for women across the continent. Their traditional role in the home leaves women little time to effectively pursue business opportunities. Other cultural impediments exist as well, such as the stigma of a working woman, perceptions of what is appropriate women's work, and the husband's cultural authority over a woman's decision to engage in business. Such norms are difficult to change and have a dramatic impact on women's successful engagement in the business environment.

Lack of education is also a significant limiting factor. Though education for primary school is mandatory, families must pay for uniforms. When families have limited funds, they will typically send their sons to school over their daughters. One competitive primary school in northern Rwanda had a boy-to-girl ratio of more than 3:1. For girls who complete primary, the continuation rate to secondary school is low, and university rates are even lower. The student body of the National University of Rwanda, Rwanda's most prestigious university, is approximately 25 percent female, mostly because girls are not well prepared from a young age to meet the university's standards. Other higher learning institutions have higher female student rates, but these schools are less competitive. If education were appropriately prioritized in Rwanda, not only would female students qualify for top universities, but other impediments, such as cultural stigmas and insufficient knowledge of rights, would diminish. With better education, women would also be much better prepared to engage in and run a business.

Rwanda is certainly improving in bounds. Women today are more involved in the business environment and more active participants in society than ten years ago. There is a mandatory 25 percent minimum for female representatives in parliament, but in fact women make up 45.3 percent of the representatives – the highest female representation rate in the world.[5] Such percentages enable women's rights and empowerment to be more effectively addressed. Sound laws are being passed, and groups that promote and assist women entrepreneurs, such as the Chamber of Women Entrepreneurs and CAPMER, have developed.

But these reforms have not yet had impact on the ground – overcoming cultural perceptions and entrenched inequalities will take time. Despite changes and efforts at higher levels, public attitudes and women's day-to-day lives reportedly remain unchanged. Accordingly, the focus should be on efforts that reach women on the ground. With continued focus on practical assistance to women, Rwanda will come to recognize the great benefits that result from actively and fully engaging women in the economy.

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[1] *UNFPA,* State of World Population 2000: Lives Together, Worlds Apart *(2000) at 38.*

[2] *Catherine Newbury and Hannah Baldwin,* Aftermath: Women in Postgenocide Rwanda*, Center for Development Information and Evaluation, USAID (July 2000) at 7.*

[3] *The World Bank,* Doing Business: Women in Africa *(2008) at 8.*

[4] Gender Equality as Smart Economics: A World Bank Group Action Plan *(March 2008) at 6.*

[5] *The World Bank,* Doing Business: Women in Africa *(2008) at 8.*

better access to law, regulations, and other key information through the internet. Only when locals and outsiders feel that they have a genuinely fair chance at business success – one that is not compromised by the ambiguity of insider involvement or the challenge of limited access to information – will the country represent a genuinely attractive investment opportunity.

4. The underplayed role of women in Rwanda's economic development

It is increasingly recognized that, when women are unable to access the same conditions as men to participate in work and commerce, the economies where they live can lose billions of dollars of potential income and growth.[8] At this time, conditions facing women in Rwanda indeed appear to have critical economic consequences.

Traditionally, females in Rwanda have been disadvantaged from a very young age – until very recently, primary-school attendance by girls has lagged significantly behind that of boys, and, as a consequence, female literacy is as much as 10% lower for women than it is for men. Rwandan girls are far more likely than boys to drop out of primary school and, although statistics among various sources are not consistent, the rate at which they proceed to secondary school appears to be somewhat less than boys (some recent statistics do suggest that enrollment has now achieved parity), and women are far less likely to pursue higher education.

Regardless of whether they have had access to formal education, women face special challenges in starting or continuing a business. They typically do not have collateral to obtain financing because houses and land are usually in the husband's name, they are culturally not viewed as business people, and their businesses generally remain informal. Furthermore, certain businesses, such as selling handicrafts, are considered "women's businesses," while certain businesses – those that are larger or export-oriented – are "men's businesses." These stereotypes constrain both sexes.

Public and private sector representatives suggest that the government's recent efforts promoting women's equality are very positive, but it will take time for women to catch up in education and for cultural perceptions to change. The fact that women are accessing microcredit at very high rates is a promising development, so long as the businesses they start benefit from technical assistance in such areas as bookkeeping, marketing, and efficiency.

5. The growing significance of regionalism

Rwanda joined the EAC in 2007, signifying its commitment to regional integration of economic policy, regulatory frameworks, and trade in goods and services, among other facets. The five member states of the EAC cover an area of 1.8 million square kilometers and have a combined population of about 100 million people. The EAC currently operates a customs union and is planning a common system of tariffs, as well as a standard tourist visa and possibly a common passport. Given the interdependence of the EAC states, especially with respect to port access, the potential of streamlined administrative systems within the EAC to contribute to economic growth throughout the region is significant. Rwanda belongs to other regional organizations, such as the Common Market for Eastern and Southern Africa (COMESA), which also influences certain legal framework and policy initiatives.

Rwanda's place within the EAC presents enormous opportunities, particularly with respect to trade in services, including professional services, tourism, franchised businesses, and trade facilitation services. Rwanda's access to skilled labor, along with professional opportunities for its own workers, will improve greatly if EAC members continue to streamline practices allowing skilled workers to move freely among their borders.

Furthermore, there are important regional opportunities with respect to accessing credit. That is, if lenders regard Rwanda as part of an overall regional strategy, supply for credit may grow. There is a need for creditors to have access to credit information on a regional basis. In developing software and legal frameworks, Rwanda should pursue regional integration in credit information. This could include, among other possibilities, development and implementation of EAC protocols and standards, and joint ventures with trustworthy credit agencies from other countries. Regional credit information will benefit Rwanda's access to finance.

[8] *See* United Nations Economic and Social Commission for Asia and the Pacific, *Economic and Social Survey of Asia and the Pacific 2007* (Chapter 3: Gender Inequality Continues, at Great Cost) (April 12, 2007); *see also* "Women and the World Economy," *Economist* (April 12, 2006).

Although harmonization of country practices and regionalism generally is beyond the scope of this report, they should be taken into account as Rwanda plans for its future growth.

6. Building foundations of trust through law, institutions, and freedom

During this diagnostic's public roundtable (conducted on February 8, 2008), the head of a prominent business posed a poignant question: "How do we get people to work together?" Another businessman posed the same question from a different angle when, during an interview, he noted that there were few wholesalers in Rwanda; most small businesses, he said, import their products directly. These observations about working together are quite relevant to the future of economic development in Rwanda. They go to the heart of the problem: trust.

Rwanda's legacy of colonial occupation and civil war has done much to destroy trust at various levels. Colonial government, followed by independence under a defective domestic government, led to an understandable distrust of government based on negative experiences, at least for all but a minority of favored elites. The civil war led to highly individualized distrust, when the social fabric of Rwandan society was torn apart. In its place, there is now a highly individualized, self-protective ethos in Rwanda.

At this time, there are grave concerns, voiced by both local and outside actors, that economic reform in Rwanda is taking place at the cost of political freedom. That is, Rwanda is perceived as taking a number of reform "shortcuts" that have been taken in certain other economically successful countries, but that ultimately limit the country's attractiveness as a destination for business formation and investment. Namely, limitations on free speech and actions that run counter to government interests diminish outside confidence in the country's leadership. Significantly, in its annual report issued in January 2008,[9] Freedom House classified Rwanda as "not free." This classification reflects worldwide concern over Rwanda's restrictions on the media, constraints on meaningful political activity, and prosecution of individuals whose main crime seems to be that of crossing the ruling party. Rwanda is thus the *only* country within the five-nation East African Community (EAC) (which also includes Kenya, Tanzania, Uganda, and Burundi) that is found by Freedom House to be "not free."

Rwanda's government defends its heavy political hand at this time by saying, "Look at what we have been through."[10] President Paul Kagame argues that outsiders criticize such practices as media constraints and prosecution of dissidents "because they are defensive" about their own unflattering roles in Rwandan history.[11] The president does suggest that, as new laws and institutions take hold, freedom will in fact increase "to the highest level we can take them."[12] One hopes that this is true. To have achieved so much in the area of good governance, yet to stop short of certain true hallmarks of a well-governed state, would be a disservice to the Rwandan people, depriving them of the true potential of all they have made happen in so short a period of time.

Ultimately, trust within a society can only be earned. The new policies of participatory policy-making are beginning to restore trust in the government. This must be guarded carefully by ensuring that the new policies are designed to benefit economic actors based on merit, not on connections. Such trust will increase social and political stability, with a positive impact on the economy, including the credit system.

At the village level, trust is rather easily established because the intimate nature of that society makes it easy both to know an individual's character in a transaction and to enforce agreements through a variety of social sanctions. As an economy becomes more commercial in nature, credit and other economic needs outgrow effective local enforcement

[9] Freedom House, *Freedom in the World* (January 2008). Freedom House's two other classifications, based on political rights and civil liberties, are "partially free" and "not free." Of the countries most recently ranked by the World Bank as the world's top 25 countries for doing business, Freedom House classifies 19 of them as "free." Four of the top 25 are classified as "partly free" (Singapore, Georgia, Hong Kong, and Malaysia), and just two (Thailand and Saudi Arabia) are categorized as "not free." Thus, as Rwanda seeks to improve its poor ranking under the World Bank's most recent *Doing Business* report, the country must recognize that, in the eyes of the world, its willingness to entertain dissenting views or atypical approaches is perceived as more like that of Saudi Arabia (which Doing Business ranks at twenty-third) than Estonia (a former Soviet republic ranked by Doing Business at seventeenth, and called, by Freedom House, "free").

[10] "A conversation with Rwandan President Paul Kagame," *Ikaze Magazine* (Nov.–Jan. 2008), at 9.

[11] Id.

[12] Id. at 10.

mechanisms. Lenders, for example, require more than trust in an individual borrower; they also require a trustworthy legal system that enforces commercial obligations when the individual fails to fulfill them. Such a system enables people to work together more effectively and capture the benefits of improved economies of scale.

To borrow Friedrich Nietzsche's famous phrase, building trust requires "a long obedience in the same direction." The commercial legal reform initiative referenced throughout this report presents many short and midterm opportunities to build a rule of law that is accessible to all members of society. In addition, the government has a tremendous capacity to restore trust through building institutions that conform to international best practice: for example, it can continue to train judges to serve as fair and independent arbiters of dispute; it can ensure the more timely and effective enforcement of judgments; and it can improve its own ability, through both traditional and modern methods, to provide information to the public. Sound, transparent governance is itself a trust-building act, one that offers the long-term benefit of economic growth for all.

The BizCLIR Recommendations: Top Priorities

This report contains over 200 recommendations that suggest – in terms ranging from the very broad to the highly specific – a variety of approaches to improving Rwanda's business environment. Although each of the report's recommendations contributes to an overall vision for how Rwanda can continue its emergence into the world economy, the following can be considered the **top** priorities:

***ALL* SUBJECT MATTER AREAS**	
No.	**Recommendation**
1.	Make all laws available to the public in a more thorough, user-friendly format than that currently provided by the *Official Gazette* and on existing government websites. Assist the Rwanda Investment and Export Promotion Agency (RIEPA) and the Center for Support to Small and Medium Enterprises in Rwanda (CAPMER) in making information on commercial laws and regulations available to the public in a simple, accessible, and understandable form.
2.	Improve accessibility of public services geared toward enterprise development, financing, and operation through better marking of Business Development Services (BDS) centers, better signage in public buildings, more plentiful availability of free information, and more readily available personal assistance.
3.	Encourage media coverage of business issues in a way that is more comprehensive, detailed, fact-based and accountable than media coverage is now.

STARTING A BUSINESS	
No.	**Recommendation**
1.	Support public awareness campaigns on entrepreneurialism, business opportunities, and the benefits of joining the formal sector.
2.	Assist with establishment and capacity building for BDS centers throughout the country.

DEALING WITH LICENSES	
No.	**Recommendation**
1.	Continue reviewing and streamlining business licensing environment. Create a legislative, regulatory, and institutional reform program that defines and implements necessary reforms.
2.	Create a developers' manual that sets forth all existing and anticipated legal and regulatory aspects of a construction project in Rwanda.

EMPLOYING WORKERS	
No.	**Recommendation**
1.	Engage in a long-term consensus-building activity that gets to the root of the relationship between labor law and economic productivity. Rather than rushing to adopt a Labour Code, seize the opportunity to learn from lessons throughout the world and to use the new code as a tool toward implementing the overall economic objectives of the government, private sector, and workforce.

2.	Study and answer with tangible conclusions the following questions: o What is the relationship among Rwanda's current system of higher education generally, its current system of professional education specifically, and the country's potential for sustained economic growth? o How can Rwanda achieve a well-working indigenous system of university and professional education?

REGISTERING PROPERTY	
No.	**Recommendation**
1.	Clarify ambiguities in the Land Law. Suggested solutions for consolidating land and "villagisation" need to be well elaborated, sequenced, and participative, including clear articulation of "public purpose" expropriation for national "optimal land use."
2.	Involve civil society organizations in policy implementation, especially through raising awareness and dissemination of key aspects of policy, capacity building, and monitoring of the socioeconomic and gender impacts of land consolidation and "villagisation."

GETTING CREDIT	
No.	**Recommendation**
1.	Update, as necessary, the Financial Sector Development Plan to capture additional interventions identified in this report within the existing comprehensive approach to improving access to affordable finance.
2.	Fill gaps in the existing legal regime, including: o Improving and expanding credit information o Establishing a pledge registry system.
3.	Improve the enforcement regime through: o Establishing rapid enforcement mechanisms for credit transactions o Improving court performance o Developing agricultural lending products.
4.	Increase development credit (paired with risk-reduction programs).

PROTECTING INVESTORS	
No.	**Recommendation**
1.	Support public awareness and training on good business practices and basic corporate governance through the PSF, CAPMER, and BDS centers. Create education and training programs on basic business management, with a special emphasis on training rural entrepreneurs.
2.	Revise the Draft Company Law to account further for the limited resources and nature of private, closely-held companies by simplifying their compliance requirements. Also, edit it for readability and to clarify provisions that are currently confusing or incomplete.

PAYING TAXES	
No.	**Recommendation**
1.	Minimize the impact of taxation on companies' cash flow, including the removal of anticipatory payments on corporate income tax and the 3% tax on the value of invoice for winners of public tenders.
2.	Improve the capacity of the Rwanda Revenue Authority, promoting greater clarity in tax regulations and full consistency of the three-language versions of the fiscal laws and regulations.

TRADING ACROSS BORDERS	
No.	**Recommendation**
1.	Implement the WTO Customs Valuation Agreement. To do so, train Customs officials in the content and implementation of the agreement, including the application of the transaction value method.
2.	Prioritize and implement the following needs: o Revision of Customs legislation o Computerization of Customs administration o Restructuring of the Customs Valuation Division o Strengthening of the inspection process o Establishment of two sections on rules of origin and post-clearance auditing o Training of Customs officials in the revised Customs legislation o Fraud control o Post-clearance audit facilities and methods o Rules of origin o Training of the private sector in Customs procedures.

ENFORCING CONTRACTS	
No.	**Recommendation**
1.	Support prompt passage of most laws drafted through the efforts of the International Law Institute and the Business Reform Cell.
2.	Plan and implement educational activities in conjunction with passage and implementation of the new commercial laws to include the Rwandan legal, banking, business, academic, and judicial communities.
3.	Develop programs in conjunction with the Institute for Legal Practices and Development in Nyanza for both judges and lawyers in the area of commercial law.

CLOSING A BUSINESS	
No.	**Recommendation**
1.	Pass the Draft Insolvency Law in the 2008 legislative session.
2.	Once the Draft Insolvency Law becomes law, plan and execute educational activities for the legal, banking, academic, and judicial communities in Rwanda.

STARTING A BUSINESS

Introduction

In many parts of the world, running one's own business is considered the height of success. People employed by enterprises owned by others long for the day when they can be their own boss. Entrepreneurialism is a virtue. In many countries, the will to start and grow a business exists, but bureaucratic obstacles and costs make it untenable. In other countries, including Rwanda, there is an added challenge: The population is historically not drawn to business.

While the *Doing Business* ranking for Starting a Business focuses on business registration, there is more to starting a business than getting it registered. If an entrepreneur can successfully register a new business but has no hope of competing within the sector because he or she is not competing on a level playing field, registration will mean little. Even for companies that make it beyond the registration phase, in countries with significant government involvement in business, new businesses often find it impossible to compete with state-owned enterprises or businesses favored by the state. A skewed playing field may also be caused by uncompetitive practices by other private companies. Accordingly, both privatization and competition are discussed in this chapter. This chapter also discusses investment facilitation and promotion because, particularly for larger investors, the ease with which investments can be made and the incentives offered to attract investors have a major impact on whether a particular investor will choose to start or bring a business to Rwanda.

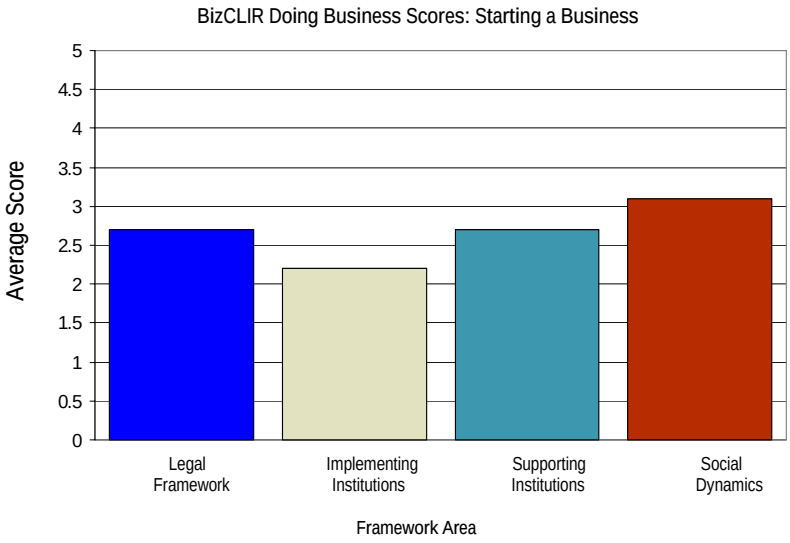
In Rwanda, while there is room for improvement in the business registration process, actual registration is not the primary challenge facing up-and-coming entrepreneurs. Rwanda has a moderate *Doing Business* ranking of 63 in this area, significantly higher than any other countries in the region. Additionally, almost all private sector representatives consulted indicated that registration, although once challenging, has become quick and relatively simple. Major changes in the process that will further simplify registration and provide for a centralized registry, as detailed in the Legal Framework section below, are underway.

Starting a Business

Doing Business Ranking 2008	63
Doing Business Ranking 2007	55
Procedures (number)	9
Duration (days)	16
Cost (% gross national income per capita)	171.5
Paid in Minimum Capital (% gross national income per capita)	0.0

The main challenge to starting a business in Rwanda is that the local population lacks the necessary entrepreneurial spirit. According to many public and private sector representatives, running one's own business does not mark career success in Rwanda in the way it does in many other countries. Rather, holding a steady job, particularly in the government, is considered optimal. This results from a long history of the government being the primary employer and closely controlling business until only about a decade ago. Accordingly, few Rwandans pursue innovative business ideas, and most entrepreneurs remain at a subsistence business level.

Rwanda is in the process of addressing each of the challenges to business start-up, and the government has taken several steps to increase its country's appeal as an investment destination. The registration process is being overhauled, privatization of state-owned enterprises is well underway, and a legal



framework on competition is being developed. Resources to assist potential entrepreneurs, large and small, in pursuing new business in the country have also emerged. Each of these developments is a strong step in the right direction and in laying the groundwork for a welcoming environment for business start-up. The focus now must be on implementing the laws effectively, publicizing new processes and resources for entrepreneurs, and ensuring that the responsible institutions have sufficient staff and resources to meet their mandates.

The BizCLIR indicator scores reflect the state of transition in Rwanda impacting the various factors of Starting a Business. As reflected in the graph at the beginning of this chapter, the legal framework, implementing institutions, and supporting institutions fall in the "moderately negative" range, indicating that there are many specific areas that warrant reform in the short-term. Social dynamics for Starting a Business, however, are somewhat more positive, indicating improving conditions, including the removal of roadblocks and growing interest in business formality.

Legal Framework

Extensive commercial law reform is currently underway in Rwanda. The Business Law Reform Cell, composed of five highly regarded Rwandan professionals appointed by the Ministry of Justice in 2005, conducted an assessment of the country's commercial laws and identified 16 priority laws that either were missing from Rwanda's commercial legal framework or were inadequate in their current form. This wave of legal reform was initiated in part by a World Bank Competitiveness and Enterprise Project in Rwanda that began in 2001.

Several of the priority laws identified by the Business Law Reform Cell will have a significant impact on the environment for starting a business in Rwanda, and these reforms offer some potentially significant advantages over the current conditions.

Business registration. Although registering a business in Rwanda is becoming easier, the laws governing the process now establish a complicated and decentralized procedure that does not result in a comprehensive record of registered businesses. Under the current legal framework, the Law on the Organization of Commercial Establishments (1988) and the Law on Commercial Registration (1991) provide the process for registering a new business.[13] The law provides for the formation of four types of companies: public limited company, limited liability company, limited partnership, and general partnership.

Key Laws

Current Laws

- Law on the Organization of Commercial Establishments, 1988
- Law on Commercial Registration, 1991
- Law Establishing the Rwanda Commercial Registration Services Agency, 2007
- Law on Cooperatives, 1988
- Law on the Organization of Domestic Trade, 2001
- Rwanda Competition Policy
- Law on Privatisation and Public Investment, 1996
- Law Relating to Investment and Export Promotion and Facilitation, 2005

Draft Laws

- Company Law
- Law on Business Registration
- Law on Competition and Consumer Protection
- Law on the Competition and Consumer Protection Commission

Applications are to consist of certain requested information in the form of an application letter; no standard forms are currently available for application use. The memorandum and articles of incorporation must also be submitted in the case of company applications, and such documents must be notarized. Applications for registering a business are submitted to the clerk of the court of first instance in the location where the applicant wants to conduct business. The court clerk has 30 days from the date of the application to register the applicant, although it is unclear what recourse is available if a decision is not made within that time period. The fees associated with a registration application are high and include a proportional tax of 1.2% of the company's starting capital, a fixed fee of RWF 5,000 for all companies, and an additional activity-specific

[13] Because these laws pre-date 1994, they are only officially available in French and Kinyarwandan. English translations do not appear to be available for either law. Specific information regarding the requirements for registration was found on the CAPMER website at *http://www.capmer.org/new/enterprise.aspx*.

fee ranging from RWF 12,000 to 100,000.[14] The significance of these fees could be a contributing factor to the substantial informal sector.

Copies of the application also must be filed with the Ministry of Commerce and the RRA. One of the interim steps taken to ease business registration is that the fee to the RRA for business registration has been removed. However, some public and private sector representatives still suggest that many business registrations do not make it beyond the local court of first instance. The responsibility for retaining company registers remains at the court clerk level, so no centralized and comprehensive register is currently available. Because many registered companies do not ultimately file with the RRA, they are not included within the tax base.

However, the challenges in the current legal framework for business registration are being addressed. The Law on Establishing the Rwanda Commercial Registration Services Agency (RCRSA) (2007) recently established a centralized registration agency based in Kigali and may in the future establish branch offices elsewhere in the country. The RCRSA will ultimately be responsible for registering companies, other business associations, secured transactions, and intellectual property rights, and for publicizing information on company registration.

By creating a single agency responsible for retaining a centralized registry, this law has laid the groundwork for significantly improving the ease of registration and accuracy, not only for businesses, but for other areas as well. The RCRSA should be in a much better position to accurately record business registrations than first instance courts. Additionally, having a centralized location and dedicated agency should improve the availability of information on businesses, which is important to both the government and potential investors.

Despite this positive step, the benefits of the new agency are not yet clear because the new registration system has not gone into effect. Until the Draft Law on Business Registration is passed and the necessary regulations are promulgated, the current system of registration will remain in effect. The draft law provides that the register of businesses will be centrally kept in hard copy and electronic form by the RCRSA and that an application form will be available for registration purposes, both in printed and electronic form.

However, the law only provides that the minister responsible for commerce shall specify the contents required for this form. Whether this will ultimately be a burdensome step in the registration process will depend on the information required, but the ability to apply electronically and the use of a standardized application form will be improvements on the current process.

The Draft Law on Business Registration also provides for public access to information in the business register "provided that it is for justifiable

Under current law, registration applications by natural persons require the following:

- Name
- Place and date of birth
- Domicile and residence
- Nationality
- Sex
- Marital status
- Name of the spouse
- Proof of the consent of the spouse in case of marriage with a settlement based on joint ownership of property
- Name of the business enterprise and trademark if possible
- Commercial activities to be carried out
- Location of business enterprise headquarters
- Judgments rendered by Rwandan courts or foreign courts regarding bankruptcy of the applicant
- Two passport photos

Applications by a "moral person" or company must include the following:

- Name of the company
- Objectives of the company
- Amount of capital, number, and value of the shares
- Initial capital
- Headquarters of the company and its branches
- Names of the managers of the company
- An act nominating persons given the powers of signature
- Judgments rendered by Rwandan courts or foreign courts regarding bankruptcy of the applicant
- Trademarks

[14] See http://www.capmer.org/new/enterprise.aspx for a list of activity-specific fees.

reasons."[15] Public access to this information is important for a healthy investment environment, and the effect of the vague justification requirement is hard to predict. If this provision is not further clarified in the law, it should be made clearer in implementing regulations to ensure that it may not be used arbitrarily to deny public access to this information.

Similarly, the draft law does not specify application fees, although it does indicate that certain types of businesses will be designated exempt from registration fees by the Minister of Commerce as an incentive for businesses to join the formal sector. The fees ultimately specified should be at a rate that is not burdensome or a disincentive to registration.

The draft law attempts to improve the certainty of the business registration process by shortening the time period allowed for responses to registration applications and detailing procedures for applications that are refused. The Registrar General or his or her agents must issue a registration number and certificate within five working days from receipt of an application. If the conditions for registration are not met, the applicant must be notified in writing within the same period, and any applicant who does not receive a response within this period may seek a court order requiring that the RCRSA grant a certificate of registration. Such orders are immediately enforceable according to the draft law, but the effectiveness of this provision will be entirely dependent on how difficult and time-consuming it is to obtain such an order.

The draft law in its current form lays the groundwork for a better registration process, but the ease of business registration will be significantly affected by the details that will emerge in subsequent regulations and ministerial decrees. Incorporating more of these details into the law itself would provide more certainty as legal provisions are more difficult to change. At the time of writing, this draft is at an early stage in the legislative process, under review by the Ministry of Justice, so the content may change significantly prior to presentation to Parliament. This early stage provides an opportunity for adding clarity to the law, but also for inserting complicating provisions.

Cooperatives. Cooperatives do not register in the same ways as companies. The Law on Cooperatives (1988) provides instead that cooperatives apply to the Ministry of Justice for a "legal personality" and register with the Ministry of Commerce directly. The application requires notification of the articles and memorandum of association. Plans are underway to establish a dedicated agency to coordinate and support cooperatives. As part of the same effort to ease the process of business registration, the process for registering cooperatives has also been eased recently. The government views cooperatives as a way for poor individuals currently in the subsistence economy to enter a broader business base and become more profitable. However, until a dedicated agency charged with cooperative registration and support is established, cooperatives will likely continue to be underused by small farmers and businesses that stand to benefit the most from this type of association.

Competition. Competition creates incentives for businesses to be efficient and innovative, and it results in more and better choices for consumers. When competition is stifled, these incentives are gone, and consumers, entrepreneurs, and the economy suffer. An innovative entrepreneur may be able to register a new business, but if that sector is dominated by uncompetitive practices, any meaningful engagement in that sector will be denied. A sound competition law and policy is necessary to ensure that the economy remains open to new businesses.

Rwanda does not currently have a Competition Law, but the Law on the Organization of Domestic Trade (2001) includes some competition-related provisions. This law prohibits certain uncompetitive behavior such as dishonest dealings, agreements aimed at impairing free movement of goods and services**,** and agreements to artificially increase prices. It requires that prices be determined by market forces except in the case of market failure, and any resulting instances of price-fixing require consultation with the government.[16] However, in the absence of a competition agency or other body to implement them, these limited competition provisions have minimal effect.

Although Rwanda has no competition law in place, the Ministry of Commerce, Industry, Investment Promotion, Tourism, and Cooperatives (MINICOM) recently established the Rwanda Competition Policy to guide the government's efforts to promote a business environment conducive to competition. As the competition policy indicates, increased

[15] Draft Law on Business Registration, Article 12.

[16] *See* Rwanda Competition Policy at 9–10.

liberalization in the economy in recent years could open the door to uncompetitive business practices such as price-fixing and collusion. Rwanda's recent accession to the EAC and its membership in COMESA are opening the door to significant competition from the rest of the region, which could also lead to an increased risk of companies engaging in uncompetitive practices. Accordingly, the development of a clear policy to promote competition is timely and important. The competition policy itself and the Draft Law on Competition and Consumer Protection and Draft Law on the Competition and Consumer Protection Commission are based on COMESA's competition policy and law for the region. The COMESA policy highlights as a basic principle the need to establish a competition and consumer protection law that prohibits anticompetitive behavior, abuse of dominant market positions, and mergers and acquisitions that are not in the public interest.

The aim of the Rwanda Competition Policy is to promote fair competition and protect consumers from unfair practices. According to the policy, Rwanda's economic liberalization plan seeks to increase efficiency and competition in the domestic market. The policy clearly indicates that market share alone is not indicative of whether or not business practices violate competition principles. This is an important recognition, as many countries with long histories of strong competition policies have concluded that a market-share focus alone can be both difficult and inaccurate. On the other hand, the role of market share in highlighting potentially uncompetitive activities should not be dismissed.

The policy also addresses some remaining exemptions and limits on competition. One such limitation appears to regard small and medium-sized enterprises (SMEs). The policy provides for a focus on promoting SMEs in recognition of the vital role they must play in the economy. The policy states that one of the objectives of the ensuing competition legislation will be ensuring that SMEs are able to participate in the economy.[17] Of course, this laudable objective must be pursued within the principles of fair competition. The policy's assertion that SMEs may need to be shielded temporarily from foreign competition suggests the possible use of a competition law to prevent rather than promote competition.

The competition policy provides for exemptions in certain sectors or industries and exceptions on a case-by-case basis wherein restrictions on competition will be allowed on a temporary basis for efficiency. Exemptions can be provided for the following broad purposes: promotion of exports, promotion of small local businesses or business associations, change in productive capacity to stop decline in an industry, or economic stability of an industry. No guidance or limitations are provided for granting exceptions.

Because the policy is the only available gauge of the government's approach to competition, the future for competition in Rwanda is hard to predict. The policy does indicate several activities that will be prohibited by statute, and these comport with essential competition and consumer protection principles.[18] However, the objectives discussed are for the most part only broadly outlined, and some are potentially equivocal, so until legislation is passed and enforced, it will remain unclear what ends the competition policy and current draft laws will ultimately serve. That the government has put efforts into developing this policy, and has prioritized legal reform in this area, is a first step in the right direction. Ensuring transparency, consistency, and due process – all mentioned in the policy as important institutional tools – should be a strong focus in the next steps taken.

Privatization. A strong presence of state-owned enterprises (SOEs) in the economy can also create barriers to entrepreneurs trying to start a new business. In the past, this has been a major challenge to developing the economy as most businesses in Rwanda were historically state owned or controlled. In 1995, however, the government committed to move toward a liberal, market-based economy. The Law on Privatisation and Public Investment was passed in 1996, and an ambitious privatization process has been underway since. At the time of writing, 70 SOEs have been successfully privatized and 20 companies remain on the list to be privatized. Another 14 companies that were initially on the list of SOEs to be privatized have been withdrawn. Most of these entities appear to have been withdrawn because they are in fact providers of government services, such as the Criminal Investigation Division. For others, including two dairies, it is unclear why they are no longer listed for privatization. The government purportedly plans to completely divest

[17] Id. at 14.

[18] See id. at 15.

from all business with the exception of retaining 20% ownership in two banks.

In accordance with the Law on Privatisation and Public Investment, a detailed Procedures Manual was established to ensure a transparent and predictable privatization process. The Procedures Manual calls for financial and legal audits of companies to be privatized so that an informed decision on each company's value and viability can be made. Privatization is then conducted through public tender processes that are detailed in the manual. The manual also establishes requirements for the tender specifications, advertising, bid presentation, bid evaluation, and successful bid notification. It specifically addresses these issues for sales of shares in semi-public companies as well.

For each tender, bidders are charged with providing both a technical offer showing their experience, qualifications, and business plan, and a financial offer. Technical specifications, unlike the process-oriented tender specifications outlined in the manual, are necessarily industry-specific and dependent on circumstances specific to each company privatized. Because the technical specifications are specific to each instance of privatization, the Privatisation Secretariat has significant discretion regarding the specifications it seeks and the bid it ultimately chooses. This is particularly true given that the mandate of the secretariat is not to maximize financial returns, but to focus instead on selecting a bidder that will improve the business and ensure continuity in service or product. While criticisms were not heard regarding the transparency of the actual process, some individuals suggested that the bid decisions were carefully controlled. Additionally, the final decision on privatizing a business is made by the Cabinet on the basis of the recommendation of the secretariat, but the Cabinet may choose not to follow this recommendation without explanation.

Notwithstanding the uncertainty provided by these two areas of discretion, the general impression of the privatization process in Rwanda is that it has been orderly, largely transparent, and quite successful. Even following privatization, the secretariat continues to monitor privatized companies for three to five years to ensure that the transition is smooth. The long process of liberalizing the economy that was once dominated by state-run business appears to be in its final stages and has significantly improved the opportunity for innovative entrepreneurs to enter the field.

Despite significant privatization over the past decade, some industries in Rwanda remain dominated by the government, such as the tea, brewery, and airline industries. Importantly, the competition policy indicates that it is to apply broadly to both private and public business activities. The legislation on competition should incorporate this principle by clearly stating that SOEs are subject to the law in the same manner as private enterprises and that the Competition Commission has the authority to regulate them as well. Without such regulation, the remaining SOEs may be able to thwart fair competition in certain sectors, thus preventing meaningful engagement of new businesses in these areas.

Investment promotion. With a young market economy such as Rwanda's, it is not sufficient to spur a growing economy by easing the process of starting a business. Strong economic growth requires affirmative efforts to attract new businesses as well. Rwanda has taken steps in this direction with the

Qualifying investors are exempted from paying import duties on:

- Machinery and raw materials
- One personal car and personal and household properties for expatriates
- Equipment and ordinary materials for private educational institutions
- Specialized vehicles
- Tourist chartered airplanes
- Machinery, equipment, and raw materials for investors operating in free economic zones
- Building and finishing materials for qualifying international companies (reduced to 5 percent)
- Medical equipment, medicinal products, agricultural equipment, livestock, and fishing and inputs
- Specified equipment for the tourism and hotel industry.

Incentives available to investors also include the following income tax benefits:

- Reduction of income tax by an investment allowance based on asset depreciation under specified circumstances
- Deduction of training and research expenses
- Tax discounts for taxpayers who export commodities or services that bring into the country US$3 million or more in a tax period.

Law Relating to Investment and Export Promotion and Facilitation (2005) (Investment Law). This law defines a foreign investor as a person or business investing at least US $250,000 and a local investor as a person or business investing at least US $100,000.[19] Importantly, the Investment Law specifically calls for equal treatment of foreign and local investors "in matters related to incentives and facilities."[20] The high threshold for local investors excludes most of them from important incentives and benefits; however, the law's benefits appear to be primarily directed toward attracting foreign investors.

Under the Investment Law, the Rwanda Investment and Export Promotion Agency (RIEPA) is the point of contact for investment project registration and is specifically charged with facilitating the investment process. The Investment Law allows RIEPA 10 days to respond to registration applications, and if an applicant has not heard in that time period, he or she may appeal to the minister who has five days after receipt of the complaint to investigate and respond.[21] These explicit deadlines are useful to ensure that investors are not delayed by the registration process and that they have some method of recourse if RIEPA does not take action.

Articles 16 through 19 and Annexes I and II of the Investment Law outline the incentives available to investors qualifying under the law. They provide for exemption from value-added tax on imported goods and services, exemption from import duties on certain goods, certain income tax exemptions, and any additional exemptions or incentives that the Cabinet puts in place. For any investor investing US $100,000 or more, the law also provides specifically for a right to recruit up to three expatriates and, for qualifying foreign investors, a free initial work permit and one-year residence visa for the investor and these recruited expatriates. Anyone investing at least US $500,000 is entitled to permanent residence status.[22] Despite this benefit, private sector representatives contend that work permits and visas for necessary experts continue to be a significant business cost. The law also provides for the establishment of free economic zones where goods and services are imported free of duties.[23]

Even with significant incentives offered, investors will not invest or remain in countries where their investment is at risk. The Investment Law addresses a major concern for investors of expropriation. Article 30 provides that the government is responsible for protecting invested capital and shall not acquire the rights of an investor … except due to public interest according to periods and procedures provided by law and in consideration of prior payment of adequate compensation, in foreign convertible currency, in a period not exceeding twelve (12) months from the date of acquisition, and such amount is freely repatriated to a country of the investor's choice without being subject to any form of tax whatsoever.

The specificity of this provision is comforting for foreign investors who fear loss of their investment at the hands of the Rwandan government. However, only by exercising expropriation fairly, transparently, and with little frequency can trust in the safety of an investment be built. Most private sector representatives did not report a fear or pattern of unjust expropriation of businesses, although some concern about the security of property rights was raised. This issue is addressed further in the chapter on Registering Property.

Reasons for business informality:

Uncertain how to become formal: 4.6%
No incentives to become formal: 50.2%
Requires less capital to operate: 72.9%

Source: Rwanda Informal Sector Survey 2005-2006

Implementing Institutions

The institutions responsible for business registration are vital to a healthy environment for starting a business, but they are not the only important implementing institutions in this area. Agencies charged with assisting entrepreneurs throughout the business process can be equally or more important in creating an environment in which up-and-coming entrepreneurs can succeed if they provide the right tools, information, and assistance. Institutions responsible for ensuring that competition is open and fair and that public sector companies do not dominate the business environment are also necessary.

[19] Law Relating to Investment and Export Promotion and Facilitation (2005) (hereafter "Investment Law") at Art. 2.
[20] Id. at Art. 7.
[21] Id. at Art. 6.
[22] Id. at Arts. 20–21.
[23] Id. at Arts. 22–26.

Business registration. The primary implementing institution for starting a business in Rwanda will soon be the RCRSA. The law establishing this body was passed in 2007, and at the time of this diagnostic, personnel recruitment was underway. The RCRSA will be supervised by MINICOM and will include a Registrar General, responsible for the daily activities of the RCRSA, and a board of directors that will govern it. The RCRSA is based on the model of the Mauritius registry and is responsible not only for business registration but also for registration of secured transactions and intellectual property rights. The move toward a centralized registration location and a dedicated registration agency is promising, but only with effective implementation will this body be able to create a comprehensive and user-friendly registration environment that can sufficiently address the challenges to business formalization, certainty, and growth. This body must have an adequate number of well-trained staff in order to provide prompt registration and be responsive to applicant needs and questions.

Until a new registration law is in place, the institution responsible for business registration is the clerk at the local court of first instance. Although many businesses manage to register under this system, it is entirely ineffective in creating a comprehensive registry of businesses and allowing for a centralized source of information and resource for cross-referencing with tax compliance.

Additionally, courts of first instance lack the capacity to track registration or enforce compliance with company law requirements, such as auditing. The ministry has made efforts to ease the registration process under the current system, and public sector representatives generally agree that business registration is not difficult. However, benefits that would fall to the government under an efficient and comprehensive business registration system, such as increased tax revenue and collection of business information, are missing under the current system.

Business development institutions. As previously discussed, effectively starting a business does not end with business registration. Accordingly, two agencies have been established to assist entrepreneurs with various business and trade needs. The Rwanda Investment and Export Promotion Agency (RIEPA) is a resource available specifically to larger investors, both foreign and local. RIEPA's One Stop Center, active since 2004, provides a single location where these investors can complete necessary documentation procedures for business registration, customs, immigration, and work permits. Public and private sector representatives suggested that the benefits of the One Stop Center are limited since it does not address the myriad of licensing issues that businesses face, and it lacks sufficient capacity to meet demand. However, the general consensus is that RIEPA offers a valuable service that is improving the appeal for larger investment. Investors engaged with RIEPA generally find the staff accessible and responsive and report a strong will to facilitate improved investment processes and appeal.

Key Implementing Institutions

- Ministry of Commerce Industry, Investment Promotion, Tourism, and Cooperatives (MINICOM)
- Rwanda Commercial Registration Services Agency (RCRSA)
- Courts of First Instance
- Rwanda Investment and Export Promotion Agency (RIEPA)
- Center for Support to Small and Medium Enterprises in Rwanda (CAPMER)
- Business Development Services Centers
- Privatisation Secretariat

Nonetheless, RIEPA only deals with big businesses, and many believe that the threshold for engaging RIEPA is too high to benefit local companies significantly. In order to qualify as an investor and be able to register with RIEPA, a foreigner must invest at least US $250,000 and a local individual or company must invest a minimum of US $100,000. Very few local companies meet this minimum capital requirement and, thus, fall outside the auspices of RIEPA. This not only limits their access to the convenient One Stop Center, but also prevents them from taking advantage of the many investment incentives offered to larger investors, which can drive up their cost of business. While promotion of foreign investment is important, the vast majority of investment in a typical healthy economy is domestic, not foreign, so this large sector of the business community must not be left behind.

Local SMEs, however, are not without their own resources. In 2000, the Center for Support to Small and Medium Enterprises in Rwanda (CAPMER) was established as part of the Integrated Programme for Industrial Development in Rwanda, a project run jointly by MINICOM and the UN Industrial

Development Organization (UNIDO). CAPMER later became a permanent nonprofit support structure for SMEs supported by MINICOM, the Kigali Institute of Science and Technology (KIST), the Private Sector Federation (PSF), UNIDO, and the Dutch Development Cooperation (SNV). CAPMER's mandate is to promote SMEs in Rwanda through business development services.

CAPMER focuses on encouraging entrepreneurial development, providing technical assistance with business plans, and sustaining businesses. The challenge for CAPMER is outreach to those with the most need. CAPMER has a very limited capacity, so it works with certain sectors, cooperatives, and associations in order to reach groups of people rather than individual businesses. At present, the only individuals to whom it provides assistance are those who approach the center themselves for help with issues such as business plan development or business registration. CAPMER will need increased capacity to reach out sufficiently and meet demand. Under its current structure, CAPMER has the ability to conduct trainings and does so generally at the request of, and in collaboration with, government agencies or donors. It aims to groom trainers who can disseminate business development information throughout the country in order to reach more of the population. Public sector representatives hope that CAPMER will ultimately have sufficient capacity to run classrooms and a technical center, and adequate financial resources to run independently.

A specific issue that CAPMER has been able to address to some extent is access to finance. CAPMER has made arrangements with banks through which banks will direct individuals seeking finance but in need of help with business plans to rural consultants who can assist. This is practiced by banks all over the country and has generated positive feedback so far.

In order to improve outreach outside of Kigali, CAPMER has partnered with the Private Sector Federation to create Business Development Services (BDS) centers in each district in the country. Public and private sector representatives agree that dissemination of information and assistance on business development outside of Kigali is a major concern, and the National BDS Network is the solution underway. The BDS centers are intended to serve SMEs, cooperatives, and entrepreneurs generally by providing information, training, assistance with access to finance, and consulting services locally in each district. Bank representatives will also be associated with the BDS centers to further improve financing assistance. BDS centers will also include Trade Point centers that will facilitate trade, promote Rwandan export products, and provide international trade-related information.

Four BDS centers were opened in 2005 and four more were launched in 2007. BDS centers have not been launched in the 22 remaining districts, and even where they have been launched, their capacity is very limited. Building the capacity of existing BDS centers and establishing them in the remaining districts should be a priority for business development in Rwanda. Most Rwandans live outside the capital city and are not aware of the resources available there for business assistance. Without the BDS centers, business services and information can only be obtained by a visit to CAPMER or RIEPA in Kigali, which can be a challenge for much of the population and increases business costs.

Access to information. One issue common to each of the institutions discussed above is that they are not yet providing enough information to the public – with regard to either the services they offer or the areas in which they are involved. As reform is occurring, processes are changing, and institutions are developing services to improve the business environment in Rwanda, it is vital that the public not be left behind. RIEPA, CAPMER, and the BDS centers need to be resources of accessible information, and they must let the public know that they are. The primary reason for the lack of information is insufficient capacity. Public and private sector representatives frequently mentioned the need for larger staff with more training, not only in these institutions, but in government institutions generally. Public sector representatives interviewed were competent and engaged in their work, but many spoke of the need for additional staff to accomplish their mandates.

The general capacity problem is likely the cause of limited public awareness of the service offerings of these institutions, particularly CAPMER and the BDS centers. As discussed above, CAPMER does not have adequate outreach capacity, and the BDS centers are not widely known or used. In one small town where a BDS center was recently established, the assessor was unable to locate the center or, after asking several individuals in the town center, find anyone who had heard of it. Although anecdotal, this suggests a need for additional publicity and outreach within the town to ensure that the BDS center is recognized as an available resource. RIEPA is more

well known among its constituency, larger investors, but its target audience has a better ability to seek out available resources than the smaller businesses that CAPMER serves.

However, RIEPA's constituency is in need of more information on the business community in Rwanda. Foreign investors, in particular, need not-yet-readily-available information about current businesses and business sectors present in the country. With more information available to potential investors comes increased certainty and, as a result, decreased risk. RIEPA, including Rwanda's Trade Point office, is working on making available more information on trade, active business sectors, and investment opportunities in the country. As the agency's capacity in this area improves, increased investor confidence should follow.

In addition to providing information on the institutions themselves and what they have to offer, RIEPA, CAPMER, and the BDS centers should have certain information readily available to the public and should make those resources known. Each institution should have hard copies and electronic copies of all the relevant commercial laws and provide copies to the public on request either for free or for a nominal fee. The General Secretariat of Government located in the Office of the Prime Minister is responsible for retaining the *Official Gazette,* which records laws as they are passed. Although the public can obtain free copies of laws from the *Gazette* or access them electronically online, the *Gazette* is only organized by date. Consequently, it is very difficult to find a law in the *Gazette* without the date of passage. The online version of the *Gazette* is not searchable, and only laws passed in recent years are available online. Given these factors, the *Gazette* does not provide adequate public access to the laws. The Ministry of Justice maintains a public library where the general public can consult laws free of charge, and this resource should be publicized, although broader access to the laws will ultimately be necessary. Because these laws often use complicated technical language, they are generally of limited use to ordinary citizens even if they can be found. Key information such as the requirements for business registration should be available at RIEPA, CAPMER, and BDS centers in simple, understandable, and accessible formats.

The current registration process provides a good example of limited public knowledge about commercial processes. For example, corporate seals are not necessary for obtaining business registration, but this fact is not well known by the public. It has thus become another step that entrepreneurs undertake unnecessarily during the registration process. Part of easing this process will be to educate entrepreneurs about the necessary requirements and what steps are optional. It will be particularly important to build awareness about the new registration process and agency once this system is in place. RIEPA and CAPMER should play a role in publicizing and assisting entrepreneurs with the new registration process. Some public sector representatives indicated that the government has in the past used television programs to advertise government reforms and has provided a toll-free number for the public to call with questions or concerns. Given the rural nature of much of the country, radio campaigns are another potentially useful tool for raising awareness of reforms, commercial processes, and the institutions available as resources to the public.

The Internet is one good resource for information sharing, and RIEPA and CAPMER have both begun utilizing this tool. However, the websites of these agencies have not yet been fully developed. At first look, they appear to offer a wealth of information, but most of the links either do not work or are not yet completed. Developing informative websites takes time, and the process for both RIEPA and CAPMER is already underway. As information is added and these websites are fleshed out, they should prove useful tools. However, keeping this information up-to-date and accurate is vital.

Competition. Competition remains a significant challenge to starting a business for many investors because parts of Rwanda's business scene are currently dominated by a small group of investors who appear to be close to the government. The tea industry and brewery remain government-controlled, and one of the largest investment companies in the country reportedly has associations with the ruling party. Some foreign investors are said to enter the market but leave when they find that the sector they are engaged in is controlled by one of the few significant local investors. Although few people suggested that obstacles would be raised to new entrepreneurs entering the market, it was suggested that success can depend on having friends in the public sector to help navigate the bureaucratic challenges to business. While no one indicated that actual registration is difficult, obtaining other necessary licenses, as discussed in this report's chapter on Dealing with Licenses, could prove very

difficult without assistance. No representatives indicated that either local or foreign businesses were favored specifically.

The Competition Policy calls specifically for a dedicated body, the Rwanda Competition Commission, to undertake both enforcement and an education and publicity campaign. Regarding enforcement, the commission will have an investigative role and quasi-judicial powers enabling it to impose sanctions, order interim measures, and order termination of uncompetitive agreements or activities. The policy calls for high penalties for anticompetitive conduct in order to sufficiently encourage compliance, and it suggests that criminalization of such conduct would be beneficial from an enforcement standpoint. According to the policy, the Commission will start out small and will consist of a Board of Commissioners and an Executive Secretariat. The Chairperson and Vice Chairperson of the Board will be appointed by presidential decree to ensure strong political backing. The Commission will be supervised by MINICOM, which remains responsible for the policy.

Agriculture. Some private sector representatives asserted that the government in general is not as committed to supporting agriculture as it is to supporting other business. Plans are underway to establish an agency dedicated to promoting and supporting cooperatives, but such an agency does not yet exist. Public and private sector representatives recognize the need to promote cooperation and collaboration by farmers to overcome the limited business capacity of individuals and to professionalize agriculture in Rwanda. Representatives of the agricultural community have voiced a need for demonstration centers to help farmers better understand what is necessary to succeed in business, and short-term training on basic farming issues such as seed selection, planting, production, cultivation, process transformation, and distribution would be beneficial. Developing an agency responsible for promoting cooperatives is important to ensure that agricultural issues, particularly those of small-scale farmers, are properly represented and championed. Agriculture is indeed the business of most of the country, so the economy cannot thrive if its development is overlooked.

Key Supporting Institutions

- Rwanda Revenue Authority (RRA)
- Banks
- Private Sector Federation
- Universities
- Notaries

Supporting Institutions

Institutions that play a strong supporting role for an effective business start-up process include tax authorities, accounting and tax professions, banks, the private sector, universities, and notaries.

Tax authorities. The RRA has a big push underway to move informal businesses into the formal sector. The tax system has recently been simplified to ease the burden of taxation. A presumptive amount of taxes for many businesses has been implemented, which calls for a payment based on turnover and the number of persons in the business. However, many within the private sector continue to find the tax process burdensome and tax rates too high, even in priority sectors such as tourism. A major source of revenue is the value-added tax (VAT), which has been very successful and is easier to implement. A detailed discussion of taxes and the tax reforms underway can be found in the Paying Taxes chapter of this report.

In addition to simplifying the tax system, the RRA is increasing its enforcement efforts targeting tax evasion. The RRA is working with Customs and local tax revenue units using cross-referencing systems to determine which businesses are engaged in trade or are paying local trading license fees but are not paying taxes to the RRA. Because informal businesses frequently change names to avoid detection, it remains difficult to track them even through cross-referencing, but this program has had some success.

The Private Sector Federation consists of the following nine chambers:

- Chamber of Agriculture & Livestock
- Chamber of Industry
- Chamber of Commerce & Services
- Chamber of Tourism
- Chamber of Financial Institutions
- Chamber of Crafts, Artists & Artisans
- Chamber of Liberal Professionals
- Chamber of Women Entrepreneurs
- Chamber of Young Entrepreneurs

According to some private sector representatives, the RRA's enforcement efforts have been overzealous, and this has decreased rather than increased the appeal of joining the formal sector. Some banks are campaigning to entice the public to get bank accounts, keep good books, and make it easier for banks to see their cash flow and lend them money. However, they assert that the efforts of the RRA have led many businesses to believe they are worse off if they follow this path. Small business representatives indicated that keeping financial books opens one up to fines and scrutiny if any mistakes are made, whereas not keeping records makes it easier to avoid such scrutiny. Bank representatives and tax professionals highlighted the importance of raising awareness of the benefits of joining the formal sector and providing training and education on tax compliance and good bookkeeping. Individuals who have never been part of the formal sector do not know what is required or how to meet those requirements, so education in this area is paramount if the drive to increase formalization is to succeed. Additionally, a focus on providing guidance on mistakes and opportunities to correct them rather than on punishment when taxpayers are not attempting to evade their obligations would significantly increase the appeal of subjecting oneself to taxation.

A large component of the RRA's budget is reportedly for publicity, and toll-free hotlines that citizens can call with tax-related questions are publicized throughout the country. Additionally, the RRA holds taxpayer clinics. These are steps in the right direction, but more must be done to allay widespread perceptions that joining the formal sector exposes one to unforgiving tax liabilities with no benefits.

Banking sector. The banking sector can play a significant role in increasing the appeal of formalization. There are several benefits to joining the formal sector, including limited liability for certain registered businesses and an increased ability to assert one's legal rights. The most common benefit, however, is the ability to seek financing. If a business is not registered, paying taxes, or keeping good records of its finances, it will not be a good candidate for a reasonably priced loan. According to many public and private sector representatives, accessing credit is one of – if not the – biggest obstacles to starting a business. Without financing, many potential entrepreneurs lack the resources to even attempt a new business. Banks can play, and are playing, a role in educating the public on how to improve their chances for accessing finance. As discussed above, banks are partnering with CAPMER and BDS centers to provide information and assistance to people seeking loans. This campaign should be continued and extended, and the RRA should engage in this effort as well since it has much to gain from increasing engagement in the formal sector. This report's chapter on Getting Credit examines financing in greater depth.

Private sector. A major supporting institution for business in general is the Private Sector Federation (PSF), an umbrella organization for nine business chambers. Although it is a private institution, it still relies heavily on government and donor funding, so it is not completely independent. This organization is charged with advocacy and capacity building for the business community. Its capacity-building role in particular is important for improving the

The National University of Rwanda offers several degree programs within its Faculty of Economics and Management, including undergraduate degrees in:

- Business administration, with majors in marketing, finance, human resources, and entrepreneurship
- Accounting sciences and finance
- Information technology applications in management
- Economics, with majors in money and banking, development studies, and international economics
- Applied statistics.

The University has recently added a masters in economics, and the Law Faculty has just begun offering a masters in business law.

environment for business start-up. As mentioned above, the PSF has partnered with CAPMER to develop BDS centers throughout the country in an effort to increase business resources and improve capacity outside the capital city. The PSF has also been the major private sector contributor to public-private sector collaboration on ongoing commercial law reforms.

Representatives from the PSF are given an opportunity to comment on draft commercial laws and were consulted when those laws were being developed. Indeed, this collaboration reaches the highest levels of government, with biannual meetings between the president and the PSF board of directors and frequent meetings with relevant ministries throughout the year. Although not all small businesses are aware of the PSF's role in legal reform, the level of public-private sector collaboration is clearly very high, and representatives from the PSF and its various chambers expressed great satisfaction with it. This process could be further improved by extending the invitation for comment on necessary commercial law reform to a broader audience, including significant representation from SMEs.

In addition to engaging in the legal reform process, the PSF should raise awareness within the business community about the commercial law reforms that are occurring and their implications on how businesses are registered and conducted. This should be a key part of the PSF's capacity-building mandate. The PSF is a relatively new organization that does not yet have the capacity it needs to fully engage, but it already appears to be playing an important role. The membership of the PSF is growing but is not yet broad-based. It needs to continue to work closely with the government and its constituents to ensure that the needs of the business community are known, and it should become a resource of information for the private sector.

Although capacity remains limited, the PSF and its chambers should continue to focus on using and sharing the resources available to them. For example, the Chamber of Young Entrepreneurs offers networking opportunities and business information to emerging and potential entrepreneurs by bringing them together with experienced entrepreneurs from whom they can learn. This chamber has a monthly breakfast where successful entrepreneurs are invited to speak about their experiences, and other guests discuss practical issues such as accessing finance. Although the chamber does not yet have the capacity to offer training, these breakfasts provide valuable information to its members. As capacity increases, the next focus should be on outreach and training on business start-up and good management.

Universities. Universities can and should play a significant role in promoting business development by offering courses that provide the skills necessary to succeed in the business community. This includes business education as well as technical education providing industry-specific skills. Many private sector representatives indicated that the classical education dominating the education system in Rwanda is not conducive to business development and that graduates of business-related programs do not have the skills and practical knowledge necessary to engage in the business community. Some international companies stated that they do not rely on this education, but rather undertake long training programs for new employees on their own. It is clear, however, that commercial growth in the country is leading to an increased focus on business education. Moving forward, the focus should be on practical training and opportunities for realistic experience.

The Faculty of Economics and Management is moving toward a regional focus in its business education. There is a realization that, while the quality of the student body is improving, the university is not yet graduating students who are generally competitive with graduates in other countries in the region, such as Kenya and Uganda. However, each year more and more students are taking advantage of opportunities to study abroad in countries such as the United States and United Kingdom. Language also continues to be a challenge throughout the education system, so courses in many faculties are taught in both

Businesses in Rwanda

- Businesses 64,218
- Individually owned businesses 23,938

- Private limited liability companies 391 (0.61%)
- Public limited liability companies 64 (0.10%)
- Unions, associations, and federations converting into cooperatives 1,127 (1.7%)

Source: "Businesses in Rwanda Informal – 2007 Census," *New Times* (February 28, 2008).

English and French to provide students an opportunity to become capable in both. This is important for business in Rwanda today because English is increasingly proving to be the language of the future, but French continues to be the second language of many within the business community.

Notaries. A specific challenge to business registration for companies whose applications require memoranda and articles of incorporation is the current system of notaries in Rwanda. The only notaries available are public sector notaries within the Ministry of Justice. Accordingly, accessibility of notaries is very limited, and this can cause delay in the registration process. Many private sector representatives, particularly lawyers, would like notaries in the private sector as well. This is currently under consideration, as is the removal of the requirement that application documents be notarized. Either way, change should be made to ensure that a notarization requirement is not an obstacle to efficient business registration.

Social Dynamics

Entrepreneurialism. Following a long history of close government control of business, many Rwandans still do not see business as a promising opportunity available to them. While small-scale entrepreneurs are plentiful in the country, they often follow a path out of necessity rather than ingenuity, and subsistence-level businesses do little for economic growth and employment. Although it is changing, according to some public and private sector representatives, most people entering business today do so because they lost their job or failed in school. Risk aversion is common in the population, so a steady government job has greater appeal than borrowing money or investing one's savings in something uncertain. The government is addressing this problem by encouraging involvement in cooperatives and associations in order to spread risk, but the idea of working together in this manner is still being socialized. In Rwanda, subsistence agriculture is still how most people get by.

Potential entrepreneurs also lack the know-how necessary to start and run a successful business. The education system is not conducive to developing business skills, and finding skilled employees to work in businesses is also difficult. Those engaged in small businesses often do not adhere to good bookkeeping and business management, and intermingling of business and personal funds is common practice. This creates uncertainty and reduces a business's chances for success. Furthermore, it reduces the opportunity for access to financing, thus making it more difficult for the business to expand and grow. Without good business management, these businesses will be destined to remain small or fail.

Because the vast majority of investment is domestic, it is vital for economic growth that the development of domestic business is not overlooked. Accordingly, efforts by CAPMER and the PSF to build basic business know-how and capacity in the private sector through training and assistance should be high priority and widely supported. The public and private sectors have also been addressing the limited entrepreneurial nature in Rwanda by promoting pursuit of high-quality products and adding value. Because of the country's small size and the limited resources of most Rwandans, focusing on economies of scale and succeeding through quantity production is not a reasonable option. Rather, the government and donors are encouraging entrepreneurs to create high-quality products that sell for higher prices instead of relying on raw materials that are cheaper to produce. This is a good approach that should be further disseminated throughout the small business community, particularly in agriculture. It has already proven fruitful with USAID's coffee project, SPREAD.

Improving business know-how should increase confidence within the business community, and this is important at a time when the domestic economy is being opened up to competition throughout the region. While the local population realizes that increased competition ultimately will greatly benefit the Rwandan economy and their choices as consumers, the recent accession to the EAC is a source of some anxiety in the private sector. There is concern about the ability of local companies to compete with more advanced regional companies with greater expertise that will have open access to the Rwandan market. However, the business community has broadly accepted that this is an important step toward building a vibrant economy. It also offers a great opportunity for skills transfer and for Rwandan entrepreneurs and potential entrepreneurs to benefit from more established business management practices used by incoming companies.

Informal sector. As discussed above, the challenge in Rwanda is not that people do not engage in business, but that the large majority of businesses remain very small. A related issue is that most of these businesses are informal. The business

environment is primarily informal, cash based, short term, and undocumented. The informal sector is estimated to account for approximately 94% of employment in the country.[24] The business community must graduate to a more advanced, formal community before strong economic growth can be realized. While taxation is a major disincentive to registering a business, a broader cultural challenge also contributes to the reluctance to formalize. There is some fear of exposing oneself to authority, a lingering sentiment from the period up to the genocide. In light of this background and the innate burden of taxation, the benefits of formalization need to be publicized, as discussed in the section on Supporting Institutions above. As long as businesses remain informal, their opportunity for growth and success is limited. Informality on a large scale, as is the case in Rwanda, is a significant challenge to a healthy domestic economy, so efforts to address and reduce the informal sector should be prioritized.

Women in business. Women face special challenges in starting or continuing a business. While business know-how and capacity is a problem for the public generally, women are particularly vulnerable in this area for both practical and cultural reasons. They generally do not have collateral to obtain financing because houses and land are usually in the husband's name. Women also lag behind men in education and literacy. Culturally, women are not viewed as business people, but many more women have entered business since 1994, in part due to a shortage of men to run businesses.[25] Women run 41% of businesses in Rwanda today. These female-run businesses generally remain informal because their priority is to be large enough only to feed their families. Certain businesses are considered women's businesses, such as selling handicrafts, and certain businesses are men's business. While it is difficult for a woman to compete in a business traditionally considered a man's business, it is reportedly equally difficult for a man to fill a role considered women's work, such as secretarial positions.

Public and private sector representative suggest that the government's message on women's equality is very positive, but it will take time for women to catch up in education and for cultural perceptions to change. Because of their roles in the family and the limited value placed on women's education, numbers of women studying fall from primary to secondary education, and fall further from secondary to university level, with very few women completing higher education. As they continue to benefit less from education, women will continue to face greater challenges entering and succeeding in business. CAPMER's initiatives for training women specifically are a good step toward addressing women's business know-how, but they have very limited capacity to address this challenge, so more resources will be necessary to meet the need. Additionally, these programs fail to address the root problem of education, which will require greater targeted efforts to increase female enrollment at every level and to address the tendency to drop out.

Appeal to investors. There are positive reasons to choose Rwanda as a business location. It is safe and clean, boasts a great climate, and has a strongly pro-business leadership. However, the market is small, worker capacity is very limited, weak infrastructure raises business costs, and perceptions of uncertainty in the business climate persist. The issue of worker capacity will be addressed in this report's chapter on Employing Workers. Addressing the infrastructure issue will require investment of significant resources and is not addressed in detail here.

Uncertainty in the business environment can be a significant disincentive to investment because it increases risks and transaction costs. Some of this uncertainty relates to dispute resolution which is discussed in this report's chapter on Enforcing Contracts. Another level of uncertainty results from the drastic legal reform underway. While this reform is very positive and should ultimately improve the country's appeal to investors, it currently raises some questions about how business will be conducted in the near future. This uncertainty is unavoidable during times of legal and institutional change, but it can be managed by ensuring that the public and potential investors are aware of and educated on the changes coming. Accessibility to information, discussed above in the Implementing Institutions section, will be key to increasing certainty, as will providing up-to-date information on the business environment. Additionally, regular application of new rules and procedures over time will increase confidence in new processes.

Uncertainty also results from perceptions of favoritism and perceptions that rules and regulations

[24] Rwanda Informal Sector Survey (2005–2006) at 2, *available at http://www.statistics.gov.rw/IMG/pdf/Publication_Informal_Sector_Survey.pdf.*

[25] *See* Anthony Faiola, Women Rise in Rwanda's Economic Revival, W. Post, May 16, 2008, at A01.

can change without notice. Some private sector representatives suggested that there are perceptions of favoritism in Rwanda, and this may be a result of the country's small population and smaller private and public sector communities. It is inevitable in a small community that people know each other and connections between the business community and government exist. Perceptions of favoritism can and should be managed by prioritizing transparency and certainty in government processes and decisions. Regarding the changing of rules and regulations without notice, private sector representatives indicated that this was primarily a problem at the local level. Accordingly, transparency and certainty should be prioritized at every level of government bureaucracy so that investors do not fear that investments made one day will be plagued with new costs and risks the next.

Moving in a positive direction. Despite many challenges that remain, there is a strong sense in the public and private sector that the economy is moving in a positive direction. Both sectors understand that it will take time to improve the commercial environment, but Rwandans are energized and excited about the future of business in the country. The strong reform effort underway is very promising, but commitment to implementing these reforms and accompanying education, awareness building, and capacity building will be necessary to ensure that the significant efforts already taken will succeed.

Recommendations

To raise the Doing Business scores . . .

- Make all laws available to the public in a more user-friendly format than the current *Official Gazette.* Assist RIEPA and CAPMER in making information on commercial laws relevant to these institutions available to the public in a simple, accessible, and understandable form.
- Lower the threshold for local investors to qualify for investment incentives.

To strengthen the overall environment for Starting a Business . . .

- Support public awareness campaigns on entrepreneurialism, business opportunities, and the benefits of joining the formal sector.
- Support public awareness campaigns and education on new laws as they are promulgated.
- Assist CAPMER with training on business development and management for SMEs, including training specifically geared toward women.
- Assist the PSF with business development and management training, which should address leadership, marketing, accounting, and business ethics.
- Implement a tax policy strategy that educates rather than punishes those that seek to practice sound corporate governance and bookkeeping.
- Continue extensive private sector consultations periodically once new laws have been passed to ensure that they are amended as necessary.
- Build awareness about the institutions available to help small and large businesses through radio programs, television programs, and billboards.
- Assist with establishment and capacity building for BDS centers throughout the country.
- Support RIEPA's efforts to obtain and make available information on businesses, business sectors, and trade in Rwanda.

DEALING WITH LICENSES

Introduction

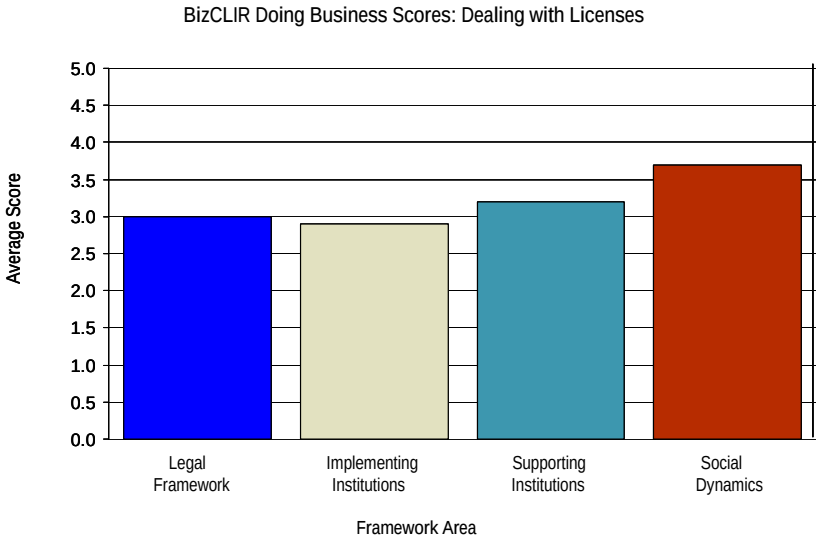
It is a fact of civilized society that, where there are markets, there must also be some market regulation. National, regional, and local institutions of governments are obliged to ensure that private enterprises will play by a set of shared rules. Public institutions should require businesses to engage in lawful activity; to pay their employees wages; to observe general rules of health, environmental consciousness, and safety on behalf of their employees, customers, *and* neighbors and to contribute, by way of paying taxes, to the state's ability to provide core infrastructure, security, and social services. Licensing of certain business pursuits, to the extent that it takes place in a limited fashion necessary to protect the populace (as opposed to merely protecting the entrenched interests of certain powerful enterprises), is a normal function of government. Indeed, some regulation by government is necessary, important, and good.

The public licensing of building initiatives – small, medium, and large construction projects that involve the use of land, community infrastructure, environmental resources, and even public safety – is a key government function, one that has an especially strong impact on a business environment generally. Failure of a government to license construction projects in a sound and consistent manner can result in veritable disaster. The 1999 earthquake in Koacaeli, Turkey, destroyed more than 20,000 buildings, resulting in more than 17,000 deaths and at least 250,000 people temporarily or permanently displaced. The disaster ultimately revealed the government's negligence with respect to issuing construction licenses and failing to enforce building codes designed to provide far better protection against natural disaster. In Kenya, construction accidents are often attributed to the corruption of building inspectors, who reputedly accept money in exchange for allowing unstable projects to go forward. In China, the poor quality of air that has resulted largely from lax government engagement in regulating emissions from power plants and heavy industry threatens to undermine, in the short term, the 2008 Summer Olympics, and, in the long term, the health of the Chinese people.

Dealing with Licenses

Doing Business Ranking 2008	124
Doing Business Ranking 2007	132
Procedures (number)	9
Duration (days)	16
Cost (% gross national income per capita)	822.1

Moreover, the issue of construction licensing relates strongly to that of land-use planning. That is, particularly in urban and suburban environments, a community-sanctioned agenda for placement of commercial, industrial, residential, and so-called mixed-use building projects. The absence of formal planning has marked certain cities as environmentally and commercially unsustainable, unsound, and, quite simply, undesirable as places in which to invest and live. Lagos, Nigeria, is an example of how lack of urban planning relates directly to sustained and grinding poverty.[26] Thus, it is well within the call of government to regulate and license building schemes according to a comprehensive and environmentally sound master plan.



On the other hand, too much regulation, or government oversight that is inconsistent, sluggish in implementation, or poorly executed, can be an enormous problem for an economy, as the World Bank's *Doing Business* initiative has exhaustively illustrated in recent years. It is now well established that countries that offer a business-friendly regulatory environment grow faster.[27] Such an environment is comprised of a relatively simple and clear set of rules and processes for launching a construction project, including the creation of reasonably understood laws and regulations, along with a "one-stop shop" of government agencies that participate in the licensing process. It also involves a willingness of government to *refrain* from regulating certain aspects of the market. For example, countries that do not bestow national and local authorities with duplicative or ultra-discretionary licensing powers are considered more business-friendly than those that do the opposite. There is much to be learned from societies that balance the critical needs of government oversight against those of economic growth.

This chapter primarily addresses the environment for licensing construction projects in Rwanda. In general, it concludes that Rwanda is forging a promising balance between the need for economic development and the long-term preservation of its environment and other key interests such as public safety. In fact, concerns about land use are of greater importance in Rwanda than in many neighboring countries, given the country's extraordinary population density, the extremely limited amount of available land, and the environmental degradation that has already taken place. Industries that have been pegged as key to the country's future – tourism and agro-processing among them – clearly depend on sound environmental management, which, in turn, may result in more stringent business licensing requirements.

This chapter also looks at attitudes toward and dynamics affecting the regulation of business generally. Again, to a significant extent, it appears that Rwanda is beginning to apply the best practices of licensing regimes in other business-friendly countries, but has not yet avoided certain of the pitfalls of the licensing function.[28] Ultimately, as one donor observes, "it still takes two years" to open a small hotel in Rwanda. Although blatant corruption among government inspectors and other officials is not widely regarded to be a problem, there is some indication that "preferred" business initiatives get regulated more favorably than others. This is an issue that bears continued scrutiny.

As reflected in the graph at the beginning of this chapter, the BizCLIR indicator scores suggest that the area of Dealing with Licenses is beginning to reflect an interest in reform. A legal framework on which companies may begin to make plans is taking shape, and institutions – particularly the environmental agency and the Private Sector Federation – are becoming increasingly adept at navigating the challenges before them. The social dynamics underlying Dealing with Licenses are

Dealing with Licenses:
The Key Requirements to Build

- **Approval** from the Rwandan Environment Management Agency (REMA), accepting a company's environmental impact assessment (EIA).
- A **location permit** from the local planning authority. Proof of the right to use of the land is required.
- A **building permit** from the local planning authority (which requires a REMA-approved EIA, as well as proof of conformity with any local development plans).
- An **occupancy permit** from the local planning authority (which requires satisfaction of water, sanitation, and electrical inspections).

In fact, the range of licenses, permits, and requirements that constitute full compliance with the law is not clearly defined in Rwanda. Builders (and their lawyers) have a *general* idea of what is expected, but there is a great deal of uncertainty about the jurisdiction of various ministries and local authorities. Clarification of Rwanda's licensing framework should be a major priority for the future.

Source: World Bank, "Dealing with Licenses, Rwanda," *Doing Business 2008.*

[26] *See* George Packer, "The Megacity: Decoding the chaos *of Lagos," New Yorker (November 2006).*

[27] Simeon Djankov, Caralee McLiesh, and Rita Ramalho, *Regulation and Growth* (World Bank, March 17, 2006).

[28] The focus of this chapter is somewhat different than that addressed in the BizCLIR/Tanzania diagnostic report. Based on the finding that reviewing all licensing regimes in the business environment is too cumbersome for the limited time allowed by the diagnostic process, a new focus on the key issue addressed by the World Bank's Doing Business initiative – construction licensing – is being applied here.

particularly promising – there is not a great deal of perceived corruption – although concerns with connections and conflict of interest remain.

Legal Framework

Access to licensing regime. Beginning with a very broad look at Rwanda's licensing environment, it must first be concluded that there is not yet clarity about the regulatory constraints on businesses. That is, the sources of legal authority for all licenses and regulations related to doing business – whether dealing with certain technical or professional areas; land use, construction, or environmental requirements; trade in goods and services; or other pursuits – are not yet accessible in a way that is straightforward, easy to understand, and universal. International best practice centers on accessibility, clarity, and consistency of quality laws and regulations as well as integration of licensing functions across regulatory agencies. That is, the public should have little trouble identifying where the laws and regulations are maintained in an up-to-date fashion and discerning what they say and mean in practice.

Key Laws (Construction Licensing)

Current Laws

- Existing master plans (generally disregarded)
- Law on Protection and Conservation of the Environment
- Law on Public Procurement
- Labour Code (for occupational safety and health)
- Various relevant laws pertaining to real property (discussed at this report's chapter on registering property)

Draft Laws

- Kigali Comprehensive Plan

The problem of clarity may begin to be resolved by a project currently spearheaded by the International Finance Corporation (IFC). The IFC has a program to address business licenses at all levels. So far, it has reportedly identified 186 license requirements at the national, district, and municipal levels in Rwanda. Many of these are said to arise from overlapping jurisdiction and redundancies that come in part from recent moves to decentralize political power. As a result, there is uncertainty over what is required for various businesses to operate in full compliance with national and subnational laws and regulations. The IFC is working with the Rwandan government to establish a body that can analyze, rationalize, and oversee licensing requirements and regimes.

Any efforts to streamline and improve access to Rwanda's licensing environment should be mindful that many licensing requirements expected to be enforced in the future have not yet been established. Various topics remain works in progress, including certain land-use policies, environmental standards, a building code, and even professional licensing requirements. Thus, the integration of new licensing requirements must be part of any broader project to improve Rwanda's regulatory environment.

Once the universe of regulations has been clarified and streamlined (and a plan for integrating new requirements has been put in place), access to the regulatory framework must be addressed. For larger firms, access to all licensing and regulatory requirements should be available both through government websites – ideally, one consolidated, well-maintained site – and through the Rwanda Investment and Export Promotion Agency (RIEPA). For smaller enterprises, regulatory information should be accessible through the Center for Support to Small and Medium Enterprises in Rwanda (CAPMER), as well as through the Private Sector Federation (PSF) and local business development institutions. These institutions are detailed in this report's chapter on Starting a Business.

Licensing regime for construction projects. Any construction licensing regime involves a variety of national and local government institutions, including local planning and land registration authorities, various national authorities, and other authorities pertaining to water, electricity, and sewage. Those agencies charged with enforcing the law must be equipped, willing, and able to coordinate their respective licensing processes. The ultimate goal of a legal framework is to effectively balance opportunities for economic growth and development with a society's long-term interest in sound management of shared resources and public safety.

In Rwanda, the universe of laws, regulations, and even institutions concerned with licensing the construction of buildings is not yet clear and, evidently, not yet fully established. Until recently, companies seeking to license a construction project would work almost exclusively through district offices, where they would submit a plan for construction that was signed by a professional

architect or engineer, as licensed in Rwanda, regionally, or internationally. That person would be considered "accountable" for any deficiencies in the building structure or process, but enforcement of that status has never been uniform or consistent. Rwanda does not yet have a building code, so compliance with such a code was apparently not necessary.

Similarly, until about three years ago, Rwanda had not engaged in significant urban planning, so compliance with zoning regulations was not a typical concern among builders. ("There was a master plan [in Kigali]," according to one government representative, "but it was not followed.") That has changed, as detailed later in this chapter. Also, until 2006, there was no formal requirement for an environmental impact assessment (EIA). With the enactment of a new environmental law, this fact has changed – in most instances, local authorities now may not issue building permits without an EIA that has been approved by the Ministry of Lands, Environment, Forestry, Water and Mines.

The final authority for licensing a construction project lies with the five districts in Rwanda. Consideration of a construction project, whether a subdivision or another type, may implicate the following issues:

- Zoning
- Urban limits
- Retention of agricultural lands
- Lot size
- Ingress and egress
- Traffic flow
- Density
- Setbacks from roads, lakes, rivers, etc.
- Open space
- Parking
- Drainage
- Biological resources
- Water resources
- Protected areas
- Sewage treatment and disposal
- Solid waste disposal
- Public health
- Natural hazards
- Air quality
- Infrastructure

Some of these areas are clearly defined in the law. Several others are not, or, at least, they are not widely understood in a way that is meaningful to users and avoids the shutdown or relocation of construction projects – a problem with which Rwanda has recent experience.

Environmental protection. Of all the legal framework issues pertaining to construction licensing, the one that concerns the business community the most is that of preparing and defending their EIAs. In 2003, through a multistakeholder process, the government of Rwanda developed a national environmental policy, which was followed by the enactment of a new Law on Protection and Conservation of the Environment in 2005. Pursuant to that law, all building initiatives – whether public or private – must provide an EIA. To do so, a builder must rely on general environmental guidelines, enacted in 2006 (but not, unfortunately, easily available from the Internet). According to government representatives, the new environmental law is based largely on regional norms. The EIA is to be submitted for approval to the Rwanda Environment Management Authority (REMA), an institution located within the Ministry of Lands, Environment, Forestry, Water and Mines.

The promotion of environmental issues as a major priority, predictably, is not popular with many construction companies. The emphasis on compliance with standards on the environment is "killing business," one builder complains. Yet Rwanda's long-term environmental issues do warrant much stricter consideration of these issues than was demonstrated in the past. The country's population density is such that land has been divided into a multiplicity of farming plots that ultimately damage the environment through deforestation and extreme soil erosion, which in turn lead to diminished land fertility. At the same time, water has become increasingly vulnerable to pollution through increased use of certain fertilizers and pesticides. Urban pollution has been exacerbated through poor waste management, with haphazard construction in Kigali further complicating the problem.

Zoning. In addition to general concern for the environment, there is increased policy attention being devoted to land-use planning. In November 2007, the city of Kigali released a "conceptual master plan," crafted in cooperation with the Ministry of Infrastructure. Prepared by a consortium of international and local groups, the conceptual plan is intended to serve as the basis for a Kigali Comprehensive Master Plan. This plan will include major zoning decisions, including the establishment of residential, commercial, and industrial zones.

Once a master plan for the city has been enacted, more detailed plans (culminating in zoning ordinances) for each of the three districts of Kigali are anticipated. The purpose of a master plan is not only environmental stewardship – although that is key – but also quality of life, public health and safety, and appropriate divisions between the general locations where people live and work.

What's in a plan?

Future planning, at the provincial, district, or local levels, will likely include most of the following elements:

A vision statement
A land use plan
A plan for transportation
A plan for community facilities
A plan for housing
A plan for economic development
A plan for conservation and open space
A plan for recreation
A plan for preservation
A plan for public utilities
A plan for addressing regional concerns
A plan for implementation

In light of this new emphasis on urban planning, builders should anticipate a more strenuous licensing regime for building in the future. It will not be enough to arrive at a district office with a set of construction designs signed by an architect; rather, a request for approval will likely require a showing of compliance with pertinent land-use plans, environmental laws, and zoning ordinances enacted by a local government or the national legislature.

Building code. Another initiative that is expected to follow the development of the Kigali Comprehensive Master Plan is a building code for Rwanda, an effort that would likely be spearheaded by the Ministry of Infrastructure. Enactment of a national building code is an issue in which consultation with other East African nations would be useful. The construction of unsafe buildings is a problem throughout the region, with construction accidents resulting in hundreds of deaths each year. Fortunately, Rwanda does not suffer the same extent of corruption that is found in Kenya and Uganda; thus, the issue in these countries that "inspectors are paid to look the other way" is less likely to be a problem.

Occupational safety and health. Construction companies, like all businesses, are obliged under Rwanda's Labour Code to provide a safe environment for their workers. With the exception of certain responsible international employers, the occupational safety of construction workers is an issue that is largely ignored. Other than working to ensure that construction sites do not employ children, labor inspectors tend to allow such unsafe practices as lack of safety equipment, bare feet, and lack of accessible first aid. There is no evidence that construction companies that engage in unsafe labor practices run the risk of having their building permits revoked.

Various relevant real property laws. A construction license typically requires proof of a right to use the land on which the construction project is planned. The various relevant land laws are discussed in this report's chapter on Registering Property.

Implementing Institutions

Ministry of Lands, Environment, Forestry, Water and Mines (MINITERE). MINITERE is charged with "ensuring a rational management of lands, taking care of the conservation, and protection of the environment in view of a sustainable human development," according to its own mission statement. Within MINITERE's authority is the following:

- Elaboration of policies and laws regarding lands and environmental protection
- Coordination and monitoring of the implementation of policies and laws regarding lands and environmental protection
- Preparation and supervision of management programs for lands and environmental protection
- Development and supervision of national forestry policies, strategies, and programs
- Development and oversight of national policies, norms, and programs concerning sanitation
- Legal oversight of the water and sanitation sector
- Oversight of the mining and quarry sectors.[29]

MINITERE suffers from the same accessibility issues found in several of the country's ministries. Its main building, though easily located in Kigali, is difficult for

[29] This is a summary of MINITERE's mission statement, found on its website.

outsiders to navigate. Its website, which should be a prominent source of information given the high importance placed on its agenda, is incomplete and generally unhelpful.

Key Implementing Institutions

- Ministry of Lands, Environment, Forestry, Water and Mines (MINITERE)
- Rwanda Environment Management Authority (REMA)
- Local planning authorities (provincial and district)
- National Tender Board (NTB)
- Ministry of Infrastructure
- Various other ministries

Rwanda Environmental Management Authority (REMA). As the government of Rwanda places the preservation of the environment among its top policy priorities, REMA is charged with leading the resulting initiatives. An institution located within MINITERE, REMA holds the primary authority for issuing EIA approvals, which are now a prerequisite to obtaining local authorization to build. For smaller projects, EIA approval may be acquired in five days or less. For larger projects, the REMA aspires to take no longer than 42 days to approve a project.

REMA is also overseeing major transformations in the industrial environment for Kigali. For example, the Gikondo Industrial Park has been found to present significant challenges with pollution and waste management. REMA has required certain factories to move and has sharply limited new entrants to the facility.[30]

Many businesses perceive REMA's authority to be virtually draconian. A centrally located Kigali business claims that environmental restrictions are making it difficult to expand and that relocation to suit REMA's requirements may be its only option. Businesses further complain that they do not receive enough concrete direction from REMA. They know that they are required to abide by strengthened environmental standards, but assert that they do not have sufficient information from the Ministry about what, exactly, they are required to do. Again, however, the government of Rwanda is resolute in its prioritization of environmental protection, and the international community supports this resolve. Unlike in other countries, there is a sense that Rwanda has no extra space to waste or manage poorly.

REMA provides some training for professionals who seek to learn how to prepare an EIA. This training is provided free of charge. REMA is also engaged in educating the public on environment issues. Through an environmental education strategy, it conducts informational programs for primary-school students and is even working with the Ministry of Education to include environmental science in public school curriculum.

With respect to the Rwanda's sweeping Economic Development and Poverty Reduction Strategy, REMA chairs the Environment and Land Use Management Sector Working Group (SWG).

Local planning authorities. These authorities, including those that exist within Rwanda's five provinces and 30 districts, are beginning to exert greater regulatory authority over the building process. Kigali (which has provincial status) leads the urban planning process, but lacks, according to observers, sufficient resources and expertise to handle all its responsibilities. In general, districts are responsible for reviewing building proposals, ensuring compliance with relevant laws and regulations, and inspecting and approving final construction projects. The local authorities employ architects, engineers, and other professionals who are charged with performing these tasks, but they suffer from the same skill and capacity deficiencies that are a countrywide problem (as detailed in this report's chapter on Employing Workers.) Schedules and internal processes through which district authorities review and approve licensing procedures are not clear or accessible. On the other hand, unlike other countries, there is no widely held perception that local inspectors can be "bought off" to refrain from properly inspecting a construction site.

It is not clear whether local authorities currently operate comprehensive and well-organized systems for recording construction licenses.

National Tender Board (NTB). The growth in Rwanda's construction industry – 15.8% in 2006[31] – is largely led by the government's investment in

[30] *See* "A meeting with the CEO of Rwanda Inc.," *Enterprise* (Private Sector Federation Magazine) (Jan.-Mar. 2008), at 7.

[31] Economist Intelligence Unit, Rwanda Country Profile (2007), at 17.

building projects (often substantially supported by donor funds). Guided by the Law on Public Procurement, the NTB is charged with evaluating proposals and granting contracts. The NTB is perceived by the private sector as generally transparent and fair in its operations. In fact, the website of the NTB provides copies of all guidelines and forms that are necessary to submit a bid for a public contact. This manner of clarifying and providing access to formal procedures is a model for other agencies, such as local planning authorities, to follow.

Ministry of Infrastructure (MININFRA). The Ministry of Infrastructure is significantly involved in the oversight of the construction of public buildings. Urban planning is part of MININFRA's mission, and it has worked closely with the city of Kigali to create its conceptual master plan.

The Ministry employs a number of construction inspectors, but "the problem," according to one representative, "is capacity. Inspection has to be done in all aspects, and that capacity does not yet exist." In a similar vein, builders complain that, with respect to government building projects, there are "too few people handling too many projects."

MININFRA has a website containing significant information about the infrastructure of Rwanda. The site lacks sufficient coverage of the legal framework, however.

Other concerned ministries. The use of scarce land resources is an issue that impacts many government agencies. In fact, it impacts most of them, including the Ministry of Agriculture; the Ministry of Local Government; and the Ministry of Commerce, Industry, Investment Promotion, Tourism and Cooperatives. Building contractors assert that the government would substantially help the business community if it would create a "one-stop shop" for the acquisition of building permits and licenses. They acknowledge RIEPA as a forward step for investors in the country, and suggest that a similar, customer-service-oriented process for builders would be welcome. Specifically, builders would like to see a single place where they could go to learn about and fulfill the requirements of the following agencies:

- REMA (for EIAs and other requirements)
- Ministry of Agriculture
- Ministry of Infrastructure
- Ministry of Local Government
- Ministry of Commerce
- Ministry of Public Service and Labor (concerning occupational safety and health issues)
- National Tender Board
- Local planning authorities
- Utilities, including water, sanitation, telephone, Internet, etc.

As noted, the Ministry of Education is participating in the development of an environmental science component of public education. The Ministry of Public Service and Labor provides public works jobs, many of which involve environmental protection initiatives, including construction of terraces, reclamation of marshland, tree planting, ditch digging, and water management for people and for animals. Even the Rwandan Civil Aviation Authority plays a role in enforcing the country's priority of environmental preservation: the in-flight magazine of Rwandair Express contains a notice that states that, due to the national ban on polythene (plastic) bags, no such bags may be transported into the country.

Supporting Institutions

Utilities. Although the authorities for water, sewage, and electrical power were not closely examined during the in-country portion of this diagnostic, the *Doing Business* survey indicates that connection to water lines and power grids can take a long time in Rwanda – from 21 days to one month.

Key Supporting Institutions

- Utilities
- Private sector consultants
- Private Sector Federation
- Lawyers
- Universities
- Donors

Private sector. As the process for obtaining licenses for building projects becomes increasingly complex, both the government and builders rely on the expertise of private sector consultants to support substantive demands. For example, REMA maintains a list of about 25 local consultants that have the capacity to prepare an EIA on behalf of a company. Similarly, the Ministry of Infrastructure relies on independent consulting firms to help validate the quality of public building projects. The capacity of the individuals and firms that help

support this process, according to one government representative "is not great, but it is improving."

As part of its work to assist entrepreneurs – detailed in this report's chapters on Starting a Business and Protecting Investors – one issue that the PSF has found itself coping with on behalf of new and established businesses is EIA compliance. The PSF intervened on behalf of a local company when REMA shut down a project called Kigali City Park on environmental grounds, and continues to be involved as the project changes hands into new foreign ownership.

In fact, the PSF could do a great service to the construction community if it created a "developers manual," a very strong form of which can be found in Jamaica (see box). The PSF could compile a list of all the steps involved with a construction project, from start to finish. This guide would include the EIA process, but would also tackle other issues faced by builders, whether mundane or thorny. This work could take place in conjunction with the efforts of the International Finance Corporation (IFC) to identify all business licensing requirements (detailed below).

Legal profession. The legal profession does not yet have the capacity to meet commercial demand or understand the current commercial laws or those looming on the horizon because there is generally limited experience in the commercial sector. A New Partnership for Africa's Development (NEPAD) initiative to train lawyers is reportedly underway, but more needs to be done, particularly as the new commercial legal framework emerges. Specialization in commercial law, or in any area, remains rare. If equipped with sufficient knowledge and understanding of commercial law, the legal profession can be a messenger and implementer of good business practices to clients in the business community.

Universities. As detailed in this report's chapter on Employing Workers, there is a pronounced deficit in skilled workers in Rwanda; less than 3% of the population receives a university degree. With respect to the licensing regime in Rwanda, there is a need for strengthened higher education across the board – from business education (discussed in this report's chapter on Starting a Business) to far more extensive training in math, science, architecture, and engineering. Efforts are reportedly underway to strengthen Rwanda's teaching of the sciences, including through a master's degree in environmental science available at the National University.

Donors. Finally, at all angles of the business licensing environment in Rwanda, donors play a direct or indirect role. With respect specifically to the *Doing Business*–identified issue of Dealing with Licenses, the IFC is the most active donor at this time. The IFC has a program to address business licenses at all levels. So far it has identified 186 separate license requirements at the national, district, and municipal levels. Many of these arise from overlapping jurisdiction and redundancies that come in part from recent moves to decentralize political power. As a result, there is uncertainty over what is required for various businesses to operate in full compliance with national and subnational law and regulation. Accordingly, the IFC is working with the Rwandan government to establish a body that can analyze, rationalize, and oversee licensing requirements and regimes.

Social Dynamics

The absence of corruption – but the importance of "connection." The extent to which private sector observers assert that the Rwandan government is "honest," "fair," and "business-friendly" is remarkable not only for a country in East Africa, but for the developing world generally. The government is "exemplary," one factory owner asserts. "Here, you cannot see corruption," a lawyer comments. "This is not like Congo or Burundi." "The civil service is perceived as not corrupt, strict, and fair," a donor representative agrees.

Thus, unlike many countries' business licensing environments, Rwanda has an advantage: conditions for doing business are not distorted by the eagerness of underpaid government actors to take, or the willingness of businesses to pay, informal fees. For any outside investor, the relative absence of corruption in Rwanda is an enormous incentive to choose to do business there rather than in a less law-abiding neighboring country.

On the other hand, certain dynamics exist within Rwanda's licensing environment that are at once plain to see *and* difficult to nail down. These concern the place of *connectedness* in the business environment – that is, the significance of relationships with powerful office holders and others that may make the difference between getting a business lawfully operating within a short period of time *or* facing a series of obstructions. One donor

A Best Practice from Jamaica:
Creating a Developer's Manual

The legal framework overlaying Jamaica's construction licensing regime is vast – at least 35 laws and hundreds of regulations pertain directly or indirectly to land use in Jamaica. One recent achievement is the creation of a comprehensive, loose-leaf Development and Investment Manual (Developers Manual). A USAID-sponsored project of the Jamaica Chamber of Commerce (JCC), in partnership with the government of Jamaica, the Developers Manual was created for the purpose of clarifying and improving access to the statutory and regulatory framework implicated by the development process. The process of collecting all pertinent laws and regulations proved long and challenging: "[During the process] we discovered just how much was in peoples' heads" rather than in the law itself, according to one public official.

Following this undertaking, several volumes of the Developers Manual (with others planned for the future) were issued in mid-2007, covering the following topics:

- Planning and development
- Environment
- Infrastructure, utilities, and communications
- Hospitality industry and security
- Social infrastructure and waste disposal
- Business facilitation
- Finance

As the JCC notes in its introduction to the manual, the collection of all the relevant laws and regulations represents merely a first step to reform Jamaica's construction licensing process. The JCC anticipates that a critical "second stage" is necessary – that is, "a thorough review of the processes . . . to ensure that all redundancies and duplications, as well as outdated or irrelevant procedures are excised, and that business-friendly procedures are put in their stead."

observed that mayors in Rwanda are particularly influential and that, although not reputed to take bribes or engage in the type of corruption found elsewhere on the continent, a mayor "has his own business and his friends have their own businesses," and a mayor can "find a way to stand in the way of a project" if he or she chooses. Mayors may exercise authority to an extent that conflicts with national law – for example, one mayor reportedly acted to close small bars after 10 p.m., notwithstanding national legislation that would have kept them open. A similar complaint arises with respect to certain high-level ministry officials who have been known to throw up roadblocks – such as with respect to the employment of foreign workers – when a company's actions conflict with the official's personal interests.

Similarly, one construction company representative notes that the extent of government intervention in a project may turn on who the project is *for*. That is, labor inspectors are more likely to "show up" at projects that are privately sponsored, rather than launched by the government.

Yet the private sector also highly praises the burgeoning free-market system in Rwanda: Competition among companies has been "helpful to the contractors and helpful to the client[s]," one builder says. When his company loses a bid, "You pull up your socks . . . you learn when you lose . . . [and] next time I will present my bid better."

The high cost of doing business. Construction contractors criticize Rwanda's government for not supporting an environment that allows construction companies to grow, and, in particular, not using the public contracting process as a means of helping companies build their capacities. One contractor says that a company can be severely damaged by rapid changes in transportation or fuel costs, changes that are not anticipated in government contracts. "When you finish a [government project]," one contractor complains, "you are out of money." The high cost of transport, discussed in this report's Trading Across Borders chapter, is another area in which slow government action may be holding back economic growth.

Regional considerations. Another licensing dynamic that should not be overlooked is Rwanda's

place within the EAC, which carries with it important responsibilities and opportunities. To the extent that Rwanda is able to harmonize its business licensing practices with other countries in the region, the more attractive the region as a whole becomes as an investment destination.

Recommendations

To raise the Doing Business scores . . .

- Establish a one-stop shop for construction licenses, including an integrated, online "planning portal" and other agency-integration methods.
- Within local planning agencies, clarify and post the specific procedures for obtaining a building permit, including a list of time frames and costs.
- Create a Developers Manual that sets forth all the existing and anticipated legal and regulatory aspects of a construction project in Rwanda.

To strengthen the overall environment for Dealing with Licenses . . .

- Continue review and streamlining of business licensing environment in Rwanda generally. Support the institution ultimately commissioned to oversee this effort. Create a legislative, regulatory, and institutional reform program that addresses necessary reforms.
- Publish the universe of commercial laws and regulations in a single, accessible, and adequately maintained place.
- Continue development of master plans and zoning rules through transparent processes and a mindfulness of economic development priorities.
- Enact a national building code, accompanied by a plan for public education and legal implementation.
- Improve the accessibility of MINITERE and all other ministries through improved "customer service," beginning with better signage and buildings and strengthened ministry websites.
- Within REMA, continue providing guidance and instruction about the creation of EIAs.
- Within REMA, also continue public awareness and education initiatives that increase basic understanding about the relationship between economic development and environmental stewardship.
- Encourage and support more productive relationships between universities and the private sector, including through university participation in BDS centers. Entrepreneurship can be directed especially toward "green" activities – that is, the establishment of businesses that can take advantage of the country's new emphasis on environmental stewardship, such as tourism.

EMPLOYING WORKERS

Introduction

The area of employing workers is one in which Rwanda's *Doing Business* ranking does not ultimately address the key issue the country faces concerning its labor force – an acute shortage of skilled and productive workers.

Under *Doing Business*, Rwanda ranks just below the survey's halfway point: 95th in the world, out of 178 economies studied in 2007. As detailed in this chapter's Legal Framework discussion, Rwanda's Labour Code indeed contains a number of restrictions that warrant loosening for the long-term benefit of the business climate and for workers generally. In addition, certain institutions are structured in a way that does not support, or even interferes with, the productive engagement of workers. In particular, the role of labor inspectors lacks clarity and there is a lack of consensus over the accountability of labor inspectors.

But the *Doing Business* inquiry is limited to the role played by government in regulating the employer-employee relationship. The *Doing Business* indicators examine the ease with which companies and other employers can lawfully hire and fire workers, looking specifically at the "rigidity of employment" – that is, restrictions on hiring workers, limitations on hours worked, and costs and difficulty of firing.[32] The BizCLIR diagnostic revealed, however, that the issue in Rwanda is less a concern over government restriction and intervention in the employer-employee relationship and more one of employee preparedness, capacity, and productivity. In short, Rwanda lacks skilled workers, at least in numbers that are necessary for the country to achieve the economic growth it seeks in a relatively short period of time.

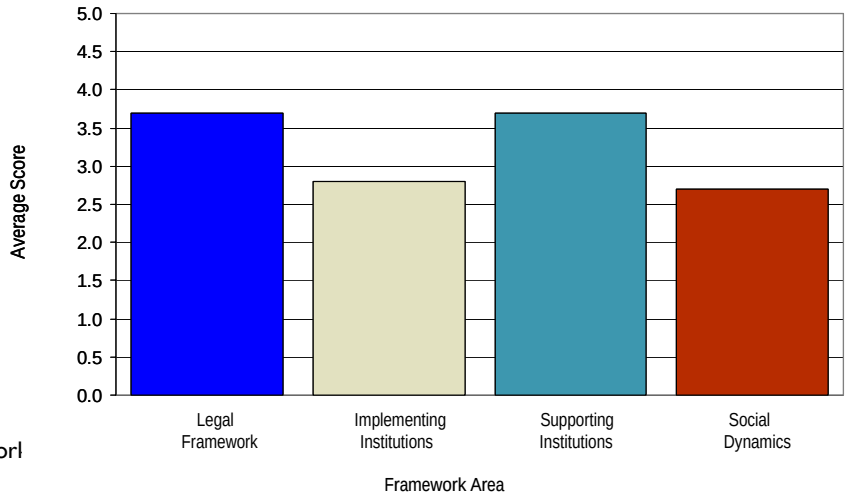
Specific shortfalls in Rwanda's workforce include the following:

Employing Workers

Doing Business Ranking 2008	95
Doing Business Ranking 2007	95
Difficulty of hiring index	56
Rigidity of hours index	40
Difficulty of firing index	30
Rigidity of employment index	42
Non-wage labor cost (% of salary)	5
Firing costs (weeks of wages)	26

- A lack of skilled professionals (including lawyers, accountants, engineers, architects, and others)
- A lack of skilled tradespeople (plumbers, electricians, and carpenters)
- Among unskilled laborers, a debilitating unfamiliarity with modern work habits, practices, and labor rights
- Literacy rates that, though relatively high for the region, are still too low
- Insufficient access to primary and secondary education, notwithstanding certain improvements in this area
- Weaknesses in university-level education, including high costs, poor access for women, and a lack of orientation toward private sector opportunities
- Discriminatory forces against women that diminish their productivity in the workforce
- Pervasive health concerns within the populace.

BizCLIR Doing Business Scores: Employing Workers



[32] *See* World Bank, "Methodology, Employing Worl *Doing Business 2008* (2007), *available at* http://www.doingbusiness.org/MethodologySurve loyingWorkers.aspx.

Workforce profile[33]	
Population	9.2–9.9 million
Labor force	4.6 million
Approximate number of employees formally employed (as evidenced through Social Security compliance)	200,000
Percentage of workforce employed in agricultural sector	90
Percentage of workforce employed in industry and services	10
Unemployment rate	No precise figure available.
Literacy: Male	76.3%
Literacy: Female	64.7%

On the other hand, certain trends favor the strengthening of Rwanda's workforce and labor productivity over the next generation. They include:

- Improved access to primary education, through the elimination of certain school fees
- Reduced differences between girls and boys in access to primary education
- Strengthened opportunities in vocational training
- Significantly increased opportunities in continuing education, which are being accessed by both working and unemployed adults
- Considerable efforts in employer-sponsored training
- Streamlined access to skilled foreign employees, who provide needed skills and serve as on-the-job trainers for local workers.

In the near term, Rwanda is challenged with ensuring that its revised Labour Code – currently in draft form – both fulfills the country's obligations under international conventions and better supports economic efficiency and productivity. Legal and regulatory reform, however, will not be enough to pull Rwanda into a state of competitiveness with other dynamic African economies, let alone other states that are vigorously seizing opportunities in productivity and competitiveness. Across Rwanda's business environment, institutions must continue to be strengthened for the purpose of addressing Rwanda's critical needs in workforce capacity and productivity.

The BizCLIR indicator scores for Employing Workers show clear promise in the areas of legal framework and supporting institutions, as indicated by the graph at the beginning of this chapter. However, there is plenty of room for continued reform. The scores further illustrate this chapter's central points that social dynamics underlying Employing Workers – chiefly the skills of workers – and implementing institutions – in particular the labor ministry, the courts and labor inspectors – need continuous and constructive attention.

Social Dynamics

The social backdrop against which Rwandans seek and earn their livelihoods is critical toward understanding the country's overall environment for labor and employment. Thus, this chapter begins with a discussion of Social Dynamics – emphasizing the makeup and central challenges of the country's workforce – and follows with sections on Legal Framework, Implementing Institutions, and Supporting Institutions.

A post-conflict society. A generation has not yet passed since Rwanda's civil war and genocide of the 1990s. Those crises left tens of thousands of children orphaned and a quarter-million women coping with the trauma of rape. In addition, other violent, post-genocide domestic and regional conflicts have been quelled for only a short time. Thus, although the reconciliation, social progress, and government capacity building that have taken place in recent years have proven remarkably successful and have surely exceeded expectations from most quarters, the damage and stresses that remain are enormously

[33] Unless identified otherwise, figures for the tables in this chapter are drawn from a number of sources, including the Economist Intelligence Unit (EIU) Country Profile (2007), the CIA's online World Factbook (2008), the OECD's Africa Economic Outlook (2007), and other external publications, which themselves draw most of their data from international sources or the Rwandan government's own surveys. Given the limitations in domestic information gathering – an area that the British Government is in fact seeking to bolster – the figures cannot be said to be exact, but they do represent best estimates as accepted by the international community.

relevant toward understanding the makeup of the country's workforce.

Moreover, over the course of this diagnostic, the visiting team heard consistent if oblique references to unresolved tensions among classes, ethnic groups, political parties, and various other constituencies. The extent to which these tensions impact employer-employee relations – whether in hiring and firing; labor union membership and activity; on-the-job training; and so forth – was indiscernible, but far from inconceivable as an influential factor. There is clearly a sense – not fully spoken, apparently due to fear of government reprisal – that economic opportunity in Rwanda is not equal and that to oppose the government is to quash prospects for a vibrant livelihood. Although Rwandans are far more secure physically today than they have been at any time since independence, the populace lacks a critical degree of political and economic confidence. This can only be addressed through continued honest and forthright coming to terms with the past, and, as discussed from the outset of this report, a commitment to respecting political freedoms in the country.

An agricultural society. Notwithstanding an exceptionally high-population density – 359 people per square kilometers in 2006 – around 90% of the population lives in rural communities.[34] Agriculture is by far the dominant sector for employment – as confirmed by the country's 2002 census, it employs about 90% of the population, while producing 40% of the GDP.[35] Consisting largely of subsistence farming, the agriculture sector is largely beyond the reach of labor and employment laws and regulations, except for some of the larger operations such as plantations and agro-processing (of which there are very few). Although there is evidence of a growing middle class and new wealth, particularly in Kigali, the vast majority of Rwanda's workers earn less than $2 a day, with at least 50% earning less than $1 a day.[36]

Nonetheless, this diagnostic identified a number of examples in which agricultural production now reaches beyond subsistence farming or export of raw products, thus presenting opportunities for higher wages for workers or greater wealth accumulation for entrepreneurs. For example, improvement of the specialty coffee industry, largely supported by USAID, has translated to new work and entrepreneurial opportunities in the sector.[37] The expansion and improvement of coffee-washing stations means that more specialty coffee is being exported (at prices higher than those that semi-washed beans could obtain).[38] It also provides a substantial number of jobs for unskilled workers, at least during the "coffee season" from April through July, when laborers (predominantly women) are hired for about $1.50 per day to pick and sort coffee beans.[39] Simple contributions to the coffee-growing community, such as bicycles to transport sacks of coffee beans (rather than the much slower, but enormously common, method of hand carrying the sack for considerable distances), add to the productivity of agricultural workers. Skills and lessons learned from increased transactions, productivity gains, and growing entrepreneurialism in the specialty coffee sector can likely be transferred to other traditionally exported crops in Rwanda, such as tea and, to a lesser extent, spices.

Similarly, the Urwibutso juice factory north of Kigali is accessing Italian machinery *and* know-how for the purpose of preparing pineapple, passion fruit, and strawberry juices to meet international export standards. This work includes the production of juice bottles, which to date have had to be imported. The jobs generated by the success of such an endeavor represent the type of next-generation labor opportunities that rural-based Rwandans will need. The "spillover" impact of this thriving factory includes not only opportunities for local farmers, but also factory and skilled management jobs, jobs at a local private school launched by the company, jobs at the factory's roadside market and restaurant, and continuous construction work. Legal reforms such as a competition law and strengthened corporate governance, discussed elsewhere in this report, will increase the confidence of investors necessary to launch similar enterprises.

A third opportunity in Rwandan agriculture is the introduction and development of silk worm farming – "sericulture." This industry depends on the healthy proliferation of mulberry trees, on which silkworms feed, followed by a series of activities that lead to the production of raw silk, then processed threads,

[34] EIU, Country Profile, Rwanda (2007), at 28.
[35] Id.
[36] *See* Swiss Peace, *Fast Update: Rwanda: Trends in Conflict and Cooperation*, No. 3 (May–June 2007).
[37] *See* Paul Schattenberg, "Texas A&M leads effort to improve agriculture in Rwanda," *A&M Systemwide* (November/December 2006).
[38] EIU, Country Profile, Rwanda (2007), at 28.
[39] Karol Boudreaux, *State Power, Entrepreneurship and Coffee: The Rwandan Experience*, Mercatus Policy Series, Policy Comment No. 15 (October 2007), at 9.

and even manufactured silk fabrics.[40] This new opportunity challenges farmers, in the long run, to trade their current subsistence-based pursuits in favor of unfamiliar cash crops. (At this time, the growth of mulberry trees is taking place on 10,000 acres of government-allocated land; additional farms are run by the Ministry of Defense.) If successful, sericulture in Rwanda may lead to growth in work opportunities in the formal industrial sector. It again requires, though, confidence in other key areas covered by this report: the sound governance of businesses, the protection of investors, and access to credit, among others.

Education in Rwanda	
Primary school enrollment	
2002	74.5%
2005	86%
2007	97%
Secondary-school enrollment (among children ages 13 to18)	
2005	10%
2007	40-50%
University enrollment	2.7%

Skills. To a debilitating extent, the Rwandan workforce lacks skills. This point was stressed throughout the diagnostic, particularly by business people who are concerned with completing projects and attracting new business. One foreign manager of a construction project called his workforce "the worst of any labor situation in Africa," noting that construction workers without any experience begin from a point of using "sticks as hammers." Local companies, the same observer noted, "need hand-holding" when it comes to meeting agreed-upon expectations and getting a job completed. (On the other hand, another employer in the construction field voiced no complaints with the quality of his labor, stating that what it lacks in skills, it makes up for in affordability. Rather than paying for a few employees to use expensive construction equipment, he says, he instead hires a large number of workers to perform the same tasks manually.)

To address the skills deficit, throughout this decade the Rwandan government has placed education at the "front burner" of its development activities. School fees for primary education were abolished around 2004, and efforts have been made to build more schools and improve school curriculums.[41] Nonetheless, constraints on accessing education at all levels remain a problem for many. Although they no longer have to pay school fees, poor families often find the costs of uniforms and books to be a deterrent to sending their children to primary school. The percentage of students that finish primary school is improving – earlier in this decade, about 40% were estimated to have completed primary school; in September 2007, the government reported the rate of completion to be as high as 84%.[42]

The percentage of children ages 13 to 18 proceeding to secondary school is relatively low, but improving. As recently as 2005, only about 10% to 15% reportedly made this transition; this rate has improved to reach around 50%, according to "unverified" 2007 government reports.[43] Secondary school is often regarded as too expensive for the typical family: Fees remain, as do additional expenses for books and uniforms. But to attend secondary school is to become proficient in a second language, either French or (increasingly) English, which presents an enormous advantage to students when they enter the job market.

The British government, along with other donors such as the UN Educational, Scientific and Cultural Organization (UNESCO), works closely with the Rwandan government to improve access to and the quality of primary education. The latter is critical: Many Rwandan teachers themselves lack sufficient education and training, and primary-school class sizes often exceed 50 students. Long-term support for education serves Rwanda's need for a workforce that offers a breadth of skills and capacities through which it can compete regionally and internationally.

Weaknesses at the primary and secondary levels have consequences at the highest education levels: Less than 3% of Rwandans attend university.

[40] *See* "The Secret of Sericulture: The Art of Silk Production," *Enterprise* (Private Sector Federation Magazine) (January–March 2008), at 49; *see also* "Rwanda on the Silk Road," *Ikaze Magazine* (Nov. 2007–Jan. 2008), at 22–25.

[41] *See* DFID, *Free Education means a future for Rwanda's Children* (October 15, 2007), *available at* http://www.dfid.gov.uk/casestudies/files/africa/rwanda-schools.asp.

[42] Gasheegu Muramila, "Rwanda: Primary School Enrollment Rises," *The New Times* (September 20, 2007).

[43] Id.

Professional skills are lacking throughout the economy, with both quantity and quality of skills wanting in such areas as law, management, accounting, food sciences, engineering, and other technical fields. According to the World Bank, Rwanda's preparedness to participate in the so-called knowledge economy ranks last among EAC countries, and, indeed, near the bottom in the world. Specifically, Rwanda ranked 134th out of 140 countries surveyed in 2007 for economic incentive and institutional regimes, education, innovation, and information and communications technologies.[44]

Investment in higher education is increasingly acknowledged as a key component of long-term economic growth, as well as a woefully underplayed aspect of international development. The significance of higher education is explained in a recent working paper of the Center for Global Development:

> Higher education is critical to build the human capital that in turn builds the very institutions that are regarded as an indispensable factor of development – the accountants, doctors, engineers, lawyers, teachers – that comprise the middle class. The emergence of a vibrant middle-class, which was neither part of the land-tied peasantry nor part of the aristocracy that drew its privileges from feudalism, was crucial for the development of modern institutions of capitalism and democracy. Institutions are not merely an amalgam of abstract rules that shape the incentives of agents; they are embedded within organizations that act as the locus of collective action. The weakness of the middle-class has hobbled the organizational capabilities of institutions in many developing countries, and that weakness is, in turn, partly the result of weak systems of higher education.[45]

As discussed later in this chapter, employers in Rwanda often need to rely on skilled professionals from neighboring countries to fill the professional and technical skills gap. This fact undeniably drives up the cost of doing business in Rwanda; on the other hand, it also presents on-the-job learning opportunities for local employees.

This chapter's section on Supporting Institutions discusses the emergence of several activities and institutions that are directed toward developing and refining Rwanda's human resources. In many cases, employers find themselves providing both on-the-job training and after-work training in semi-skilled and skilled work. (One foreign investor reported that, although he employed 17 expatriates in 1999, internal training has allowed him to reduce that number to five by 2007). Vocational training has become increasingly important, although there remains significant demand for plumbers and electrical technicians that is not yet being met. Furthermore, to a remarkable degree, private continuing-education opportunities are in high demand. Vast opportunities now exist in the professions, management, the skilled trades, tourism, and even entrepreneurship. As noted recently by the Organization for Economic Cooperation and Development, "Among skilled people, there is no shortage of work."[46]

Gender equality in the workforce. Traditionally, females in Rwanda have been disadvantaged from a very young age – until very recently, primary-school attendance by girls has lagged significantly behind that of boys, and, as a consequence, female literacy is as much as 10% lower for women than it is for men. Rwandan girls are far more likely than boys to drop out of primary school and, although statistics among various sources are not consistent, the rate at which they proceed to secondary school appears to be somewhat less than boys (although some recent statistics suggest that enrollment has now achieved parity). Factors contributing to the female dropout rate include household demands, gender-related violence, and, often overlooked, poor sanitation facilities at school.

Only about one-quarter of students attending the selective National University of Rwanda are women. There is a higher rate of enrollment of women (about 35-40%) in the less-prestigious private universities. Anecdotally, women appear to seek out continuing-education and training opportunities at a rate at least as high as men.

[44] World Bank, Knowledge Economy Index (KEI) 2007 Rankings. Burundi is not ranked. Not incidentally, of the 25 countries ranked at the top of the KEI, all but one (Hong Kong/China) are assessed by Freedom House as "free." Hong Kong is called "Partly Free."

[45] Devesh Capur and Megan Crowley, *Beyond the ABCs: Higher Education and Developing Countries*, Center for Global Development Working Paper 139 (February 2008), at 4–5.

[46] OECD, *African Economic Outlook*, *Rwanda* (2007), at 466.

Health in Rwanda	
Life expectancy	44 years
Prevalence of HIV/AIDS	7% – urban dwellers 2.2% – rural dwellers
Presence of malaria	40% of all health center visits are due to malaria Malaria is the principle cause of morbidity in every province.
Access to improved drinking water sources	92% – urban 69% -– rural
Immunization against major diseases	Approximately 95%
Domestic violence	Trauma remains from widespread rapes during the genocide, and domestic violence generally remains an underserved issue. Public attention to the issue is increasing. Few prosecutions of domestic violence.
Alcohol and drug abuse	Rwanda not known to have a significant drug abuse or trafficking problem, although some recent increases in drug use in the capital are reported.

With respect to women in the workforce – most who work in agriculture and many others who work in the informal sector, such as domestic labor – one concern that was articulated several times over the course of this diagnostic is that "they don't know their rights." Specifically, women working as domestic servants can be particularly vulnerable to abuse, because household employers often "do not observe basic labor standards," such as health, safety, wage, and hour fundamentals. Women are also highly vulnerable to sexual harassment – in domestic work situations in particular – and employer-induced pregnancy among women domestic workers is a not-insignificant problem.

The Rwandan government is mindful of the country's historical neglect of girls and women, and has been striving in recent years to provide them with equal opportunity and better access to education and skill-building opportunities. Reform of the inheritance law nearly 10 years ago has strengthened women's access to property, which in turn allows them to take better advantage of entrepreneurial opportunities or agricultural management choices. In March 2007, the Ministry of Education and the First Lady of Rwanda launched a five-year campaign "to address the existing gender imbalance by taking extra measures to encourage girls to enroll and stay in primary and secondary school."[47]

Health. As illustrated in the table in this section, Rwanda has a long way to go before its workforce can be regarded as generally healthy. Access to improved drinking-water sources is a national priority and has shown progress in recent years, although access to safe sanitation facilities remains poor. Immunization rates for major diseases such as tuberculosis, DPT, polio, hepatitis, and measles is around 95%, which, though not ideal, is a good showing for the region.

Although not as bad as some countries in Africa, the HIV/AIDS rate in Rwanda presents a serious public health problem, as does the continuing scourge of malaria. There has been some success with using the workplace as a base for voluntary counseling and testing and treatment of HIV/AIDS, as evidenced by a program staged by the Heineken Breweries' subsidiary in Rwanda beginning in 2001. Between 2001 and 2005, 736 employees and their families (out of an eligible pool of 2,595) sought and received testing. The 109 individuals that were identified as carrying the virus were directed to counseling and treatment. A study of this program concluded that "seeing people thrive on treatment is a long-term motivator for others to seek testing and care" and that, accordingly, the program "is an encouraging example of the role that employer-based programs can play in helping HIV-positive employees and dependants gain access to care while reducing the negative impact of AIDS in the workforce."[48]

[47] United Nations Children's Fund, *Rwanda launches campaign to keep girls in school* (press release, March 2007).

[48] Feeley et al., "A Successful Workplace Program for Voluntary Counseling and Testing and Treatment of HIV/AIDS at Heineken, Rwanda," 13 *International Journal of Occupational Environmental Health* 99 (January/March 2007), at 105.

Legal Framework

Rwanda has a core set of laws and regulations pertaining to labor and employment that, compared with many countries that are overwhelmed by work-related statutes and other legally binding authority, are relatively straightforward in scope and applicability. These include, with respect to private sector employment, the core Labour Code (Code de Travail), effective in 2002, and at least seven ministerial orders that supplement the Labour Code. At this time, the Labour Code is undergoing revisions, through which (among other changes, detailed below) the ministerial orders are expected to be substantively folded into the new law.

Key Laws

- Draft Labour Code (2008)
- Labour Law (Law No. 51/2002)
- Civil Procedure Code (2004, with specific provisions addressing the resolution of labor-related cases)
- Law on Immigration and Emigration (1999)
- General Statutes for Rwandan Public Service (2002)
- Social Security Law (2003)

In addition, the General Statutes for Rwanda Public Service were enacted in 2002 and serve as the primary source of authority for individuals employed by national, provincial, town, or district government. Other key laws impacting the labor and employment relationship are the Law on Immigration and Emigration (as well as regulatory policies that specifically concern the engagement of foreign labor) and the Social Security Law.

Access to the legal framework. Access to the legal framework governing labor and employment in Rwanda is insufficient to meet the needs of both the domestic business community and potential outside investors. The Ministry of Public Service and Labour (MIFOTRA), the key implementing institution addressing workforce matters, operates a website that contains some information about its core operations. It posts, however, only the public sector employment statutes. It does not post the existing Labour Code and accompanying ministerial orders, the latter which detail such key topics as working hours and occupational safety and health. The few documents found on the ministry's website are posted in English and, to a slightly greater extent, French. No laws or related documents are posted there in Kinyarwandan.

The website of RIEPA, the country's one-stop shop for investors, lists the Labour Code as among the laws accessible in PDF form, but attempts to download the document at the time of this diagnostic proved unsuccessful. RIEPA similarly has a placeholder for information pertaining to "living and working in Rwanda" – presumably a reference to the formal process for foreign workers to acquire a work permit – but that information also is not actually posted.

Although various other laws of Rwanda can be found at a number of government websites, the universe of laws and regulations pertaining to labor and employment is neither identified nor available at any of these places. The website of the International Labor Organization (ILO) posts Rwanda's Labour Code, but only in French and without the critical ministerial orders. This ILO link is the only access to Rwanda's Labour Code provided through the World Bank's *Doing Business* website, which endeavors to maintain a library of current business laws from throughout the world.

MIFOTRA does not appear to operate a library or service through which individuals can easily access hard copies of laws and regulations pertaining to labor and employment; nor does such a service exist through RIEPA. Practicing lawyers do, however, appear to keep photocopied and bound copies of the Labour Code. Practicing lawyers also rely on the regular publication of the *Official Gazette,* but this is not a realistic source for outsiders, due to the limitations of the *Gazette*'s indexing attributes.

The Draft Labour Code, which is being considered for enactment as early as May 2008, is not widely available to individuals who are not directly involved with the legal revision process. It has reportedly been made available, however, to major stakeholder organizations, such as the labor unions, the PSF, and the bar association.

The Law on Immigration and Emigration (1999) can be found in English at the website of the Director of Immigration and Emigration, a section of the National Security Service. Recent rule changes involving foreign workers and their access to visas and work permits are not found at the Directorate's website, however. Whether they have in fact been formally memorialized was not clear during this

diagnostic. The Social Security Law is available at the website of the Social Security Fund of Rwanda.

The matter of accessibility to the labor-related legal framework points out an opportunity for Rwanda that would serve its business environment well – that is, through the definitive, thorough, and well-maintained provision of such information by way of the Internet. This function may not seem relevant to the vast majority of Rwandans who cannot access the Internet, but it is highly relevant to the community of entrepreneurs and investors who seek to know their obligations and opportunities when it comes to creating jobs in Rwanda. Provision and maintenance of information is not expensive, but it does take determined oversight to ensure that attempts at creating useful websites are not abandoned midstream.

The Labour Code of 2002. Rwanda's existing Labour Code is not considered by employers – a variety of which were interviewed for this diagnostic – to especially interfere with their ability to do business.

From the outset, it is worth noting that Labour Code does not mandate a minimum wage. In various wage categories, the government does set minimums; it is said, though, that employees often agree to take less than what is already a very low minimum wage (in certain unskilled jobs, less than $1 a day). Regardless, there are few complaints from employers about the costs of unskilled labor in Rwanda – even in full compliance with the law, it comes very cheap. Skilled labor, however, is in great demand and can be very costly for employers.

Basic labor rights. It is widely acknowledged that countries that fail to protect basic labor rights are less desirable, in the long run, as investment destinations. Namely, international companies do not relish being characterized in the international media as abusing its workers. In Rwanda, the Labour Code provides for the core labor standards as enunciated by the ILO, and, in general, these core rights are respected and enforced:

- Workers may associate freely and form labor unions (Labour Code, Title VIII).
- Workers may engage in collective bargaining (Title V).
- The Labor Code prohibits forced labor (Title I, Article IV).[49]
- The Labor Code prevents discrimination in employment on the basis of "race or ethnicity, color, sex, religion[, and] political opinion" (Title II, Article 12).
- The Labor Code prevents child labor (Title II, Article 11).

Notably, the right to form unions and engage in collective bargaining does not extend to agricultural workers. Thus, the vast majority of the population has no access to this right, or others enunciated by the Labour Code.

In addition, there is no separate law that prohibits trafficking in persons, although such crimes can be prosecuted as other offenses. Child labor in the agricultural sector is, in practice, a continuing problem. Although the government has attempted to manage the problem, the fact that at least 14% of primary-age children do not attend school means that many likely work illegally.

Hiring and firing. The Labour Code is grounded in a Western Europe–based tradition that favors heavy regulation of the labor-employment relationship. In contrast to the "at will" norm found in the United States and other more centrist or even "right-leaning" economies, the Labour Code requires employers to provide their employees with a written contract if a job is to last for more than 90 days (Article 7). That contract exists for a "non-determined duration" once the initial fixed term is completed (usually two years) and the employee is kept on the job (Article 9). Employment contracts may only be broken by an employer due to "legitimate grounds" against which the employee has the opportunity to present a defense (Article 21) or for "economic reasons" (Article 29). The law spells out a process through which employee

[49] In fact, Title II, Article 11 of the law makes a few exceptions concerning unpaid labor. In addition to excepting required military service, labor as a penalty for a crime, and work mandated by the government in the event of natural disaster, Article 11 allows for mandatory unpaid work "organized by local communities, when approved by the population or their representatives." This seems to refer to the return of the colonial tradition of Umuganda (community labor), a monthly public "clean up" required of most citizens. Some individuals interviewed for this diagnostic charged that Umuganda is "not about work" nor is it "economically productive"; instead it is implemented for the purpose of "political indoctrination."

representatives and then, if necessary, a labor inspector must review and attempt to mediate a case before it may be brought before a court (Article 182). Ultimately, labor disputes can be resolved in the country's system of courts – although the Labour Code is insufficiently specific with respect to the point at which a court may be accessed to consider the case. (Labor disputes brought to court take place under the authority of the Law No. 18/2004 of 20 June 2004 Relating to the Civil, Commercial, Labour and Administrative Procedure – that is, the 2004 Civil Procedure Code, detailed in this report's chapter on Enforcing Contracts.)

Businesses and lawyers vary in their view of the administrative requirements for hiring and firing. Lawyers are well accustomed to creating employment contracts and advising employers about their obligations under the contracts. While one lawyer reports that, in general, it is "not easy to fire anyone," a number of business owners did not view difficulty in firing as a particular problem, chiefly because their severance pay obligations (particularly for low-skill workers) are not perceived as high.

Significantly, Article 29 of the Labour Code, while permitting discharge for "economic reasons," does not define that term, leaving judges to their own interpretations. One lawyer reports having been asked by a judge why, if worker terminations are taking place for economic reasons, the company has not declared bankruptcy. The draft labor code, discussed later in this section, adds a definition of the term "economic reasons," apparently for the purpose of avoiding such judicial interference with what should be an economic decision.

Additional provisions. The Labour Code contains general provisions on wages and hours (including vacation time) and occupational health and safety, certain of which may be amended under the new code. Enforcement of these areas is thin, however. For example, on construction sites, safety equipment is rare; workers often work barefoot; and babies are often tied to their working mothers, who may be subjecting them to dangerous conditions. Also, as previously noted, the need for any work at all leads many unskilled workers to accept extremely low pay, regardless of whether a minimum wage has been set for the activity by the government.

The existing law also defines the roles of labor inspectors and, to a more limited degree, staff delegates, which are discussed in the Implementing Institutions section of this chapter.

The Draft Labour Code. While revisions to the Labour Code are underway – indeed, a revised code may be enacted as early as spring 2008 – there does not appear to be a widely shared understanding of the purpose for the new code. According to the Organisation for Economic Co-operation and Development (OECD), the government is revising the law to "provide a conducive legal and regulatory framework for investors."[50] This goal would be consistent with the overall agenda of the Rwanda Commercial Law Reform Project, which has been engaged by the government to oversee the revision of various commercial laws, as detailed in this report's chapter on Enforcing Contracts. Yet there was no evidence during this diagnostic that government officials involved in reforming the labor law in fact view the exercise as an opportunity to promote labor flexibility through such *Doing Business*-recommended strategies as reducing the costs of hiring and firing.

Rather, most local actors – including those that work for the Ministry of Public Service, Skills Development, and Labour, as well as other various public, private, and labor representatives – view the revision of existing labor law as due simply to a desire that it become "more comprehensive." (it will incorporate, reportedly, the ministerial orders that support the existing code) and in stronger compliance with specific conventions of the ILO. Examples of newly added and generally non-controversial provisions in the draft law include prohibitions against sexual harassment and discrimination on the basis of HIV/AIDS. Maternity leave will be extended from 12 to 14 weeks.

In fact, there appears to be no special urgency or demand for a new labor code, even from the private sector, which does not regard the current activities of labor unions or even existing hiring and firing regulations as particularly burdensome. In its current form, the draft law does appear more organized and easy to navigate than the existing Labour Code. It has a table of contents and further improves upon the existing law by including a list of definitions (although, for even greater ease of navigation, this list should be alphabetized). The draft law specifically responds to the employer complaint concerning the conditions under which employees may be terminated for "economic reason;" unlike in the

[50] OECD, *African Economic Outlook*, *Rwanda* (2007), at 466.

current law, that term is defined in a way that allows employers to "protect the competitiveness" of their companies (Draft Labour Code, Article 48).

The Draft Labour Code is reportedly drawn significantly from the law of Namibia and was prepared by Reform Project team members. At the time of the diagnostic, the draft was in the hands of MIFOTRA, which was in the process of consulting four major "social partners" about its contents and potential impact: on the employer side, the PSF; and, representing the interests of the employees, three labor unions (CESTRAR, COSYLI, and COTRAF – more fully discussed later in this chapter).

But the draft remains rough, with extremely vague provisions remaining in the document (Title IX, addressing Administrative Organs of Work, is just one example of a section in which careful additional scrutiny is warranted). More important, the revision process seems to not yet have grasped an opportunity that is almost unique with respect to labor and employment law. That is, unlike many of the laws being addressed by the Reform Project, there does not happen to be an international consensus about the contents of a labor code. Unlike the areas of secured transactions, bankruptcy, competition, corporate governance, and other business-related issues, no international model laws have been constructed. Rather, a labor code often reflects a political consensus about how a country views the employer-employee relationship.

Over the past century, the temptation in many countries was for governments to provide strong protections for employed workers – that is, to heavily regulate the conditions of their hiring, firing, wages, hours, and other aspects of employment. But heavy regulation over labor conditions has been found to correlate with lower labor force participation and higher unemployment, especially of the young.[51] Increasingly, therefore, nations are accepting the notion that the more flexible the legal framework pertaining to labor, particularly when it comes to the ease of hiring and firing workers, the more flexible and productive an economy is permitted to be.

Therefore, the current opportunity in Rwanda is to do more than "tweak" various aspects of the existing Labour Code, which is ultimately entrenched in an old "left-leaning" model that favors preservation of existing jobs over the creation of new ones.[52] To reject this norm would require a great deal of consensus building and boldness on the part of the government, business, and labor communities. It is hard for many people to accept that certain "laws created to protect workers often hurt them."[53]

As one prominent issue, the role and reporting responsibilities of the labor inspector seems to have been left out of major policy discussions to date. This is a matter that, if unaddressed in the new law, will continue to interfere with the flexibility of labor markets in Rwanda. At this time, employers lack a full understanding of the boundaries of the labor inspector's authority, and this inhibits their ability to plan effectively for the future.

Other issues that warrant further public scrutiny *before* a new Labour Code takes effect are the high rates of severance pay and cumbersome methods of dispute resolution that currently tend to favor workers in Rwanda. This state of affairs may have the result of *workers not getting hired at all*, or employers choosing to hire workers informally (a practice that happens more often to women, to their economic detriment). To the extent that Rwanda becomes increasingly industrialized – with agricultural-processing jobs leading the way – these are issues that are best addressed now. They also must be addressed if Rwanda seeks to improve its Employing Workers ranking under *Doing Business*.

Tanzania may serve as one guide for the process of achieving consensus. As a signal of national intent, Tanzania's most recent labor and employment law reform – the Employment and Labour Relations Act – states that its first objective is "to promote economic development through economic efficiency, productivity and social justice."[54] Rwanda can further benefit from the experiences of such countries as Macedonia, which recently went through a dedicated reform of its labor law, directly resulting in economic gains.[55] As many countries have learned, reduced government control over a business environment is not incompatible with labor rights. Most importantly, it gets people into the workforce

[51] Botero et al., *The Regulation of Labor* (World Bank, June 2004).

[52] Id.

[53] World Bank, "Employing Workers," *Doing Business 2008* (2007), at 19 ("More flexible labor relations boost job creation").

[54] Tanzania Employment and Labour Relations Act, Section 3(a) (2004).

[55] *See* Adam Larson, Kiro Minoski, and Janet Morris, *Employing Macedonian Youth* (Case Study, Macedonia), in World Bank, Doing Business; How to Reform (2007).

more fluidly and allows small and medium-sized businesses to guide their labor decisions according to their business needs, rather than to stringent government requirements.

The time may be right for Rwanda to take the bold step and become a nation based generally on "at-will" employment, rather than on rigid legal protections that are destined to keep the country ranked in the second half of the world's economies in the World Bank's *Doing Business*/Employing Workers survey, while ultimately failing to protect the nation's huge sector of agricultural workers. Given the lack of urgency to create a new labor code, the time indeed seems right to have the conversation about what employers and employees can achieve together through a legal framework. Even if it takes a few more years to pass a new code (urgent measures, such as protection against sexual harassment or HIV/AIDS discrimination can be addressed through ministerial orders), the long-term benefit to the economy may be significant and effective.

The Law on Immigration and Emigration. Enacted in 1999, this law addresses, among other topics, the issue of whether and under what conditions "foreigners" may live and work in Rwanda. Access to foreign skilled labor is an enormously important issue to Rwanda's private sector, which has trouble finding skilled and semi-skilled workers for important jobs throughout the economy. Until recently, the process of acquiring a work permit for foreign workers was cumbersome, difficult, and expensive. Recently – that is, sometime within the second half of 2007 – conditions facing foreign workers were considerably loosened by the Directorate General of Immigration and Emigration. The bureaucratic changes – which have been favorably received by employers – are reportedly a matter of policy and leadership, rather than regulatory change. In fact, any such process, including time frames, costs, and administrative procedures, should be fully documented in an authoritative source that is accessible to employers (and their lawyers) both online and in hard copy.

General statutes for Rwandan public service (2002). As noted, this law generally governs the conditions for public employment, and is generally beyond the scope of this diagnostic. One interesting initiative of MIFOTRA, however, is its plans announced in early 2008 to extend the workweek of government employees from 40 to 48 hours. The conditions under which this change will take place remain vague. According to a local newspaper, employees are being urged by the government "to work in the spirit of nationalism, and to work longer in order to enhance their productivity, rather than to get over-time payment."[56]

During this diagnostic, public sector employees expressed wariness of the anticipated new workweek hours, pointing to the many non-work responsibilities held by their members, including self-sponsored training and continuing education, in addition to domestic and family responsibilities.

Social Security. A system for providing old-age, disability and survivors insurance was first established in Rwanda in 1956; the social security law was most recently updated in 2003. The system covers all salaried workers, including permanent, occasional, and temporary workers; professional and in-service trainees; apprentices; civil servants; political appointees; and government officials. There is voluntary coverage for persons who were previously insured at least six consecutive months and had mandatory coverage in the last 12 months and for the self-employed.

The source of income for the social security program is as follows:

- *Insured person:* 3% of gross earnings; 6% of gross earnings for voluntary coverage. The minimum monthly earnings for contribution and benefit purposes are equal to the legal minimum wage (where applicable). The maximum monthly earnings for contribution purposes are subject to a ceiling.
- *Self-employed person:* 6% of income. The maximum monthly income for contribution purposes is 104,000 francs.
- *Employer:* 3% of gross payroll. The minimum monthly earnings for contribution purposes are equal to the legal minimum wage. The maximum monthly earnings for contribution purposes are subject to a ceiling.
- *Government*: None.

Persons are eligible for benefits after age 55 and after they have stopped working. The pension is equal to 30% of average earnings during the last three or five years of work (whichever is higher), plus 2% for each 12-month period of insurance

[56] Manasseh Nshuti, "Work does not kill," *Focus* (Jan. 28–Feb 3, 2008), at 7.

coverage beyond 180 months. The minimum pension is 50% of the legal minimum wage.

Employers must also contribute 2% of their gross monthly payroll to Rwanda's worker's injury program. If a worker suffers temporary disability, the benefit he or she receives is equal to 75% of the insured's average daily earnings in the three months before the onset of disability. The benefit is payable until full recovery or certification of permanent disability, up to a maximum of 180 days. If the disability is permanent, the pension is equal to 85% of the insured's average monthly earnings in the three months before the onset of disability.

Implementing Institutions

Ministry of Public Service, Skills Development, and Labour (MIFOTRA). Like most government agencies, the ministry charged with overseeing both public and private sector employer-employee relations is viewed by its stakeholders – including private companies and worker representatives – as being relatively fair and void of the corruption that undermines public institutions through much of Africa. The mission statement of MIFOTRA is as follows:

> To reinforce the national labour standards, promote job creation and institutionalize an efficient and modern public service management framework that will enable private and public sector organizations to perform at their best and effectively contribute to improving the lives of the Rwandan population.[57]

Preliminarily, it cannot be said that MIFOTRA does an adequate job in making itself accessible to its stakeholders. Although its main building in Kigali is conveniently located and, like the rest of the country, quite neat and clean, the ministry's formal entry provides no guidance to visitors – either through signs or human assistance – and the remainder of the building similarly lacks clear signage or directions. Paper signs posted on doors appear to have taken on a permanence that is not sufficient for this serious and important institution. Also, as previously noted, the ministry website does not yet provide a range of labor-related information that is necessary for private sector employers.

Key Implementing Institutions

- Ministry of Public Service and Labour (MIFOTRA)
- Labor inspectors
- Staff delegates
- Courts
- Immigration service
- Social Security Fund of Rwanda

MIFOTRA is significantly involved in workforce development initiatives, such as through the establishment in 2007 of the Rwanda Workforce Development Agency, which aims to train tradespeople and encourage entrepreneurship.[58] It also oversees the Labor-Intensive Local Development Program (PDL-HIMO), a public works initiative that provides jobs to many unskilled workers for the purpose of developing local infrastructure, such as road construction and rehabilitation, reclamation of marshlands, and environment protection projects. MIFOTRA significantly supports the training of its own personnel, through short and long-term training efforts abroad and domestic training and continuing-education opportunities.[59]

Unlike various other ministries, MIFOTRA is not listed among those domestic institutions charged with leading various substantive segments of the government's Economic Development and Poverty Reduction Strategy (2008–2012) (EDPRS), including the four working groups (education, health, water/sanitation, and social protection) charged with addressing human development. MIFOTRA has overseen the creation of the EDPRS budget, however.[60]

MIFOTRA formally employs about 50 people in full-time jobs, although many more people work there on a contractual basis. This fact arises from a set of reforms in 2005 that reduced the number of public employees and sought to retrain or return to school those employees whose jobs were terminated.

MIFOTRA may get involved with labor disputes at a regional or local level, if necessary. For example, if a labor inspector (discussed below) fails to resolve a certain dispute in his or her jurisdiction, a person employed at the national level may be sent to a work site to inspect and attempt to resolve the issue. The Labour Code is not particularly clear, however, on

[57] *See* Mission Statement, Ministry of Public Service and Labour at *www.mifotra.gov.rw*.

[58] Id.

[59] Id.

[60] "Work does not kill," *Focus,* at 7.

the circumstances under which such intervention will take place.

Labor inspectors. Labor inspectors are government employees authorized under the Labour Code and charged with observing and reporting on work conditions throughout the country. An inspector may handle issues ranging from worker health and safety to compliance with child labor standards, and is authorized to work out solutions to various issues, such as ensuring that children found working during school hours are sent to school. There are at least 30 labor inspectors – one posted at each of the country's districts. A labor inspector is required to have a bachelor's degree and also must pass a substantive skills test and a computer skills test, as well as submit to a personal interview.

Consensus is lacking within Rwanda about the scope of a labor inspector's authority and obligations. "Ask him where he derives his powers," one lawyer who is critical of the government asserts. "He does not know." Indeed, neither the existing Labour Code nor the draft code is specific about what institution oversees labor inspectors. The existing Labour Code refers to a "Labour Directorate" (Article 160) and the draft code refers to a "service administration" (draft code, Article 253), which may have some oversight over inspectors, though it is ultimately not clear.

According to one government employee, labor inspectors in fact report to the mayor of the districts where they work. Mayors have the authority to assign labor inspectors to tasks that are not directly related to labor and employment oversight and intervention, thus further complicating the actual scope of his or her obligations. Labor inspectors are reportedly paid by the districts where they work.

MIFOTRA is working to build the capacity of labor inspectors. Labor inspectors meet occasionally and receive training on various issues, such as ILO standards and dispute resolution techniques.

Moreover, several of the businesses and business lawyers interviewed for this diagnostic report general satisfaction with labor inspectors. They typically say that there is "not a problem with over-inspection." On the other hand, the rate of inspection can reportedly turn on the identity of the employer – when a project is commissioned by the government or an otherwise influential person, one business representative asserts, there tends to be fewer on-site visits by inspectors.

That said, this diagnostic found too much ambiguity concerning the role, authority, and usefulness of labor inspectors. This norm is not uncommon for the region and the world – there is no shared system of labor inspectors or convention of best practices, not only in Africa, but also in the world. If anything, the arena of labor inspectors is one which invites too much bureaucracy and opportunities for corruption. In Rwanda, the topic of labor inspectors warrants further study in the short-term as the basis for building consensus about how Rwanda can continue its steps toward becoming a more business-friendly environment.

Staff delegates. Both the existing Labour Code and the draft code incorporate the institution of elected "workers' delegates" or "staff delegates" in any "institution" that "uses" at least 10 employees. These delegates are charged with representing the interests of employees to their employers and to labor inspectors. The draft code provides considerable details about the election and appointment of these delegates, but does not ultimately address why such a delegate should be mandated by law, when there is a clear right of workers to organize into unions (which then would presumably represent worker interests). It could be that the system of "staff delegates" is a form of representation for agricultural workers – but neither existing law nor the draft code makes this clear. A frank discussion about whether and to what extent the new labor code will be "business-friendly" should address the overlapping roles of staff delegates, labor inspectors, and labor unions.

Dispute resolution institutions. Under existing (and likely future law), employees with grievances are obliged to engage their local labor inspector to serve as a mediator of a complaint (after consulting with, perhaps, their staff delegate or labor representative). The inspector must review the circumstances of a case and attempt to arrive at a negotiated solution. The employee may resort to a court only after this "administrative" level of review has been exhausted.

Courts are perceived as honest – that is, they do not share a reputation for the type of corruption found in many of the world's states that thoroughly undermines a sense of the rule of law. This fact may be bolstered in part due to an increase in judges' salaries in recent years. But the capacity of judges is

considered relatively weak. With respect to labor and employment disputes in particular, businesses and lawyers perceive judges to instinctively favor workers.

Directorate General of Immigration and Emigration. In conjunction with the government's new policy to streamline the process under which foreign workers obtain visas, an immigration official is placed at RIEPA to assist employers with this effort. The new process is described as much more customer-service oriented and accessible than in the recent past. Private employers continue to complain, however, that bringing in more than three foreign workers can prove cumbersome and expensive.

Social Security Fund of Rwanda (SSFR). Although only about 200,000 workers in Rwanda are contributing to the country's social security fund, the fund itself is performing relatively well, and invests significantly in development projects throughout the country. Among the projects sponsored by the surplus monies of the SSFR are real estate ventures, office buildings, and shopping malls. Proceeds from the SSFR's investments reportedly represent about 45% of the fund's total value, with the remaining funds coming from employer and employee contributions and collected late fees.

The SSFR is endeavoring to improve formal contributions and engages in seminars and media campaigns about the long-term benefits – to individuals and to the Rwandan economy – of participating in the system. The website of the SSFR of Rwanda is one of the stronger and more helpful areas in which the government provides information to the citizenry.

Supporting Institutions

Labor unions. In Rwanda labor unions are authorized by law according to international standards, but they are weak. That fact is not inconsistent with the country's extremely low rate of the nation's workforce – just 10% – working in the industrial sector. Quite simply, Rwanda as an agricultural society does not share the industrial history of many countries where labor unions have advanced to positions of relative strength and influence in a business environment.

Until 1991, organized labor in Rwanda was controlled by the government – just one union was authorized by the government to operate. Following constitutional reform, the Central Union of Rwandan Workers (CESTRAR), Rwanda's largest and formerly sole authorized trade union, separated from the government and became established as an independent institution. (A new constitution was enacted in 2003, which similarly provides for the right of employees to form trade unions and to enter into "general and specific agreements" with employers.[61])

Key Supporting Institutions

- Labor unions
- Private companies/Private Sector Federation
- Lawyers
- Universities
- Vocational schools
- Cooperatives
- Professional training and continuing education
- Donors

At this time, Rwanda has at least three labor "syndicates," which themselves represent a number of smaller, sector, or employer-based unions. In addition to CESTRAR, the Conseil National des Organisations Syndicates Libre (COSYLI) represents a variety of smaller unions that themselves represent journalists, domestic employees, gardeners, night watchmen, electricians, and others. One of COSYLI's chief concerns is the plight of domestic workers and other employees who work in relatively informal or "invisible" circumstances. There is third syndicate, which is no more influential than CESTRAR or COSYLI.

At this time, labor unions play a role in negotiating employee complaints and representing employee interests before their employers and neutral tribunals. Ultimately, however, the scarcity of well-paying jobs for low-skilled people in Rwanda makes the bargaining power of unions intrinsically weak.

Private companies. As discussed, the core concern voiced by private companies is the low skills of their employees and, in many instances, a lack of access to any employee who has even the basic skills to perform a certain job. Interestingly, the few companies that do employ a large number of workers, whether skilled or unskilled, tend to take a warm and even paternalistic view of their staff: Management often refers to workers as "members of the family" and sees its obligations as extending to

[61] Constitution of Rwanda, Article 38 (2003).

family members and communities, such as through construction of schools or family participation in health initiatives. That said, unskilled workers in Rwanda invariably work for very low pay.

Although formal employment with private companies is low, private employers do endeavor to contribute to labor productivity by providing on-the-job training and by paying for training elsewhere. As one builder said, "You start building capacity within your own company . . . you don't expect the government to take care of it." Private companies will provide training up to a point – another construction company representative said, "[W]e can't offer training for technical people like technicians and foremen – only for those at a lower level, like masons."[62] It does not appear that private companies benefit from tax breaks or other incentives to train their workers. This is an opportunity missed – where companies know that their efforts to train workers will be rewarded in some meaningful way by the government, they will be more inclined to do so.

Private companies generally voice satisfaction with the competence of the government agencies that regulate them, but complain about access to decisions: "Government employees are always in meetings," one businessman complains. "They are not doing the business of their jobs."

Private Sector Federation. The PSF – detailed in this report's chapter on starting a business as an institution charged with representing the interests of private companies – is playing a growing role in developing the capacity of entrepreneurs. With donor support, the PSF has developed a number of training programs so that entrepreneurs seeking certain skills – such as sewing fashion design or transforming leather – can train and then hire certain workers (and those workers who are not hired may themselves attempt to build their own businesses). The PSF also supports a number of BDS centers (discussed in this report's chapter on Starting a Business), but these initiatives lack sufficient public awareness and internal capacity.

Lawyers. Although the more established attorneys in Rwanda tend to handle a variety of types of law – ranging from company registration to criminal matters to personal injury claims – there is a growing trend among new lawyers to specialize. A number of firms are emerging that focus nearly exclusively on commercial law. According to a number of lawyers who specialize in this regard, labor and employment work takes up around 20-25% of their work, which may include drafting employment contracts or representing employers or employees in an employment-termination matter or other type of dispute.

For their part, private companies that employ a significant number of workers rely on private counsel to help navigate the more difficult employment matters, particularly the discharge of employees. They are accustomed to using lawyers to help prepare labor contracts, to help mediate employment disputes, and to represent them in court, as well as to provide necessary advice concerning the priority rehiring of laid-off workers, as mandated by the Labour Code.

Universities. Higher education is considered too expensive or otherwise inaccessible for most people in Rwanda. In 2003, only 27,243 students were enrolled in Rwanda's six public universities and approximately 14 private universities, in contrast to the 1.8 million enrolled in Rwanda's universal primary education system. About one-quarter of the National University's student body is women, a rate of representation that appears to be somewhat stagnant at this time.

As a matter of public policy, victims of the genocide are provided with free education. This is a policy that, though well intentioned, observers agree may prove to have the negative consequence of perpetuating real and perceived advantages to some groups over others.

Both the National University and various private schools are engaged in working with the government to respond to curriculum needs and skills deficits. One opportunity that has not yet been exploited to its potential, however, is that of university-private sector interaction. The BDS centers that are being created throughout the country could surely benefit from connections to higher education; at this time, however, no such relationships appear to have been launched in earnest.

The National University of Rwanda Law Faculty was founded in 1973. Although a law degree has traditionally been earned in an undergraduate setting, there is a newly established master's program that aims to bolster the quality of lawyers

[62] "On the up and up: Rwanda's construction companies," *Enterprise* (Private Sector Federation Magazine) (January–March 2008), at 35.

graduating from the National University. Labor law is among the required courses. Among the issues that should be anticipated as the new commercial laws take shape and become enacted is how they will be learned by professors and instructors and then taught to law students.

Vocational education. Concurrent with its push to improve primary and secondary education in Rwanda, the government is mindful of the need to develop skills in various key trades, and donors are actively assisting this effort. The German government is especially supportive of vocational programs for secondary-school students and recent high-school graduates, and is actively engaged in helping schools train students to become electricians, carpenters, accountants, information technology professionals, and automobile mechanics. Assistance includes curriculum support, teacher training, identification of private sector partners, and assistance in procuring equipment and supplies. Demand for vocational education is high – there remains a critical need for plumbers and other technicians who understand water and sanitation – and private employers tend to welcome skilled students for internships. Over 41 schools in Rwanda currently belong to a newly established Association of Technical Schools.

Another "vocation" that is receiving considerable attention in the area of skills development is tourism. The Rwandan Tourism Institute (RTI), a private institution (that nonetheless expects to be training some government workers), is an enormously popular resource. The school provides full- and part-time training in all aspects of hospitality and offers both diplomas and certificates. Among its most popular classes is English, proficiency in which is understood to be a major advantage for people working in the field. RTI also offers courses in customer care, housekeeping, restaurant management, and entrepreneurship.

Cooperatives. A cooperative is a business that is owned and controlled by the people who use its services. Users share services received and earnings allocations on the basis of use. Particularly in rural and agricultural settings, cooperatives have the potential to contribute to the development of productive, efficient and scientific-based systems. Without cooperatives, small producers have almost no form of collective organization and are at an immense disadvantage when taking their products or crops to the market.[63] Cooperatives strengthen market access and support competitive returns for independent farm operators. In addition, cooperatives can play an important role in rural communities, where they encourage democratic decision-making processes, leadership development, and education.[64]

In Rwanda, as discussed in this report's chapter on Starting a Business, cooperatives represent an under-exploited opportunity in building the labor force. Plans are underway to establish an agency dedicated to promoting and supporting cooperatives, but such an agency does not yet exist. Public and private sector representatives recognize the need to promote cooperation and collaboration by farmers to overcome the limited business capacity of individuals and to professionalize agriculture in Rwanda. Representatives of the agricultural community have voiced a need for demonstration centers to help farmers better understand what is necessary to succeed in business, and short-term training on basic farming issues such as seed selection, planting, production, cultivation, process transformation, and distribution would be beneficial. Developing an agency responsible for promoting cooperatives is important to ensure that agricultural issues, particularly those of small-scale farmers, are properly represented and championed.

In short, cooperatives in Rwanda are underused by small farmers and businesses not only as a means of building the incomes of rural workers, but also as an alternative to labor unions and as a source of training and knowledge. Cooperatives as a source of building rural competencies is an issue in need of greater study and support.

Professional training and continuing education. Within Kigali, there is a clearly a movement among young people to build their skills – English classes taught after work hours are said to be enormously popular. Training is offered to various degrees through private sector organizations and professional associations, such as the PSF and the bar association. The newly established training center for lawyers and judges in Butare is considered enormously important toward the long-term implementation of new laws. "More training" is the unequivocal answer to the question of how donors

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

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

can help, but that is often accompanied by requests for books, materials, and other equipment that is a necessary component of an effective training program.

Donors. As mentioned throughout this chapter, a variety of multilateral and bilateral donor organizations – including the governments of the United States, Great Britain, and Germany as well as the UN, the IFC, and others – are active directly or indirectly in the arena of labor policy and workforce development. There is an immediate need, however, for stronger consultation among the donors about their respective roles in the private sector generally and workforce development specifically. This diagnostic found a lack of communication among donors – not uncommon in transitional economies, but regrettable nonetheless – and a resulting sense that opportunities are being missed and resources not being efficiently channeled. The focus and extent of all donor initiatives should be clarified among the donors themselves, as well as within the Rwandan government, especially as the goals of the EDPSP are pursued.

Recommendations

To raise the Doing Business scores . . .

- Publish the universe of labor and employment-related laws and regulations in a single, accessible, and adequately maintained place.

- Clarify and publicize reforms to system of immigration and work permits. Investors unable to find local workers with the skills they require should be better enabled to employ expatriate workers meeting their skill needs. This calls for eliminating the arbitrary limits on employing foreign employees, and relying on new skill-training incentives for employers for the purpose of phasing in local workers to key positions.

- Clarify the role and reporting responsibilities of labor inspectors.

- Reconcile the role of staff delegates with other legally authorized worker representatives. Consider whether the presence of staff delegates in fact contributes to economic productivity and overall labor relations of the country.

- Train judges in the resolution of employment disputes. Reinforce the role of the judge as that of enforcing the law, rather than that of "protecting" the interests of one side or the other.

- In a short-term study based on a wide sample of cases, quantify the exact costs of hiring and firing workers (both skilled and unskilled) in Rwanda. Identify which costs can be changed through legal reform, and which are matters of implementation and education. Develop a clear plan for addressing each of these issues.

To strengthen the overall environment for Employing Workers . . .

- With respect to the process of revising the Labour Code, engage in a long-term consensus-building activity that gets to the root of the relationship between labor law and economic productivity. Rather than rushing to adopt a new law, seize the opportunity to learn from lessons throughout the world and to use the new code as a tool toward implementing the overall economic objectives of the government, the private sector, and the workforce.

- Study, propose, and implement options for creating tax breaks or other incentives for companies that invest in worker training. There are many models for such a system throughout the world, including government training grants or subsidies, tax credits, and public-private training partnerships. These warrant further consideration from the perspective of what would work best in Rwanda.

- Improve the accessibility of MIFOTRA through improved "customer service" – better signage, clarity of rules, and a more welcoming approach to stakeholder input.

- Strengthen and expand opportunities for vocational education and training. Specifically provide support to the association of vocational schools.

- Continue support for improvements to primary and secondary education systems, with particular emphasis on encouraging higher rates of primary-school completion and progress to secondary school.

- Examine how, particularly with respect to girls, issues of infrastructure and sanitation impact the decision to pursue secondary education.

- Study and answer with tangible conclusions the following questions:

    - What is the relationship among Rwanda's current system of higher education generally, its current system of professional education specifically, and the country's potential for sustained economic growth?
    - How can Rwanda achieve a well-working indigenous system of university and professional education?

- Encourage and support more productive relationships between universities and the private sector, including through university participation in BDS centers.

- Through the establishment of a dedicated office or agency, as well as public education and information programs, support efforts of small farmers to understand the advantages of processing and selling their goods collectively through cooperatives.

- Encourage informal producer organizations to formalize as cooperatives so they will be able to take advantage of the various benefits that come with business formality, including information-sharing and training opportunities.

- Analyze and develop a "map" of government licensing and regulation regimes affecting agricultural producers, and work with cooperatives to press for streamlining and simplification of these regimes.

- Continue to examine the question of how women who are not part of a community's formal economy spend their days and how the productivity of daily life might be enhanced, thereby allowing time for other things. Is there consistent access to electricity, clean water, efficient transportation, titled property, markets, health care, child care, police protection, telecommunications services, and so forth? An inquiry into what role women play in supporting or supplementing the livelihoods of the men in their communities will further identify what skills they already have or constraints that must be addressed.

- Continue attacks on HIV/AIDS, including through employer-based counseling, testing, and treatment programs.

REGISTERING PROPERTY

Introduction

The ability to freely own all types of property and to easily transfer and register property is a fundamental facet of business and economic growth in an emerging free-market economy such as Rwanda. In Rwanda, as in most economies, land and improvements to land account for most of the wealth of the country. A strong legal and institutional framework is imperative in order for individuals and businesses to own, use, and sell all types of property; to manufacture and sell products and services; to raise capital; and to obtain credit.

This chapter is grounded in the World Bank's *Doing Business* indicators for Registering Property. Those indicators examine the legal, institutional, and social underpinnings of registering real property – land and fixtures on land – in a country. They first center on the right of various constituencies to buy, sell, inherit, and otherwise own real property and to use it with only limited constraints. They then examine the ability of individuals and companies to register property with the government, thus signaling legal ownership, which is a critical component of using the property to access credit. This chapter delves more deeply into the environment for registering property, closely examining the extent to which property rights may indeed be used as a basis on which to build wealth.

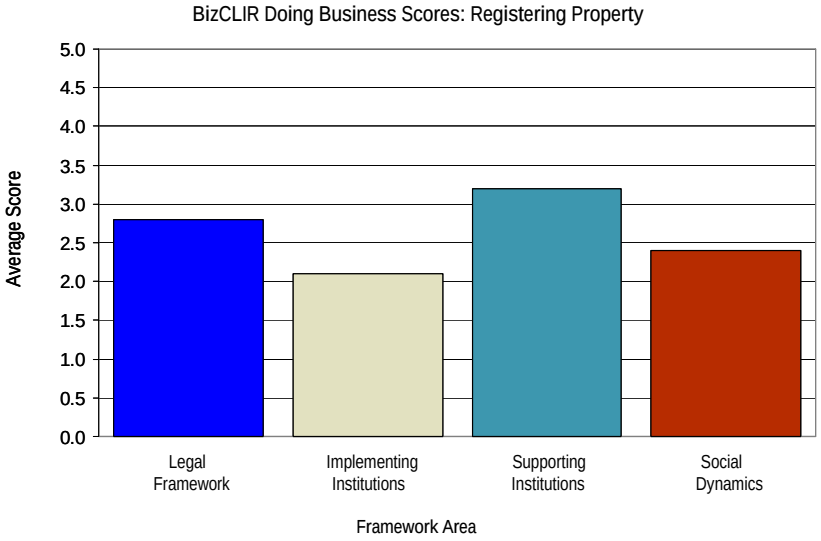
Rwanda has a population of approximately 8.2 million and land surface area of 26,388 square kilometers.[65] It has a population density of over 340 persons per square kilometer and is one of the most densely populated countries in Africa. About 92% of Rwanda's inhabitants live in rural areas and 90% of them depend on agriculture. In 2006, the per-capita income was estimated to be US $250 and the incidence of poverty was slightly above 60%.

Registering Property

Doing Business Ranking 2008	137
Doing Business Ranking 2007	134
Procedures (number)	5
Duration (days)	371
Cost (% of property value)	8.4%
Paid in Minimum Capital	

In the United Nations' most recent Human Development Index, Rwanda ranks 161st out of 177 countries surveyed.[66]

Rwanda has a hilly topography. More than 50% of farm holdings have experienced severe forms of soil and fluvial erosion. Because of land scarcity there is overcultivation of agricultural fields.[67] Land productivity for major crops has been declining since the 1990s, due to demographic pressure, environmental degradation, and lack of use of modern agricultural methods. Through inheritance,



[65] United Nations Food and Agricultural Organization, *Implications of the Ongoing Land Reform on Sustainable Rural Development and Poverty Reduction in Rwanda* (Report of the Thematic Dialogue Held on January 20, 2006).

[66] UNDP Human Development Index, 2007–08 (Rwanda fact sheet).

[67] Daniel C. Clay and Laurence A. Lewis, "Land Use, Soil Loss, and Sustainable Agriculture in Rwanda," *Human Ecology*, Vol. 18(2) (June 1990); *see also* Eugene Rurangwa, *Perspective on Land Reform in Rwanda* (2002), at 7.

land fragmentation has been so extensive that it is often referred as "miniaturization."[68] Land has been linked to conflict for four decades after Rwanda's independence.[69] In fact, some experts note that land has been a factor behind mounting social tensions before every major conflict in Rwanda. Even today more than 80% of all disputes in Rwanda reportedly are related to land.[70] Conflicts arising from land relations have been fueled by the land scarcity, growing unequal distribution of landholdings, insecure land tenure, and a growing population of landless people.

At present, Rwanda has not yet moved to a fully operational and modern land-titling system. Rwanda's *Doing Business* ranking slipped in 2008 to 137th from 134th in 2007. The duration for property registration in Rwanda is what is most surprising – it takes 371 days.[71] There are many ways that Rwanda can improve this showing, and by so doing, it can better support the wealth and viability of the majority of its citizens.

The BizCLIR indicator scores for Registering Property, shown in the graph at the beginning of this chapter, fall among the weaker scores in this diagnostic. Above all, Rwanda's implementing institutions for real property need continuing attention and reform. The other areas – legal framework, supporting institutions, and social dynamics – also warrant continued constructive assistance.

Legal Framework

Until recently, Rwanda has not had a formal land policy, beyond its overriding policy that all land, officially, belongs to the state. Nor until recently has Rwanda had a formalized system of land registration, apart from a few scattered land regulations, most of which date back to the colonial period. This state of affairs has exacerbated tensions between the restrictive written law and the widely practiced customary law, giving rise to insecurity with respect to land tenure and inheritance and sale of land.[72]

Since Rwandan independence, there has been no credible Land Law or policy to provide formalized and legally secure land ownership or leasing.[73] Belgian land tenure regulations were recognized as binding after independence by Article 108 of the Rwandan Constitution of 1962. At that time, lands occupied by the original inhabitants were to remain in their possession. All unoccupied lands including all marshlands reverted to the state. All sales or gifts of land required approval from the Minister of Agriculture, and lands belonging to persons who were not original inhabitants had to be registered.

While the application of Belgian law required land registration, this was not operational. The situation

Key Laws

- Land Law (2005)
- Various presidential and ministerial orders pertaining to land (2005–2006)
- Law on Matrimonial Property and Succession (1999)
- Draft Mortgage Law
- Draft Law on the Protection of Intellectual Property

[68] Chris Huggins and Johan Pottier, "Land Tenure, Land Reform and Conflict in Sub-Saharan Africa: Toward a Research Agenda," in *Land Rights, Conflict and Peace in Sub-Saharan Africa* at 384, *available at* http://www.iss.org.za/pubs/Books/GroundUp/Conclu.pdf .

[69] *See, e.g.*, Opinion, "Rwanda, Move Beyond Just Land Redistribution," *Kigali Times* (February 1, 2008).

[70] Chris Huggins et al., "Conflict in the Great Lakes Region – How is it Linked with Land and Migration," *Natural Resources Perspectives* No. 96 (ODI) (March 2005), at 2.

[71] The World Bank ranks New Zealand as the top-performing country with respect to registering property. Registration in New Zealand reportedly takes one day. Rwanda falls within the middle of some of its geographic neighbors, behind Kenya, Burundi, and Mozambique, but ahead of Tanzania and Uganda. Rwanda has fewer procedures for registering property as compared to some of its neighbors. Kenya has 8; Mozambique 9; Tanzania 10; and Uganda 13.

[72] As two experts note: "Customary systems, which rely on unoccupied land to provide social 'safety nets,' have become undermined through land scarcity and have evolved, becoming more individualized and monetarized. However, there is a dearth of information regarding their current relevance across the country." Herman Musahara and Chris Huggins, *Land Reform, Land Scarcity and Post-conflict Reconstruction: A case study of Rwanda,* ACTS Report on the Conference on Land Tenure and Conflict in Africa: Prevention, Mitigation and Reconstruction (December 2004), at 32.

[73] *See generally* United Nations, *Implications of the Ongoing Land Reform*, at 12–13.

was not changed with the enactment of a 1976 Land Law.[74] Under the 1976 law, all lands not appropriated according to written law belonged to the state. Lands subject to customary law, or rights of occupation granted by law, could not be sold without prior permission from the minister responsible for lands. Moreover, the minister could only grant such authorization when: (a) the seller had at least two hectares remaining; and (b) the buyer did not possess more than two hectares. Contravention of these provisions was punishable by a fine of RWF 500 to 2000 and the loss of customary rights or rights of occupation. Throughout the 1980s and 1990s, land transactions nonetheless continued in many parts of Rwanda, apparently without the required authorization from the government.

Until 2005, land acquisition in Rwanda was governed largely by custom. This means that previous land acquisitions, transactions, and the post-genocide land-use arrangements were not protected by law. The exceptions to this practice included plots of land in urban areas and church properties. Property rights were not for ownership but for use (also referred to as *usufruct*). In the aftermath of the genocide, the government found it necessary to establish a national land policy that would guarantee a safe and stable form of land tenure and bring about a rational and planned use of land while ensuring sound land management and an efficient land administration.

In 2004, the government adopted a new land policy. At that time, 15% of poor rural households in Rwanda did not own any land, and 60% of poor rural households owned less than 0.5 hectare, while 25% had more or less one hectare.[75]

The 2004 Land Policy states that:

- All Rwandans will enjoy the same rights of access to land.
- All land should be registered to provide greater security of property rights.
- All titles will be transferable, but not in a way that fragments plots below one hectare.
- Land use should be "optimal."[76]
- Households would be encouraged to consolidate plots to ensure that each holding is not less than one hectare.
- Land administration will be based on a reformed cadastral (registered title deeds) system.
- A formal system of land administration will be developed.
- Marshlands will remain in the state's private domain and will be allocated to individuals by concessions granted by the government.

Prior to the 2004 reforms, Rwanda carried out very limited land registration based on a centralized manual registration system on a so-called demand-lead basis. In rural areas, property owners were provided with a sketch plan and descriptions of the property and registrations were held in a cadastral database at the ministry in charge of lands.

In 2005, Rwanda undertook a major reform of its land laws and property registration system. Rwanda's 2005 law is Organic Law No. 08/2005 of July 14, 2005 (Land Law). It provides for the registration of land property and protects land ownership through land commissions composed of elected commissioners. In the future, property registration will be overseen by a national land registrar who has a deputy in Kigali City and in other districts throughout the country. The Ministry of Lands, Environment, Forestry, Water and Mines (MINITERE) is responsible for overseeing land registration.

Under the new Land Law, ownership of land remains with the state. The state permits land use through long-term renewable leaseholds of up to 99 years. This approach is intended to create a system of formalized private property ownership.

The 2005 reforms created land registries in each of the 104 rural districts and eight urban municipalities (the formal organization of Rwanda has since changed to five provinces and 30 districts). A dual system of land registration was envisaged.[77] The

[74] Musahara and Huggins, *Land Reform,* at 32–33. The Land Law of 1976 sought to avoid the development of a land market. Like subsequent efforts at land reform in 1978 and 1991, many aspects of the 1976 law went largely unimplemented. In fact, regulations tended to bring more confusion, rather than clarity, as they were provisional or were ignored in practice.

[75] John Huggins, *Land Reform, Governance and the Environment: The Case of Rwanda,* (Draft) Paper Prepared for 4th Regional Session of the Global Biodiversity Forum (GBF) for Africa (June 2004), at 4.

[76] The 2005 Land Law has been criticized on this point. The notion of "optimal use" is ambiguous and may lead to property confiscation by the state.

[77] Musahara and Huggins note:

> The government of Rwanda has re-conceptualized its notion of registration in pragmatic ways. As it is

formal system would apply to high-value land and urban areas, and commercial enterprises and other land users requiring detailed documentation for legal and financial purposes. Such land would be registered in the Kigali cadastre. With a titling system, it would be possible for a title holder to use his land as collateral for a loan, bequeath it to his or her descendants, donate it, or sell it.[78] Concurrently, a system of local land registration would be created for the majority of rural areas and would be developed and overseen by the districts.

The Land Law protects all registered landowners from ad hoc expropriation. Article 5 of the law permits "any person or association with legal personality that owns land either through custom, or who acquired it from competent authorities or who purchased it" to own such land on the basis of a long term lease. The new Land Law guarantees the rights of landowners: it stipulates that landowners cannot be arbitrarily evicted by the government. In the event of expropriation, property owners have a statutory right to adequate compensation.

The Land Law also protects real property rights acquired through custom as well as those acquired through written law.[79] The Land Law defines acquisition by custom to include "all persons who inherited the land from their parents, those who acquired it from competent authorities, or those who acquired it through any other means recognized by national custom whether purchase, gift, exchange and sharing." Vacant land is considered state-owned property.[80]

One of the goals of the 2005 Land Law is to promote consolidation of small landholdings. There is a hope that small parcels of land will be sold to commercial farmers who will consolidate their holdings to develop viable agribusinesses.

The Land Law also formalizes the process for collateralizing land through a titling system and cadastre registry. The impact of this change on the ability of individuals and businesses to borrow money is discussed in this report's chapter on Getting Credit.

The Land Law provides for a land commission to monitor land usage and development and a land office (registrar) to deal with land registration.[81] Registration is mandatory under Article 30 of the Land Law. MINITERE is responsible for specifying the procedures by which land registration will be carried out.

Other relevant features of the Law include:

- Foreigners are given the same rights over land ownership as Rwandan citizens.
- Private property "ownership" is permitted under renewable leasehold titles of up to 99 years.[82]
- Land can be sold, mortgaged, or bequeathed at will.
- Land will be classified as rural or urban (ownership of rural land will entail obligations to put it to productive, sustainable use).

practically impossible for all households to have plots surveyed and registered in the near future, a dual system will be established. The "formal" or "national" system will be based on full cost-recovery, will use accurate surveying equipment, and will cater to those wishing to gain bank loans or invest significant capital in the plot. The "informal" or "local" system will use less expensive mapping methods, and will be affordable. *See* Huggins and Musahara, *Land Reform,* at 38.

[78] *See* Arts. 34–38 of the Land Law. *See also* Karol Boudreaux, *State Power, Entrepreneurship and Coffee: The Rwandan Experience*, Mercatus Policy Series, Policy Comment No. 15 (October 2007), at 9.

[79] *See* Art. 7 of the Land Law.

[80] *See* Art. 15 of the Land Law.

[81] *See* Art. 26 of the Land Law: "Certifying that the land has been allocated or leased on sustainable basis shall be indicated by a certificate approving the registration of land issued by registrar of land authentic deeds. The structure, powers and functioning of the registrar of land authentic deeds are determined by a Presidential order." *See also* Art. 27:
The Land Officer shall keep land registers and issues certificates approving ownership of land. Regarding land issues, he or she holds the power of the public notary and in regard to administration, he or she is supervised by administration of town, municipality or district in which the land he or she is responsible to register is located. The structure of the registers mentioned in paragraph 3 of this article as well as other responsibilities and functioning of the land bureau are determined by the order of the Minister having Land in his or her attributions. The Land Officer shall keep land registers and issues certificates approving ownership of land. Regarding land issues, he or she holds the power of the public notary and in regard to administration; he or she is supervised by administration of town, municipality or district in which the land he or she is responsible to register is located. The structure of the registers mentioned in paragraph 3 of this article as well as other responsibilities and functioning of the land bureau are determined by the order of the Minister having Land in his or her attributions.

[82] *See* Art. 24 of the Land Law, which provides for long-term leases of between 3 and 99 years.

- Failure to use properly, protect, and conserve land can result in land confiscation.
- Marshlands remain state property.
- Transfer of title deeds requires prior consent of all family members.
- A new land tax (property tax) was created.
- Undeveloped land reverts to the state's private domain after three years.
- Land reserved for agriculture may not be reduced to less than one hectare.

The 2005 Land Law conforms to international best practices in many respects, especially its attempts to create private ownership and to provide a formal title and registration system. One commentator notes that, in terms of weaknesses, the law allows the government to bar people who own less than one hectare from registering their property.[83] Another provision that may cause problems is the provision that the government may confiscate land from subsistence farmers if they do not use the land diligently and efficiently ("optimally").[84] The standard for government confiscation is ambiguous. The plan to encourage land consolidation may also be unworkable given the large number of smallholders in rural areas (i.e., those who own less than one hectare).

The government is meant to compensate people for confiscation but has not set up clear standards for doing so. Thus, as noted by one observer, "[T]hese prohibitions and potentially vague use requirements place undesirable limits on individual liberties. Further, they will lead to serious problems with corruption as individuals seek to skirt these artificially imposed constraints and demands. Such requirements are likely to benefit educated elites who may try to dispossess uneducated farmers."[85]

Furthermore, the Land Law may pose special difficulties for women smallholders and their child dependents. Under the new Land Law, the government is supposed to register all parcels of land. Women, however, may face specific difficulties in registering their land. Only legally married women and their children (not women married according to customary norms and their children or unmarried poor women) can register and inherit land. There is uncertainty in the law regarding inheritance as well (namely, do women inherit via the Land Law or the Inheritance law?) There is also concern that custom will bar women from exercising their rights under the Land Law.[86] Although USAID has been working with the government of Rwanda to ensure women's access to legally protected land rights,[87] this is a continuing issue that warrants active monitoring for years to come.

In addition to the 2005 Land Law, there are several recently enacted administrative orders that set forth additional details of the new land registration and administration framework.

Prime Minister's Order N° 17/03 of 09/10/2006. This order establishes a National Task Force in charge of land reform and management in Rwanda. The Task Force was initially established for a period of one year, but its term may be renewed. The mission of the Task is to:

- Prepare the establishment of the Land Centre including the elaboration of the bill governing its creation, structure, and functioning as well as to mobilize necessary funds for its launch in 2007
- Elaborate a detailed program for the implementation of the land policy and Land Law
- Finalize the elaboration of all the bills and orders governing land use so as to enable their application
- Prepare for the creation of land commissions at the national, city, and district levels as well as land committees at the sector and cell levels
- Monitor the elaboration of land registration.

A national Land Commission is responsible for development of land policy and oversight of the registration process. The Commission is meant to operate at the national, district, and local levels.

Presidential Order N° 54/01 of 12/10/2006. This order sets forth the duties and structure of the national and district land commissions**.** The responsibilities of the National Land Commission include, among others:

- Approval of procedures and guidelines for land administration and land-use management

[83] Boudreaux, *State Power, Entrepreneurship and Coffee* (citing Johan Pottier, "Land Reform for Peace? Rwanda's 2005 Land Law," *Context Journal of Agrarian Change* (October 6, 2005), at 521).

[84] See Arts. 62–65 of the Land Law.

[85] Boudreaux, *State Power, Entrepreneurship and Coffee,* at 24.

[86] Id.

[87] USAID Press Release, *Course Highlights the Importance of Secure Property Rights Kigali Rwanda* (December 2–7, 2007).

Draft Law on the Protection of Intellectual Property

Like real property, intellectual property requires a sound legal framework to enhance investor confidence and economic growth.

A review of Draft Law on the Protection of Intellectual Property in Rwanda indicates that it substantially meets international standards. It generally conforms to the Agreement on Trade-Related Intellectual Property Rights (TRIPS) and the intellectual property rights laws of many other countries, both developed and developing, with respect to the specific types of protections it covers. Notwithstanding this coverage, it does not expressly provide protection for plant varieties that is the subject of the International Convention for the Protection of Plant Varieties (UPOV Convention,1961), which would be beneficial to the country.

While Rwanda is a contracting state to two of the generally recognized major international IP conventions, it has not become a member of a number of other international treaties that deal with this kind of property. Rwanda signed the Paris Convention for the Protection of Industrial Property (covering patents, industrial designs, utility models, industrial designs, marks, and unfair competition) and the Berne Convention for the Protection of Literary and Artistic Works (covering copyright). Many of the provisions of the Draft Law are modeled on corresponding provisions in those conventions as well as those in TRIPS.

Although it is not a signatory to many other relevant treaties, a large number of provisions in the Draft Law incorporate in one way or another concepts and wording from them. For instance, the Draft Law extends protection to performers, phonogram producers, and broadcasts referred to in the Rome Convention (1961) as well as to performers and phonogram producers referred to in the WIPO Performances and Phonograms Treaty.

In addition to the aforementioned international conventions to which Rwanda is not a party, the country has **not** signed the following agreements:

- Washington Treaty on Intellectual Property in Respect of Integrated Circuits
- Lisbon Agreement for the Protection of Appellations of Origin and their International Registration
- Madrid Agreement Concerning the International Registration of Trademarks
- Protocol to the Madrid Agreement Concerning the International Registration of Trademarks; the Patent Cooperation Treaty
- Trademark Law Treaty
- Nice Agreement Concerning the International Classification of Goods and Services for the Purpose of Registration of Marks.

With many laws, the ways of expressing the intent of and language used in provisions often result in some inconsistency as well as a degree of uncertainty with respect to their intended scope. However, usually this is not to such a scale that the laws cannot be interpreted and applied properly. The Draft Law is no exception. Another review of this law is recommended in order to make appropriate changes to correct inconsistencies and clarify the intended effect.

For instance, "protection of title" is used in Article 144 concerning border measures, although there is no clear indication in the draft regarding what is meant by that phrase. Similarly, in Article 148 concerning border measures, reference is made to infringement of only "industrial property right," which suggests protection for the specific types of "industrial property" noted in Title I, Chapter I, Article I (basic meaning) rather than "copyright and related rights," (also noted in Article One) which should also be entitled to protection in accordance with Articles 50 and 51 of TRIPS. In addition, at various points in the draft, reference is inappropriately made to defined terms in Chapter II, Article 4. For example, in Article 63, reference is made to a requirement of Article 4(5) regarding cancellation of a registration, when that specific article is the definition of an "industrial design and model."

One important change should be made to clarify the time for filing a patent and or trademark application in Rwanda insofar as the "right of priority" is concerned and noted in Article 27 as well as referenced in Article 93. The priority right under Paris Convention Article 4(c)(1) is measured from and uses the date of filing of the **first** application. Article 27 seems unclear in this respect. Another addition to the Draft Law that should be made is a requirement that an application for registration of a geographical indication should include something like the following: "a certificate by a local competent authority that indicates (i) the characteristics or peculiarities of the goods are due exclusively or essentially to the geographical environment, including natural and human factors as well as production traditions, of the location, and (ii) the applicant is located in and operates a business in the location (c) that involves the production of the goods.

In furtherance of its efforts to be a WTO member, and as part of its goal of having the IP of Rwandan nationals protected in other countries as well as attracting foreign companies to do business and invest in the country, Rwanda should become a member of additional IP conventions like those identified above.

In summary, the Draft Law suggests that the government desires to engage in the implementation of a meaningful and effective intellectual property rights system that will be of benefit to the business environment in Rwanda.

- Participation in preparing, updating, and monitoring the implementation of the national land policy
- Supervision and monitoring of the National Land Centre
- Advising MINITERE on the confiscation of land from those who do not maintain it properly, do not exploit it, or do not have any right to it
- Monitoring and approval of land expropriation to pursue activities in the public interest
- Approval of action plans of land commissions at the city and district levels.

MINITERE has the right to enjoin decisions contained in reports submitted to it by the National Land Commission within seven working days from the day it receives a copy, if the report contradicts existing land legislation or infringes upon the public interest.

In addition to the National Land Commission, there is a Kigali commission[88] and commissions at the district level.[89] These commissions report to the National Land Commission. The responsibilities of land commissions at the district level include:

- Monitoring the inventory of escheated land and the remaining land that has no persons with rights over it
- Submitting to the National Land Commission a report on unused or underused land so that the state may requisition it or relocate it to people who shall put it under productive use
- Monitoring land registration and allocation
- Monitoring the compliance of land lease contracts.

Presidential Order No. 53/01 of 12/10/2006. This order determines the structure, powers, and functioning of the Office of the Registrar of Land and sets forth the basic structure for the National Registrar of Land Titles. The Office of the Registrar has the following powers:

- Signing certificates of land titles and long-term leases
- Certifying that land has been allocated on freehold terms
- Certifying that land is leased under a long-term contract
- Registering and deleting mortgages on immovable property
- Supervising auction sales provided for in mortgage contracts
- Certifying deletion of mortgages on immovable property
- Transferring mortgages
- Certifying loss of a land lordship certificate on the basis of a judgment issued by a competent court.

The Registrar of Land Titles also has the authority to coordinate the activities of deputy registrars of land titles.

Ministerial Order N° 001/2006 of 26/09/2006. This separate order determines the structure of land registers, and the responsibilities and functioning of the district land bureaus. The order sets forth the structure of the land registries themselves. There are meant to be three types of land registers: a cadastral register, a register for short-term lease contracts, and a register for long-term lease contracts. In addition to a national registry office, the order creates district land bureaus in areas considered cities, towns, or trading areas. The district land bureaus are responsible for implementing land registration and issuing land ownership certificates. The bureaus are also required to manage land registers and to update them as required.

Inheritance Law. Customary law in Rwanda has traditionally discriminated against women with respect to the inheritance of real property. Women encountered significant barriers in reclaiming their property after the 1994 genocide, mainly due to discriminatory customary law. As a result of a Law on Matrimonial Property and Succession (Inheritance Law) enacted in 1999, Rwandan women can now inherit property from their parents or husbands. Among other components, the law enables widows whose deceased husbands' male relatives had already inherited their property to reclaim it. Notwithstanding these legal advances, the daily reality of discriminatory land inheritance practices continues to impact most women's lives.

[88] Membership of the Kigali Land Commission includes two representatives of the Kigali City administration, two representatives of civil society from farmers' associations, and one representative of the PSF.

[89] The land commission at the district level exercises its authority in the entire district, and is composed of the following five members, whose responsibilities include land administration and land-use management: two representatives of the district administration, two representatives of farmers' associations, and one representative of the PSF.

A new draft mortgage law is meant to be presented to Parliament in 2008.[90]

Implementing Institutions

At present, the system of land registration in Rwanda is in transition. The government is in the midst of an ambitious program to create a formal land tenure and registration system for the entire country. Thus, the discussion and description of land registration reflects processes that are changing and those that reflect both old practices as well as newly introduced ones. Where possible, this chapter discusses processes that are intended to be put in place within the next several years.

Ministry of Lands, Environment, Forestry, Water and Mines (MINITERE). At the national level, MINITERE is the primary implementing institution for property registration.[91] It possesses the legislative mandate and authority for land administration and the management of systems for urban and rural land registration. MINITERE is responsible for land registration for the whole country with the exception of land overseen by the Kigali City Council, which administers and maintains its own land register. In practice, formal land registration has been undertaken for only a small portion of the country, with the focus on urban areas and those in rural areas under commercial agriculture or owned by churches. Because of this and because of the current time it takes to formally register property, Rwanda does not conform to international best practices currently.

The World Bank's most recent *Doing Business* report indicates that completing a single property transfer in the largest city of an African country costs, on average, 12% of the value of the property and takes more than 100 days on average.[92] Where Rwanda lags behind other neighboring countries is with respect to the time it takes to register property. In Burundi, it takes 84 days, and in Uganda, it takes 227 days. Rwanda, in contrast, requires a reported 371 days – it takes longer than one calendar year to register real property.

Currently, Rwanda carries out limited land registration on a centralized manual system on a demand-led basis in rural and urban areas. The Kigali City Council has been autonomous in terms of land administration since 1998. The city follows legal policies, laws, and bylaws set forth by MINITERE with respect to land-use planning, land registration, and land taxation; otherwise, its land administration system it totally independent of that operated by MINITERE. In 2002, the city contracted with an external firm and outsourced the process for creating a modern cadastre and registry for land and revenue management.[93] This project moved the whole process of land surveying and registration

Key Implementing Institutions

- Ministry of Lands, Environment, Forestry, Water and Mines (MINITERE)
- National Land Centre
- National Land Registry
- National Land Commission
- District land bureaus
- Kigali City Council
- Rwanda Revenue Authority

[90] Kabona Isiara, "Rwanda: Housing - BCR Launches Mortgage Financing," *The New Times* (March 6, 2008), *available at* http://allafrica.com/stories/200803060322.html.

[91] The mission statement of the Ministry of Lands, Environment, Forestry, Water and Mines consists of insuring a rational management of lands, and taking care of the conservation and protection of the environment in view of a sustainable human development. According to the Ministry, the fulfillment of its mission is assured through:

- Preparation and supervision of management programmes for lands and environmental protection
- Elaboration of policies and laws regarding lands and environmental protection
- Coordination and monitoring of the implementation of policies and laws regarding lands and environmental protection
- Establishment of a land system which makes the overall population feel secure and guides the necessary land reforms for a healthy management and a rational utilization of national land resources
- Improvement of the human welfare, rational utilization of national resources, and protection and rational management of ecosystems for a sustainable and equitable development.

[92] World Bank, *Doing Business 2008* (2007).

[93] The Kigali City Council received technical assistance from Sweden. *See* Tommy Österberg, Mohamed Khadash, and Kholoud Saad, Rwanda – Kigali City Council (KCC) Cadastral Information System (paper presented at Promoting Land Administration and Good Governance, 5th FIG Regional Conference Accra, Ghana (March 8–11, 2006)).

from conventional paper-based methods and techniques to an automated service. Prior to the initiative, all land management for Kigali was done manually with paper copies of all documents.

Summary of Property Registration Steps in Rwanda
(Source: World Bank *Doing Business* 2008)

No.	Procedure	Time to complete	Cost to complete
1	Request a certificate from Land Registry	30 days (simultaneous with step 2)	RWF 3,200
2	Obtain assessment of true value of the property	10–60 days (simultaneous with procedure 1)	RWF 200,000
3	A notary from the Ministry of Justice authenticates the sale agreement	3-7 days	RWF 10,000 (copy of sale agreement) + RWF 7300 (notary services)
4	Register the sale agreement with the Rwanda Revenue authority	60 days	6% of the property value + RWF 4500 (fixed costs)
5	Finalize registration at the Registrar of Real Estate and obtain new deed	180-360 days	RWF 6,500

Step 1.Request a certificate from the Land Registry (Service des Domaines) confirming the identity of the property owners and the title status. This is considered a due diligence measure for the buyer to determine the current status of the property (e.g., any encumbrances or liens). This procedure is not required by law but is done in practice. Participants in the World Bank's *Doing Business* survey noted that the procedure can be slow. The World Bank has recommended a series of targeted reforms in response to its findings. In the area of obtaining a certificate from the registry, the World Bank lists two targeted, short-term reforms (to take place in less than five months): clearing the backload of existing files and documents to ease information retrieval, and establishing a request form to request the letters that are submitted. The Land Registrar is the institution responsible for implementing these measures.

Step 2. Obtain an assessment of the value of the property. The law requires that a land assessment expert from the Service des Domaines or from the Office of Urbanism and Housing make an assessment of the "true value" of property. Buyers may also hire a private expert. The charge for a government-employed expert is RWF 15,800. These experts are reportedly in high demand. Because of this, the valuation process can take over two months. Until recently, if the value was above the sale price, the property transfer tax would be calculated on the higher assessed value. Private experts reportedly charge around RWF 200,000 and may take between 10 and 60 days. The World Bank recommended the establishment of a low, flat fee for registration of property and mortgages, and this recommendation was recently accepted: Presidential Decree N° 02/01 of March 31, 2008 created a new list of fees charged by Districts. Article 10 of the Decree provides that "the transfer of property ownership resulting from the sale, donation, inheritance, buying from public auction and mortgage registration for loan acquisition purposes shall be charged a fee of twenty thousand Rwandan francs (RWF 20,000) irrespective of the value of the property, its cost or the loan's amount."

Step 3. Authenticate the sales agreement by a notary from the Ministry of Justice. The law requires that a notary from the Ministry of Justice authenticate the sales agreement. Parties usually ask the notary to draft a sales agreement. The parties sign the agreement in the presence of between two and four witnesses and a public notary. The contract is then executed in six copies. One is kept with the notary, two each are given to the buyer and seller, and the sixth copy goes to the Land Registry. The typical sales contract length is three pages with another three pages for the notarized act. The cost for this procedure should not exceed RWF 10,000.

The World Bank recommends that the registrar establish standardized forms to authenticate sales agreements. This would eliminate the step that requires a notary's assessment. It also recommends equipping the registry office with more notaries to authenticate sales agreements.

Step 4. Registering the sales agreement with the Rwanda Revenue Authority (RRA). The parties to a sale must re-register the sale agreement with the RRA**.** If the property is already registered with the Land Registry, the sales agreement registration fees, until

recently, amounted to 6% of the sales price or the valuation, whichever is higher. The parties are also asked to request a certificate from the RRA that they are in good standing regarding their tax payments (referred to as an *attestation de non creance*). The RRA's services are in high demand, and the time required to obtain such a certificate can exceed three months. A proposal to scrap the 6% registration fee was recently accepted, and the recent Presidential Decree replaced that fee with a more affordable flat fee of RWF 20,000.[94]

The Chief Land Registrar (Conservateur des Titres Fonciere) requests in writing that the RRA confirm whether the transacting parties are in good standing. If the seller, who is given copy of the letter, follows up in person, he or she can obtain a response in about one month. The World Bank recommends eliminating this step from the procedures for land registration.

Step 5. Finalize registration at the Registrar of Real Estate (Conservateur du Titre Foncier) and obtain new deed. The seller takes the authenticated sales agreement, the registration receipt, and the certificate of good fiscal standing to the Land Registrar and files a request for a transfer of property. This is the lengthiest part of the process. For the transfer of property to be effective, the registrar has the sales agreement signed by both parties and two witnesses from the Services des Domaines in front of the Conservateur due Titre who will authenticate the sales agreement. A new property title is prepared and signed by the registrar who then voids the old title. The World Bank recommends establishing a time limit for the final transfer of property title at the district level. The World Bank specifically notes that the time can be reduced to 30 days once a filing system is in place in each district registrar's office. This reform is listed as a medium-term reform.

The World Bank has also noted improvements in the registration process. Namely, the existence of a land bureau/registry in each district has made the procedures more accessible to many users. The time to prepare the registration documents was reduced from seven to two days.

[94] Kabona Isaria, "Doing business: Property registration fee scrapped, more reforms proposed to govt" *The New Times* (Rwanda), *available at* http://www.newtimes.co.rw/index.php?issue=13452&article=4443.

As for fully implementing the registration reforms contemplated by the new Land Law, MINITERE's current priorities are as follows:

- Finalizing the secondary legislation required under the law
- Finalizing the procedures and regulations for land title registration and land administration
- Producing guidelines for land registration and public advice
- Establishing the National Land Centre – preparing the office of the registrar to open for business
- Establishing fully functioning district land bureaus.

Rwanda has developed a draft strategic roadmap (SRM) for accomplishing a full rollout of its land registration program. The draft SRM provides that the implementation of national land tenure reform will take place in four phases:

- Phase 1 (2005–2008): Short-term preparation of the implementation plan and phasing of reforms (current phase)
- Phase 2 (2009–2011): Medium-term implementation
- Phase 3 (2012–2016): Five-Year Plan 1
- Phase 4 (2017– 2021): Five-Year Plan 2.

Under this framework, all land in Rwanda could be formally registered under the new Land Law and administration system by the end of Phase 4 in 2021, with every Rwandan having formal rights and supporting documents for their land.

There is still debate concerning the cost of land registration. In the urban areas, land registration is meant to provide cost recovery for MINITERE. At the same time, the government has acknowledged that cost recovery for rural areas is not feasible initially. Thus, the government should give additional consideration as to how the costs of first-time registration for individuals in rural areas should be handled. Some stakeholders suggest that the first property registration should be free for such individuals.

MINITERE's capacity for land administration is supplemented by: (1) the establishment of a National Land Centre to provide technical and administrative support to the National Land Commission as a central land data bank of all land information in the

country;[95] and (2) the establishment of national, provincial, and district land commissions. There will be a land office (sometime referred to as land bureau) in each district with the main role of surveying land parcels and registering land titles. This will be done under the supervision of the district and sector land commissions.

National Land Centre. Based on the 2005 Land Law and 2006 regulations, land administration will be operated at the national level through the creation of a National Land Centre. The Centre will provide technical and administrative support to the National Land Commission. This will include the important role of archiving information on land conflicts and adjudication. The Centre will maintain a National Land Register as a spatial database of land registration information for both the national and local land registration systems. The Centre will not register land itself, as that activity will be progressively decentralized. Districts and municipalities will transfer or provide access to key registration information to the National Land Register. This information will provide the basis for a national overview of land allocation.

National Land Register and National Land Commission. A National Land Register is necessary to monitor land registration activities throughout the country, provide information on trends, and safeguard against undesirable appropriations. The National Land Commission will receive regular updates on the status of the National Land Register and determine appropriate actions as necessary. During the transition period, National Land Register staff will support and provide training for decentralized land registration.

Will MINITERE, the National Land Commission, and the National Land Register be able to meet their operational goals and timeline? As of October 2007, the government identified some of the steps that need to occur in 2008 during the remainder of Phase 1 of its implementation plan. This requires the completion of several more pieces of secondary legislation and the commencement of an IFC-funded Land Registration Support Project in the amount of US $3.2 million over three years. MINITERE aims to make a public announcement by mid-2008 that the National Land Registry is "open for business," at least centrally and in the four registration trial districts. Land-titling and registration procedure manuals were to be completed in the first quarter of 2008, but whether this has occurred is unclear.[96]

District land bureaus. As of October 2007, 11 out of 30 districts had established district land bureaus, which are planned to serve parallel with the National Land Registry. To date, the duties of district land officers have been established and stamps, letters, and seals are ready for them to use. In a conference focused on land title implementation, it was noted that, now and in the future, any letter pertaining to land transfer that is not signed by a district land officer will not have legal value.[97]

Field-testing of land tenure standardization was launched in 2007. Three trials clarified land rights for over 2,800 households on over 14,000 landholdings.[98] The question remains, however, as to whether, and how, the land-titling methods can be replicated in other parts of the country in order to achieve the first national registration of all land. Some of the issues that officials have flagged based on the initial field trials include issues such as:

- Status of urban land settlement (planning, resettlement, plot densification, and rights of informal settlers)

[95] Id. The proposed Land Centre will have four technical units and one support unit. The National Land Registry Unit is meant to maintain the National Land Register. The Spatial Services Unit is meant to manage geodesy, mapping, and spatial data management. The Spatial Co-ordination Unit will be responsible for the collection and coordination of spatial development information. The Training and Decentralization Unit is tasked with training participatory planning teams and supporting the decentralization of services. The Support Unit will provide support to the Centre's administration, management of human resources, finances, procurement, logistics, security, and maintenance of equipment.

[96] "The draft SRM includes proposals for an LTR [Land Title Registration] Support Team to operate from 2008 to 2011 that would concentrate solely on field regularization and processing of records for delivery to the Registrars. This would enable the District Land Bureaus to concentrate on development of procedures and systems and deal with day to day land-related business. The Support Team would set targets and priorities in coordination with the District priorities, the Office of the Registrar and MINITERE." Id. at 7.

[97] Republic of Rwanda, MINITERE, *Phase 1 of the Land Reform Process for Rwanda Development of a Strategic Road Map Workshop on Strategic Road Map to Land Reform* (October 2007), at 5. A summary of proceedings is *available at* http://www.oxfam.org.uk/resources/learning/landrights/downloads/rwanda_land_tenure_reform_workshop_oct_07.pdf.

[98] Id. at 7.

- Rights to use wetlands (tenure arrangements, use, and management)
- Problems arising from land consolidation and subdivision (inheritance, fragmentation, and land sharing)
- Family inheritance rights and land registration (need for more concrete advice).99

Two of the first land registration trials took place in the Biguhu cell (Ruganda sector, Karongi District) and the Nyamugali cell (Gatsata sector, Gasabo District). Contrasts were noted between the relatively greater importance of inheritance as a means of access to/acquiring land in Biguhu (rural) and of purchase in Nyamugali (urban). It was also pointed out that the majority of people taking part in land tenure registration in both areas had no documents to support their claim to ownership.[100]

Supporting Institutions

Notaries. Notaries are integral to the property registration program and are employed as civil servants. In the past, a shortage of notaries has increased the time it takes to register property in Rwanda. The government has reportedly increased the number of notaries in its employ, which has improved the registration process ever so slightly. The World Bank is also assisting MINITERE and the registrars with developing standardized forms so that a notary's evaluation of a land sales contract will not be required in the future.

Key Supporting Institutions

- Notaries
- Property assessors
- LandNet and other NGOs
- Courts and the legal profession

Property assessors. Property assessors are also important to the registration system at present – both public and private. It is unclear whether there are sufficient assessors available to meet demand.

LandNet. LandNet is the primary NGO that has represented civil society interests during the land reform process. LandNet Rwanda was created in 1999 in connection with DFID-initiated work to establish an Africa-wide network of national chapters of LandNet Africa. It is itself a network of local and international NGOs dealing with land policy issues in Rwanda, and has strong DFID and Oxfam connections. In Rwanda, CARE International provided early support, detailing a staff member to work on setting up the organization and providing initial office space, services, and modest initial funding. Most of LandNet Rwanda's constituent organizations are based in Kigali, but organizations in the field provide it with a strong understanding of land issues and rural issues generally. While the relationship between LandNet and the government has generally been positive, tensions have been evident when the network has taken the initiative to lobby senior politicians.

Other NGOs. Another knowledgeable and influential NGO providing input into issues relating to land is the national farmers' organization, IMBARAGA. In general, however, experts have noted that there is room for greater engagement with civil society on land reform – both to raise awareness of the new laws but to also to gain greater input into issues relating to rural land registration, land consolidation, and land disputes.

Courts and the legal profession. Land disputes reportedly represent a large percentage of cases brought before Rwanda's formal court system. The effectiveness of the courts is discussed at this report's chapter on Enforcing Contracts. In general, it is critical that Rwanda's judges be informed about the content and implications of the country's new legal regime as it pertains to real property, including the Inheritance Law. Meaningful training in real property law should be an emphasis within all law-related training institutions, including law schools, the legal training center, and training programs for legal professionals.

Social Dynamics

Fragmentation. As noted, much of Rwanda's smallholders have plots that are less than 0.5 hectares. The new Land Law contemplates that land consolidation will occur based on the new titling system which provides for access to credit and a larger market for property, given the titling system. Some land experts note, however, that land fragmentation in Rwanda has been a "coping strategy" of using different plots for different crops in different seasons and, because of this, gains from consolidating land may not be as high as expected.

99 Id.
100 Id.

Note on intellectual property

Rwanda has not yet ratified WIPO Internet treaties, but steps to implement and enforce the WTO TRIPS agreements have taken place. Intellectual property bills covering patents, trademarks, and copyrights have been adopted and will soon be sent to parliament. According to news reports, an intellectual property registration service agency is "due to be established" but does not yet exist.

Nearly four years after WTO members agreed on a procedure for poor countries to import generic versions of patented medicines that they are unable to produce themselves, Rwanda has become the first country to notify the WTO that it intends to use it. It filed a notification (IP/N/9/RWA/1) on July 19, 2007. Rwanda informed the WTO that it expected over the next two years to import 260,000 packs of the HIV/AIDS drug TriAvir, manufactured in Canada by Apotex, a major generics producer headquartered in Toronto. It specified, however, that it might modify this quantity, as "it is not possible to predict with certainty the extent of the country's health needs." As a Least Developed Country (LDC), Rwanda did not have to prove that it lacked manufacturing capacity. Under WTO rules, LDCs are not required to provide patent protection to pharmaceutical products until 2016.

The WTO Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS) allows governments to issue "compulsory licenses" –effectively suspending patents – to permit the generic production of essential medicines without the consent of patent holders. It stipulates, however, that drugs produced in this fashion should be "predominantly" for the domestic market, providing minimal help to countries that have little or no pharmaceutical manufacturing capacity. To address this, governments agreed in August 2003 on how to waive the domestic consumption requirement to allow poor countries to import drugs produced under compulsory license elsewhere.

Participation in land reform. There is still an issue of whether smallholders, farmers and other individuals have participated as fully as possible in land reform. This relates to the question of whether many individuals are aware of changes in Rwanda's Land Law. The need for strong state intervention and for technical activities prior to fully reforming the process led Rwanda to take a top-down approach to the initial phases of land reform. At the same time, the decentralized nature of land registration does provide room for local involvement – providing room for bottom-up involvement. The membership of local land councils, for example, would be one way in which local stakeholders could become more engaged in land reform.

Public awareness. The evolution of the policy and law was preceded by an elaborate consultation process with stakeholders countrywide. In view of the cost and timing, the numbers of people and meetings may not have been as large as expected. However, taking into consideration the length of the process (eight years) and openness to debate with stakeholders, particularly LandNet, it is clear the government intended to be transparent, even on such a sensitive issue as land. Even though the government was transparent, it is unclear whether a handful of knowledgeable NGOs are sufficiently representative of the entire Rwandan public. There is no doubt that the principal stakeholders – peasants – are not aware of the Land Policy and Land Law. The level of advocacy for land is still weak in Rwanda.

Gender inequality. In order to address gender inequities in land ownership, Rwanda passed legislation in 1999 that states that male and female children have equal rights to inherit their parent's property, both prior to and after the death of a parent. There remain, however, a number of obstacles to effective implementation of the law. First, the law only applies to civilly married women: Long-term unmarried relationships are not covered by the law. Many couples do not get legally married because of the expense, and polygamous households are not legally recognized. Second, the Land Law stipulates that women can inherit land as guided by the inheritance law. The Inheritance Law (Article 90) states that the Land Law will further detail how women can inherit land. Thus, the current formal law concerning women's inheritance rights in property is unclear at best.

Local administrators in rural areas suggest that, with the extra pressure on the land represented by the

entry of women as legitimate inheritors of family land, the ban on subdivision of plots smaller than two hectares will be difficult to enforce. Monitoring implementation of the law, by researchers who have experience in gender issues and are aware of the effects of the war and genocide on gender relations, will be essential in order for it to have a positive impact.

Recommendations

To raise the Doing Business scores . . .

- Publicize the Land Law more broadly. The Land Law and policy require further dissemination.
- Clarify ambiguities in the law. Optimal land use is important in land-scarce Rwanda. Suggested solutions for consolidating land and "villagisation" need to be well elaborated, sequenced, and participative, including clear articulation of "public purpose" expropriation for national "optimal land use."
- Accelerate the strategic road map. It is important to accelerate the road map and land reform implementation process to limit speculation and support smallholders.
- Reinterpret existing laws. Given the new administrative units in Rwanda, the Land Law and policy need to be reinterpreted and adjusted for coherence, especially concerning how new proposed land institutions will be affected.
- Build staff capacity. Details of the new institutions have not yet been determined in terms of composition and participation of different groups; appropriate institutions for effective land administration will also require building staff capacity.

To strengthen the overall environment for Registering Property . . .

- Involve civil society organizations in policy implementation, especially through raising awareness and dissemination of the key aspects of policy, capacity building, and monitoring of the socioeconomic and gender impacts of land consolidation and "villagisation." There are large gaps in capacity between urban-based NGOs and rural organizations, and national and international organizations. It is important to build the capacity of local NGO networks to advocate for the land rights of the poor. There is an urgent need to create a workable strategy to promote non-farm activities, based on realistic projections, rather than an overly optimistic model, because of the large number of people who may become landless in the near future. This should involve regional as well as national solutions, and the EAC, COMESA, AU, and other organizations should be directly involved.
- Monitor implementation of the inheritance law and provide direct assistance to women who seek to enforce their rights under the law.
- Conduct further research into the effects of HIV/AIDS on land rights, particularly for women and children, and use the results to guide amendments to Land Law and policy.
- Make land commissions representative of society. The composition of the land commissions should include representatives of those "voiceless" sections of society who are most easily marginalized.
- Inventory households and types of problems of livelihoods facing households caught up in the rural-urban enclave – likely victims of "public purpose" expropriation.
- Raise awareness. There is lack of knowledge of the land reform process among all stakeholders; communication, awareness, and broad participation is recommended through "managed engagement." Participation of all stakeholders, especially the rural poor, should be given priority.
- Promote accession to additional IP conventions and treaties.
- Revise the Draft Law on the Protection of Intellectual Property to correct inconsistencies and clarify the intended effect of unclear provisions.

GETTING CREDIT

Introduction

Lending in Rwanda presents a complex picture. On the positive side, substantial reforms have lowered the costs and risks of lending. *Banque Nationale du Rwanda* (BNR – the nation's central bank) has led the banking system through impressive changes and currently is implementing a comprehensive Financial Sector Development Plan.[101] Since 2000, nonperforming loans have dropped from roughly 60% to approximately 23%. These improvements are reflected in the changing investment climate, with a number of reputable foreign banks actively seeking investment in Rwandan banks.

At the same time, there is still significant risk of non-collection. The enforcement system is weak, as are standards for business records, so banks currently charge as much as 9% in risk premiums to their less qualified borrowers. High inflation (currently over 10%) drives up the cost of money, forcing up commercial interest rates, which leads to less affordable credit.

The availability of affordable credit arises from a complex system of laws, regulations, standards, practices, and knowledge. Credit terms – interest rates, fees, and maturities – are affected by a wide range of forces, from prudential regulation of banks to availability of personal identity cards. This Gordian knot of challenges, however, can be understood and addressed effectively through a comprehensible, comprehensive approach.

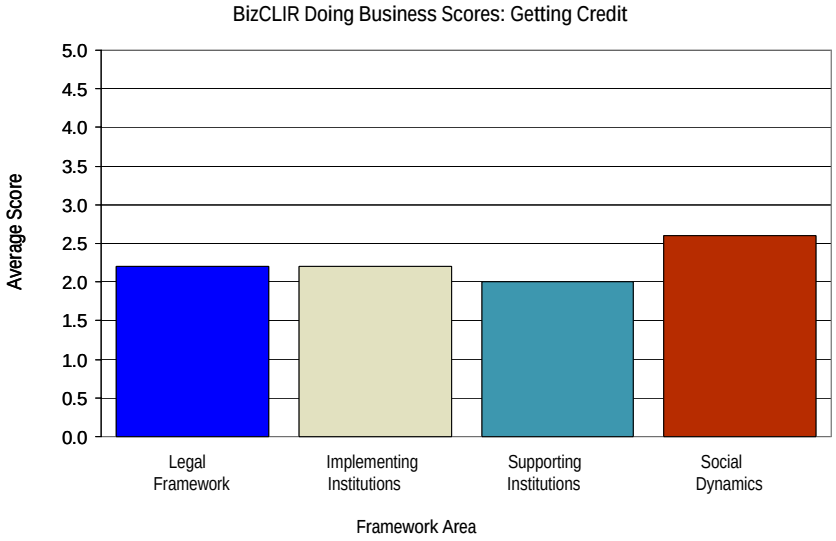
Lenders, like all businesses, prosper when revenues from their services exceed the costs and risks of providing those services. Banks, microfinance institutions (MFIs), and nonbank financial institutions (NBFIs) such as leasing companies cannot simply absorb these costs or risks; instead, problems in extending credit must be priced into the terms. Risks, even more than costs, are hard to manage and identify, so higher risk leads to higher interest rates, shorter terms, and higher fees.[102]

Getting Credit

Doing Business Ranking 2008	158
Doing Business Ranking 2007	156
Credit information index	2
Public registry coverage (% adults)	0.2
Private registry coverage (% adults)	0.0
Legal rights index	1

These costs and risks occur on the demand side of lending (among potential borrowers) as well as on the supply side (among banks). Rwanda has problems on both sides of the equation that need to be addressed systemically, systematically, and comprehensively over time. Much work is underway, but given the country's exceedingly high demand for investment finance and commercial credit, much more work is still needed.

Doing Business ranks Rwanda 158th out of 178 countries for Getting Credit. The World Bank's measures look primarily at the status of credit



[101] The FSDP, supported by the multi-donor FIRST Initiative, is a comprehensive analysis and framework for reform. The following analysis was conducted independently and without prior reference to the FSDP, but has arrived at essentially the same approach and conclusions.

[102] The link between lending risks and terms has been well documented. *See, e.g., Diffusing Default: Incentives and Institutions,* ed. Marco Pagano (Development Center of

information and the ability of lenders to register and enforce interests in collateral. These aspects of the issue are essential, of course, but are only the tip of the iceberg. This report analyzes that iceberg more extensively, including bank regulation, secured lending laws, enforcement, leasing, and insurance, as well as other laws and institutions affecting the availability of credit.

The BizCLIR indicator scores for Getting Credit are consistent with Rwanda's poor *Doing Business* ranking: namely, the area of access to credit is one of the weakest aspects of the country's business environment. These BizCLIR scores are reflected in the graph at the beginning of this chapter. In all aspects – legal framework, implementing institutions, supporting institutions, and social dynamics – the BizCLIR scores are generally negative. This chapter points out exceptions to the problems along with opportunities for reform, and further presents a lengthy list of recommendations to improve the country's performance in this area.

Legal Framework

The legal framework for finance and credit is comprised of a variety of laws. These laws, when rightly designed, enable lenders to reduce costs and manage risks more effectively, while helping potential borrowers to establish their creditworthiness and meet their repayment obligations. Rwanda is addressing gaps in many of the fundamental laws using international best practices through the Financial Sector Development Plan (FSDP), which is overseen by BNR. Long-term success requires a comprehensive approach: this part of the BizCLIR diagnostic outlines the comprehensive framework for reforms in a way that can serve as a complement and supplement the FSDP.

Key Laws

- Law Relating to Regulations Governing Banks and Other Financial Institutions (1999)
- Land Law (2005)
- Insurance Law (1982)
- Tax laws (detailed in the Paying Taxes chapter)
- Presidential Decree N° 02/01 (March 31, 2008) (concerning lending)
- Draft Secured Lending Law

the Organisation for Economic Co-operation and Development: Washington, DC, 2001).

Banks and MFIs. Rwandan banks are generally liquid, but their rates and terms are considered unaffordable to many potential borrowers: interest rates on commercial loans are generally upward of 18% annually, with 200% to 400% collateralization (notwithstanding legal limits on collateralization that are significantly less). The problem has been magnified by relatively high-interest government bonds (with rates as high as 8-11%), which compete against riskier and more costly loans to potential commercial borrowers. These rates are now falling, but ongoing problems with inflation tend to offset the gains from these improvements.

There is considerable progress in the Rwandan finance industry. Commercial banking (other than microfinance) as of 2006 reached approximately 30,000 borrowers and 125,000 depositors, out of a total population of more than 9 million.[103] In the arena of microfinance, there are tens of thousands of active loans – although readily available numbers are not complete, Banques Populaires, the country's largest MFI, reportedly has extended over 600,000 small loans, with a core set of borrowers being small enterprises owned by women.[104] Moreover, a number of foreign banks have invested in Rwanda and others are showing strong interest,[105] including Barclays, which is currently examining investment opportunities.

Banks and other financial institutions are governed by Law No. 08/99 Relating to Regulations Governing Banks and Other Financial Institutions, plus a number of more recent regulations and instructions. As the country's central bank, BNR supervises banking and finance. The banking community is generally satisfied with the regulatory regime and finds the prudential regulations generally appropriate to the Rwandan lending environment. This report does not delve deeply into these regulations in light of ongoing competent work among the BNR, banks, and development-partner community, but instead

[103] African Development Fund, Rwanda Poverty Reduction Strategy Support Program, Phase II (June 2007), at p. 23, n. 1, *available at http://www.afdb.org/pls/portal/docs/page/adb_admin_pg/documents/operationsinformation/Rwanda- percent20PRSSP percent20II.pdf.*

[104] See Anthony Faiola, Women Rise in Rwanda's Economic Revival, W. Post, May 16, 2008, at A01.

[105] Actis, FINA Bank, Nigerian Access Bank and Ecobank have already invested; Barclays Bank is considering the purchase of a 70 percent stake in Banque de Kigali. "Rwanda: Barclays Looks to Buy into Big Bank." *East African Business Week (Kampala),* March 32, 2008.

highlights several areas of concern for further development of law, practice, and regulation. (*See also* Implementing Institutions: BNR, and Social Dynamics: Cash Flow Lending for other observations and recommendations.)

A number of representatives from banks, MFIs, and NBFIs complain that the regulatory regime has been designed as a "one size fits all" system, despite distinctively different regulatory needs for different types of institutions. Rwanda appears to need to tailor its regulatory regime to the type of financial institution being regulated. For example, some individuals note that nondepository institutions are subject to many of the same requirements as deposit-taking banks. Clearly, the political will for such an approach is present: BNR created simplified regulations for a recently created microfinance bank (MFB), the first of its kind in Rwanda, thus distinguishing the needs of the new MFB from the needs of MFIs. The financial system would profit significantly if BNR would now work with other institutions to make similar adjustments. This should be a high priority.

The practice, if not the law, on bank receivership needs to be developed. In the past year, BNR liquidated eight MFIs due to insolvency. While perfectly legal, this was not necessarily the best option. The closings prompted a run on the banks because they sparked reasonable fears among depositors that other banks would be closed. One banker reported that 30% of deposits were withdrawn as a result of perceived risk by depositors, thus dramatically reducing the capital available for loans. Receivership is often preferable to such closures, allowing for possible rehabilitation. Receivership also tends to avoid the widespread impact of dramatic closings. Likewise, a purchase and assumption approach could also provide a viable alternative to liquidation, especially given the shortage of qualified management and its limitations in a receivership setting.

The legal and technical infrastructure for automated payment systems and automatic teller machines (ATMs) should be completed. Although automated payment systems are working, bankers report the need for additional adjustments and investments in switching hardware and software. The base system, however, is quite good, with the capacity to serve as a credit card switching system for much of Africa, and certainly East Africa.

The lack of automated teller machines (ATMs) in Rwanda, particularly international ATMs, increases the costs of obtaining cash for the average account holder and regional or international residents, and even tourists. Rwanda has the potential to become a regional financial center, but needs to complete the ATM and switching systems to ensure a full range of cost-effective banking services.

New developments in low-cost banking using cell phone technology are showing promise in other African countries, enabling MFIs and MFBs to expand services to the rural poor. USAID has already agreed to provide Rwanda with information and results from mobile banking projects in West Africa, and BNR is in communication with the Central Bank of Kenya regarding an East African Community (EAC) harmonization project to support mobile banking. In addition, several MFIs are exploring the possibility of piloting such systems, but will be unable to do so until appropriate legal guidelines, protections, and regulations have been established. Filling this gap should have high priority.

For all legal and regulatory reform, the finance community has expressed the desire for BNR and the Ministry of Finance to employ a more open policy development and drafting processes. Although both institutions have received praise for participatory processes, several respondents note that the system is often rushed, with inadequate communication of proposed reforms. A more systematic, formal system for input and comment would improve ownership, adoption, and implementation of new policies and directives.

Capital markets. Broadly speaking, the term "capital markets" refers to the complex set of interactions and institutions that bring together those who need additional capital with those who have surplus capital available. Thus banks, government treasury notes, nonbank financial products, insurance, pension funds, venture capital, and stock markets are all a part of the capital markets. When working well, they reduce the cost of capital by establishing efficient markets for exchange and capital expansion. Likewise, they reduce risks of investment and lending through prudential regulation of registered entities.

In keeping with Rwanda's aggressive business environment reform program, BNR has launched the Rwanda Stock Exchange (RSE).[106] The RSE, which opened on January 31, 2008, will initially offer government and private bonds, followed later by equity shares. The RSE is open to foreign and national investors and will become the platform for the next round of government privatizations. On opening day, the Banque Commerciale du Rwanda floated its first-ever bond, seeking 5 billion in Rwandan francs (approximately US $9.3 million) through a five-year, 8% note. Since then, the government has offered two bonds worth RWF 10 billion (approximately US $18.6 million), at 8% and 9% on two-year maturities. In addition, four Kenyan stock brokers have registered with the exchange, suggesting the RSE is on the way to achieving its goal of attracting regional investment.

The underlying legal structure for the RSE is beyond the scope of this report. Input from various investors, however, provides a useful direction for ongoing development and refinement of the exchange.

First, one of the functions of a stock exchange is to lower risk through careful management of traded stocks and bonds. Risk can arise both through experience and *perceptions*, whether or not perceptions are borne out in reality. To ensure a higher level of comfort to international and national investors, the RSE should create investment vehicles of the same type with which international investors are already comfortable. Most, if not all, existing and potential investors on the new exchange have significant experience in foreign capital markets and are looking for familiar investment mechanisms, even in unfamiliar territory. Special care, therefore, should be given to ensuring that investment products are developed according to international standards and experience.

Such development is a matter of both substance – what goes into new laws, regulations, and product offerings – and process – the way each is developed. The banking community of Rwanda, although generally quite pleased with the overall approach and governance of BNR, has also noted that BNR would benefit by establishing a more open policy and regulatory process. Some bank representatives note that initial openness in seeking outside input on laws has sometimes fallen short as the process developed, with BNR treating drafts and comments as confidential documents not available to interested parties. Such secrecy undermines investor confidence. Moreover, all regulators need input from stakeholders as they develop, implement, and monitor policies and regulations. Some of the noted procedural shortcomings are certainly due to the accelerated pace of reform underway, which has not left ample time during this phase for more stakeholder participation. As conditions regularize, BNR should revise its existing policy processes to ensure a higher level of ongoing input and feedback from stakeholders.

Recently, the government of Rwanda has improved its performance on treasury notes. Over the past few years, rates have varied from 8-11%, crowding out commercial lending. This year, the rate has dropped to 6%. The high rates on government bonds have been partly a function of risk as the government of Rwanda proves its reliability over time, but also a function of high inflation; both are improving. Further savings should be realized as well when BNR automates the T-bill process for secondary market trading. BNR has been working with the U.S. Treasury Department and the World Bank on automation.

Creditworthiness can only be established over time through consistent discipline in meeting credit obligations. Rwanda is moving in the right direction to rebuild trust in the government, especially through the introduction of performance management, customer service orientation, and responsible handling of government obligations. In fact, the government is introducing the self-discipline of paying late fees on failure to meet contractual obligations. Even so, there are gaps in creditworthiness. One lender notes that his institution will not accept government contracts as a basis for lending to contractors because of the government's poor reputation for timely payment, even when there are no questions of contractor performance. The government can improve its credit profile through a concerted program of honoring debts in a timely manner. The result is lower risk and greater volume in the capital markets.

[106] "Rwanda Opens Stock Exchange," *Business Daily Online, available at http://www.propertykenya.com/news/520509-cobrand!*;"Rwanda: Stock Exchange Lists First Corporate Bond," *AllAfrica.com* (February 15, 2008), *available at http://allafrica.com/stories/200802150037.html*; "Rwanda Issues Another $9m Bond", Rwanda Investment and Export Promotion Agency (RIEPA) (February 12, 2008), *available at* http://www.rwandainvest.com/spip.php?article409.

Rwanda's capital markets are rather shallow at this point. Various instruments are used in many countries to expand capital, such as derivative instruments like mortgage-backed securities. Such instruments allow lenders to aggregate their numerous smaller accounts, package them, and sell or obtain loans against them. A number of Rwandan respondents have expressed interest in developing a secondary market in mortgages, which can be quite attractive for investors. The primary problem with that, in the short term, is that the underlying mortgage and real estate market is unsound. A program to create mortgage-backed securities should establish a long-term strategy for strengthening the primary market, in combination with careful, participatory policy development and the drafting of appropriate laws and regulations. Some finance professionals estimate that Rwanda is 10 years from being able to offer such mortgage derivatives; this may be an exaggeration, but work on the problems should begin immediately. USAID has provided some assistance on real estate market development through the International Real Property Federation; more work is needed.

Credit information bureaus. Rwanda has no private credit bureaus to date, and the public credit bureau managed by BNR has limited coverage and utility. The country's poor *Doing Business* ranking for Getting Credit is due largely to this poor credit information system. Credit bureaus are discussed at length in this chapter's Implementing Institutions section below, but it is important to note that an underlying legal framework must be established to support improvements in this area.

No independent review of the underlying laws and regulations for the public credit bureau was undertaken for this diagnostic because the International Finance Corporation (IFC), the world's leader in assisting countries in establishing credit information, is currently working with BNR on updating the public bureau, as discussed further below.

However, improving the public credit bureau will not suffice. The government and donors should support the development of private credit information bureaus as well. An effective legal framework to support such efforts will require the development of appropriate access to personal data, software development for information sharing, contractual models for obtaining information from a wider range of credit providers (utilities, phone service providers, credit card companies, leasing companies, as well as banks, MFIs, and other NBFIs), and regulatory changes to require regulated institutions to provide appropriate information.

Secured lending. Lenders provide credit when they are certain they can get the principle and interest back. To the extent they have doubts, lenders either do not lend, or they raise the rates to cover loss and risk of loss.

Secured lending is the foundation of the credit system.[107] It permits borrowers to establish their creditworthiness and eventually graduate to some degree of unsecured lending. It also increases the quantity of available commercial finance by allowing borrowers to leverage their assets for additional loans.

In Rwanda, this foundation is deeply underdeveloped. Secured lending on real property is problematic; on movable and intangible property, it is almost nonexistent. Fortunately, reforms are underway that will provide the basis for a healthy credit environment, but it will take time. Consequently, interim measures are also needed to ensure improved access to credit while the foundations and framework are being established.

Real property and mortgages. Real property is the principal form of collateral in most countries today. It is considered less risky precisely because it is immovable and therefore impossible to hide or remove. Even so, land and the buildings on it may not have value to a lender if the market or the underlying legal system and enforcement practices are poorly developed.

Rwanda's real property legal framework, regulated by the 2005 Land Law, is undergoing significant change through the government's reform program that could prove to be very positive. At present, all land is owned by the state. Companies and individuals can obtain long-term leases on land, and such leases permit the holder to build upon or otherwise develop the property, subject to zoning restrictions, environmental rules, and other regulations. These leases can be sold and transferred, buildings can be sublet, and in general

[107] In the United States, it is estimated that 60 percent of commercial lending is secured with movable and intangible property (such as receivables). *See* Heywood Fleisig, Mehnaz Safavian, and Nuria de la Pêna, *Reforming Collateral Laws to Expand Access to Finance,* at 7, *available at* http://www.ceal.org/ceal-org/publications/IB_02.pdf.

the property and buildings can be treated as if the underlying land were owned by the leaseholder. The lending community, however, is not satisfied that the current system appropriately addresses their risk concerns. There are several reasons for this.

First, in a transitional time such as this, leases are not as secure as ownership. Such security comes through years of secure dealings with government, in which the terms of the lease are honored as conditions change, such as a change in government. For example, much of London's financial district is built on land owned by the crown and provided to investors under 99-year leases. These leases are only marginally less valuable than actual ownership because the royal family has been honoring these leases for hundreds of years subject to a rule of law. Rwanda's reforms are only a few years old. Whether they will be honored through the next regime change is unknown. Consequently, lenders are uncertain that long-term commitments will be honored and, thus, are less willing to lend long term based on the existing leasehold system.

The government is now considering a switch to private ownership. Development partners and financial institution stakeholders should encourage and support the move to private property. Property rights provide the basis for economic freedom and concomitant economic growth.[108] Private ownership of land has also been shown to result in greater investment, higher building quality, and even lower family size, an issue of great current concern for Rwanda.[109] Property rights are also the foundation of mortgage and construction lending.[110]

Second, land redistribution is creating uncertainty in the lending market. Newspapers regularly report redistribution of larger, presumably underutilized landholdings to the rural poor. The need for such redistribution is clear: most Rwanda farmers hold less than one hectare of land, hardly enough to escape from poverty and subsistence agriculture. The process of redistribution, however, has given rise to strong popular perceptions that the basis for dispossession is political rather than legal. As a result, lenders may not be willing to lend on large landholdings that might be dispossessed prior to repayment. As a policy matter, therefore, the government should publicize the basis of land redistribution to ensure transparency, certainty, and clear indications of the rule of law. Otherwise, perceptions of risk can depress mortgage lending.

On a related theme, a recent program by the Ministry of Agriculture has raised some important questions about the nature and sanctity of property rights. The program *requires* farmers in certain lowland areas to plant maize instead of sweet potatoes or other traditional crops. The farmers hold leases on the land in question. According to Article 23 of the Constitution of Rwanda, "Private property [which includes leasehold rights], whether individual or collective, shall be inviolable. No infringement shall take place except for the reason of public utility, in the cases and manner established by law, and in return for fair and prior compensation." The issue at stake is whether the government can mandate crop selection "for the reason of public utility." If so, land use from year to year can become uncertain, such that banks and other lenders will be reluctant to extend loans beyond a single growing season, if that. (Moreover, crop choices by government are seldom as economically profitable as crop choices by farmers.) If basic property rights are uncertain, the mortgage and agricultural lending markets could suffer. The constitutionality of this program needs to be settled, hopefully in favor of private property rights, for the market to respond effectively.

Third, as discussed in this report's chapter on Registering Property, Rwanda's land registry system is currently far from sufficient. The civil war devastated records of rights in land, and these records must now be rebuilt. Such rebuilding is underway, but it tends to be a slow process worldwide, and Rwanda is unlikely to be an exception. Even so, it is possible to create a higher degree of certainty in the short term. One method is by using traditional forums, such as *gacaca* to settle land disputes and issue documents. Eventually, such title documents should be linked to registered descriptions of the land in a cadastre. Currently, banks are lending against title documents, despite the absence of a full registry or cadastre, but risks are perceived to be higher. If they could register their claims in a centralized, easily accessible registry, this notice would reduce the risk of fraud. Consequently, BNR and other appropriate stakeholders should develop a notice registry for claims against real estate to be incorporated into the pledge registry project described below for movable property lending.

[108] See Richard Pipes, *Property and Freedom* (1999).

[109] Sebastian Galiano and Ernesto Schardofsky, Property Rights for the Poor: Effects of Land Titling," *available at* http://economics.uchicago.edu/pdf/ Galiani_022706.pdf.

[110] Id. Contrary to expectations, titling alone has not necessarily led to increased credit for the poor.

Mortgages are used in Rwanda, based on leasehold rights and ownership of buildings. As noted, their overall security is undermined by the existing registry system. There have been other problems as well, although some have been recently addressed. Until recently, registration of mortgages or transfer of property was subject to excessive fees, fees that added to the overall cost of the transaction without bringing similar benefit to the registration authorities. For property transfers, the fees were a percentage of the stated value of the property. For mortgages, they were 2% of the value of the loan. In other words, neither fee was related to the cost of registration, but instead both were structured as revenue-generation fees – the higher the transaction, the higher the fee, without regard to complexity or simplicity of services provided.

Fortunately, this has changed. Presidential Decree N° 02/01 of March 31, 2008 created a new list of fees charged by Districts. Article 10 of the Decree provides that "the transfer of property ownership resulting from the sale, donation, inheritance, buying from public auction and mortgage registration for loan acquisition purposes shall be charged a fee of twenty thousand Rwandan francs (RWF 20,000) irrespective of the value of the property, its cost or the loan's amount."

This was an important move, one that demonstrates an understanding of certain key priorities. Indeed, revenue generation is best handled through taxes for a number of reasons. First, Rwanda has a relatively shallow and precarious real estate market at this time. Credit costs are high – too high for most potential borrowers, given the limits of 70% lending against property value and short maturities (often only seven to ten years). Excessive transfer fees put real property purchases beyond the reach of many potential buyers, buyers who would invest in homes or businesses if they could afford it.

Recent reforms may help alleviate another problem. Studies elsewhere in Africa have shown that when transfer taxes on real estate are too high, new owners simply forego registration. As a result, one South African township found itself with a high percentage of unregistered ownership only ten years after substantial investments were made to provide owners with title. In short, the cost of registration was not worth the perceived benefits of registration among the poor.[111] One unintended consequence of overpriced registration, then, is degradation of registration.

There is another common problem with overpricing. In order to keep terms affordable, parties often understate the price of the property to lower the taxes.[112] The impact of such understatement is that it distorts important market information and undermines the validity of contracts because the stated terms do not match the real terms of the transaction. Given that this ubiquitous practice is a survival, coping strategy that eliminates the expected revenues, it is best to support the integrity of the market through rational, cost-recovery pricing that does not cause market distortions.

To improve the environment for construction and construction lending (major economic drivers), Rwanda needs a modern condominium law. The existing legal structure does not sufficiently recognize the condominium structure, in which individuals or companies can own specific portions of a building outright. To achieve a similar effect, clever investors are using a cooperative-type arrangement based on contract, in which they are issued shares corresponding to the square meters they wish to own and given sole use rights of that portion of the building. Such cooperative agreements are useful, but condominium ownership is an additional, needed tool, especially for finance. The law should ensure that lenders can take an interest in future premises (that is, apartments not yet build) as a means of raising construction capital.

While not strictly a legal issue, the mortgage market suffers from mismatched maturities in the capital markets. Borrowers generally need long-term financing for mortgages on real property investments. For the most part, Rwandan banks take in short-term and demand deposits which must be paid regularly. If they lend funds on a long-term basis, they are unable to meet current obligations effectively. Banque Commerciale du Rwanda recently floated a five-year bond on the stock market to increase its medium-term capital, but more work is needed. Secondary markets and other instruments

[111] Karol Boudreaux, *The Effects of Titling in Langa Township, South Africa*, Mercatus Policy Series, Policy Comment No. 4, George Mason University (2006), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1027012*.

[112] This ancient practice has afflicted many countries and classes, and was even undertaken by none other than William Shakespeare, who appears to have understated the price of a home purchased in Stratford in 1597 to avoid excessive registration fees. Bill Bryson, *William Shakespeare: The World as Stage* (New York: Harper Collins, 2007), at 121.

are necessary to establish long-term sources of funds to support real estate development.

Moveable property lending and leasing. The existing legal framework in Rwanda is wholly inadequate to support modern financial practices using movable property as collateral, as reflected in the Doing Business scores. In fact, there is no single law that properly or adequately establishes a basis for collateral lending or a pledge registry.

Fortunately, the IFC has undertaken support and establishment of a collateral lending system, including an electronic, notice-based system. The Draft Secured Lending Law is a sound, modern law based on international best practices as advanced over the past several years in other countries. Additional changes may be required during the vetting process, but can be left to the capable input of the IFC and its advisors. It will also need to be accompanied by electronic signature and other supporting laws for an accompanying electronic registry.

The importance of the movable property regime cannot be overstated. Movable and intangible property (primarily accounts receivable) provide additional bases for lending. In modern economies, borrowers can package their accounts receivable and inventory together and offer them as security to banks in order to obtain working capital, commercial loans, or other forms of finance. By providing notice of any claims in such property through a national electronic registry, lenders can reduce risk and costs of risk management, thus avoiding conflicting claims in the property in the event of default. Rwanda needs such a system if it is to attain the levels of credit required to achieve growth goals.

Microfinance institutions already use movable and intangible property as collateral for MFI loans through contractual pledges. Micro-lenders report the pledge of consumer goods, sales agreements, inventory, and other contract rights, which they secure through a series of contracts and deposit with local authorities. Although useful, these mechanisms are more costly and less efficient than rights granted through a modern collateral registry system. High priority should be given to completion of the collateral registry system.

Leasing is a form of secured finance. It differs from strict secured finance in that the lender maintains ownership of the property rather than the borrower. As such, it is generally easier for the lender to enforce the agreement through seizure of property, although secured loans can enjoy the same rapid recovery if the law permits.

Technically, Rwandan law permits both operational and financial leases.[113] In practice, however, financial leases have been almost eliminated due to double taxation that makes them unaffordable. This problem arises because the leasing company (at present, only banks are actively leasing) must pay an 18% value-added tax (VAT) on the purchase of the equipment. The borrower (lessee) then must pay an additional 18% VAT on each payment, leading to a total tax rate of 36% on the base transaction. Additional taxes apply, of course, on any profits made from the leasing transaction under the corporate tax code. To worsen the situation, the leasing company must pay the additional VAT on payments even if the borrower defaults on those payments. Several banks have discussed discontinuing leasing altogether in light of the excessive costs.

Leasing can be preserved by eliminating this double taxation. In theory, banks or leasing companies can claim a tax refund on the VAT they pay. In practice, these refunds are quite difficult to obtain; require expensive and time-consuming paperwork, bookkeeping, and follow-up; and are often delayed for months. Tax authorities and the leasing industry would be better off by eliminating one of the two VAT requirements. This would also save time and money for the tax authorities, who would then not have to dedicate resources to processing unnecessary refund applications.

The leasing industry would also profit by reforming leasing law to permit hire-purchase arrangements. This is a form of payment over time in which the borrower builds equity in the equipment being purchased. It has proven quite useful in the United Kingdom and British Commonwealth members, although it is less common in other jurisdictions.

[113] Operational leases are generally used when a company, for example, desires use of equipment for a specified period of time that is significantly less than the useful life of the equipment. For example, a two-year truck lease, in which the company walks away from the truck at the end of the lease, would generally qualify as an operational lease. A financial lease is different in that the intention throughout is to transfer ownership of the equipment at the end of the lease. It occurs when the lender purchases equipment, then leases it to the borrower under terms that permit the borrower to pay off the price plus interest, then purchase the equipment for a nominal fee at the end of the lease.

Leasing has proven to be extremely effective for expanding the credit supply across a wide variety of industries. In mature economies, leasing can be used for a range of equipment, from vehicles to tools to office furniture. It can even be used very effectively in the dairy industry.

Insurance. Insurance plays a substantial role in access to affordable credit by lowering risks of loss for both lenders and borrowers, by funding capital markets, and by promoting a culture of accountability as insurers combat fraud.

Rwanda has a relatively new, and extremely thin, insurance system. Originally launched as a monopoly in 1975, competition was introduced in 1982 under Law No. 18/82, which liberalized the industry under the supervision of Commission Nationale de Contrôle des Assurances (CNCA). Today, there are four insurance companies competing for insurance business, but generally competing only across a small percentage of the population, due in part to the high level of poverty in the country.

Insurance regulation appears to be improving. CNCA has introduced a plan to have insurers separate accounts for their automobile coverage from general accounts. This decision is based on recognition that companies are generally cross-subsidizing automobile coverage, keeping prices artificially low by paying claims from profits of other insurance lines. Consequently, CNCA is concerned that the financial health of insurance companies may be compromised.

According to lenders, the cost and quality of insurance products to protect their lending risks is generally satisfactory. The range of products – life, health, and accident – is generally sufficient for their risk management needs. They find prices to be acceptable and are pleased overall with the integrity of insurance companies in their payment of claims. There is, however, one significant exception to this otherwise healthy picture.

Few, if any, agricultural risks can be insured in Rwanda. Crop insurance is virtually nonexistent. Likewise, farmers are unable to obtain livestock insurance. This is not simply a matter of insurance companies being unwilling to take risks, nor does the legal framework impede development of such products. Instead, the agricultural sector does not yet have sufficient capacity to identify and mitigate agricultural risks.

In part because of this gap, it is very difficult to obtain agricultural finance in Rwanda. To address this problem, a comprehensive program is needed to develop the necessary resources for introduction of affordable agricultural insurance. Several development partners and NGOs have begun to pilot micro-insurance products for small producers that may be appropriate in Rwanda,[114] but other products are also needed for larger-scale operations.

Another potential problem may be growing. Insurance companies often end up in court for disputed claims, but Rwandan court procedures are slow and costly, increasing the cost and price of insurance services. Specialized insurance arbitration may be a better, more cost-effective approach to disputed claims.

Agricultural lending. Insurance is not the only problem for agricultural credit. Assistance is also needed in developing appropriate lending products for agriculture. Agricultural economic activity is cyclical, requiring low or deferred payments until harvest. Most Rwandan banks offer products with regular, equal payments that are inappropriate for agricultural production. Several micro-lenders have introduced specialized products featuring interest-only payments until harvest, when principal becomes due. Coverage, however, is insufficient to meet the extensive needs of the agricultural sector, involving some 80% of Rwanda's population.

Additional study is necessary to develop an appropriate strategy for reaching producers who need credit. In particular, methods are needed to increase affordable credit to Rwandan equipment and input providers who can on-lend to individual farmers as needed. Economies of scale may simply not permit affordable direct lending to each producer. However, processors, cooperatives, traders, and equipment suppliers are often in a more viable position to obtain credit, which they can then extend to their customers or members. For example, processors can use contract farming agreements to supply cash or inputs before harvest; cooperatives can obtain loans for bulk purchase of seeds and provide credit to their members. The larger unit is normally a better credit risk and has greater familiarity with the specialized needs of their end users. Improved credit products for such borrowers will require development of the pledge

[114] *See, e.g.*, The Microinsurance Centre LLC, http://www.microinsurancecentre.org/, which specializes in insurance products for the poor.

registry system noted above,[115] along with an improved framework for mortgage lending on agricultural land.

The European Union and USAID have provided various guarantee programs to reduce risks to banks of agricultural lending. Such guarantees have been helpful, but additional work is needed to reduce the actual risks. Pairing credit guarantees with risk-reduction programs could provide an effective system for increasing credit in the short term while ensuring long-term availability of affordable finance.

Taxation. Taxes, while necessary, have significant cost implications for lenders. The way taxes are administered through assessment and collection can increase the risks of lending. If the costs and risks are too high, taxes can have a very negative impact on the availability of affordable finance. As intimated in the discussion above on VAT on leases, both tax levels and administration may be having an unacceptably negative impact on access to credit in Rwanda.

With respect to Paying Taxes, Doing Business ranks Rwanda the best in the Great Lakes region – 50th overall. Aggregate tax rates are approximately 34%, and complexity of filing is reasonable, although it could certainly be improved. However, the impact of taxes on credit arises from different issues.

First, Rwandan tax rules are not yet well understood by businesses or tax collectors. Many of the rules are new, and many tax collectors do not have an adequate understanding of business to properly apply rules related to deductions and depreciation. As a consequence, numerous Rwandan businesses and banks complain that tax liabilities are uncertain because it is difficult to predict what will be allowed or disallowed. This raises business risks, which in turn raises the risk premium charged by banks. Moreover, inappropriate tax assessments raise the costs of paying taxes, through both higher tax liabilities and the added cost of protesting the assessment.

While these are not unusual problems, the issue has been exacerbated in Rwanda by very aggressive audits and unnecessarily punitive assessments. There is almost unanimous agreement among stakeholders that the tax authorities are at best overly enthusiastic in their audits, if not overly aggressive. Unfortunately, businesses do not find the same level of enthusiasm when seeking advice on how to handle certain deductions or accounts. A number of respondents complained that they had unsuccessfully sought instruction on tax liabilities in order to establish their accounts properly. Upon audit, tax authorities found the accounts noncompliant and assessed penalties retrospectively rather than demanding correction and assessing penalties based on failure to correct.

These issues have a credit impact because they affect the ability of borrowers to repay their loans in light of unexpected tax liabilities, and because they affect the perception by lenders of the risks of lending to businesses with unproven accounting systems. They also have a negative impact on formalization. Several lenders reported anecdotes of formal businesses deciding that it was too "dangerous" to remain formal under such aggressive tax enforcement and returning to the informal sector. Informal businesses have much less access to finance.

Aggressive tax compliance programs have a positive impact on business accounting and should not be discouraged. In light of the newness of the rules and systems to all stakeholders, including the tax authorities, a more gracious approach seems appropriate over the next few years, until the standards have been established. This suggests that improved customer-service orientation and improved dialogue between the tax authorities and businesses could reduce unnecessary costs and risks, especially if combined with increased training of tax collectors in business operations and accounting. In addition, improved technical training will be necessary. Rwanda is moving from a Francophone accounting system, designed primarily for tax audits, to an EAC system, based on International Accounting Standards, which is designed for improved enterprise financial management. Tax auditors will need to learn the differences in the systems to effectively serve their customers and perform their duties effectively.

This customer-service orientation should be applied as well to the tax appeal system. Currently, tax appeals are made directly to the revenue authorities. If unsatisfactory, the taxpayer can then complain to the Ministry of Finance. During the process, however, assets may be frozen or seized based on a presumption of guilt. These tactics can devastate a

[115] For a more complete explanation of secured lending in agricultural markets, see "Bringing More Dead Capital to Life," USAID's Rural and Agricultural Finance Initiative, at n. 8, *available at* http://www.microlinks.org/ev_en.php?ID=16097_201&ID2=DO_TOPIC.

business, and the inefficient appeals process only adds to the damage. Several taxpayers also note that the revenue authority needs greater independence to determine propriety of assessments without political interference.

Two other tax issues affect credit. One is the perception of selective enforcement. Many respondents expressed concern that less-favored investors are being singled out for excessive attention by tax authorities, while other more-favored businesses – such as government-owned or politically-connected business – are ignored. As one investor stated, "I am currently favored. That could change without warning. If it does, I may have to disinvest."

Such insecurity affects investment, but to the extent it is shared by banks, it also affects risk perceptions through increased cost of capital. These perceptions can be addressed, at least in part, through increased transparency regarding the basis for choosing companies that will be subject to audit. Better yet, the audit should be based on selection systems that target companies based on clear, published guidelines, including random selection.

A second problem arises in the area of tax liens. Under current law, tax liens take priority over all other claims, including registered, secured claims by lenders. Because tax liabilities are not always clear in advance, especially under the new, still unsettled rules, lenders cannot effectively predict potential problems. Unregistered tax priorities amount to a hidden lien or claim on the assets used by a lender to provide security. The possibility of an unknown and unknowable tax liability substantially raises the risk of lending and reduces the availability of affordable credit in the marketplace.

The problem can be addressed by reforming existing law so that tax liens take priority upon registration only over claims not registered before the lien. That is, the tax lien would be subordinate to existing, *registered* liens, but have priority over all other claims. This is increasingly the best practice being adopted worldwide by countries as they introduce modern secured lending. It has several added benefits: registration requirements instill discipline in revenue authorities to file their claims immediately and to abide by the rule of law; and registered tax clams inspire greater payment discipline by tax debtors. Both of these would improve the overall risk environment for lenders in Rwanda.

The tax system in Rwanda is discussed at greater length in this report's Paying Taxes chapter.

Accounting. Rwanda currently suffers from a confused and confusing system of accounting standards, exacerbated by a lack of well-trained accounting professionals. The impact on access to credit is significant at several levels.

Accounting is fundamental to good corporate governance and proper business practices. Without proper accounts, a business is more difficult to manage and is at a higher risk of failure, or at least hardship. Proper accounting requires a clear set of published standards as well.

Rwanda is currently in transition. Having once been a party to French accounting standards, the country is making a move to international accounting standards (IAS) more common to commonwealth countries in the region and in international practice. In addition, there is a separate system of outdated accounting standards – the International Accounting Plan (IAP) – which is different from both. For a lender to conduct a proper evaluation of a wide range of Rwandan businesses, it is necessary to have specialists in three different accounting systems, a rather expensive proposition.

Given that 60% of foreign investment generally comes from neighboring countries, Rwanda would do well to accelerate regional harmonization of accounting standards by adoption of a new accounting law based on IAS, and eliminating use of other standards such as IAP. IAP is currently required under some laws, despite adoption of IAS by the BNR. Neighboring commonwealth countries have already made this move, and such harmonization will be necessary if Rwanda is to become a regional financial center. Such standardization will enable Rwanda to improve accounting skills by specializing in a single, uniform approach that can be applied by all businesses for business and tax purposes. Notably, the Draft Company Law currently under consideration incorporates IAS as the accounting standard for corporate governance purposes. The Draft Law is discussed in the Protecting Investors chapter of this report.

The regional standard has an added benefit. Rwanda currently has a shortage of trained accountants, yet Kenya, Tanzania, and Uganda have a surplus. Accounting reform should be accompanied by a program for attracting skilled accountants from the

region to provide services and training to Rwandan accountants. If accompanied by a regional accounting certification program, then Rwandan accountants could eventually provide services elsewhere in the region as well. Improved accounting will improve the health of businesses, rationalize tax compliance, and decrease lending risks.

Enforcement. According to one banker, "Getting legal recourse is a nightmare in Rwanda." Others echoed the sentiment that any attempt to assert a claim through the courts ended in delays, uncertainty, and high collection costs. Once in court, a claim can take several years to process and enforce.

Enforcement is the heart of risk management. If loans cannot be enforced in a reasonable time for reasonable costs, banks are unwilling to make them. Where enforceability is uncertain, banks will over-collateralize to improve their prospects of recovery. Lending risks in Rwanda continue to be high, as evidenced by high interest rate spreads and collateralization requirements of 200-300%.

Ironically, the problem with enforcement (as further elaborated in this chapter's discussion of Implementing Institutions and this report's chapter on Enforcing Contracts) is not inefficient or unreliable enforcement procedures, but inefficient and unreliable court procedures *prior* to enforcement. Lenders generally agree that once they receive a favorable judgment in a case, they can enforce the judgment within a reasonable time and upon reasonable terms.

Enforcement is carried out by bailiffs, who are private service providers licensed by the state. According to the bailiffs, the Rwandan legal regime is generally supportive of their work. There are, however, inefficiencies and overlaps in jurisdiction. The law requires a bailiff to register separately in each jurisdiction where he or she works. In addition, local leaders can preempt a bailiff at the village or town level, and then refuse to proceed with enforcement in order to protect the defendant. This, of course, is inappropriate interference in the legal process. To address these issues, the law on bailiffs should provide for national registration and exclusive appointment by the plaintiff or court. In other words, the plaintiff should be able to decide whether the local authority or the bailiff should enforce the claim, and the party chosen should then have exclusive authority to proceed with the enforcement, without interference.

Enforcement can be improved under existing court conditions by simply permitting a greater number of claims to bypass adjudication and proceed to independent enforcement with the court's approval. It is already possible to provide for self-help in a contract, if the contract is notarized and then recognized by the court with jurisdiction over the claim. Wider use of self-help mechanisms would improve enforcement practice and payment discipline. This will require decentralization of notary functions to be practical. With only five notaries in Kigali, the commercial center, it is desirable to authorize licensed attorneys to perform authentication and other basic notary functions so that there are sufficient providers to meet demand.

Competition. Theoretically, the Rwandan banking sector is competitive. There are no legal restraints on competition, nor do stakeholders make any claims that banks act in concert or otherwise avoid competition. Even so, there is limited actual competition because demand for financial services outstrips supply.

Rwandan banks compete only marginally with one another for prime customers.[116] Some are actively seeking to expand their customer base, but others have a reputation as little more than private funding vehicles for the owners, with few loans being made to depositors of the banks. Improved regulation can address such problems over time.

A more competitive banking sector will evolve as the overall financial system is improved. Normally, this leads to improved terms as lenders try to attract better customers by offering benefits based on the borrowers' credit rating. Without competition, creditworthiness does not necessarily translate into individualized benefits. To the extent that this is not happening, regulatory intervention may be appropriate.

Competition is not only a factor within the banking industry. If banks perceive that an industry is dominated by politically connected companies, they may be reticent to extend loans to new investors.

[116] "Prime" customers are those with established positive credit histories, reliable cash flows, and valuable collateral.

Implementing Institutions

Given the large number of legal areas affecting access to credit, there are also a number of implementing institutions charged with proper regulation and application of the laws. An in-depth review of each is beyond the scope of this diagnostic, but preliminary input suggests the basic issues for many of the institutions are the same.

Regulators. Rwanda is in a phase of positive transition. Government agencies are being rebuilt and reformed to have a more proactive, customer-oriented approach. Overall, the business and finance community is pleased with the general tenor of reforms among the implementing institutions.

Ministries and agencies are characterized as having good leadership but low capacity. Several stakeholders complained that it is difficult to find lower-level officials who adequately understand problems and appropriate solutions within the given industries. One also notes that regular turnover – in which competent officials are shifted from one agency to another – is disruptive to ongoing work between government and private sector institutions.

The most significant problem noted was characterized as overzealous enforcement, particularly true of tax and environmental authorities. In the case of taxes, revenue agents are perceived as overly harsh in their treatment of taxpayers, audit findings, and penalties assessed (including immediate account freezing, without benefit of prior appeal). This is worsened by a general capacity deficiency among tax auditors, who frequently have a poor understanding of the underlying business and banking transactions that they audit. This has a chilling effect on business. According to several bankers, penalties assessed against inappropriate documentation have inspired some formal business to stop keeping records because the penalty for no records is less than the penalty for bad records. Others reported that some businesses are returning to the informal sector due to unexpectedly high tax assessments.

In the case of environmental regulation, authorities appear to be taking their responsibilities seriously, but capacity and timing issues have proven problematic. Investors complain that various projects have been stalled or even abandoned either by delays in receiving their environmental approval or by having decisions amended after the project has gotten underway.

Key Implementing Institutions

- National Bank of Rwanda (BNR)
- Credit information bureaus
- Collateral Registry (not yet formed)
- Courts and other commercial dispute resolution mechanisms

Municipal regulation has been problematic as well, when well-intentioned regulators have attempted to shift municipal responsibilities to private businesses. For example, larger businesses are being asked to install waste-treatment facilities or repair and maintain municipal roads serving the business. This has an impact on credit because it creates uncertainty about business costs and, therefore, the viability of the business. Additional unpredictable costs may result in an inability to meet loan payments. While it may become government policy to seek government cost sharing on urban infrastructure with businesses (with appropriate tax deductions), existing law does not authorize such unilateral mandates.

The problems cited suggest the need for greater attention to customer-service skills as well as ongoing capacity development. One of the missing components among regulatory officials, especially tax authorities, is a sufficient understanding of business and credit: operations, accounting needs, and cost and risk issues. Improved understanding of these issues can be very helpful in improving tax compliance without damaging taxpayers. For example, the double VAT on leasing indicates a lack of understanding about how leases work; jurisdictions with healthy leasing industries do not overtax these transactions.

National Bank of Rwanda (Bank Nationale Du Rwanda). BNR is widely respected and well regarded by the banking and finance community. Stakeholders offered strong affirmation of leadership, direction, and overall practices. Specifically, they note very deliberate efforts by BNR to engage stakeholders in developing policy, identifying constraints, and solving problems. BNR has involved the finance community in the preparation of new laws and regulations as well. All these factors have begun to rebuild trust between BNR and the finance community while building greater ownership of the regulatory framework.

Within this generally positive review, there are three weaknesses. First, finance professionals express concern at the depth of capacity at BNR. This

parallels a similar complaint throughout all professions and sectors in Rwanda and requires long-term investment in education, training, and oversight of BNR staff. In the short term, BNR has already supplemented its ranks with professionals from the region who can bring deeper experience, and will certainly need to continue to do so. These professionals can be used in training and mentoring Rwandans while filling immediate capacity gaps.

Second, new approaches are needed for dealing with insolvent institutions. As noted, the sudden and unexpected closing of eight MFIs several years ago led to a run on banks, as well as a lingering problem of decreased deposits from Rwandans who are afraid of losing their money in a closure. The finance community did not question the propriety of taking action on the insolvent institutions, but rather the type and speed of actions. Institution receivership or other work-out strategies could help rehabilitate such institutions in the future, or at least keep the public informed and calm about the impact. In fact, better overall communications between BNR and the public would be a low-cost, useful step in restoring lost confidence.

Finally, although BNR has been generally open about the policy development and drafting process for laws and regulations, the overall process has not been consistent. One stakeholder noted that BNR sometimes treated the process as confidential, denying requests to obtain a copy of the drafts under consideration, which had been openly shared at an earlier phase. BNR (and other agencies) would benefit from establishing, publishing, and disseminating a defined procedure for policy, legal, and regulatory reforms. The procedure should emphasize openness, provide sufficient time for meaningful input, and post drafts on a public website, even if comments are no longer being accepted. This kind of openness allows affected stakeholders to plan more effectively for change.

Credit information bureaus. Credit information organizations provide data on past and present payment behavior of borrowers. Depending on how the bureaus are structured, they can present information ranging from amount of current debt, past debt, defaults and delays in payment, and even history of tax liens, bankruptcies, and payment of utilities bills. This information allows credit managers to adjust terms to risks, rewarding good behavior through better terms while increasing interest or fees or both for higher risk borrowers.

Rwanda's poor Doing Business ranking for Getting Credit is based, in large part, on the absence of a vibrant system of credit information. Fortunately, this deficit is now being addressed.

Public credit information bureau. BNR manages a public credit bureau that has traditionally captured and reported only negative information; that is, it tracks late payments, but has not provided information on good payment behavior. Coverage is low, as only bank loans are covered, and only those loans above RWF 500,000 (approximately US $9,000) are reported. As the World Bank notes, less than 1% of the adult population is covered by the existing system.

Users of the system complain that there can be a lag of as much as six months between the time they report the information and the time it shows up in the public registry. BNR states that the information is upgraded monthly, which appears to be the case now, but negative impressions remain from the past. Moreover, hyper-literal software unduly limits credit searches in the existing system, a particularly vexing problem in a country where spelling of names is not always standardized. This software fails to provide information on variations of a name spelling or other pertinent data, which might have resulted from typographical errors or use of alternate spellings based on language preferences of the person taking information.[117] As a result of current uncertainty, lenders require borrowers to obtain clearance certificates from each of the six commercial banks as a prerequisite to a new extension of credit. This increases operating expenses of banks, which must provide redundant certificates on information already reported to BNR, and expenses of borrowers, who must spend time and effort in obtaining the certificates.

As mentioned in the Legal Framework section of this chapter, the IFC is working with BNR to update every aspect of the public bureau, including software, reporting requirements, and presentation of information for more rapid, reliable public information. As the IFC is the world's leader in assisting countries to establish credit information, it should be sufficient for the task, and no independent review of the underlying laws and regulations was deemed necessary at this time. The models being employed represent international best practices and

[117] "Philip" could be written as "Philippe," "Phillip," or even "Filip," for example, and the software would capture only one of the four based on the name entered in the search.

should be sufficient for Rwanda's needs. Moreover, Rwanda is expected to participate in a regional harmonization initiative in EAC, led by the Bank of Uganda. This will improve both credibility and reach of the system.

While reforming the system, BNR should take measures to expand the available information. The public credit bureau should capture and disseminate information on all positive and negative transactions of all regulated entities, including MFIs, NBFIs, and cooperatives. From a project standpoint, this means that software should be obtained (systems already exist in Uganda and elsewhere) and deployed to capture MFI credit information. Financial institutions are not required to register information on micro and smaller loans. Several MFIs are beginning to collaborate on software that would allow them to create a credit information database, which reflects local demand and will be helpful in protecting MFIs from high-risk borrowers. (In Rwanda, MFIs run an unusually high percentage of nonperforming micro-loans. Worldwide, most MFIs collect 95-98% of their loans; in Rwanda, some MFIs are collecting no more than 85% at present.) This database will be very useful to MFIs, but the utility would be greater if the BNR bureau captured this information as well. Implementing partners have an opportunity to support this reform based on local demand and strong political will for greater information accountability. Such a system could be developed on a regional basis also, achieving even greater economies of scale.

Some policy makers have expressed doubts over the need for comprehensive credit information on small transactions. Indeed, the expense of tracking US $100 (or smaller) loans seems hardly worth the effort, even when made part of routine electronic information collection. The problem is that small loans are the basis for individuals obtaining larger loans, moving from micro to SME business levels. Currently, a good Rwandan micro-borrower can pay faithfully for years and still have no visible credit history to take to a bank for the next level of lending. Those who are faithful in little things will likely be faithful in larger things. In Rwanda, such faithfulness is not yet being captured and rewarded.

Private credit information bureaus. Improved *public* information bureaus will help reduce lending risks in Rwanda, but not enough. Public information is collected by central banks for regulatory purposes. Although useful to lenders, it has been shown to be significantly less useful than information provided by private credit agencies. There are no private credit information bureaus in Rwanda to date. At least one Rwandan investor expressed strong interest in funding the development of one or more private credit bureaus, and it was reported (but unconfirmed during the research for this diagnostic), that at least one development partner is discussing support for such a project.

As a general rule, private bureaus collect more information on more debtors than public bureaus due to their different functions. Public credit information bureaus are normally linked to regulatory responsibilities and, therefore, are normally concerned only with information generated by the regulated financial institutions. Private bureaus are concerned with providing accurate information to various credit providers who want extensive information whenever possible, including utilities payments, outstanding debts, positive and negative payment history, credit card information, mortgages, lawsuits, and other data indicating the creditworthiness of a potential borrower.

As discussed in the Legal Framework section of this chapter, the government of Rwanda and its development partners would do well to support the development of private credit information bureaus by establishing the underlying legal and institutional framework needed so that private investors have the necessary bases for investment. These reforms should be pursued within the EAC context to ensure regional harmonization. Transparency and accountability would benefit greatly if the system tracked payment performance of government agencies as well, enabling creditors to ascertain reliability and government monitors to enforce payment discipline within the government.

Personal identification cards. Two other significant changes are needed for credit information to achieve its purposes of cost and risk reduction. First, Rwanda needs to complete its reform and re-issuance of personal identification cards with unique identifying numbers. Lenders must be secure regarding the identity of borrowers, to ensure that borrowers are not fraudulently covering past negative credit behavior. Although this is possible through tax identification numbers for companies and registered, formal employees, the bulk of the Rwandan population does not have tax identification numbers. The government is currently promoting a program of identification cards as part of improving access to finance; the program should be given high priority.

Registration also serves another function. Success of registration programs depends heavily on trust, among other factors. When individuals are worried that registration could subject them to greater negative consequences than whatever benefits will accrue, they typically avoid registration and its potential benefits. The Rwandan registration program provides an opportunity for the government to reestablish trust, in part through extolling the benefits (such as greater access to credit or better credit terms), and in part through taking a more collaborative approach to tax enforcement (as discussed in more detail below). Of course, such a program should be careful not to oversell the potential benefits; for example, personal IDs alone will not lead to credit without meeting other credit qualifications.

Regional credit information. A second factor should also be carefully considered as Rwanda develops its credit information systems: regionalization. Much of the commerce in the Great Lakes Region is conducted on a regional basis, with various producers, traders, and suppliers crossing one or more of the multiple boundaries in the region. The Rwandan market is also quite small. As a result, there is great need for creditors in Rwanda and its neighboring countries to have access to information on a regional basis. In developing software and legal frameworks, Rwanda should pursue regional integration of credit information. This could include development and implementation of EAC protocols and standards, joint ventures with trustworthy credit agencies from other countries, among other possibilities. Regional credit information will benefit Rwanda's access to finance.

Collateral registry. As noted, Rwanda does not have a collateral registry because it has no modern, notice-registry legal system. The IFC is now funding the development of the law and registry.

Some caveats are in order with regard to the future registry. Registration should be electronic, not paper-based, with national access to the registry by lenders using the registry. Prices of registration should remain low – at a cost-recovery basis – no more than approximately US $10 per registration or transaction. Such a registry requires very few employees – no more than two or three at most because all registration work is done by users of the system online. This is important because it places responsibility for accuracy on the users, not on the government, thus avoiding liability for damages caused through typographical errors or incomplete information. In addition, a low-cost, high-volume registry can produce significant revenues for the government, even with an extremely low transaction fee.

The registry should be developed from existing, Internet-based models from jurisdictions with successful registry systems. It should not be housed by the courts, as there is no judicial involvement needed in a properly constructed system. The registry and law should be developed in tandem as well.

Rwanda should seriously consider expansion of the basic movable property registry to include filings on real property as well. There is no longer a technological reason for a separate notice registry for mortgages or other liens on real estate. Including this function would also help to bypass the long, slow work of rebuilding the land registry system.

Courts and other commercial dispute resolution mechanisms. These are covered more completely in this report's chapter on Enforcing Contracts. For purposes of this chapter, it is important to note the relevance of their effectiveness to credit.

Credit arises from contracts, and contracts are meaningful only where they can be enforced. In Rwanda, there is inconsistent quality and reliability in contract enforcement. For most loans and credit agreements, there is no reason for this. Loan contracts contain no performance terms that are subject to dispute – either the debt has been paid according to the terms of the agreement or it has not. If not, enforcement should be rapid, and the process should protect the lender's interests as rapidly and effectively as possible. Otherwise, risks of default increase, along with costs of collection. Rwanda still has unacceptably high risks and costs for lenders.

According to the finance community, courts are slow and often biased toward the debtor, with judges sometimes ignoring the terms of the contract and accepting unsubstantiated claims that the debtor did not understand the contract and therefore should be released. In fact, such claims should not even be adjudicated as the only defense to nonpayment is proof that payment was made or that the contract was amended, both of which have documentary evidence. Rwanda should take care to reform the courts for rapid, decisive enforcement of loans. Ethiopia adopted a stringent enforcement law

and procedures several years ago, and the system has improved payment discipline while rationalizing enforcement. Rwanda would do well to follow suit.

Supporting Institutions

Banks and banking associations. The six commercial banks of Rwanda are in varying stages of recovery and reform. As of 2000, when privatization began in earnest, the average bank had nonperforming loans (NPLs) of 60%, with some as high as 80%. Today, those portfolios range from approximately 10-25%. NPLs are still too high, but recovery at the fully privatized banks has been impressive. Many of the continuing NPLs involve directed loans, indicating that the shift to market-based, cash-flow lending and the rule of law in enforcing such loans are not fully integrated into the Rwandan financial system.

Banks have far more demand for their products than they can reasonably supply at current levels of investment. One of the reasons for low penetration is the high cost of lending, which makes loans unaffordable to most Rwandans.

One factor elevating the cost (and consequent scarcity of affordable funds) is risk constraints. Interest rates to borrowers tend to run upwards of 18%, although some prime customers obtain rates around 10-11%.[118] Simple mathematics suggests that the risk premium portion of interest rates ranges from 5-7%. This risk is an aggregate of systemic risks (inability to enforce loans, uncertain economic conditions) and borrower risk (moral hazard). Overall, the margins between deposit and lending rates – on average about 8% for prime customers and 14% otherwise – signals need for additional improvement in the risk environment. High-income jurisdictions, such as OECD countries, generally have a spread of no more than 3%.

Key Supporting Institutions

- Banks
- Rwandan Banking Association
- Rwandan Micro-Finance Association
- Cooperatives
- Legal profession
- Accountants
- Business and financial media
- Educational institutions

Another cost factor is operational inefficiencies. Rwanda's private commercial banks have instituted various internal training programs to improve operations, but these staff under-perform compared to bank staff in surrounding countries. One banker estimated that current quality of banking expertise is approximately 40% less efficient than similar banks in Uganda and Kenya. This inefficiency raises the cost of lending, and thus the cost of loans.

The Rwandan Banking Association receives mixed reviews from the finance community. Banks tend to see the association as a forum for addressing the needs and concerns of the banking system by engaging government and BNR to advocate reforms. The association is regularly included in the discussions of policy and regulatory reform for banks, such as advocating a change in the way VAT is handled for leasing. The association is still new and under development, however, and does not always have the capacity to provide services the banks would like.

The Rwandan Micro-Finance Association is considered to be a stronger, better organized body, representing the interests of the numerous MFIs throughout the country. Both the Banking and Micro-Finance Associations are crucial partners in the development of the financial sector and should be formally, regularly and effectively included in all reform initiatives.

Cooperatives. Although this diagnostic did not encompass direct meetings with representatives of agricultural cooperatives, several stakeholders were able to provide some useful comments and insights.

In general, cooperatives serve an important function for small agricultural producers. For the most part, a farmer with only a few hectares under production simply cannot achieve the economies of scale necessary to generate a significant living wage or to promote significant economic growth. In Rwanda, most farmers have less than half a hectare for their production needs. Consequently, they cannot obtain the discounts or efficiencies for inputs and equipment that can be achieved by larger enterprises. Cooperatives enable small holders to aggregate their purchases and obtain better terms, as well as various services or use of equipment that would be otherwise unaffordable to such small producers.

[118] These rates are declining as the cost of money and inflation improve. However, the risk premiums are not affected by those improvements.

Cooperatives can also serve as the principal source of credit for farmers. They can obtain large loans and extend smaller credits to their members. This much-needed service is limited in Rwanda. There appear to be insufficient numbers of cooperatives (or agricultural associations, which serve the same functions) and insufficient lending products to meet the cooperatives' credit needs. More financial products that track the nature and needs of each agricultural industry are needed. As noted by one coffee investor, the finance needs are quite different along the value chain from "crop to cup," and each point in the chain needs specialized products. If the chain does not include cooperatives and associations, or those organizations are weak, then credit is constrained.

Work with cooperatives, however, should distinguish between the treatment of inputs and outputs. One initiative has found that production is reduced when each producer receives an average price for the quality of their products, but increases when premium quality is rewarded with premium prices. Consequently, cooperatives buy inputs in bulk for the entire cooperative, reselling at an average price, but purchase output on an individual basis. This way, those who wish to work harder or more effectively can earn appropriate premiums for their additional efforts.

Legal profession. In Rwanda, the legal profession is underdeveloped. There is insufficient experience in drafting clear, appropriate loan and credit documentation for lenders; for borrowers, there are not enough experienced lawyers to help them understand and negotiate credit agreements. At the same time, low expertise leads to lengthier, less-predictable litigation. Improved training and education will help, but there is also a need for banks, lawyers, and business associations to work together closely with the Bankers Association to establish standardized contracts and forms that provide mutually acceptable starting terms for all parties. Standardization lowers both costs and risks of lending transactions, especially as part of larger reform packages to simplify enforcement procedures.

Accountants. The supply of qualified accountants is inadequate for Rwanda's needs. For that matter, the supply of basic bookkeepers is also inadequate. There are representatives of several international accounting firms who provide services primarily to the economic elite. Midlevel firms have little affordable access to quality accounting services. There is no Rwandan association of accountants, pending passage of a draft law on accounting. The needs are substantial.

The Banking Association, Microfinance Association, PSF, Rwanda Revenue Authority, and BNR should all be closely involved in the development of local accounting norms and standards that comply with IAS. Once established, it will be necessary to revise existing programs and create new ones to train existing accountants while introducing new curriculum into accounting courses for new accountants as part of an overall program to improve capacity in accounting.

Capacity should include identification or development of low-cost, user-friendly accounting software that meets regional norms. An off-the-shelf product with relevant standard accounts could offer a cost effective basis for businesses and business service providers to satisfy the requirements of tax authorities and lenders.

As a general rule, there are two reasons for businesses to invest the time and trouble to install an accounting system: it results in benefits or avoids penalties. Benefits normally come from improved access to affordable credit when banks offer better terms to those with better books. (At least one bank is currently making this offer.) Penalties come from tax authorities when poorly kept books lead to higher tax liabilities and fines.

As previously noted, aggressive Rwanda tax-compliance efforts are driving up the demand for better accounting among businesses. This provides an opportunity. Tax authorities could team with service providers to encourage businesses under audit to upgrade business accounting systems. For example, tax authorities could actually hand out low-cost accounting software, offer courses in proper tax accounting, or provide lists of accountants who can get business books into shape, using an incentive of reduced penalties for current violations, or simply the possibility of not getting penalized the following year. Similarly, tax authorities could offer deductions for reasonable accounting costs, lower rates for automated bookkeeping, or other tax breaks for quality accounting.

Likewise, banks could offer accounting software to customers, offer training, or refer customers to outside trainers and accountants. The PSF could also offer such services, tailoring the accounting to different industry segments. The conditions are ripe for Rwanda to incentivize dramatic change in

accounting practices among businesses, once the accounting system is rationalized.

Business and financial media. The best business reporting in Rwanda comes from Kenya. The *East African* is the news source of choice for business information among Rwandan businesses. Unfortunately, this respected publication covers only a fraction of important financial and business information that affects credit in Rwanda. Rwandan-based media that cover financial issues tend to be superficial, with little useful analysis of trends, government initiatives, or other financial issues.

Educational institutions. Education related to credit and finance is currently underdeveloped. Finance professionals note that graduates of existing Rwandan institutions often do not have the necessary skills in business, accounting, and finance that the degree programs should bestow. Accordingly, skills development is needed for graduates, but new curriculum and teaching methods are needed for existing programs.

Rwanda would benefit from the reform of existing publicly funded schools – in both the university and continuing-education arenas – and the introduction of private schools offering business and accounting studies. Private schools provide competition and tend to drive up the performance of public schools, while offering students choice. Educational reformers should work with the business community to identify gaps in existing education and the needs of business if Rwanda is to be competitive in the region.

Rwanda has a tremendous untapped resource for education and training. The country is the beneficiary of a multitude of development-partner programs, many of which are staffed with experienced specialists. These specialists often concentrate their time in project management activities, as is appropriate to their mission. Many could and would, however, readily lecture, offer training, help develop curriculum, or otherwise provide direct and indirect assistance to improve skills and education in Rwanda. For example, many of the expatriates working in microfinance hold degrees in banking, finance, accounting, and other relevant disciplines, and bring years of management and professional experience. By partnering together, schools, associations, and projects could leverage their resources to address some of the existing skills gaps. Comprehensive reforms are needed, however, to address the wider problems.

Social Dynamics

Increased access to affordable credit is much more than a matter of good laws and proper procedures. Underlying assumptions, expectations, and vested interests, among other issues, influence the social dynamic in which finance reform takes place. Factors include supply and demand for finance and for reform, conflicting norms, transition in governmental roles, and differing conceptual definitions of the problem. Many of these have implications for design, implementation and prioritization of reform efforts.

Supply and demand. In the much-needed efforts to improve access to affordable credit, access to equity is often overlooked.

Most small businesses (especially individual entrepreneurs) finance their initial operations primarily with their own funds and capital. Moreover, Rwandans – like many others in the world – are reported to have an aversion to dependence, and loans are a form of financial dependence. Up to a certain point, they would rather rely solely on their own resources, including those they can obtain from family and friends. The ability to accumulate capital, therefore, is the starting point for growth at the lowest levels.

There are two significant impediments currently to wealth accumulation among Rwanda's poor. First, they have insufficient access to trustworthy depositary institutions where they can accumulate funds risk-free. There are two reasons that they do not use banks or MFIs. First, such institutions do not adequately penetrate the hinterlands, primarily because of the cost of putting up even small banks in tiny, poor communities. This can be addressed in part through the introduction of mobile banking, which should be a priority reform for Rwanda. Second, damaged trust from the run on depositary institutions suggests that BNR needs to introduce more nuanced approaches to dealing with troubled institutions, and that a system of guarantees for deposits needs to be installed, enforced, and communicated.

Another barrier to asset accumulation arises from land policy. Without meaningful, long-term ownership or usage rights, people invest very little in land. Yet such investment is an important part of capital accumulation that is often used as the basis for small businesses, and sometimes results in greater access to credit. Long-term ownership can be undermined, however, if transfer of ownership is limited. Land policies need to ensure that individuals

and businesses can freely buy and sell their property without unnecessary restrictions.

The impact of recent land redistributions on finance is primarily negative. Relocations in Kigali fueled insecurity of ownership among the poor so that they do not invest. Redistribution of large landholdings in the regions creates insecurity among large landholders, who then become reluctant to develop their land fully for fear of expropriation. Banks are less willing to lend against land unless they are certain that ownership rights will survive the duration of the loan. As a matter of land policy, therefore, the government should establish, publish, and disseminate clear, transparent standards for property dispossession, including appropriate compensation. Reasons for dispossession should be highly limited, such as eminent domain, foreclosure, repossession, and judicial penalties as a means of satisfying fines, but only when other resources are insufficient.

Asset accumulation is also undermined by poor business skills. One Rwandan bank conducted a survey in which it discovered that at least 20% of the proceeds of commercial loans to most customers go to noncommercial purposes. Intermingling of personal and business funds is believed to be widespread. By failing to institute proper business and accounting procedures, businesses dilute their capacity to do business, lower their return on investment, and reduce their business assets.[119] Public education is needed to improve understanding of personal and business money management. Actual change will come slowly, but foundations can be laid today.

Supply of credit is a function of risk, with higher risk leading to less credit, or higher priced credit. Risk can be actual or perceived. Actual risks have been addressed above; perceived risks are a separate issue.

Perceived risks come from several sources. Transition itself creates risk perceptions. When laws or policies are reformed, even if the reforms are perceived to be positive, there is a gap between adoption and implementation. Rwanda is undergoing extensive, significant, desirable reforms, but it will take time to work out implementation. In lending, it can take up to five years for a new law, such as a change in leasing, before the law can be tested in court to see if it works. This uncertainty is translated into risk, which banks must guard against in keeping with their fiduciary responsibilities. In simpler terms, they must wait until the dust settles to see how things have come out. Rwanda would benefit from additional credit guarantee programs from development partners to underwrite risks until perception conforms to reality.

One other facet of supply and demand has an impact on financial sector reform: definition of the market. Rwanda has two principal markets – domestic and regional. Most discussion of reform involves domestic considerations. Yet both demand and supply of financial services are regional as well. There is, therefore, a risk that domestic policies, if not aligned with regional realities, might constrain financial benefits at the regional level. Harmonization with Kenya, Uganda, and Tanzania is necessary to fully address financial system constraints and capture the economies of scale inherent in the larger regional market. Fortunately, this is exactly the approach being pursued by BNR.

Conflicting norms. Every society encompasses a varied array of norms and expectations. According to one commentator, "[W]e live in two different worlds – one where social norms prevail, and [another] where market norms make the rules."[120] Political norms – a distinct subset of social norms – add a third layer of competing systems that sometimes intersect and cause confusion in the world of credit.

Social norms define mutual obligations and expectations that define families, communities, and societies. Failure to comply leads to social sanctions, but not legal sanctions. Market norms are set by laws, regulations, and contracts. Failure to comply can lead to court and, as with social norms, can affect future market relationships. Both systems effectively regulate the relationships they define. A problem arises, however, when the standards of one are applied to the transactions of the other.

[119] The problem can be illustrated with a simple example. Suppose a business takes a loan of $10,000 at 10 percent interest. Immediately, the business uses $5,000 (50 percent of the proceeds) to buy a personal car for a relative of the owner. By diverting the proceeds, the business has converted the terms of the loan to an effective interest rate of 20 percent.

[120] Dan Ariely, *Predictable Irrational: The Hidden Forces that Shape Our Decisions* (New York: HarperCollins: 2008), at 68.

Rwanda is a traditional society. At its base are small communities where approximately 80% of the population resides. Moreover, more than 60% live at or below the subsistence level, where social norms are paramount for survival. In this setting, additional resources – such as money – will be used as needed for the protection or advancement of the extended family.

Rwandan bankers consistently complain that there is a problem of social and market confusion. As discussed above, borrowers who obtain business loans will often divert their borrowed funds to noncommercial uses, and Rwandans reportedly regularly commingle personal and business funds. The average business may not even account properly for business assets that define cash flow, revenues, and expenditures.

There is nothing inherently wrong with "borrowing" from the business, nor with seeking to meet the needs of family members with additional resources. However, two problems arise in Rwanda because of this. First, business records are compromised when outflows of resources are not properly accounted for. Rwandan banks note that few borrowers can provide reliable records that truly present the conditions of the company. This leads to increased costs to the banks in examining a potential borrower's accounts, and increased risk if the borrower is perceived to have inadequate business skills to achieve repayment.

Second, social norms present a significant challenge in enforcement. A number of stakeholders note that one of the problems in court proceedings is that Rwandan judges – drawn from a deeply traditional society – are frequently unwilling to enforce the terms of a loan agreement because of the perceived damage to the borrower. With an orientation that seeks to protect the social fabric and not the transaction, a number of judges have been known to rewrite the terms of the agreement or refuse to enforce the terms, thus, in their minds, avoiding a breach in the relationship between lender and borrower. The transaction, however, is sacrificed.

Far from being helpful, this confused approach damages society by undermining the market requirements for lending. Market relationships require enforceable contracts. When enforceability is sacrificed in one transaction, lenders cannot be certain whether any of their loans will be enforceable or what standards are being applied to the terms. This dramatically increases risk, which, of course, increases fees and interest rates while shortening the terms of lending.

This problem is best approached through public education on the nature and enforceability of commercial loans. Such education can be general – through reforms to curriculum in schools and universities and regular stories in the media – as well as specific. Specific education can include better explanation of the terms and implications of loan agreements and how they will be enforced, as a part of the loan officer's interaction with each borrower. There must also be education of judges, lawyers, and other parties to enforcement, emphasizing the damage done to the economy when contracts are not enforced according to their terms.

Political norms represent an additional problem. Rwanda has a legacy of government influence in lending, where loans have been (and to a lesser extent, still are) made based on the political connections of the borrower, not on the borrower's underlying ability to repay. Political loans are repaid through political means – that is, the borrower exercises influence, for example, on behalf of the officials who made the loan possible. Likewise, such loans are sometimes the reward for political acts. In both cases, the "borrower" is not truly a borrower, and there is little expectation of repayment unless the recipient fails to deliver the expected debt.

Political parties, with their own funds, should have reasonable freedom to use those funds for political purposes. The problem arises when the political norms are commingled with market norms, and commercial lenders are used to provide money for political purposes, in violation of their fundamental fiduciary duties to their shareholders and depositors. The impact of the problem can be very clearly seen in the unusually high level of nonperforming loans (NPLs) in Rwanda's banks. Privatized banks have spent several years cleaning up NPLs, yet many still carry NPL portfolios in excess of 20%. These dead loans compromise the financial health of the banks, lower the capital available for additional lending, and increase lending costs.

To address the underlying problem requires greater independence of the banking regulator, BNR. It is the role of BNR to prohibit and sanction political lending, enabling banks to resist pressure for political loans that do not meet commercial banking requirements. This is particularly true of those banks still owned in whole or substantial part by the government, where it is rumored that political loans

are normal. Greater press exposure is also needed to uncover and report on practices that undermine the Rwandan economy. Such exposure empowers banks to enforce loans according to their terms.

Education of public officials is also needed to establish proper limits on political power. Political loans, in essence, are an improper commingling of public and private resources based on inappropriate conceptions of the reach of political power into the market. Public service and public integrity programs, plus better investigation and enforcement against misuse of political power, will help to correct this natural but inappropriate tendency to favor political friends with market resources.

The changing role of government. Rwanda is going through dramatic transition. Society continues to be rebuilt after the civil war, but not simply rebuilt as before. Instead, the government is actively seeking to install and instill a new public service orientation in which government agencies actively engage in dialogue and communication with the private sector, particularly those stakeholders most affected by an agency's work.

This change encompasses far more than making government friendlier. It is a fundamental shift in the concept of the role of government that can put Rwanda on the path to long-term sustainable development. Rwanda's government is moving away from a control mentality to a facilitative form of government. Facilitative governments tend to support economic and personal freedoms and regulate abuses of those freedoms within a relatively free market. Control governments generally seek to control the economy and limit personal and economic freedoms. The current changes in Rwanda represent a significant break with control traditions.

At least with respect to its economic development, Rwanda is moving in the "facilitative" direction through its interactive policy creation and law-making, which create a cycle of accountability and reinforces predictability. The government permits stakeholders to advocate and even obtain greater economic freedoms through constructive dialogue with public officials, officials who often have no way of understanding private sector need without such interaction and exposure. Predictability is built as stakeholders can both influence and observe trends in law and regulation.

This has a very positive impact on the economy and on the credit sector. One of the risks captured in interest rate levels is systemic risk of bad government. Nonresponsive (or irresponsible) governments tend to ignore market realities, commingle private and public funds, and otherwise create risks throughout the market and society, conditions that often give rise to civil unrest as well as market failures. Rwanda's current reforms are moving in the opposite direction, lowering systemic risks and improving the chances of successful growth.

The reforms need ongoing support. Not all public officials have bought into the new concepts. Some public officials appear still to be using their political power to obtain inappropriate personal benefits, or to inappropriately favor friends or political cronies by manipulating government regulation and distorting competition. As a result, some of the reforms so far may be only superficial.

To protect and reinforce the ongoing reforms, Rwanda should incorporate an extensive program of public education on the proper role of government. One goal of such a program is to change expectations of the governed so that corruption and abuse of power are not considered a normal part of government processes. Rwanda's fight against corruption is impressive, moving the country to 111 on Transparency International's *Corruption Perceptions Index*, far better than almost all other African countries. Yet reduction of petty corruption does not necessarily lead to reduced misuse of power for anticompetitive purposes. A well-considered curriculum on civic education should be adopted at all levels of education, from primary to university, emphasizing the nature of the social contract by which government is accountable to the governed. Although this may seem rather distant from issues affecting affordable credit, it is actually fundamental to creating the kind of environment where credit is affordable.

More directly, it is important to train regulators in this new approach. BNR, while generally praised for its positive relations with the financial community, has also been characterized by vestiges of a control culture. Several stakeholders note tendencies to direct banks rather than regulate them according to rules, sometimes substituting regulator judgment for appropriate business judgment of the bank directors. For example, banking regulations require banks to assess a penalty of 10% on customers who write checks against insufficient funds, and to forward half of that fee to BNR, even if the customer does not have sufficient funds for the fee. This directive

punishes the victim (the bank) for customers who bounce checks. The amount of funds is not significant, but the approach reduces respect for the regulator and damages relationships with banks.

These problems can be addressed through ongoing use of participatory mechanisms already in place. BNR and other regulators should consider reform an ongoing process and work with stakeholders regularly to identify problems, analyze options, and implement solutions for better regulation and operation of the credit and finance markets.

Systemic versus sector reform. Much of the reform activity underway in Rwanda targets systemic problems – problems that potentially impact all stakeholders. These reforms are essential. They reduce overall costs and risks of providing credit and doing business. Yet they are not sufficient.

Each sector has specialized needs and problems that may constrain growth and economic health despite improvements from systemic reform. The needs of Rwanda's agricultural and tourism sectors require specialized analysis and tailored solutions. Within agriculture, different solutions are needed for different subsectors: tea and coffee, for example, have different profiles than livestock and vegetables. This need suggests expansion of existing reform and development efforts on a sector basis, yet Rwanda has hardly enough resources to pursue existing systemic reforms. Consequently, the demand for reform cannot currently be met through the existing supply of policy makers.

Development partners can play a crucial role filling the gap in research and analytical capacity. By working with and through local counterparts, such as the Ministry of Agriculture and farming cooperatives, development partners can supply technical assistance to develop new credit and insurance products, identify additional constraints, and assist in formulation of policy solutions. One goal of such assistance must be to establish systems for regular analysis of constraints among public and private institutional stakeholders.

On the systemic side, it is also important for policy makers to take a broader view of the system. As pointed out in this report, the factors affecting credit and finance go far beyond bank regulation, credit information, and pledge registries. BNR has established a comprehensive national reform strategy designed to identify and address a wide range of sources of unnecessary costs and risks of finance and credit in the Rwandan economy. The vision needs to be regularly revisited to ensure sufficient breadth to connect, for example, the high cost of building materials and import duties with the ability of borrowers to afford loan repayment. The FSDP provides the appropriate framework from which to implement and refine such a strategic vision and, with appropriate support, can ensure more effective, systemic reform initiatives.

Trust and credit. During this diagnostic's public roundtable (conducted on February 8, 2008), the head of a prominent business posed a poignant question: "How do we get people to work together?" Another businessman commented on the same phenomenon from a different angle when, during an interview, he noted that there were few wholesalers in Rwanda – most small businesses import their products directly. This observation and the question about working together are quite relevant to credit. They go to the heart of the problem: trust.

Rwanda's legacy of colonial occupation and civil war has done much to destroy trust at various levels. Colonial government, followed by independence under a defective domestic government, led to understandable distrust of government based on negative experiences, at least for all but a minority of favored elites. The civil war led to highly individualized distrust when the social fabric of Rwandan society was torn apart. In its place, there is today in Rwanda a highly individualized, self-protective ethos.

Trust can only be earned. The new policies of participatory policy making are beginning to restore trust in the government. This must be guarded carefully by ensuring that the new policies are designed to benefit economic actors based on merit, not on connections. Such trust will increase social and political stability, with a positive impact on the economy, including the credit system.

At the village level, trust is rather easily established because the intimate nature of that society makes it easy both to know an individual's character in a transaction and to enforce agreements through a variety of social sanctions. As an economy becomes more commercial in character, credit needs outgrow effective local enforcement mechanisms. In other words, lenders require more than trust in an individual borrower; they also require a trustworthy system that enforces commercial obligations when the individual fails to fulfill them. Such a system

enables people to work together more effectively and capture the benefits of improved economies of scale.

To borrow Friedrich Nietzsche's famous phrase, building trust requires "a long obedience in the same direction." In the short term, however, it is possible to create incentives that will bring people together in business, at least somewhat. For example, tax breaks or lower duties for wholesalers can rebalance business costs to incentivize wholesale import business. Credit guarantees to cooperatives or other lending institutions can help restructure credit for smaller borrowers, building trust between lender and borrower and between lender and guarantor.

There are two other implications from the current problem of deteriorated trust. First, the government has tremendous capacity to restore trust and stability by developing effective procedures to settle administrative claims. Timely payment of bills and timely settlement of disputes will permit lenders to characterize government contracts as assets that can be used to secure a loan. Unfortunately, one stakeholder reported on an institution that will not accept government contracts as a basis for a loan because the government cannot be trusted to pay in a timely manner.

Next, policy makers should be careful to introduce effective consumer protections. This is needed at several levels. First, lenders need to include consumer protection advocates in the development of credit (especially enforcement) policies so that consumer representatives are satisfied that the system is appropriate and reliable from a consumer perspective as well. Second, protection of consumers against poor business practices strengthens the overall integrity of the business and financial system by reducing unscrupulous practices and the activity of unscrupulous actors.

Credit and women. Over the course of this diagnostic, access to credit for women was not generally reported as a significant issue in the credit arena. In fact, MFIs lend heavily to women, and some have credit lines open *only* to women. Commercial banks reported significant levels of female customers with up to 30% of accounts or loans going to women. The legal system does not on its face discriminate against women.

Even so, there are problems. Women are often treated as minors (children) in traditional sectors of Rwanda and sometimes are not allowed to enter into business transactions without the written consent of an adult male relative or her husband. The impact of legislation enacted in 1999 to improve the rights of women to inherit land has not been sufficient; women are reportedly being denied the rights to which they are unequivocally entitled. Such discrimination not only reduces credit opportunities for women, but also negatively impacts economic growth in general.

Priorities

The recommendations in this chapter are not all equal in importance or necessary to begin at the same time. Priority should be given to the following areas:

- Updating, as necessary, the FSDP to capture additional interventions identified in this report within the existing comprehensive approach to improving access to affordable finance
- Filling gaps in the existing legal regime
  - Improving and expanding credit information
  - Establishing a pledge registry system
- Improving the enforcement regime
  - Establishing rapid enforcement mechanisms for credit transactions
  - Improving court performance
- Developing agricultural lending products
- Increasing development credit (paired with risk-reduction programs)

Rwanda needs to continue addressing discrimination problems, both through ongoing legal reform and through public education and reporting on these issues.

Recommendations

To raise the Doing Business scores . . .

- Improve and enhance BNR's public information registry. Capture microloans; improve the timeliness of information; and establish a regional information-sharing capacity.

- Create a private information registry. To do so, adopt necessary laws and provide investment incentives if necessary to attract private investors, and enable cross-border processing so that investors can capture economies of scale through regional approaches.

- Establish a movable property lending regime based on a notice registry system with the following characteristics:
    - A specific, extensive list of properties and rights that can be pledged combined with general clauses permitting property pledges not captured by the list
    - Notice registration only: contracts and underlying documents should not be registered
    - Internet-based registration, with fees based on cost recovery only (no more than US $10 per transaction)
    - Registration of real property interests and liens in the movable property registry
    - Registration of lease interests in movable property registry
    - Attachment of priority to tax liens only upon registration
    - Fast, effective enforcement mechanisms
    - Clear rules for self-help in enforcement.

- Establish specialized products to support agricultural activity, including agricultural lending.

To strengthen the overall environment for Getting Credit . . .

- Continue implementation and revision of the FSDP as a comprehensive strategy for lowering costs and risks of lending in Rwanda, including all factors listed in this report.

- For all legal and regulatory reforms, develop new curriculum for law and business schools, plus continuing education for all legal professionals, bankers, tax authorities, and appropriate private sector stakeholders.

- Develop tailored regulatory requirements for each type of lending institution: banks, MFIs, and NBFIs, including reduced reserve requirements for nondepository institutions.

- Complete any necessary additional improvements to the switching system, along with necessary regulations for use of ATMs and telephone banking services.

- Reinforce customer-service orientation of BNR

- Introduce receivership for troubled institutions under BNR oversight along with capacity to manage purchase and assumption agreements and other lower cost solutions.

- Establish the legal and regulatory framework for banks to establish mobile banking.

- Develop internationally recognized finance products for Rwandan use.

- Develop and disseminate clear, transparent, and appropriate standards for land redistribution programs under way, along with mechanisms for ensuring fair and timely compensation and appeal from dispossession.

- Establish private ownership of real property.

- Develop and enforce effective, timely foreclosure procedures.

- Develop supporting institutions for the land market, such as surveyors, appraisers, and real estate agents and brokers.

- Revise existing leasing law to introduce hire-purchase agreements; better support operational leases; and eliminate double taxation.

- Supplement or substitute training by lending institutions with commercial training providers, possibly through the Bankers Association and the MicroFinance Association.

- Provide free training to borrowers to enable them to meet new credit standards when loan officers are better trained.

- Improve regulation and oversight of lending practices by BNR to ensure that training is utilized.

- Complete and implement the draft accounting law to establish a single accounting standard for banking and tax use based on IAS.

- Establish an accountants association in concert with an international organization such as IFAC, the International Federation of Accountants.

- Increase education and training in accounting and bookkeeping under a regional certification

program aimed at company accountants. (This should not be a full CPA program.)

- Permit and encourage employment of competent accountants from neighboring countries, at least for the next 5 to 10 years, to provide services and train Rwandans.

- Develop a program to pair accounting and business services with banks and tax authorities.

- Provide basic services to those seeking loans or having problems with tax accounting.

- Identify, develop, and distribute basic accounting software and training materials to taxpayers and loan applicants.

- Develop public education materials on basic business skills and concepts, especially:
    - Commingling of business and personal funds
    - The nature of market-based contracts and how they are enforced differently than social agreements.

- Develop special training programs for government officials to introduce them to business skills and risk-assessment principles.

- Increase the quality of and quantity of providers teaching business skills.

- Provide incentives (such as better interest rates, tax deductions, or other monetary incentives) for those who complete recognized courses.

PROTECTING INVESTORS

Introduction

To attract and retain investors, a country must have laws and institutions that provide adequate investor protections. A sound corporate governance framework is vital for providing protections and recourse for investors whose rights have been compromised. Protection of foreign investors in particular is also important. Foreign investors and local investors should be treated equally and the government should ensure that neither has unfair advantages or additional burdens to bear. Furthermore, it is important that investors, both local and foreign, can in fact rely on these protections, and on the commercial legal framework in generally. Having a transparent and predictable commercial environment is imperative if investors are to feel welcome and secure in a decision to invest in Rwanda.

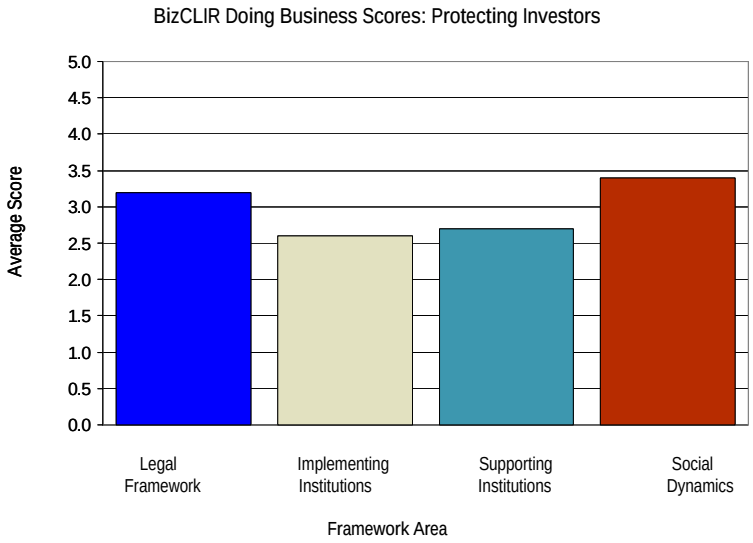
Rwanda's *Doing Business* ranking for Protecting Investors is near the bottom of the world – 165th out of 178 countries surveyed. This ranking accurately reflects Rwanda's lack of an effective corporate governance regime and culture of investor protections. The Law on the Organization of Commercial Establishments covers corporate governance to some extent, but it does not create a comprehensive corporate governance framework in line with international best practices, and it provides no effective means for enforcing the provisions it does include. Legal and institutional reforms underway, however, should place the country in a position to significantly improve its corporate governance regime and, as a result, its *Doing Business* ranking in the near future if these reforms are successfully implemented.

Although most businesses in Rwanda are of a size that does not merit advanced corporate governance procedures and protections, many public and private sector representatives believe that, as the economy advances, corporate governance will become a very important issue and, thus, is necessary to address and build on today. Furthermore, even the smallest businesses would benefit greatly from a culture that respects and implements corporate governance on the most basic level. Currently, most companies are owned by individuals and families, not shareholders, and many are informal. Nonetheless, good bookkeeping and basic business management are important to their success, regardless of their size. Many small businesses reportedly do not incorporate these practices into their business activities. Accordingly, Rwanda should support and encourage a culture of good business management, which will benefit the broader business community and lay the foundation for the more advanced corporate governance practices to come.

Protecting Investors

Doing Business Ranking 2008	165
Doing Business Ranking 2007	165
Disclosure Index	2
Director Liability Index	5
Shareholder Suits Index	1
Investor Protection index	2.7

The BizCLIR indicator scores, represented in the graph at the beginning of this chapter, illustrate an environment for Protecting Investors that is not without its negative attributes, but nonetheless shows promise. The legal framework and social dynamics show more positive attributes than negative, which bodes well for the implementing and supporting institutions that will be charged with



facilitating the promise of enhanced investment in the country.

Legal Framework

The key law for investor protections is the Law on the Organization of Commercial Establishments (1988), which provides the current legal framework for companies. This law will reportedly soon be replaced by the Draft Company Law that was being reviewed by the Ministry of Justice at the time of writing. These laws address, to a lesser or greater extent, corporate governance which provides the foundation for investor protection. In addition to corporate governance, which protects investors generally, provisions to protect foreign investors specifically are important for a healthy environment for investor protections. The Draft Company Law addresses foreign investors specifically, posing challenges in some cases. The Law Relating to Investment and Export Promotion and Facilitation (2005) has important protections of particular concern to foreign investors as well.

Key Laws

Current Laws

- Law on the Organization of Commercial Establishments (1988)
- Law Relating to Investment and Export Promotion and Facilitation (2005)

Draft Laws

- Company Law

Corporate governance. The Law on the Organization of Commercial Establishments addresses the available forms of companies and basic corporate governance to some extent. It also briefly addresses dissolution of companies, mergers, and liquidation. The law is reportedly not widely used or enforced and is only available in French and Kinyarwandan. It has minimal corporate governance provisions that match international best practices, and the provisions it does have are not followed. For example, the law requires audits of businesses of a certain size, but provides for no effective enforcement of this requirement or sanctions for noncompliance. The clerk of the court of first instance is assigned responsibility for this requirement, in addition to company registration, but private sector representatives report that enforcement does not occur.

Although many companies reportedly meet the threshold for requiring audits, very few actually comply with this requirement. Those that do are generally responding to the incentive to keep good books in order to avoid tax liability rather than to any corporate governance requirements, or they are international companies that rely on their own corporate governance standards.

Types of Companies (Draft Company Law)

- Company limited by shares
- Company limited by guarantee
- Company limited by shares and guarantee
- Unlimited company
- Public limited liability company
- Private limited company (including single-member companies)

The law also does not call for compliance with International Accounting Standards (IAS). This impacts investors negatively because it decreases certainty and predictability. Banks are required by the National Bank of Rwanda (BNR) to follow international standards, but the Law on Commercial Establishments calls for different standards to comply with its corporate governance provisions, and tax authorities reportedly require use of a different set entirely. For consistency and ease of use, particularly for foreign investors entering the market, IAS should be used and required consistently for accounting requirements in all areas. Requiring different businesses, and sometimes the same business, to comply with different standards of accounting increases business costs and lessens certainty. Notably, the Draft Company Law provides specifically for the use of IAS by public limited companies and private companies, other than small private companies.

The Draft Company Law covers in detail corporate governance issues such as disclosure, shareholder rights, and director liabilities. Although few companies in Rwanda today are of a size that would require such extensive corporate governance, the government is determined to create a solid legal framework on corporate governance to accommodate the growing economy with expectations that such provisions are becoming more broadly necessary and will continue to do so. This approach is sensible as corporate governance is a difficult, technical area that is unfamiliar to most business people in Rwanda. Socialization of the ideas and procedures will be important to its ultimate integration in business.

Although the Draft Company Law covers many of the important corporate governance issues at length, in its current state it is overly complicated and does not fully address several important issues. It includes detailed corporate responsibility provisions on auditing, company secretaries, insider-trading prohibitions, inspections, and investigations that the Registrar General can conduct. The primary weakness in this draft is that it is geared strongly toward large public companies and does not adequately address the needs and limited resources of closely held companies, such as family-run businesses. The draft makes distinctions between small and large companies for accounting and disclosure purposes to lessen the burden for small companies to comply, and it also allows for single-member companies, which are not allowed under the current law. But many requirements that are imposed on all companies, including small private companies, are unrealistic in the context of a small business. Small private companies are defined in the draft law as private companies with a turnover that is less than "such amount as may be prescribed by order of the Minister,"[121] so it is yet to be determined how small a company must be to benefit from the lower burden requirements. Regardless, simpler provisions should be required for small private companies as well as private companies generally.

With more than 700 articles, the draft law is long and difficult to grasp for those unfamiliar with the issues it addresses. The length is in part due to a number of complex issues that must be addressed in a good company law, but it is also the result of a direct attempt to provide thorough default provisions for companies that do not establish their own internal procedures or constitution. Articles 60 and 61 provide that a company does not have to have a constitution, and if it does not, the rights, duties, and obligations of the company, its board, directors, and shareholders will be those set out in the law. This approach will be beneficial for ensuring that standards exist for companies that do not choose to develop their own procedures. Nonetheless, there is significant room for clarification and improved organization that would make it a more accessible set of requirements.

Specific corporate governance issues and how the draft law addresses them are described below.

- **Shareholder liability** is limited to the amount unpaid on share, to repay a recoverable distribution, and expressly provided for in the company's constitution, unless the shareholder breaches a fiduciary duty or commits another actionable wrong.[122] Unless otherwise provided for in the company's constitution, shareholders are protected from being bound to acquire additional shares or by an increased liability resulting from alteration of the constitution.[123]

- **Shareholder rights** include preemptive rights requiring a company that issues additional shares to offer them first to holders of existing shares in a manner that would provide them the opportunity to maintain the relative voting and distribution rights.[124]

- If **approval of the company** is required, a transaction must be authorized by either a simple resolution or an ordinary resolution after full disclosure of all material facts, including any interest of a director.[125] Unless the company's constitution provides otherwise, powers reserved to the shareholders may be exercised by a simple majority of shareholder votes with the exception of adoption or approval of certain major transactions or decisions, such as company liquidation. These powers may only be exercised by special resolution.[126] A special resolution requires approval by 75% of the votes of shareholders entitled to vote, unless the constitution requires a higher majority.[127]

- **Opt-out provisions** are available in certain circumstances. If a special resolution is passed on certain major transactions or issues, and a shareholder voted against it, that shareholder may require the company to purchase his or her shares.

- **Conflict-of-interest transactions** are defined in Article 276 and extend to any transaction from which a director may directly or indirectly benefit. Specifically enumerated conflict-of-interest transactions include transactions to which a director is a party or from which a director may derive a financial benefit. They also

[121] Draft Company Law, Art. 9.

[122] Id. at Art. 197.
[123] Id. at Art. 199.
[124] Id. at Art. 131.
[125] Id. at Art. 275.
[126] Id. at Art. 202.
[127] Id. at Art. 2.

include transactions where a director has a financial interest in or with another party to the transaction, or is a director, officer, or trustee of another party that is not otherwise related to the company (e.g., subsidiary to or holding company of the company at issue). Conflicts of interest also arise through family relations. A director is considered interested if his or her child or spouse is a party to or may financially benefit from the transaction. Because insider transactions are often routed through family relations, the family interest definition should be expanded to include siblings, in-laws, and all direct descendents.

- A **director interested** in a transaction or proposed transaction must promptly disclose the interest in the interests register, if one exists, and disclose it to the board of the company, unless the transaction or proposed transaction is between the director and the company or entered into in the ordinary course of the company's business on usual terms and conditions.[128] Transactions involving interested directors may be voided by the company unless the company received fair value under it at the time.[129] Interested directors in public limited companies may not vote on matters relating to the transaction of interest, but in private companies they may vote if they have disclosed the interest. It is vital that the interested director provisions be clear, comprehensive, and effectively enforced because conflicts of interest influence directors' choices and can lead to bad business decisions, thus harming investors.

- **"Director" is broadly defined** to include anyone "in accordance with whose directions or instructions" a director or the board "may be required or is accustomed to act."[130] This is broad enough to apply to other players who may control the company such as officers and controlling shareholders.

- The articles covering **director, officer, and controlling shareholder duties** are somewhat inconsistent and difficult to follow. Unlike in the current draft, duties for officers and directors should be defined and applied more clearly and in the same manner. Director duties include the duty of good faith and honesty, duty of loyalty, duty of care, accounting to the company for monetary or other gain obtained by them in connection with their position, nondisclosure of confidential information, disclosure of interests, and the keeping of proper accounting records.[131] These duties are specifically owed to the company itself rather than to shareholders or creditors.[132]

- **Officer duties** are listed separately from director duties, and include honesty, good faith, care, and diligence. Officers are liable for any loss the company suffers as a result of any breach and are liable to account to the company for any profit made as a result of the breach.[133]

- The draft law incorporates the **business judgment rule** in Article 313, asserting that a disinterested officer or director fulfills his or her duties to the company if the officer or director believed reasonably and in good faith that the action taken was in the best interest of the company.

- Article 322 provides for **derivative actions** that can be brought by a shareholder or director on behalf of the company. This is an important tool for corporate governance enforcement.

- When **public notice** is required by the draft law, Article 22 asserts that this can be fulfilled by publication either in two newspapers of wide circulation in Rwanda or in the *Official Gazette.* This notice requirement appears minimal and not designed to reach a broad audience. If a company opts for the *Official Gazette* notice, it is unlikely that many stakeholders will be made aware.

- Other tools are available for protection of **shareholder rights** as well. Article 330 provides for shareholders, former shareholders, or other entitled individuals to be able to apply to the court directly if they believe that the company affairs have been or are being conducted in an oppressive, unfairly discriminatory, or unfairly prejudicial manner. Courts are given a wide variety of options for resolving such issues, including requiring the

[128] Id. at Art. 277.
[129] Id. at Art. 278.
[130] Id. at Art. 241.
[131] Id. at Art. 267.
[132] Id. at Art. 271.
[133] Id. at Arts. 299 and 312.

company to acquire the shareholder's shares, pay compensation, alter the constitution, or even liquidate.[134]

- The draft law provides specific requirements for **accounting records and auditing**.[135] It also requires that company directors be entitled, with reasonable notice, to inspect company records.[136] Certain limited records must be made available for inspection by members of the public on written notice, and a more extensive list of records must be available to shareholders on written notice.[137]

FDI in Rwanda

	2003	2004	2005	2006
$ Millions	5	8	11	15
Percentage	—	2.1	2.3	3.1

Source: UNCTAD, World Investment Report 2007: Rwanda

Although the draft law incorporates some good practices, a few provisions are unfavorable and tend to disadvantage **foreign companies** specifically. Article 250 requires that each company have at least one director that is a Rwandan resident. Article 364 requires that firms appointed to audit a company have at least one Rwandan resident member. Article 251 also prohibits appointment of directors over the age of 70. The draft law further requires that every company, other than a small private company, have at least one secretary who is a resident of Rwanda and is a law practitioner, a qualified auditor, *or* a member of a professional association of company secretaries approved by the Minister of Commerce.[138] Under the draft law, this personnel requirement is taken quite seriously and could prove burdensome to private companies and smaller companies that do not meet the statutory definition of a small private company.

Chapter XXI of the draft law specifically addresses and applies to foreign companies that have a place of business or are carrying on business in Rwanda. Some of its provisions put an added burden on foreign companies. For example, Article 538 requires that foreign companies have a registered office in Rwanda that is open and accessible to the public for at least four hours daily except for Saturday and public holidays. The benefit and importance of such a requirement is unclear, and such is not required of domestic companies. Registration of foreign companies requires appointment of two or more people in Rwanda, not including foreign companies, who are authorized to accept service of process and receive notices on the company's behalf.[139] Furthermore, Article 548 places additional accounting requirements on foreign companies, but gives the Registrar General discretion to waive compliance with these requirements. The costs and benefits of such provisions and the effect they have on foreign investors should be carefully considered.

Before passage, the draft law will require a few simple but important steps to make it an easily readable and understandable document. First, it will need a very thorough edit for simple but complicating mistakes. Many provisions of this draft appear to have been taken directly from other laws, including the Mauritius and New Zealand company laws on which the drafter reportedly relied, but some of these provisions appear to have been cut off in the transfer. For example, Article 249 provides that "the Board of a company may delegate to a committee of directors, a director or employee of the company, or any other person, any one or more of its powers other than its powers." Clearly, this sentence is incomplete and missing a key phrase. In the Mauritius law, an otherwise identical provision is completed by a reference to powers listed in an annex to the law. Without such a reference in the Rwandan provision, it does not make sense. In other articles, it is simply difficult to tell what a certain phrase is referring to. Additionally, in some areas, the articles are out of order, and internal references to articles are unclear. For example, Article 468 asserts a fine for anyone who fails to comply with Articles 485 or 486, but the articles referenced concern registration and amalgamation certificates. This reference appears to be a mistake and could easily cause confusion.

The draft law also needs a complete table of contents to allow readers to easily find the provisions they are looking for. Finally, each article should have a brief, descriptive title to increase the accessibility of information within the law. These basic improvements could result in a much more accessible and understandable law.

[134] Id. at Art. 330.
[135] Id. at Chapter XIV (Arts. 357–443).
[136] Id. at Art. 356.
[137] Id. at Arts. 439–41.
[138] Id. at Arts. 309 and 316.
[139] Id. at Art. 535.

Expropriation. The Law Relating to Investment and Export Promotion and Facilitation, enacted in 2005, addresses a different kind of investor protection. Investors tend to avoid or leave countries where expropriation of property or assets by the government is a problem. Expropriation without adequate or prompt compensation is a problem in many countries. Rwanda's Investment Law addresses this concern directly and specifically by placing on the government responsibility for protecting invested capital and stating that the government cannot acquire investors' rights except in the public interest, according to specific procedures (not elaborated in the law), and with prompt payment of adequate compensation. Compensation is to be paid in foreign currency that can be repatriated to another country of the investor's choice without being subject to taxation.[140]

The provision's specificity should increase investor confidence, but this confidence will be lost if expropriation is not in fact exercised fairly, transparently, and infrequently. Private sector representatives do not generally find expropriation to be a significant problem, but some concern was raised about the security of property rights. Reportedly, expropriation is common in Kigali, but commercial property is rarely the target. Property rights are discussed further in the chapter on Registering Property.

Investment incentives. Certainty and security are very important to investors and potential investors, both local and foreign. It is important to have a legal and institutional framework that supports and enables both. Additional incentives can also be used to increase the appeal of an investment location. The Investment Law provides an array of incentives to this effect that lower business costs for investors. These incentives are primarily directed toward large investors and are in practice largely the domain of foreign investors because of investment threshold necessary to qualify for them. These incentives are discussed in further detail in this report's chapter on Starting a Business.

Implementing Institutions

Registrar General and Minister of Commerce. The Registrar General is responsible for implementation of the corporate governance provisions in the Draft Company Law. This institution is given significant responsibility and discretion with regard to corporate governance issues. For example, the Registrar General has the authority to select a name for a registered company if it decides that the name under which the company was registered was not appropriate under the draft law.[141] It also has the power to require a company to change its registered office.[142] It can require companies of more than 50 shareholders to keep their share register "in such form as the Registrar General considered fit."[143]

Key Implementing Institutions

- Ministry of Commerce
- Registrar General and Rwanda Commercial Registration Services Agency (RCRSA)
- Courts
- Rwanda Over-the-Counter Stock Market
- Capital Market Advisory Council

While these issues are fairly discrete, the Registrar General also has a specific and significant enforcement role through inspections or enquetes. The Minister of Commerce may designate, by publishing in the *Official Gazette,* a company to be a declared company, and the Registrar General shall then appoint an inspector to investigate that company and provide a report. The minister may designate companies as such if an investigation is desirable for the protection of the public, shareholders, or creditors of the company, or if the appropriate authority of another country, in the case of a foreign company, has requested this designation.[144] The Registrar General may also, in other circumstances, require an investigation of companies not designated as declared by the minister.[145] The Draft Company Law gives the Registrar General significant discretion with these investigations, such as choosing which companies to investigate and whether or not to publish the resulting reports. Following the report, the Registrar General may also bring proceedings against the company in the company's name, if it appears to the Registrar General to be in the public interest.[146] Because of this level of discretion, it will important for the Registrar General to create a set of procedures or

[140] Law Relating to Investment and Export Promotion and Facilitation (2005), at Art. 30.

[141] Draft Company Law, at Art. 54.

[142] Id. at Art. 349.

[143] Id. at Art. 187.

[144] Id. at Arts. 444–46.

[145] Id. at Art. 450.

[146] Id. at Art. 455.

regulations to guide its decisions and actions in order to ensure transparency and fairness. Notably, the course of action available to the Registrar General following such an investigation is to bring an action on behalf of the company, therefore bringing it into the realm of judicial due process before sanctions are levied. Regulations should also address the type of proceeding and how it may be brought.

Rwanda Commercial Registration Services Agency (RCRSA). At the time of writing, the RCRSA was in the process of being set up. The Registrar General will be part of the RCRSA. Its capacity to fulfill the many duties directed to it in the Draft Company Law, in addition to its duties under the Draft Law on Business Registration, remains to be seen. The Registrar General and the RCRSA must be adequately staffed with people who are well trained and familiar with the registration process and the highly technical corporate governance provisions. Without sufficient training and capacity to adequately address and manage all the areas for which it is responsible, the Registrar General will not be fully able to promote and enforce corporate governance. Accordingly, a strong emphasis should be placed on training and educating RCRSA staff in the areas in which they will work, particularly if they will be working on an issue as complex and unfamiliar as corporate governance.

Courts. Once the Draft Company Law is passed, courts of first instance will no longer be charged with basic corporate governance recordkeeping and enforcement, which will be a positive change since these bodies were reportedly not performing this duty anyway. However, the Draft Company Law still gives the courts a significant role in protecting and enforcing corporate governance, but this role will appropriately be primarily a judicial function. Given this role, it is very important that the courts understand their responsibilities and receive adequate training in corporate governance issues relevant to them. They are given significant discretion to provide relief as they see fit, and have a role in approving amalgamations, compromises, and reorganizations. The draft law provides for shareholder derivative suits, and many different stakeholders can make applications to the court in a variety of circumstances, such as breach of duty by a director. Because these issues are unfamiliar and involve new technical legal issues, affirmative steps will be necessary to ensure that Rwanda's courts have sufficient capacity to resolve corporate governance issues they may face as the business community's corporate governance standards advance.

Generally, investors are quite interested in the ease of dispute resolution. This remains a challenge in the commercial sector and a disincentive to investing in Rwanda. Getting redress is one of the biggest business challenges, according to several private sector representatives, because it increases the risk of credit. The capacity of the court system to address commercial disputes is discussed in depth in the chapter on Enforcing Contracts.

Rwanda Over-the-Counter Stock Market and the Capital Market Advisory Council. Another institution with significant potential to impact the growing corporate governance climate in Rwanda is the recently established Rwanda Over-the-Counter Stock Market (Rwanda OTC Market). The country's first and only stock exchange was launched on January 31, 2008. Its establishment was sanctioned by a decree by the Prime Minister in 2007. The Capital Market Advisory Council (CMAC), a government agency operating under the Ministry of Finance, will operate the stock market until it is sufficiently advanced to be taken over by the private sector.[147] Three government bonds and one corporate bond, by the Rwanda Commercial Bank, have been issued so far. As of March 31, 2008, more than RWF 15 billion (US$27.7 million) had been raised in bonds.[148]

The stock exchange is only a bond market currently, but it is expected to open up to listing companies by June. The government plans to use the capital market as a tool for privatization by divesting its shares in some companies through public offerings.[149] The normal privatization process will still be used for companies wholly-owned by the state, but the market will be used for companies in which the government has only minority ownership. Sonarwa, the leading insurance company in Rwanda, is ready to be listed when the equities market begins

[147] Bosco Hitimana, "Rwanda to Launch Stock Exchange," *East African Business Week* (January 21, 2008), *available at* http://www.busiweek.com/index.php?option=com_content&task=view&id=4657&Itemid=33.

[148] Bosco Hitimana, "Rwanda: Country Identifies Five Firms for Listing," *East African Business Week* (March 31, 2008), *available at* http://allafrica.com/stories/200803311252.html.

[149] Robert Mukombozi, "Safaricom Excites Rwanda," *The Monitor (Kampala)* (April 7, 2008), *available at* http://allafrica.com/stories/200804072017.html.

operations, and four other companies have also been identified for listing.

Investors in the stock exchange are currently very few, but there is hope that numbers will increase as awareness increases and as the equities (shares) market is introduced in the coming months. Additionally, CMAC has recently signed a memorandum of understanding with the East African Member States Securities Regulatory Authorities (EASRA) that enables companies in other East African Community member states to buy on the Rwanda OTC Market. The Market should also be electronically accessible in September.[150] Accordingly, it is set to be available to a much wider audience.

Members of the public and private sector see the new stock market as a resource for people who want to invest in business but do not have their own ideas to pursue, and it enables such people to contribute to a growing domestic economy. Public and private sector representatives are excited about the prospects of the capital market spurring business development and providing access to long-term capital. The capital market offers a less risky investment than starting one's own business because invested funds can be recovered with greater certainty and ease. Many people also hope that it will force banks to lower their interest rates to compete. Some public and private sector representatives also anticipate that the stock exchange will spur an increased savings culture in Rwanda as well as a more advanced culture of corporate governance.

Once the equities market is introduced, listing companies will be required to meet certain corporate governance standards. Most companies in Rwanda lack the corporate governance standards required to be listed, and few companies would appear to be good candidates for the stock exchange in any case. The accounting profession, vital for a strong corporate governance regime, is not yet standardized and lacks capacity. In light of these challenges, many question whether Rwanda is ready for a capital market. Whether or not the country is ready, the capital market has arrived and is set to expand in the near future. While the stock exchange will draw attention to the need for an improved corporate governance culture and to companies with good practices, its success will also depend on the successful implementation and socialization of that culture in Rwandan companies. As the launch of the equities market approaches, the opportunity to raise awareness of the importance of corporate governance should be taken.

It is important to note with regard to these implementing institutions, as with other government institutions, that there are minimal or no perceptions of corruption in the public sector in Rwanda. Representatives from the public and private sector almost unanimously hailed the government for its clear and strong message against corruption that extends from the highest levels to the everyday bureaucracy. Respect for authority is very strong, and that has led to an uncorrupt civil service. This policy comes down from the president and is strict. Some references were made regarding bribes still occurring in some very local and low-level positions, but even these suggestions were paired with statements about how these occurrences were becoming rarer and how they occurred only on a relatively unsophisticated level. This lack of corruption is very attractive to foreign and domestic investors alike and contributes to a positive environment for investor protection and investment promotion by increasing certainty and predictability for business.

Supporting Institutions

Several institutions, although not directly responsible for implementing investor protections, can play a significant role in supporting an environment conducive to these protections. Because corporate governance in Rwanda is not advanced, most of the

Key Supporting Institutions

- Private Sector Federation (PSF)
- Rwanda Investment & Export Promotion Agency (RIEPA)
- Center for Support to Small and Medium Enterprises in Rwanda (CAPMER)
- Business Development Services (BDS) Centers
- Local investment groups
- International companies
- Professional communities, including accountants, tax practitioners, and lawyers
- Institute for Law Practice and Development (ILPD)
- Media

[150] Bosco Hitimana, "Rwanda: Country Identifies Five Firms for Listing," *East African Business Week* (March 31, 2008), *available at* http://allafrica.com/stories/200803311252.html.

institutions below are not yet maximizing this role. These bodies will ultimately be very important in socializing the concept of corporate governance within the business community and in facilitating increased and more advanced investment.

Private Sector Federation (PSF). The PSF, the primary institution for business community advocacy in Rwanda, aims to build capacity within the sector. As part of its advocacy role, the PSF has been a major contributor to public-private sector collaboration on commercial law reform. PSF representatives are given an opportunity to comment on draft commercial laws under consideration, including the Draft Company Law, and were consulted during the development period. This consultation process is promising and ensures that the business community is given an opportunity to raise their concerns and interests. Representatives of the PSF and its various chambers expressed great satisfaction with their level of involvement. On the other hand, some smaller private sector representatives were unaware of the consultation, so the PSF should take care to ensure that they invite comment and participation broadly within the business community.

In addition to its advocacy role, which is important for enabling public sector engagement in the commercial reform process generally, the PSF's capacity-building role can be used specifically to promote good business practices and corporate governance. Given its important and well-respected role within the business community, the PSF would be a good vehicle to begin socialization of the corporate governance practices specified in the Draft Company Law. As the PSF looks toward expanding its training capacity, it should strongly consider offering training on the new laws as they are passed, including the Draft Company Law, and donors and the government should support these efforts. With limited capacity currently, the PSF will need assistance and expertise to undertake such significant technical training efforts. The corporate governance provisions are a good candidate for a training course since they are important to implement in a growing economy and are complicated and unfamiliar to the local business community. The PSF should also continue to work closely with the government and to expand its role in bridging the gap between the public and private sectors.

Center for Support to Small and Medium Enterprises in Rwanda (CAPMER), Rwanda **Investment & Export Promotion Agency (RIEPA), and Business Development Services (BDS) Centers.** Other institutions that should fold corporate governance into their capacity-building efforts and contribute to its socialization include CAPMER and RIEPA. As they are developed, the BDS centers should address this issue as well. CAPMER is a resource for smaller businesses, so its focus should be on basic business management practices, good bookkeeping, and business integrity. While these issues rank at the less-sophisticated end of corporate governance, they are the essential issues for small businesses to master, and they must be soundly implemented before more-advanced corporate governance can be addressed. RIEPA works with larger investors and, accordingly, can and should address and build awareness of more elaborate corporate governance challenges. Like the PSF, each of these institutions suffers from insufficient capacity, so the extent to which any of them can realistically address corporate governance in depth is limited. This issue will require a champion if it is to become a familiar and practiced part of the business community. Each of these institutions is discussed at greater length in this report's chapter on Starting a Business.

Local investment groups and international companies. These organizations present in Rwanda can also play an important part in familiarizing the business community with good corporate governance practices. International companies, including international accounting firms present in Kigali, bring with them a long-standing practice of corporate governance in accordance with international best practices. Though international companies in Rwanda are few, as their engagement in the local business community increases, so will local exposure to the international practices they bring with them.

A few larger local companies in Rwanda are also in a position to influence the growing corporate governance culture in Rwanda. Many have integrated international best practices into their corporate governance and business management systems. Some of these companies have engaged foreign experts to share knowledge in these areas and to help them build sound management structures that ensure investor protection. Although these companies are not numerous, their numbers are growing, and local investment groups in particular are starting to

emerge with potential to positively impact the local economy and business practices.

The Rwanda Investment Group (RIG) is one example. It began in May 2006 with the aim to mobilize funds locally and internationally and invest them in highly profitable projects with a high impact on economic development. RIG was begun by local businessmen – some with, in fact, close ties to the ruling party of Rwanda – but reportedly follows international best practices of corporate governance. It has a written corporate code that details requirements for disclosure, transparency, information sharing, and annual reports, as well as responsibilities of shareholders, directors, the board of directors, and the executive council that conducts day-to-day activities. Each of its projects is separately registered as a limited liability company, and these corporate governance standards are passed on to the subsidiaries.

Although it is independent from the government, as part of its aim to impact economic development, RIG has responded to requests by the government for intervention in certain areas. As long as the government does not interfere with investment decisions, and those decisions are made by disinterested directors acting in the interest of the company, this type of collaboration should not be problematic. Because they can strongly influence the local corporate governance culture, however, local companies such as RIG must be very cautious about potential conflicts of interest and perceptions of undue influence that could arise in these situations.

Political connections with businesses can also raise concerns about potential conflicts of interest. Tri-Star, a holding company that is substantially controlled by the RPF, is a very influential local business with shares in several successful companies in Rwanda. President Kagame, the Chairman of the RPF, has defended the party's business involvement, which dates back to before the war began in 1990 in an effort to ensure that the movement could be self-sustaining.[151] Indeed, the party's funds were even used to support the new government in 1994. According to President Kagame, the RPF's businesses enjoy no special treatment and must compete for business. [152]

Nonetheless, as with RIG's government work, there is some concern that these relationships could lead to conflicts of interest, resulting in poor business decisions, or to preferential treatment for certain companies. Strong corporate governance practices that are transparent and ensure independent decision making are imperative to maintain confidence in companies with political or government connections. Additionally, transparent government practices with relation to such companies, including licensing processes and procurement, are also necessary. If strong local companies are to contribute positively to a growing corporate governance culture, they must not be perceived as susceptible to government or political influence or as the beneficiaries of government favoritism.

The PSF has begun coordinating smaller investment groups in each province as well. As they grow, these groups can offer good examples of strong corporate governance practices for other local businesses to follow. They offer an opportunity to increase awareness of good business practices and corporate governance and to familiarize these ideas in communities outside of Kigali. Because they are aimed at smaller investors and a more local population, these groups are actually in a better position than RIG to socialize international best practices to a broader audience. However, these investment groups can only fulfill this role if they implement international best practices in their businesses.

The PSF should consider engaging successful international companies in Rwanda as well as local companies that follow international best practices in corporate governance to bring their knowledge and expertise to the broader business community. This will enable them to contribute to building a culture of strong corporate governance and good business management.

Professional communities. Accounting professionals, tax practitioners, and the legal community are key to a healthy environment for protecting investors. As more advanced corporate governance provisions are implemented, and compliance becomes more complex and is actually enforced, demand for competent auditors, accountants, and lawyers who are familiar with these requirements will grow. Currently, the capacity of these professions is not adequate to support a growing and advancing economy. The law and accounting professions are, as one interviewee described them, not yet growing, but "just getting

[151] James Munyaneza, "President Speaks out on RPF Business," *The New Times* (April 2, 2008), *available at* http://allafrica.com/stories/200804020214.html.

[152] Id.

born." More practitioners who are well versed in corporate governance issues, good business management, and commercial law in general are needed.

Rwanda has very few accountants and tax practitioners and no certification system to enable businesses to find reliable advisors. This is changing though as development of a certification program by the Rwanda Revenue Authority (RRA) is under way. The RRA will be able to certify practitioners nationally and remove certification. It will also develop a code of ethics and community of professionals. The only certified accountants are in international companies upon which international organizations in Rwanda and many local companies generally rely for their accounting and auditing needs. Some local companies, including RIG, make a point to use both local and foreign auditors and accountants, which enables them to uphold international best practices but also support the development of professionals locally. Some international accounting firms also take efforts to train local practitioners in international best practices. This allows such firms to employ locally, reducing the need for expatriate professionals, and also contributes to building the local profession. While this is costly and time-consuming for the companies, the benefits to the profession in Rwanda are clear.

Commercial Law Courses at the National University

Compulsory courses include:

- Commercial law
- Securities law
- Insurance law
- Land law
- Fiscal law
- Labor law

Optional courses include:

- Intellectual property
- Arbitration

The legal profession does not yet have the capacity to meet commercial demand or understand the current commercial laws or those looming on the horizon because there is generally limited experience in the commercial sector. A NEPAD initiative to train lawyers is reportedly under way, but more needs to be done, particularly as the new commercial legal framework emerges. Specialization in commercial law, or in any area, remains rare. If equipped with sufficient knowledge and understanding of commercial law, the legal profession can be a messenger and implementer of good business practices to clients in the business community.

Recognition of the need for better training in commercial law is growing. With an increasing focus on the economy, demand is increasing for legal education geared toward business. The Law Faculty at the National University of Rwanda began offering a master's in business law in 2006, and several business law courses are now compulsory in the undergraduate law program.

To join the bar, candidates must complete law school, pass the bar exam, and complete two years of practice in a law firm. The two-year practical experience requirement is a challenge for many potential lawyers because it is generally unpaid, so most graduates do not ultimately become qualified lawyers. The Institute for Law Practice and Development (ILPD) has recently been set up to offer a one-year program after law school that will allow someone who has completed law school and passed the bar exam to become a qualified lawyer without the two years of practical experience. Additionally, its curriculum, still being determined, will be geared toward practical-skills development. The ILPD promises widespread contribution to the development of the legal profession. It will provide training for current and candidate judges as well, and plans to offer continuing legal education courses in the future. This institution will be very important in building the legal profession's capacity on a broad scale. The government and donor community should ensure that it has the resources necessary to fulfill this important role.

Media. Another resource that could be used to increase awareness of corporate governance and business practices is the media. Several public and private sector representatives indicate that the media does not cover business and economic issues in a meaningful way. The government has instituted a program to further engage the media by having one ministry each week speak with the media about changes that are under way, and MINICOM has been involved in these activities. However, representatives of the private sector would like to see more in-depth coverage of business and the economy. This is an important tool to increase the information available to the local community and potential investors abroad. Furthermore, the media can be a

key player in ensuring accountability of companies to their investors and of the government to the business community.

Social Dynamics

Most businesses in Rwanda are not yet at a level to require advanced corporate governance. For these businesses, the corporate governance issues to be addressed at this stage are basic good business practices such as accurate bookkeeping and business management. As discussed in the chapter on Starting a Business, the entrepreneurial spirit is not thriving in Rwanda, and despite large numbers of entrepreneurs, few are engaged in growing their businesses beyond a subsistence level. The commitment to business for much of the business community is to make enough money to get by and to feed one's family. This leads to a large informal sector and a lack of commitment to good business practices necessary to grow.

Basic business practices. Because of the small size of so many businesses in Rwanda, the biggest corporate governance issues are not high-level ones such as shareholder or director rights and responsibilities, but rather basic challenges of building into the business culture a commitment to not intermingling business and personal expenses. Business development institutions such as CAPMER and the PSF need to address these basic challenges and increase awareness of their importance. Corporate governance is not taken seriously by most of the business community currently because it has not been historically implemented and its importance is not understood. Even those companies that do follow good business practices for the most part do not document them or have written procedures requiring that these practices be followed. If small businesses are to grow and contribute increasingly to the economy, the business community must understand the benefits of good business practices and sound corporate governance, and implement it at an appropriate level into their day-to-day practices.

Women in business. Women have become a major part of the economy in recent years in part due to a shortage of men. Following the genocide in 1994, 70% of the country's population was female. Today, women run at least 41% of Rwandan businesses.[153] Even in those businesses not run by women, women often play a major role as many businesses are owned and run by families.

Although female entrepreneurs are many, their businesses often remain informal and very small in scale. This is a result of both limited business knowledge among women and limited ambition of women in business generally. Some public and private sector representatives suggest that the aim of most women in business is only to feed the family, and the lack of business knowledge and skills makes achievement of greater business success unlikely. This greatly inhibits the impact that this significant resource could have on economic growth. Supporting and building the role of women will be essential to creating a healthy domestic economy.

Cultural perceptions and traditional roles are the root of women's business limitations today. As discussed in this report's chapter on Starting a Business, although many women are involved in business, women are not generally considered business people within Rwandan culture. They are typically limited to certain businesses considered appropriate for women's work, such as selling handicrafts. Notably, it is reportedly just as difficult for a man to fill a traditionally female business role as it is for a woman to fill a traditionally male one, although "appropriate" women's work remains significantly more limited. Time constraints related to their traditional roles in the family are another challenge for business women. Greater sharing of household chores will likely only develop over time as cultural perceptions adapt.

Education is another major challenge for women in Rwanda that contributes to their limitations in the business community. As discussed in the chapter on Employing Workers, the dropout rate for girls in primary school is much higher than that of boys, and women make up only about 25% of the students at the National University (at less-prestigious private universities, they make up about 35-40%). Literacy for women is also trailing that of men by as much as 10%. These disparities in education are being addressed somewhat, but significant change will take time. Improvements on basic education will be necessary for women to be sufficiently capable to take advantage of resources available to assist entrepreneurs in learning better business practices.

The Rwandan government has prioritized women's political and economic promotion. Indeed, Rwanda now boasts the highest female parliamentary representation in the world at 45.3%, and public and

[153] World Bank, *Doing Business: Women in Africa (2008),* at 7.

private sector representative suggest that the government's message on women's equality is very positive. However, overcoming cultural perceptions and entrenched inequalities will take time. Some private and public sector representatives suggested that, despite changes and efforts on a high level, women's lives, and public attitudes, remain unchanged day to day. Accordingly, the focus should be on efforts that reach women on the ground with practical assistance. Government programs aimed at assisting women entrepreneurs specifically, such as CAPMER's training programs for women on business know-how, are a major step. According to a CAPMER representative, women-specific business training programs are being developed in response to the failure of general business training programs to effectively reach women. These sessions have been poorly attended by women, and those who attend usually leave. The Chamber of Women Entrepreneurs, an association within the Private Sector Federation, is another important resource for women that should be supported. This association focuses on advocacy and awareness, and organizes training. More resources are needed for such initiatives.

Promotion of women's education should also be prioritized, and some private and public sector representatives suggested that not enough has been done in this regard. Building knowledge of sound basic business practices in general is of vital importance to a healthy business environment, but because of the large number of women engaged in business in Rwanda, building the capacities of women specifically, from basic education to business know-how, will be essential.

Corporate governance awareness. The government is committed to creating the legal and institutional framework necessary not for today's economy, but for the economy it hopes to achieve in the future. The government is strongly pro-business and has an agenda for economic growth that includes promoting and facilitating increased investment. This agenda has led to significant legal and institutional reform that is currently underway. It is important that the nature of the business community, which remains for the most part unsophisticated, is taken into consideration while these reforms are put into place. Corporate governance is an unfamiliar topic to the large majority of business people in the country and will take time and effort to socialize. For example, the possibility of shareholder derivative suits will not bring any benefits or contribute to investor protection if they are not used or understood. Targeting this challenge with training and building public awareness is key to ensuring that these concepts are respected and built into the business culture. Only then will corporate governance be able to provide the protections it promises.

Predictable investment environment. There are some characteristics of Rwanda that are appealing to investors, including the country's sound security situation and excellent climate. Additionally, public and private sector representatives widely report that corruption is almost nonexistent. The president has a committed intolerance for corruption, and this message is well heeded through all levels of the government. Nonetheless, in order to create an attractive investment environment, investors must feel that their investments are protected and that they can rely on an effective and predictable legal framework to ensure such protections. This includes corporate governance implementation as well as protection from uncompensated, or unfairly compensated, expropriation of assets. On a broader level, investor protection requires that the legal and institutional frameworks governing these investments are transparent, predictable, and reliable. If rules and regulations are not enforceable or are frequently ignored or changed without reason or notice, then having good investor protection provisions in place is effectively meaningless. Investors and potential investors must be reassured and shown that the government will act transparently, consistently, and in line with the legal and institutional frameworks it has created. This is imperative for building investor confidence and minimizing investor risk, which are necessary to effectively increase investment in the country.

Recommendations

To raise the Doing Business scores . . .

- Revise the Draft Company Law to account further for the limited resources and nature of private, closely held companies by simplifying their compliance requirements. Also, edit it for readability and to clarify provisions that are currently confusing or incomplete.

- Train RCRSA staff in the complicated corporate governance provisions of the Draft Company Law once it has been passed.

To strengthen the overall environment for Protecting Investors . . .

- Assist the PSF and RIEPA with training programs and building public awareness on the implications of new commercial laws for the business community.

- Support public awareness and training on good business practices and basic corporate governance through the PSF, CAPMER, and BDS centers. Create education and training programs on basic business management, with a special emphasis on training rural entrepreneurs.

- Within the cadre of education and training programs pertaining to basic business management, direct supplementary curriculum specifically directed to women investors.

- Encourage engagement between the local business community and international companies and larger local companies that can increase the socialization of good business management and corporate governance.

- Push forward implementation of the certification program, code of ethics, and community of professionals for the accounting profession. Engage the accounting community in capacity-building efforts and education on the new corporate governance requirements when they are passed and the IASs.

- Support the ILPD in its efforts to improve commercial training and capacity in the legal profession, particularly with regard to the new legal framework that is being developed. This training should specifically address judges as well.

- Create for the Registrar General a set of procedures or regulations to guide its decisions and actions in order to ensure transparency and fairness.

PAYING TAXES

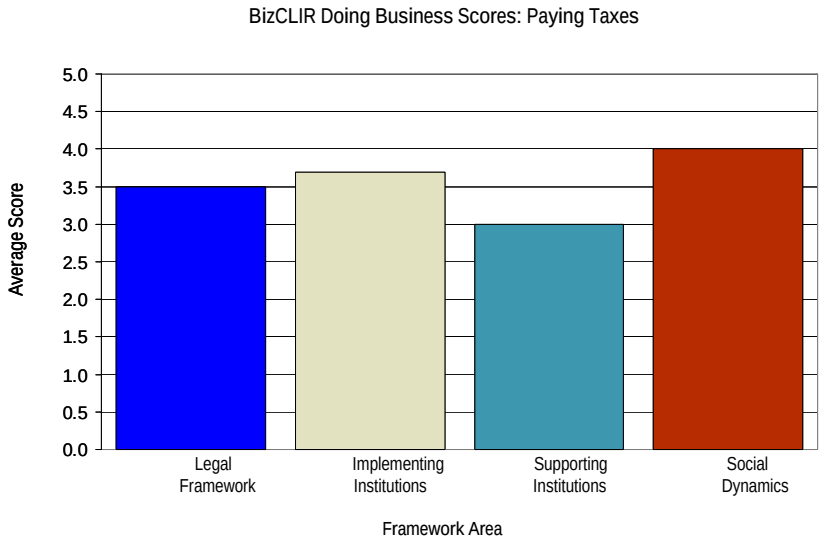
Introduction

The rate at which individuals and business entities pay their taxes reflects the capacities of a state and the health and vibrancy of an economy. The fairness and efficiency of a tax system can have significant impact on whether entrepreneurs (particularly smaller and micro enterprises) and individual citizens choose to join the formal sector. If they believe that the tax system is fair and that the state will use their tax revenues wisely, they are more likely to participate.

Paying Taxes

Doing Business Ranking 2008	50
Doing Business Ranking 2007	52
Payments (number)	34
Time (hours)	168
Profit tax (%)	20.2
Labor tax and contributions (%)	5.7
Other taxes (%)	7.9
Total tax rate (% profit)	33.8

A state with a larger tax base can typically pursue more growth-oriented priorities, including expenditures on public goods such as education, health, and infrastructure. Moreover, when more individuals and businesses participate in the tax system, the state can reduce the amount of the payments it seeks from each taxpayer. By contrast, if a country's tax system is perceived as excessively burdensome or unfair, or if the citizenry perceives the state as being a poor steward of its revenues, informality may persist with fewer enterprises participating in tax system and fewer economic benefits will result.



This chapter examines Rwanda's tax collection laws and processes, along with how the government uses the taxes it collects – a critical part of sound fiscal management. This chapter also assesses the extent to which Rwanda's tax collection system is in compliance with international best practice in tax collection. The results of this inquiry contribute to an understanding of a business entity's incentives for and against joining Rwanda's formal economy and also outline reforms that will likely increase business formalization and tax compliance.

This chapter is grounded in the World Bank's *Doing Business* survey and indicators – in this case its "Paying Taxes" section. The World Bank's indicators assess the number of steps and the time it takes for an enterprise to comply with its tax obligations as well as countries' rates of taxation. Rwanda fares well in the *Doing Business* 2008 survey; it is ranked as the 50th (out of 178 economies) for paying taxes, improving from 52nd in the previous year. One reason for its higher ranking is that the overall total tax rate has declined from 37.2-33.38%. Rwanda surpasses its neighbors, with only Uganda coming close at 55th.[154]

[154] Mozambique ranks 72, Tanzania 104, Burundi 109, and Kenya 154. *See* World Bank, *Doing Business 2008* (2007). The Doing Business tax data evaluates the tax that a medium-sized company must pay or withhold in a given year, as well as measures of the administrative burden in paying taxes. These measures include the number of payments an entrepreneur must make; the number of hours spent preparing, filing, and paying; and the percentage of profits they mist pay in taxes. The Doing Business indicators focus on the taxes that

Factors that influence whether a tax regime is perceived as popular and whether would-be taxpayers will comply include the following:

- Rates of taxation
- The complexity of the tax system
- Perceived corruption in tax administration
- The perception that revenues collected are used to provide important public services.

In 1998, the Rwanda Revenue Authority (RRA) was launched and since then it has continued to improve Rwanda's system of tax collection and to generate more revenues for the country. It collected £60 million in its first year and £240 million as of 2006.[155] As a result of increased revenues, the national budget has grown, with more being spent on vital areas such as health, education, and sanitation.

According to the Index of Economic Freedom, Rwanda rates quite well with respect to fiscal freedom, at 82.6%.[156] Although the country has moderately high tax rates (the top income and corporate tax rates are 35%), the overall tax revenue as a percentage of GDP amounted to 12.8% in 2007.

The BizCLIR indicator scores, displayed in the graph at the beginning of this chapter, reflect the overall finding of *Doing Business*: that recent tax reforms are proving effective and are in fact bolstering Rwanda's economy. With the exception of supporting institutions, all facets of the BizCLIR review are scored in the "more positive than negative" zone, with social dynamics showing particular promise.

Legal Framework

Rwanda Constitution. The country's constitution states that no taxation can be imposed, modified, or removed except by law, and that no exemption from or reduction of tax may be granted unless authorized by law. The major taxes and the procedures to collect them are based on specific laws that are readily accessible.

In 2005, Rwanda engaged in a major revision to its tax laws, resulting in a revised tax code that took effect in 2006. This revision led to streamlined procedures, harmonization of tax incentives, and lower rates for corporate income tax.[157] The tax base was widened through reforms to value-added tax (VAT) collection. In addition, new guidelines for VAT refunds were issued, setting a strict timeline and procedure for adjudication of VAT refund claims. In parallel, a revised set of guidelines for tax inspectors and a code of conduct adopted through an administrative decree were expected to be implemented at the same time as the introduction of the new tax code.

The major revenue laws and the Rwanda Revenue Commissioner's orders are available on the RRA website in English, French, and Kinyarwanda. Not all legislation, however, is present. The 2002 Law on

Key Laws

- Law Number 16/1997, establishing the Rwanda Revenue Authority.
- Law No. 16/2005, dealing with direct taxes on Income.
- Law No. 25/2005 on Tax Procedures
- Law No. 17/2002 on Decentralized Taxes
- Law No. 25/2005 on Tax Procedures
- Law No. 27/2004 Import Duty Law Modifying and Completing Law /2002
- Law Number 6/2001 on the Code of Value-Added Tax (VAT)
- Law Number 3 of 1998 on the Duty Payable for a License to Carry on I
- Ministerial Order Number I Providing for Value-Added Tax Rules and Tax Procedures (Commissioner's Order Number I of 2002)
- Commissioner's Order Number 2 of 2002
- Commissioners Order Number 3 of 2002

There are also additional laws concerning various consumption taxes and customs duties.

a business must pay and the administrative costs of doing so. The taxes included in the study are corporate income tax, turnover tax, all labor contributions paid by the company (including mandatory contributions to private pension or insurance funds), property tax, property transfer tax, dividend tax, capital gains tax, financial transactions tax, vehicle tax, and other small taxes (e.g., fuel tax, stamp duty, local taxes).

155 DFID Case Study, *Good Taxes Reduce Poverty in Rwanda* (January 2008).

156 Heritage Foundation Index of Economic Freedom 2008 (Rwanda).

157 Prior to the 2005 reforms, the IFC noted that: "Although the criteria for guiding the administrative application of some tax laws have become clearer since the establishment of the RRA, it is uncertain how well tax laws are applied in practice." *See* International

Decentralized Taxes, for example, is noticeably absent. The website does include a phone number for taxpayers to call and a series of questions and answers on a limited number of topics. The Ministry of Justice has also posted a series of tax statutes on its website – but some of the laws it includes are outdated (e.g., the 1997 Income Tax Law is still available online). The Ministry of Justice does not indicate which of the laws it has posted are current and which are available for historical purposes only.

Direct taxation in Rwanda includes a tax on industrial and commercial profits. Taxes on dividend and a turnover (sales) tax are also levied. Indirect taxation, forming the bulk of government revenue, is derived from import and export duties.

Taxes on goods and services (VAT) contributed 51.4% of total revenues in 2005, and this has been the trend for the past seven years. Direct taxes contributed about 31.4% of the total revenues in 2005. This further indicates the improvement in the effectiveness of the tax administration through enforcement and audit activities coupled with improvement in taxpayer identification and registration. Taxes on international trade contributed about 17.2% of the total revenues for 2005. This is mainly attributed to a substantial decline in import duties collected from goods originating from COMESA member states.[158]

In 2004–2005, according to reports from the United Kingdom's Department of Foreign and International Development (DFID), there were fewer than 3,000 registered companies paying national taxes in Rwanda. This included 280 so-called large taxpayers; 15,000 VAT-registered companies; and 1,000 companies with turnover of less than 20 million RWF, which pay a lump-sum 4% turnover tax. As of 2004, customs, excise, and the Large Taxpayers Department (LTD) contributed 43% of the total government revenues. The top 13 companies were estimated to pay some 80% of all taxes collected in Rwanda, and the top 280 covered by the LTD pay around 90%. [159]

The legal framework for paying personal income tax and corporate income tax is sound and encompasses best international practices. This framework includes individual income tax; corporate income tax; the pay-as-you-earn system for employees; presumptive (lump-sum) income tax for smaller businesses; and provisional and withholding taxes for dividends and royalties.

In 1997, individual taxes were levied in accordance with a progressive schedule with three brackets ranging from 0-35%. The highest tax level was reduced to 30% in the revised 2005 Law on Income Tax. That rate became effective on January 1, 2006. The personal income tax is progressive. The Word Bank reports 28% as an average tax rate based on the following sliding scale: no tax for the first RWF 30,000; 20% from RWF 30,000 to RWF 100,000; and 30% above RWF 100,000.

In 2005, the corporate income tax rate was also reduced from 35% to 30%. The corporate income tax is for anybody having a turnover that is equal to or above RWF 36 million per annum. (Income from agricultural activity that is less than RWF 12 million is exempt from taxation.) Legal entities or individuals with annual turnover of less than 36 million RWF pay taxes following a lump-sum taxation [Forfait] regime,[160] unless they opt for the real income taxation regime. Under the lump-sum taxation regime, the tax rate is 4% of a business's annual turnover.

In determining the amount of business income that is taxable, the Rwanda framework relies on international best practices: the taxable income from business is based upon the overall gross income derived from the sale of goods or services and other amounts derived from conducting business excluding exemptions and less deductions for depreciation allowances, deductions, and loss carried forward from previous years. Businesses may only carry losses forward for five tax periods (five years).

In 2005, a dividend withholding tax was introduced. The withholding tax rate on dividends, management fees, and interest income was also harmonized at 15%. As of 2005, the depreciation rules for capital

Monetary Fund, Rwanda Financial Stability Assessment (IMF 2005).

158 Rwanda Revenue Authority, Annual Report 2005, at 14.

159 Since 1998 and even before, the role of the Customs Department has been very significant in terms of contributing the biggest share of revenues. It was only beginning in 2005 that the Large Taxpayers Department reversed the rule and contributed the largest share to the total revenues. The contribution to the total revenue by LTD was 43.07 percent and that of Customs Department 41.88 percent. The Internal Revenue Department contributed 10.65 percent. Id. at 15.

160 The term "forfait" regime refers to a lump sum taxation system. This is utilized in countries such as Switzlerand as well.

Summary of Corporate Taxation Rates in 1997 and 2005 Laws
Source: UNCTAD Investment Policy Review of Rwanda 2007

	1997 Code	2005 Code
Corporate income tax rate	35%	30%
Withholding rate dividends to non residents	0%	15%
Withholding rate on agency fees and interest	20%	15%
VAT rate		
Standard	18%	18%
Exports	0%	0%
Depreciation rates (straight line)		
Buildings	4%	5%
Plants and machinery	15%	5%
Computers	33.3%	50%
Office equipment	20%	25%
Goods vehicles	25%	25%
Foreign-sourced income	Tax credit under DTT only	Unilateral tax credit
RIEPA certificate necessary for incentives	Yes	Yes
Incentives		
5% flat fee on imports	Yes	Yes
Investment allowance	Yes	No
Accelerated depreciation	No	Yes
Employment-based tax rate reduction	No	Yes
Export-based tax rate reduction	No	Yes

assets were simplified and the rates modified. All assets must be depreciated on a straight-line basis and the depreciation rates closely track the useful life of the assets. Plants and machinery are subject to slower depreciation under the 2005 income tax code. In 1997 and in 2005, loss carry forward has been capped at five years.

A taxpayer may self-assess and pay income taxes by lodging a return with the RRA (and paying taxes on a quarterly basis), by withholding and pay-as-you-earn systems (with direct withholding by an employer) or through installment payments. The pay-as-you-earn tax is a tax imposed on salaries as well as additional employer-provided benefits in kind such as accommodation and transport allowances.

The 2005 Tax Administration Law. This law was enacted to improve the administration of tax collection in Rwanda. It sets forth audit procedures, a taxpayer appeals process (which includes a right of judicial review), detailed time frames for appeals processing, and penalties for violating tax laws including criminal penalties.

The Value-Added Tax (VAT). Law No. 06/2001 introduced this tax in Rwanda in 2001, replacing a more outdated sales tax. VAT is supplemented by a series of commissioner's orders. Enterprises are required to register for VAT if their turnover is above RWF 15 million for any period of 12 months or RWF 3.75 million in three consecutive months in the last quarter of the year. The final consumer pays the tax and not the person registered for purposes of collecting and accounting for and paying VAT to the RRA. Articles 57–63 of the VAT law specify the rights and obligations of a VAT-registered taxpayer.

A VAT-registered taxpayer must:

- Clearly display the VAT registration certificate in at the entrance of his place of business for his client.
- Issue a VAT invoice to his customers every time they purchase goods or services.
- File a monthly VAT return on the appropriate form.
- Be available at all times to receive VAT officers and to make available to the officer books of accounts ascertaining to the business.

The standard VAT rate is currently 18% for taxable goods and services. (The original VAT rate was 15% in 2001 but was raised to 18% in 2002.) Goods or services consumed by "privileged" persons are exempt; this exemption covers diplomatic purchases and purchases under donor-funded agreements, projects, and technical aid. VAT is accountable for and paid monthly on an accrual basis.

Certain types of goods or services are zero-rated. Article 86 of the VAT code sets forth exempt categories. These include water supply to nonprofit entities, certain health supplies, educational services, transport services, property conveyance, life and medical insurance, among others. The Revenue

Commissioner may also exempt additional goods or services by decree.

VAT refunds may be claimed whenever input tax exceeds output tax. The law stipulates that the RRA must refund excess payments within 30 days with a maximum period of three months if investigation is needed. According to UNCTAD, VAT refunds appear to be processed "efficiently and expeditiously." The RRA is subject to a penalty of 1.5% in the event it is late with refunds. This is the same penalty that is levied on taxpayers for their late payments.[161]

The 2005 Tax Code and the Investment and Export Promotion and Facilitation Law of 2005. These laws provide fiscal incentives to investors that can obtain a Rwanda Investment and Export Promotion Authority (RIEPA) certificate. There is a high threshold to meet this classification – US $250,000 for foreigners and US $100,000 for local investors. Smaller investors are not eligible for these incentives. The incentives provided to larger investors include:

- The zero-rating of VAT on imported capital goods and raw materials that are subject to zero-rated tariffs
- A flat 5% tax in lieu of all other duties (tariffs, excise, VAT) on imported capital goods and raw materials that are not subject to zero-rated tariffs (the exemption requires RIEPA and RRA authorization for each transaction)
- An accelerated rate of depreciation of 40% in the first year on the condition that the investment be at least RWF 30 million and that the asset be held for a minimum of four years. The accelerated rate of deprecation is increased to 50% in the first year for investments located outside of Kigali or in one of 10 priority sectors identified in the Investment and Export Promotion Facilitation Law of 2005
- A special regime for international headquarters, providing for no corporate income tax and an exemption from dividend withholding tax. This regime is conditioned upon a minimum capital investment of $2 million and local expenses of $1 million per year.

[161] UNCTAD, Rwanda Investment Policy Review 2007, *available at* http://www.unctad.org/en/docs/iteipc200611_en.pdf.

In addition to these incentives, the 2005 Income Tax Code contains two additional ones that are not dependent on RIEPA certification:

- A reduction in the corporate income tax rate of 2%, 5%, or 6% for companies employing a large number of Rwandans (from 200 to more than 900)
- A reduction in the corporate income tax rate of 2% or 5% for companies exporting $3 to $5 million a year or more than $5 million in a year respectively.

According to UNCTAD's 2007 investment assessment, the 2005 income tax law lowers the corporate income tax rate but increases the tax burden on foreign investments as compared with the 1997 law. The tax burden on domestic investors, by contrast, has decreased. UNCTAD's own statistical modeling indicates that "the fiscal burden is not a major impediment to investment. Yet Rwanda's 'average' position also means that the tax regime is not a pull factor for investment."[162]

Excise duties. These duties are charged on certain goods imported as well as locally manufactured. Excise duty on imports is collected by the Customs Department within the RRA. Local excise duties are collected by VAT department. The following are the excisable goods and their corresponding rates:

Taxable good	***Rate***
Beer	60%
Soda and lemonades	39%
Cigarettes	120%
Wines and liquors	70%
Mineral water/sparkling water	10%
Fuel (other than jet fuel) and gas	37%
Vehicles (less than 1500cc)	5%
Vehicles (between 1500cc and 2500cc)	10%
Vehicles (above 2500 cc)	15%
Powdered milk	10%

Property taxes, rental taxes, and occupational/professional taxes. These taxes are collected at the district level, as authorized by Law Number 17/2002 establishing the source of revenue for districts and towns. This law authorizes Kigali and other districts to collect property taxes, taxes on trading licenses,[163] and rental income tax.

[162] Id.

[163] Under Articles 44–53 of Law No.17/2002 of 10/05/02 establishing the sources of revenue for districts and towns and its management, a duty for a license to carry out a trade or profession is payable each year by

According to Article 5 of the 2002 law, any house and land registered, whether or not in use, must pay property tax. The district, town, or city councils of the respective areas will determine the rates. Article 5 is supposedly meant to compensate for the abolished poll tax of RWF 400 per adult. Tax on rental income is another tax that was transferred to the districts and towns. According to the RRA's website, "decentralized taxes may generate more revenues if properly handled by districts and towns." Under Articles 54–65 of the 2002 law, revenue derived from the rental of buildings and land is taxable.

Import duties. These duties are paid on imported goods.[164] Currently there are four tax rates:

Goods	Rates
Finished goods	30%
Semi-finished goods	15%
Raw materials	5%
Capital goods	0%

Source: RRA website

There are additional statutes concerning consumption taxes for locally made and imported beers, lemonades, sodas and mineral water, imported cigarettes, liquors and wines, petroleum, and certain other imported and locally manufactured products.

UNCTAD also notes that Rwanda's tax laws still suffer from deficiencies including:

- A lack of clarity and inconsistencies in different versions of the laws (French, English, and Kinyarwanda)
- A complex and administratively burdensome structure of incentives
- An insufficiently clear vision as to how fiscal incentives can help achieve national development goals.

natural persons that normally carry out an activity for gain on a nonsalaried basis and by a corporate person or organization that is liable to pay corporate taxes.

[164] Under Law No.52/2001 of 30/12/2001, imports from COMESA countries that meet conditions as specified by the COMESA rules of origin are given a preferential treatment by reducing the rates.

Implementing Institutions

Rwanda Revenue Authority (RRA). The main implementing institution for tax assessment and collection is the RRA, established by statute in 1997. The RRA replaced the previous Tax and Customs Departments that existed prior to 1994. The old departments were housed within the Ministry of Finance. The RRA is a highly professionalized government authority that strives to improve its performance through biennial strategic planning and continuous benchmarking and refinements to its internal processes.[165] The RRA has received substantial technical assistance from DFID. The RRA was launched on January 1, 1998. It is the central body for the assessment and collection of tax revenues and enforcement of revenue laws. The RRA also provides advice to the government on revenue-related policy matters. As of 2006, it employed approximately 650 staff. The success of the RRA relates to is strong legitimacy and governmental support. Its slogan is "Taxes for Growth and Development."

Key Implementing Institutions

- Rwanda Revenue Authority (RRA)

According to some experts, "The establishment of the RRA marked the beginning of a remarkable process of organizational development, which has seen the transformation of the government's capacity to manage revenue collection." In just six years (1997–2003), the RRA helped increase domestic revenue generation from 9.5% to 13% of GDP.[166] This represents a stark contrast to the situation prior to the creation of RRA. According to some commentators, the previous Department of Tax and Customs was perceived as incompetent, inefficient, and corrupt. Revenue collection was not taken seriously by the government or the public.[167]

[165] Rwanda Revenue Authority Corporate Plan 2006–2008 (November 2005).

[166] Eugene Torero, Commissioner for Large Taxpayers, Rwanda Revenue Authority; Max Everest-Phillips, Senior Governance Adviser, DFID; and Richard Stern, African Regional Program Coordinator, FIAS, *Case Study 9 – Rwanda – The Rwanda Revenue Authority Project* (February 2006) (PublicPrivateDialogue.org).

[167] Developing Capacity for Tax Administration: The Rwanda Revenue Authority (ECDPM Discussion Paper 57D), *available at* http://www.ecdpm.org/dp57D.

The RRA plays an integral role in the government's broader political vision and development strategy. It is seen as playing a strategic role in:

- Increasing the country's domestic revenue generation capability [168]
- Creating an enabling environment for private sector development and attracting inward investment
- Contributing to developing a culture of taxpayer participation and citizenship as part of a wider process of establishing the norms and practices of democratic governance
- Encouraging public confidence in government.

In Transparency International's most recent Corruption Perceptions Index, Rwanda ranks 111 out of 179 – the same as Uganda and better than Kenya, but not as well as Tanzania.[169] Petty solicitation of gifts and tips, while not unheard of within the RRA, is not regarded as a major problem.

The RRA did face several challenges at its inception. In 1997, there were limited opportunities for revenue generation**,** given the country's limited tax base. The majority of Rwandans (over 90%) lived and worked in the rural areas that had been devastated by war and were largely nonmonetized. The formal economy, comprising mainly small, micro-, and medium-sized enterprises, had similarly been devastated and was only beginning to reemerge. A much larger informal sector was (and for the most part still is) beyond the reach of the tax authorities. There were few individuals earning sufficiently high salaries to be eligible for personal income tax.

A second challenge was the fact that few Rwandans believed that they should pay taxes. A third and related challenge concerned the reputation and capacity of the former revenue service that the RRA was to replace. There were negative perceptions of the previous Tax and Customs Departments.[170]

Moreover, the country's human resource base was fragile. There was a lack of trained professionals in the fields of accountancy, financial management, and tax administration. This deficit in capacity meant that the government lacked the ability to administer tax policy and that the private sector was inadequately served with tax and accountancy professionals.

At the inception of the RRA, all of the former staff of the old revenue department were required to undergo an examination as part of a re-recruitment exercise. External persons administered the recruitment process to ensure impartiality and to guard against possible political interference. Those who were retained were given an attractive compensation package as a way of instilling professionalism and loyalty.

In early 2004, the RRA was restructured along functional lines. It was reorganized into three departments – Large Taxpayers (LTD), Internal Revenue (IRD), and Customs Departments.[171] The LTD deals with 280 to 300 companies that generate close to 80% of corporate income tax and VAT in Rwanda. The IRD deals with approximately 4,000 SMEs as well as personal income taxes.

The RRA is governed by a board of directors and headed by a chairperson who is appointed by the Prime Minister with the recommendation of the Cabinet. The board is responsible for the day-to-day policy implementation of the RRA. The eight members of the board include the Chair, the

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[168] *See* id. at footnote 4, which states: "Revenue collection has grown from 9 to 13% of GDP, yet government expenditure accounts for approximately 25% of GDP. In view of this significant gap, efforts to improve domestic resource mobilization capabilities are critical."

[169] Transparency International, Corruption Perceptions Index (2007).

[170] As DFID notes:

> Before the establishment of the RRA, tax and customs were managed by two different and under-staffed departments in the Rwandan Ministry of Finances. Within these departments, the same people were responsible for both generating tax policy and organizing the collection of taxes. This gave rise to problems such as tax evasion and the special treatment of friends of senior officials and ministers. In addition, unqualified and corrupt revenue officers, and out of date systems, meant that taxes weren't being collected efficiently enough.
> DFID Case Study. *Good Taxes Reduce Poverty in Rwanda* (January 2008).

[171] The 2004 restructuring and modernization endeavors and the consequent establishment of the new Large Taxpayers Department and Internal Revenue Department started yielding results immediately, especially for VAT and PAYE (pay-as-you-earn). Substantial efficiency gains were realized in the year 2005 for all tax divisions. Since 1998 and even before, the role of the Customs Department has been very significant in terms of contributing the biggest share of revenues. It was only during 2005 that the LTD reversed the trend and contributed the largest share to the total revenues. In 2005, the LTD contributed 43.07 percent to the total revenue and the Customs Department contributed 41.88 percent The IRD contributed 10.65 percent.

Commissioner General, the Secretary General of the Ministry of Finance and Economic Planning, the Secretary General of the Ministry of Commerce and Industry, and other distinguished members from the fields of accountancy, law, economics, or other relevant areas appointed by the Prime Minister with the recommendation of the Cabinet.

The RRA board has played a critical role in facilitating the growth of the organization and in managing the interface between internal management and external stakeholders. Senior management has enjoyed the support of a board that has sought to protect the autonomy of the organization, while assuring accountability to its stakeholders – including taxpayers.[172]

With the help of DFID, the RRA has raised revenue collection from 9.7% of GDP to 13% of GDP. Import and export duties have risen from RWF 14 billion to RWF 27 billion. VAT has also risen from RWF 24 billion to 47 billion and direct taxes from RWF 24 billion to RWF 39 billion by 2004. The increase in property tax however rose only slightly from RWF 0.6 billion to RWF 0.85 billion. This may relate to deficiencies in the property registration system.

In 2004, the government approved the formalization of an RRA budget, allocating 2.6% of the revenue collected for this purpose. RRA acknowledges, however, that 2.6% is not sufficient to meet all its duties.[173] Nonetheless, it still works within its budgeted allocation and bases its own strategic planning on the funds allotted to it.

The RRA's operations are governed by the Tax Procedures Law of 2005. The RRA has only recently introduced a rolling cycle of audits in the LTD to cover all taxpayers every three years. Taxpayers had previously complained that the audit cycle was not consistent.[174] There have also been criticisms of application of new tax laws. This may, however, relate solely to the fact that the laws are new and there is no established precedent with respect to how to interpret various laws.

The RRA's audit manual spells out clear audit processes. Audit teams, for example, must keep detailed audit notes, recording points found that require clarification. The heads of the audit within LTD and IRD run case study training sessions for staff. The move to the functional structure of the RRA has allowed all taxes to be audited at the same time, making for a much more efficient and effective process.

As of 2005, the RRA recognized that its appeal proceed may need strengthening – at that time the appeal was to the same staff that made the initial decision and then to the RRA Appeals Committee which also consists entirely of RRA staff. The 2005 law changed the process such that appeals were made initially to the RRA followed by a judicial right of appeal. The private sector has complained about this lengthy process and report that fines and interest continue to accrue during this period.

The RRA has responded to complaints about its appeals process by noting that: (i) the LTD is always available to provide advice; (ii) VAT-registered taxpayers have to visit the RRA monthly to file returns and can consult with the LTD then; and (iii) taxpayers may always file amended returns.

RRA has engaged in extensive taxpayer outreach. From the start the RRA has been faced with the need to transform its relationship and standing with

[172] The RRA has a variety of internal divisions that have helped to promote efficiency, improved personnel performance, and accountability. There is a support division which houses units such as taxpayer services, finance and administration, human resources and training, information systems and technology, management and tax information, and the commissioner general's office. The planning and research department facilitates the organization's strategic review and corporate planning process. It also conducts an annual review of the RRA's progress. The human resources department has also been the focus of substantial capacity development. The information technology department has come to play a significant role in enhancing its capability to process information related to performance management. Given the comparative weakness of IT support in Rwanda, the RRA has invested in building a strong internal IT support capability. It has created an electronic records system for tax files, for example.

[173] Rwanda Revenue Authority, Annual Report (2005).

[174] Many of the complaints heard from the private sector represent apparent glitches in the process of implementing reform, rather than substantial systemic problems. The considerable growth in fees and fines from RWF 131 million to RWF 182 million from 2003 to 2004, for example, appear to be a result of more effective auditing. Prior to 2004, however, there were repeated complaints about the lateness of audits, arbitrary rulings, and resultant inequity of fines imposed where rulings were unclear and audits often late. World Bank/IFC Foreign Investment Advisory Service, Sector Study of Effective Tax Burden – Rwanda (2006), at 85.

external stakeholders. Although it enjoyed the formal support of the government, the public was not confident that paying taxes would be to its benefit. From its inception, the RRA has engaged in a variety of strategies to encourage the public to become pro-taxes and to inform the public that it is their duty and responsibility to pay taxes. These strategies have included:

- Holding an annual "taxpayers' week," which includes street parades and the award of certificates and prizes (some reports indicate this is an annual day rather than week)[175]
- Emphasizing integrity and zero tolerance of corruption in public speeches
- Adopting a policy of naming and shaming wrong-doers
- Asking opinion leaders and political figures what they can do to encourage compliance among their constituents
- Working with partner organizations to reinforce their own efforts to disseminate information about paying taxes.

The RRA has also been attentive to public relations and to creating positive messages about tax collections. To assist management in this process, the RRA leadership and consultants from DFID, identified 'policy champions' including politicians, community leaders and representatives of the private sector. Together, the RRA and these champions made large efforts to convey the strategic importance of revenue collection for national reconstruction and development.

A second and closely related challenge has been to promote the reputation of the RRA itself in order to overcome the negative perceptions associated with the old revenue service, which had been viewed as corrupt and inefficient. The strategy has been to emphasize RRA core values with respect to performance, accountability, and, increasingly, responsiveness to the needs of its customers. The shift toward a customer service orientation reflects the growing awareness of the need to offer a high level of service to the taxpaying public and to be responsive to public concerns.

The RRA's customer service efforts have included a personal visit to each of the 280 largest taxpayers to explain procedures involved in a new computerization system, for example. The RRA also has a taxpayer charter of rights that was revised in March 2005 and is accessible through the RRA website. The LTD has established customer service standards.

The RRA has instituted an online Q&A page and various brochures and forms to educate taxpayers.[176] While taxpayer rights are not embodied in law, a broad statement of taxpayer rights is posted on the RRA website and in RRA offices. An RRA Code of Staff Conduct and Disciplinary Procedures was issued in June 2001. This code includes a requirement to declare asset holdings.

The recent creation of a quality assurance unit represents a shift in emphasis away from internal procedures to external services. The quality assurance department also houses an internal affairs unit, which plays an important role in safeguarding the integrity of the authority. It is responsible for ensuring that staff are familiar with an internal code of conduct and for following up on allegations of fraud, bribery, and related malpractice. As a result of these efforts, the RRA believes that public attitudes toward paying taxes have changed for the better. The RRA cites growing taxpayer compliance and surveys of the taxpaying public as indications of success.[177]

[175] *See, e.g.,* Kenya Revenue Authority News, *KRA Joins Rwanda Revenue Authority in Honoring Taxpayers* (May 2006). At the annual event in 2006, the Commissioner General of RRA highlighted the achievements of RRA. She cited the outstanding revenue collection, which was 18% above the set target for the year 2005, as a good improvement and an important contribution to the development initiatives in Rwanda. She further said that RRA had increased taxpayer awareness in the last year, and held several taxpayer education sessions for secondary schools. These initiatives were among many outreach activities that had helped to boost revenue collections. The Commissioner noted other RRA achievements, including facilitation of cross-border trade through improved Customs controls, computerization of the tax collection and accounting system, and construction of the RRA Office Complex and Training Centre. She identified some challenges faced by the RRA in achieving its mandate. These included the rapid growth of the informal sector, smuggling of goods and tax evasion across the border, as well as high levels of illiteracy among the taxpayers.

[176] The information available via the website is not complete and can be quite varied in its usefulness and comprehensiveness. There is a lot of information in the Q&A section, for example, about how to pay taxes on vehicles but no information on the basic process of paying and filing income tax statements or obtaining tax clearance certificates.

[177] ECDPM Discussion Paper 57D, *Developing Capacity for Tax Administration: The Rwanda Revenue Authority*, *available at* http://www.ecdpm.org/dp57D.

The RRA has engaged in active strategic planning as well. The most recent (and sixth) "corporate" plan available on its website was developed in 2005 for the years 2006–2008. The RRA focused on implementing the major revisions to its customs and income tax laws as well as to tax procedures and administration. At the same time, the RRA notes that: "Our primary focus over the next three years will be on providing high standards of service to our customers and helping them to comply with their tax obligations. This will be pursued together with improving our internal business process and enhancing capacity of the organization generally."[178] However, as discussed in the Starting a Business chapter of this report, the RRA's efforts have not been entirely well-received. Some business people complain that the RRA is not doing enough to help businesses and individuals comply with tax obligations, but is instead pursuing an over-zealous campaign against tax evasion that is discouraging many from joining the formal sector and attempting to comply.

The RRA acknowledges that it faces a number of challenges. After several years of dynamic transformation and tangible improvements, the organization is entering a period of less dynamic change, so that greater efforts will be required to generate further performance improvements. RRA and UNCTAD have both noted that the RRA is no longer the employer of choice. The RRA is finding it increasingly difficult to remain competitive in the labor market. A growing number of private and quasi-public institutions as well as international agencies now offer more competitive remuneration packages. It is therefore becoming more difficult to attract and retain good personnel. Constrained by budget ceilings, the RRA will have to work at improving efficiency so that resources can be freed up to offer more attractive salaries linked to performance.

The RRA will also have to face the challenge of succession and building up the "missing middle." There is a concern that the most capable managers that have been at the center of the organization's achievements are leaving for other posts. Already a number of key managers have been recruited for top government posts, while key technical staff are being poached by other organizations that value the training and organizational experience that the RRA has provided.

[178] Rwanda Revenue Authority, 2005 Corporate Plan.

Challenges for the RRA include:

- Uncompetitive staff remuneration
- Weak performance management systems, particularly performance appraisal systems
- Inadequate supervisory skills by some managers
- Weak research and operational policy functions
- Inadequate skills in ICT among staff and limited number of ICT literate staff
- Absence of a taxpayer master file for an updated taxpayer's account
- Limited interface between RRA systems and with key stakeholders
- Limited literacy levels of the tax-paying public that limits its compliance capacity.

Supporting Institutions

President. From the outset, the president of Rwanda has played a significant role in promoting the RRA, encouraging Rwandans to pay their taxes, and insisting on public service integrity, transparency, and accountability.

Ministry of Finance and Economic Planning. This office is the RRA's parent ministry and is therefore directly responsible as a board member for monitoring the policy framework and operations of the organization. It also provides the policy links between domestic revenue mobilization and broader strategies of macroeconomic management, public sector reform, and poverty reduction.

Ministry of Commerce. The Ministry of Commerce (including RIEPA) is a board member and a critical stakeholder from the point of view of managing the relationship between the collection of revenues and creating an enabling environment for

Key Supporting Institutions

- President of Rwanda
- Ministry of Finance and Economic Planning
- Ministry of Commerce
- National Bank of Rwanda (BNR)
- Social Security Fund of Rwanda (SSFR)
- Customs and Excise Department
- Private Sector Federation (PSF)
- Tax and financial consultants
- Donors
- Taxpayers
- Police, army, and local authorities

private sector investment and development.

National Bank of Rwanda (BNR). The BNR is also a board member and a critical stakeholder in terms of monitoring the link between domestic revenue generation and the management of fiscal and monetary policy.

Social Security Fund of Rwanda (SSFR). Although only about 200,000 workers in Rwanda are contributing to the country's social security fund, the fund itself is performing relatively well and invests significantly in development projects throughout the country. Among the projects sponsored by the surplus monies of the SSFR are real estate ventures, office buildings, and shopping malls. Proceeds from the SSFR's investments reportedly represent about 45% of the fund's total value, with the remaining funds coming from employer and employee contributions and collected late fees.

The SSFR is endeavoring to improve formal contributions and engages in seminars and media campaigns about the long-term benefits – to individuals and to the Rwandan economy – of participating in the system. The website of the SSFR of Rwanda is one of the stronger and more helpful areas in which the government provides information to the citizenry.

Customs and Excise Department. This department, part of the RRA, relies on cooperation with counterpart services in neighboring countries to coordinate activities (including the effective sharing of information) aimed at thwarting smuggling rings and attempts at customs evasion.

Private Sector Federation (PSF). The RRA has worked closely with members of the PSF to carry out awareness campaigns regarding compliance, and has used the PSF as a platform for exchanges on tax-related matters with the business community. The PSF serves as an interlocutor with and a focal point for the RRA in seeking compliance and understanding on revenue issues among large, medium, and small enterprises. Some commentators note that the PSF may not be fully representative of smaller business interests in Rwanda. The PSF is discussed further in the Starting a Business chapter of this report.

Tax and financial consultants. These individuals play a critical role as intermediaries in facilitating the preparation of tax returns and company financial reports, auditing books of account, and providing related services to the taxpaying community. The RRA has invested in the development of the institutional capacity of private sector accountants and auditors. The tax intermediary sector has been poorly organized with no formal professional body in place to set standards and regulate the performance and behavior of members.

By helping the sector to organize itself into a professional body, the RRA aims to create a stronger and more trusted strategic partner that can support its own efforts to broaden the tax base and increase levels of compliance. The RRA mentioned the enactment of a licensing statute for tax professionals in its 2005 annual report. As of April 2008, creation of a certification program for tax professionals and accountants was underway.

Donors. The RRA has also invested in maintaining a productive and open relationship with external partners – namely DFID and the IMF – through whom the RRA has accessed considerable financial and technical resources that have contributed to its development. The RRA has been an active member of the Association of East African Revenue Authorities.

Taxpayers. Taxpayers interact with the RRA as enterprises and individuals, and contribute revenues through the payment of various taxes and customs and excise duties. They constitute the RRA's other "customers" whose interests must be counterbalanced with those of the government, to whom the authority is ultimately accountable. RRA has promoted Tax Advisory Councils across the country, which reportedly have strong civil society participation.

- *Large taxpayers* comprise local and international companies operating in Rwanda. This is a new and growing category of taxpayer. Although relatively few in number, they account for almost 80% of collected revenues. Such companies usually have sophisticated financial management systems and can be expected to be knowledgeable about their tax obligations. The compliance rate among this category is now very high (company tax 95% and VAT 87%).

- *Small taxpayers* comprise local small and medium-sized enterprises as well as individuals. Although significant in number, this group accounts for less than 20% of revenues collected due to low incomes, poor accounting practices,

lack of knowledge of the law, lower compliance rates, and more general difficulties associated with their identification and registration (no fixed addresses). This category also includes the large but unregulated informal sector.

- *Local and international traders, investors, and visitors* involved in the import and export of goods and services, which interact with the Customs and Excise Department.

Police, army, and local authorities and counterparts. In neighboring countries, these groups are important partners in jointly tackling smuggling and tax evasion.

Social Dynamics

Almost 90% of taxpayers are based in the capital, Kigali. This is the group that the RRA interacts with on a daily basis and on whom it ultimately depends for its performance and support.

In broad terms, Rwanda has been successful in creating an efficient tax collection system, due to the work of the RRA and the significant legislative reforms undertaken between 1997 and 2005. Between 1998 and 2006 there was a threefold increase in revenues. The national budget also grew threefold, from RWF 175 billion to RWF 528 billion during this time, thanks to the increase in revenues. Since 2003, spending on water and sanitation has increased more than five-fold, education expenditure has more than doubled and health expenditure has grown to almost five times the 2003 level.

According to DFID, as a result, poverty is falling in Rwanda, from 74% of the population in 1994 to 56.9% in 2006. The number of children in primary education has increased from 74% in 2001 to 95% in 2006, which was also helped by the introduction of free primary education. In healthcare, user rates have doubled.

As tax revenues have increased, the gap between aid and domestic revenue as a percentage of GDP is closing, and the proportion of Rwanda's budget financed by aid has declined. In 2001, only 34.62% of the total budget was financed by domestic sources; by 2006, it had risen to 48.7%.

The World Bank's 2006 business enterprise survey also shows that Rwanda is performing well with respect to tax collection among formal businesses. Moreover, its rates of corruption appear to be lower than its neighboring countries.

Regulations and Tax	Rwanda	Region	All Countries
Senior Management Time Spent in Dealing with Requirements of Government Regulation (%)	5.92	7.95	7.29
Average Number of Visits or Required Meetings with Tax Officials	3.95	4.35	3.61
% of Firms Identifying Tax Rates as Major Constraint	44.65	45.16	36.49
% of Firms Identifying Tax Administration as Major Constraint	21.56	32.55	27.28

Corruption	Rwanda	Region	All countries
% of Firms Expected to Pay Informal Payment (to Get Things Done)	19.96	45.54	36.23
% of Firms Expected to Give Gifts to Get an Operating License	4.58	17.93	16.69
% of Firms Expected to Give Gifts In Meetings With Tax Inspectors	4.90	19.89	26.37
% of Firms Expected to Give Gifts to Secure a Government Contract	14.37	42.87	26.90
% of Firms Identifying Corruption as a Major Constraint	4.35	34.39	32.70

Informality	Rwanda	Region	All Countries
% of Firms expressing that a Typical Firm Reports Less than 100% of Sales for Tax Purposes	28.90	52.69	46.36
% of Services Firms Competing Against Unregistered or Informal Firms	47.07	63.19	64.33
% of Firms Formally Registered when Started Operations in the Country	..	66.44	90.70
Number of Years Firms Operated Without Formal Registration	..	2.17	0.64

These figures indicate that Rwanda is successfully increasing its taxpaying base and doing so in a way that is also promoting efficiency and reducing burdens for taxpayers. There are areas, however, where work needs to be done. In general, little attention is paid to small businesses which account for 80 precedent of employment in Rwanda.

Despite Rwanda's impressive revenue policy framework, there is still a lingering problem of informality in Rwanda. According to the Investment Advisory Service of the World Bank/IFC, there are an estimated 90,000 firms in the informal sector, of which about 70,000 are in the secondary sector and employ about 320,000 people.[179]

This is much larger than the formal small enterprises that are registered and consist of micro enterprise and small firms (micro enterprise being less than three employees and turnover of less than RWF 1 million per annum) and small firms (of between 3 and 30 employees) with turn over above RWF 15 million per annum). They consist of approx 3,000 firms, account for 18% of GDP and employ about 3,000 people. In comparison, there are approximately 400 large firms (an increase from 280 in 2004).

In 2006, only approximately 1,000 small businesses were registered with the tax authorities (defined as turnover less than RWF 20 million in the new law). This indicates that most small businesses are registered at the local government level, or operate outside the formal sector. Under the small tax regime, small businesses with an expected turnover of less than RWF 20 million may opt to pay a tax of 4% of turnover or the standard corporate income tax of 30%.

Most small businesses tend to opt for the presumptive 4%. Although this simplifies tax administration, it may not contribute to creating or strengthening a culture of compliance among small businesses. Even when informed small businesses choose to pay corporate income tax, they may not fully understand the types of expenses that qualify as deductions (even though the 2005 Income Tax Law lists these items).

While small businesses are not required to register for VAT, staying out of the VAT system may be more of a tax burden than paying the tax. Failure to register may create breaks in the VAT chain resulting in small businesses not being able to reclaim VAT on inputs. According to the World Bank/IFC Foreign Investment Advisory Service, "Small businesses therefore may suffer a substantive VAT burden." At the same time, the formal VAT process requires taxpayers to submit monthly reports, which can be a substantial burden for small businesses as well.

The World Bank/IFC Foreign Investment Advisory Service's (FIAS's) study of the marginal effective tax rate (METR) on small businesses showed, in 2006, that small businesses appear to face a higher METR than larger firms.[180] In addition, since many small business do not register for VAT (and hence cannot claim input tax credits), they may face a significantly higher METR than large firms with or without investment allowances.

[179] World Bank/IFC Foreign Investment Advisory Service, *Mini-diagnostic of the Investment Climate in Rwanda* (April 2005) (FIAS mini-diagnostic). *See also* World Bank/Government of Rwanda Informal Sector Survey 2005–2006, *available at* http://www.statistics.gov.rw/IMG/pdf/Publication_Informal_Sector_Survey.pdf.

[180] FIAS mini-diagnostic states that the marginal effective tax burden on small businesses paying the turnover tax is higher than large businesses that pay corporate income tax and irrespective of whether they benefit from the 40 percent investment allowance (50 percent for priority sectors). Id.

Because of the high METR, in practice, many small businesses are likely to either underreport taxes or operate unregistered in the informal sector. The simplified lump-sum turnover tax, while requiring fewer procedures, probably carries a much higher tax burden than the standard regime. Small businesses perceive the tax system as incurring high time and financial costs and thus may not see any incentive to join the tax net even if they could.

As FIAS notes, a lump-sum turnover tax can simplify tax administration and compliance costs and hence benefit both tax administrators and taxpayers. However, a high presumptive turnover tax may play a negative role by encouraging small firms to avoid paying the tax via underreporting of gross revenues causing additional burdens.

The RRA has one of the most effective programs of public outreach. It did not, however, as of 2006, have a designated outreach program for small businesses with the aim of building a "culture" of tax compliance among these entities. Tax compliance and recording requirements are often strong deterrents to registering a business and paying taxes. In addition, many small firms do not have enough information to be able to enter the tax net even if they had the desire and necessary skills to do so.

This deficiency may be partly addressed through the launch of the joint public-private initiative of BDS centers by the RRA and the government. These centers could provide a good venue for training on financial accounting practices, as well as facilitating the process of formalization by providing information and training on tax registration. BDS centers are discussed further in the Starting a Business chapter of this report.

The financial services sector is the most heavily taxed sector in Rwanda, followed by mining, manufacturing, tourism, and agriculture. About 25% of the financial services sector is exempt from VAT and hence cannot claim input tax credit for VAT paid on capital inputs (mainly meals and expenses). As a result, the METR is the highest for financial services among all five sectors in Rwanda. The METR for agriculture is the lowest since almost 50% of agricultural capital is invested in land and inventory, which are the lowest taxed assets (as explained above), and the sector is exempt for VAT.

The Rwandan business tax structure, as set out in the 2005 income tax law, is simple and straightforward with a uniform corporate tax rate that is in line with the average corporate income tax rate of both its neighbors and OECD countries. The generous tax depreciation allowance for all investors makes Rwanda an attractive investment location in terms of tax.

Several issues in the new law merit further fine tuning, however, in order to achieve a higher level of efficiency, simplicity, and fairness. The current special tax incentives including both income tax exemptions and tax discounts and investment allowances for selective firms should be reexamined. If necessary and provided that the revenue impact is neutral, an unconditional tax incentive could be substituted for all income taxpayers.

As the FIAS notes:

> Special tax incentives based on highly selective conditions (such as the present incentives) given according to the business sector or performance level of firms (e.g., the amount of investment or the jobs created), or the business location, or firm size, or nationality of investors, are harmful not only to market efficiency but also to the overall investment environment. A truly efficient tax system requires not only a uniform tax rate but also a uniform tax base. To accommodate the Government's need for revenue and taxpayers' desire for low tax burdens, the best uniform tax base is the broadest one for all with a limited number of leaks from the tax base resulting from incentives being given to special interest groups.
>
> A sound income tax structure should therefore tax all firms at the same rate and on the same tax base; and the ideal tax incentive for business is a lower uniform tax rate for all. To move in this direction, a universal investment allowance that is affordable to the government could be provided for all investors in Rwanda.[181]

Recommendations

To raise the Doing Business scores . . .

- Eliminate double VAT taxation on equipment leases.
- Revise the VAT reporting requirements from monthly to quarterly returns.

[181] Id. at 24.

- Rationalize refunds or credits on inputs for re-exported goods.
- Minimize the impact of taxation on companies' cash flow, including the removal of anticipatory payments on corporate income tax and the 3% tax on the value of invoice for the winners of public tenders.
- Improve the capacity of the RRA, promoting greater clarity in tax regulations and full consistency of the three-language versions of the fiscal laws and regulations.

To strengthen the overall environment for Paying Taxes. .

- Enhance the role of the RRA to include outreach and education for micro and small enterprises.
- Replace overly aggressive enforcement with service orientation.
- Conduct VAT education and interpretation workshops.
- Provide clear guidelines to businesses for tax exemptions.
- Investigate ways to bring farmers into the tax net.
- Make allowances universal and ensure allowances are not overly generous.

TRADING ACROSS BORDERS

Introduction

The reconstruction and liberalization efforts made by Rwanda after the 1994 genocide have been considerable. The country joined the World Trade Organization (WTO) in 1996, undertook the liberalization of its trade regime, reduced its border taxes, and further adjusted its customs tariff to that of the common external tariff (CET) of the Common Market for Eastern and Southern Africa (COMESA), of which it became member in 2004. In addition, Rwanda joined the EAC in 2007.
Rwanda's liberalization and privatization measures have been designed with a clear distribution of roles: the private sector is to be empowered as an engine of growth, while the government is to foster an enabling environment. Together with accompanying sector reforms, such measures seek to create stable macroeconomic conditions, suitable for trade, investment, and greater competition.

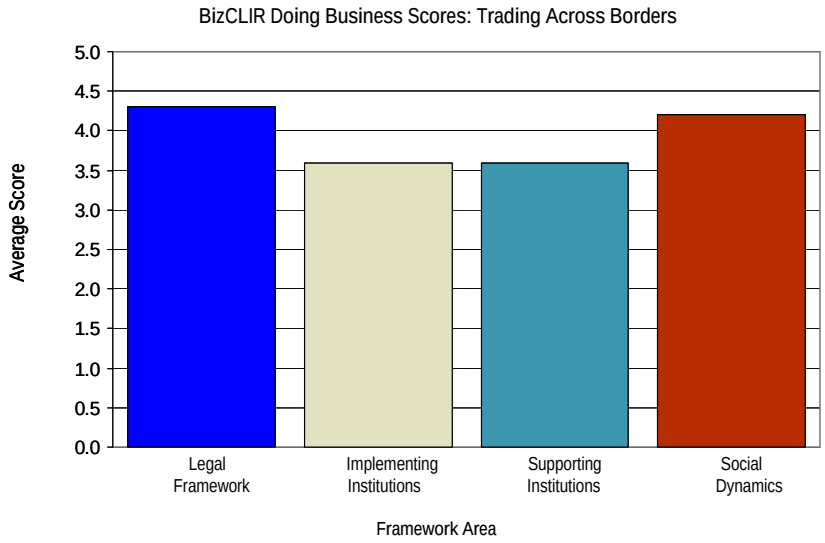
Rwanda's competitiveness in the international markets is marked by the continuous decline in the price of its main export commodities (tea, coffee, and minerals) and poor diversification. Both coffee and coltan (colombo-tantalite) experienced a particularly sharp decline in world commodity prices during 2000, 2002, and 2003, translating into a 28% fall in export revenue and a trade deficit of US $127 million in 2003. Furthermore, weather conditions determine harvests and, thus, export volume of crops. With 90% of the population dedicated to agriculture (mainly subsistence farming) contributing to roughly 40% of the GDP, Rwanda's economy clearly needs to diversify in order to reduce exposure to commodity prices and weather uncertainty, and to fight the current account deficit caused by continuously growing imports demands (mostly capital and intermediate goods such as machinery and transport equipment, followed by oil). In 2006, imports totaled US $488 million and exports totaled US $145 million, rendering a current account deficit of US $180 million.

In addition to poor export diversification, Rwanda's trade environment is affected by production and processing constraints, unfair trade practices, nontariff barriers to trade, and insufficient FDI. Though the country is a beneficiary of various duty-free and quota-free initiatives available to Least Developed Countries (LDCs), such as the EU's Everything but Arms (EBA) program, the United States' African Growth and Opportunity Act (AGOA), and Canadian and Japanese initiatives, its vulnerability to international commodity prices and supply-side constraints impinge on its ability to benefit from such preferences. Further, government officials lack the necessary capacity to deal with complex trade issues. This impinges on successful participation in international trade negotiations and adequate implementation and observance of WTO and regional trade commitments in Rwanda.

Trading Across Borders

Doing Business Ranking 2008	166
Doing Business Ranking 2007	178
Documents for export (number)	9
Time for export (days)	47
Cost to export (US $ per container)	2750
Documents for import (number)	9
Time for import (days)	69
Cost to import (US $ per container)	4970

Foreign direct investment is picking up (from US $5 million in 2003 to US $15 million in 2006)[182] and is expected to grow further thanks to political and economic stability. The new tax system, the removal of foreign exchange controls, and major privatization efforts are viewed as investment-friendly measures.



Infrastructure and transport are sectors where more investment is required, being a major bottleneck to Rwanda's development and international trade because of the country's landlocked position.

Aid from bilateral and multilateral donors is still greatly needed. Yearly aid disbursements have averaged US $330 million during 1999–2003. Upon reaching the completion point under the Heavily Indebted Poor Countries Initiative (HIPC), the IMF and World Bank pardoned 100% and 80% of Rwanda's debt, respectively, falling from US $1.5 billion to US $354 million in 2006. Rwanda also became eligible for a diagnostic trade study (DTIS) under the Integrated Framework (IF), launched in 2004 to identify areas where intensified technical assistance would be most helpful.

Recent Economics in Rwanda: Growth *and* Inflation

Being landlocked and the most densely populated African LDC, Rwanda still suffers under the effects of the genocide and destruction. Though liberalization resulted in impressive growth rates, it took the country 10 years to reach its 1990 GDP level. Rwanda's efforts produced tangible results in the post genocide years: GDP grew at 6 percent in 2000, 6.7 percent in 2001, 9.4 percent in 2002, and 3.5 percent in 2003; inflation fell from 12 percent in 1997 to 2.5 percent, and remained at that level during 1998–2002. However, inflation control during 2003–2006 has been less successful, averaging above 9 percent. Growth and inflation projections for 2008–2009 are to remain steady at 6 percent and 7 percent, respectively, if international commodity prices and export output remain stable, and the government manages to cut its expansionary budget.

Despite these important advances, further measures are needed to eliminate the many impediments to economic development in general, and those which cause poverty and impede trade in particular. The continuation of macroeconomic and structural reforms is essential to provide Rwanda with the necessary competitiveness dynamism to reap the benefits of joining the multilateral trading system, the COMESA, and the EAC.

Further, Rwanda will also need support to improve compliance with its multilateral commitments. The international community has contributed generous funding, but technical assistance is still necessary under the IF. Such assistance should focus on building capacity in trade negotiations, integrating trade into Rwanda's development strategy, transcribing the country's pre-Uruguay Round tariff commitments into the harmonized system, and effectively implementing the WTO Agreements, in particular with regard to customs valuation, sanitary and phytosanitary measures, technical barriers to trade, and intellectual property rights.[183]

In addition to technical assistance, the country will require financial support to eliminate physical constraints affecting the supply side and to build the required capacity in trade. This will ensure a more inclusive and stable market access for Rwandan products and a broader participation in the world economy. A concerted approach and assistance to the reforms in Rwanda will enable the achievement of its multilateral commitments, improve the transparency and predictability of its trade regime, attract the necessary capital for diversification, reduce its vulnerability to external shocks, and lift its population out of poverty.

The BizCLIR scores for Trading Across Borders, displayed in the graph at the beginning of this chapter, prove significantly stronger than Rwanda's most recent *Doing Business* ranking would suggest: all four facets of the review tend toward finding more positive attributes within the trade regime than negative. There is considerable basis for these findings: legal reforms have proven far-reaching and certain institutions are gaining strength. Whether the BizCLIR scores would have been lower with an on-the-ground review rather than a desk study cannot be known. Regardless, this chapter raises many points about opportunities in international trade; it further makes a number of recommendations for continued reform.

Legal Framework

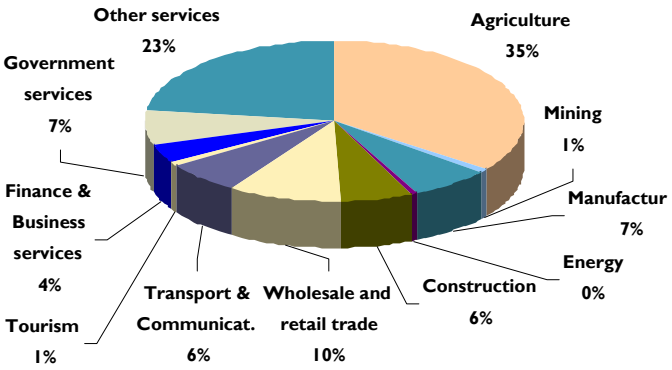
International trade law and policy. According to Rwandan law, international legal instruments – including the WTO Agreements – have primacy over domestic legislation, once they have been published in the *Official Gazette*. Rwanda's trade policy is liberal; its major objective is to create an enabling environment for regional and international integration and, thus, promote its products in international markets. To achieve this aim, it has

[183] *See WTO (2004), "Trade Policy Review Rwanda. Minutes of the Meeting", Trade Policy Review Body, WT/TPR/M/129, 1 November.*

entered into multilateral and regional agreements. Rwanda has joined the WTO, COMESA, the Economic Community of Central African States (ECCAS), the Economic Community of the Great Lakes Countries (CEPGL), the African Economic Community (AEC), and the EAC. Rwanda also applied for membership in the Southern African Development Community (SADC) so as to improve prospects for its agricultural exports, but withdrew in 2007 alleging that there would be a duplication of roles with other regional groups to which it belongs. Rwanda joined the EAC in November 2006, and full membership took effect in July 2007. The treaty establishing the EAC is the legal basis for a customs union and also envisions a Common Market, monetary union, and political federation in the future. Moreover, the Customs Union Management Act (enacted in 2004 by the EAC Legislative Assembly) sets the legal basis for the common external tariff and the administration of the day-to-day customs operations by the respective National Revenue Authorities of the EAC members. Finally, the EAC protocol provides for the elimination of internal tariffs, other similar charges, and nontariff barriers; the establishment of common external tariffs; rules of origin; antidumping measures; subsidies; and countervailing duties to meet the requirements of the customs union.

With regard to preferential trade agreements, Rwanda benefits from AGOA, the EBA, and the ACP-EU Cotonou Agreement. Being an LDC, it also enjoys nonreciprocal market access to Canada, Japan, and Australia. On a bilateral front, it has concluded trade agreements with Burundi, Democratic Republic of Congo, Kenya, Mauritius, South Africa, Tanzania, and Uganda.

Sectoral Contributions to GDP (2004)



Source: AfDB/OECD (2006)

Key Laws

Current Laws

- Various international treaties, trade pacts, and protocols
- Law Relating to Investment and Export Promotion and Facilitation, 2005
- Law Establishing the Rwanda Commercial Registration Services Agency, 2007
- Import Duty Law 2002

Draft Laws

- Law on Traders and Trade Licensing
- Law on Commercial Courts

Despite these integration efforts to the region and world economies, Rwanda lacks the necessary expertise to implement the various agreements of the WTO and fulfill basic notification and monitoring requirements, as identified in its first WTO Trade Policy Review in 2004.

According to the latest semiannual notification review of the WTO, Rwanda belonged to the list of reporting countries that had not introduced antidumping or countervailing measures during the period, which fall under Article 16.4 and Article 25.11 of the GATT, respectively.[184]

Furthermore, upon entering the WTO, Rwanda was waived from implementing the customs valuation agreement until May 22, 2001. It then requested a three-year extension, arguing inadequacy of resources as a reason for delaying implementation. Meanwhile, authorities have drafted a plan of action, specifying that implementation greatly depends on the amount of technical assistance destined to the training of customs officials.

Trade in goods. Since January 2004, Rwanda adopted the transaction method for customs valuation.[185] Though positive, the country still needs technical assistance to implement it successfully. Tariff levels are based on the four-band COMESA Common External Tariff (CET), where non-COMESA import tariffs are 0% for capital goods, 5% for raw materials, 15% for intermediate goods, and 30% for finished goods. As a result of the CET,

[184] See WTO, *Semi-Annual Reports under Article 16.4 of the Agreement* (2005) and *Semi-Annual Reports under Article 25.11 of the Agreement* (2005).

[185] Rwanda started implementing the WTO Customs Valuation agreement on January 1, 2004, changing from Brussels's definition of value (DBV) to WTO Customs Valuation Code.

applied tariffs rose to 30%, sugar imports received a 25% surcharge, and some 241 tariff lines are still applied above the bindings Rwanda undertook before the Uruguay Round. Though Rwanda bound 100% of its tariff lines, it has been unable to implement the pre-Uruguay Round rates[186] because these are below the COMESA rates. Rebinding negotiations are foreseen in the future in order to comply with the original commitments under the GATT, provided that Rwanda receives technical assistance.

Under the EAC, the common external tariff (CET) for non-EAC trade is 25% for final goods, 10% for intermediate goods, and 0% for raw materials. Difficulties with the implementation of the customs union, as well as coordination with the CET of COMESA are expected.

As is custom in other WTO members, though the bound MFN tariff is relatively high (89.5% on average), the actual applied rate is 18.7%. Agricultural goods face lower tariffs than nonagricultural goods, differing by 5% in the case of applied tariffs and 18% in the case of MFN tariffs. The information suggests that there is need to narrow the gap between the bound and applied rates, especially for nonagricultural imports.

An area where further work is required is tariff escalation. In this regard, granting of tariff preferences is subject to regulations on rules of origin of COMESA. COMESA lays down four criteria determining the right to preferential treatment: 1) goods must be wholly produced in the region, without any raw materials of foreign origin; 2) imported content must not exceed 60% of the value of all the materials used in production; 3) the ex-factory value added must account for at least 35% of the price of the finished product,[187] or the value added must be at least 25% if the finished good is deemed "particularly important" for the development of a member state (in accordance with the previously defined list of products); *or* 4) the processing leads to a change in the tariff heading.

In addition to tariffs, imports to Rwanda until only recently also faced a fee known as the MaGeRwa, a service charge covering handling services rendered to the importer. This fee has been recently replaced with a fee based on services rendered and, together with the liberalization of the warehouse services market, has significantly reduced costs for trade. Thus, the monopoly of MAGERWA (a general bonded warehouse) has seized as new providers offer warehouse facilities, as originally recommended in the DTIS. Handling costs are now calculated based on a weight rather than a value basis (i.e., US $0.02 per kg as opposed to the original 4% on CIF value), rendering more competitive prices. Estimates of

Merchandise Trade

Breakdown in economy's total exports		Breakdown in economy's total imports	
By main commodity group (ITS)		**By main commodity group (ITS)**	
Agricultural products	47.7	Agricultural products	15.9
Fuels and mining products	24.0	Fuels and mining products	17.8
Manufactures	8.3	Manufactures	66.4
By main destination		**By main origin**	
1. Kenya	41.0	1. Kenya	28.4
2. Uganda	26.6	2. Uganda	25.9
3. European Union (25)	8.6	3. European Union (25)	7.6
4. Tanzania	8.0	4. Tanzania	7.6
5. Congo, Dem. Rep. of	4.1	5. Congo, Dem. Rep. of	5.6

Source: WTO Statistics Database

[186] Prior the Uruguay Round, commitments were made during the colonial period following the Benelux Schedule II (with a Belgian Congo and Rwanda-Urundi section), the Torquay Protocol of 21st April 1951, and the Sixth Protocol of Supplementary Concessions of 23rd May 1956.

[187] "Value added" is defined as the difference between the ex-factory price of finished products and the CIF value of the non-COMESA imported inputs. The minimum level of value added was brought down from 45 percent to 35 percent in 2000, but is still very high. Egypt and Uganda, however, continue to apply the 45 percent threshold.

ports and terminal handling charges for imports have thereby signicantly dropped from US $1000 in 2006 to US $550 in 2007.[188]

Concrete reforms to enhance Trading Across Borders that have and are currently taking place include the following:

- Facilitation of document preparation for Customs by reducing the number of documents required to conform with international standards, placing some of the required documents on the Internet, and creating a one-stop center for exports

- A speed-up of inland transportation and handling with the aid of a one border post concept (negotiations of a draft agreement with Uganda for the establishment of such a post are well advanced), and the use of an electronic exchange of information system (RADDEX) developed by the East African Revenue Authorities (EARA), enabling the tracking of cargo information between Uganda, Kenya, and Rwanda

- Improvement of customs clearance and technical control with the implementation of pre-arrival clearance and a 24-hour customs service

- Improved ports and terminal handling by opening offices of the Kenyan and Tanzanian port authorities in Kigali for cargo handling.[189]

Moreover, Rwandan Customs has increased the number of declaration acceptance points, thereby reducing the waiting time to submit declarations. An important administrative procedure recently implemented is the separation of files into those that require a physical check and those that do not. The latter group are thus not delayed, since they do not have to wait behind those files that require physical checks. Overall, the reorganization of customs, especially Kigali's "Dry Harbor" should also lead to an improvement of procedures, especially with regard to greater transparency on the issuance of technical and health certificates. It still remains unclear how long it takes to obtain such certificates, more access to information is needed.

Other important liberalization measures include the following:

- Abolition of export taxes in 1999
- Creation of the Rwanda Bureau of Standards (RBS)
- Rwanda's membership to the All Inter-African Phytosanitary Council
- Creation of a draft law on traders and trade licensing for approval, which will regulate the commercial registry of such activities.

Despite these important reforms, sectors that still need considerable attention are intellectual property, sanitary and phytosanitary measures, and government procurement. Rwanda needs to implement various legislative reforms in intellectual property that are subject to outdated legislation, in order to conform to WTO commitments. A draft law on intellectual property is currently under discussion and will substitute the outdated regulation of 1963.[190] This draft law is discussed further in this report's Registering Property chapter. Equally, a draft law had been put forward and is being applied in part with regard to procurement.

So far, the country has not participated in the dispute settlement mechanism of the WTO as a complainant, respondent, or third party to a trade dispute. Moreover, Rwanda has not signed any of the WTO plurilateral agreements and is not an observer to any of these agreements, underscoring the need to generate capacity in trade in order to improve its participation in the multilateral trade field. In addition, Rwanda has not taken an active part in the negotiations since its entry into the WTO in 1996. The numerous negotiations in the multilateral and regional forums (e.g., Doha, COMESA, and negotiations with the EU under the Cotonou Agreement) exceed the country's ability to react accordingly, as each requires a different scope, timetable, and procedures. Accordingly, there is need for technical assistance to:

[188] Estimations are based on a recent World Bank Doing Business site visit in 2007.

[189] *See* World Bank, "Report On Doing Business Workshop," Workshop at Prime Holdings, Kimihurura (November 16, 2007).

[190] The Rwandan government has called for technical assistance in drafting a law on competition, and has revised its industrial property legislation, completing a draft law with WIPO's support. Technical assistance needs now focus on the training of personnel that will implement and enforce the law.

- Identify sectors and issues important for Rwanda
- Provide training in negotiating techniques
- Identify reforms necessary to implement the results of the negotiations.

Agriculture. Agricultural productivity has been continuously declining, partly due to the high population density and over-farming. Rwanda's main agricultural exports (tea and coffee) are of high quality, but transport constraints and the distance to ports undermine some of the trade efforts. Further, the quality of coffee, the second largest export, has been declining due to soil degradation and problems in processing and quality control.

Support for traditional sectors, while developing new higher value-added activities, is part of the agricultural strategy defined by the Rwanda Vision 2020. Specific strategies for the traditional export sectors include the development of the coffee sector (in particular high-quality coffee); privatization of the tea sector; modernization of farming practices; accessible finance at low interest rates; increased production and value-add of agricultural and dairy products; and increased number of agro-industries and granaries.

A nontraditional sector with export potential is horticulture, and efforts are geared to design sector business plans in order to attract investment and create a horticultural incubator fund to support potential exporters in the flower business, as defined in the country's DTIS.

Manufacturers. The lack of industrial capacity in Rwanda raises the vulnerability to commodity fluctuations, and impedes taking due advantage of the nonreciprocal market access and other preferences offered by the developed world. Supply-side constraints that have been duly identified in the DTIS and Rwanda Vision 2020 seek to generate capacity and add value to products. In particular, efforts to commercialize and raise the quality and output of handicrafts are viewed as a means to raise this nontraditional export.

Mining and energy. Mining is mostly done in small scale, and all mining output is exported. A mining concession is valid for 30 years and can be renewed for 15-year periods. There are various types of concessions, special operating permits, and temporary authorization for mining surveys and operations. Further, special operating permits are reserved for small-scale mining or limited production and for small-scale mining associations. A new mining code is in the process of being adopted and aims to facilitate investment in this sector.

A major potential for natural gas extraction from Lake Kivu has been identified, which would also help address the energy shortage and possibly contribute to diversifying exports and reducing the country's dependency on oil imports. Estimated reserves have been projected at 55 billion cubic meters. In order to develop gas extraction, the Kibuye Power Limited was established in 2004, with a 30% stake owned by the government and the remaining 70% equity owned by Dane Associates, a UK company. However, the project recently failed due to a dispute. In March 2007 the government won an injunction from the Rwanda High Court to suspend Dane Associates from participating in the project. The dispute focused on what the UK company had done with the €2.3 million (US $3.1 million) it claimed to have spent on the project, but for which the government argued an absence of adequate receipts. This has been a major setback to methane gas extraction (and sustainable energy consumption) in Rwanda.

Trade in services. So far, Rwanda has only committed five out of a total of 12 services sectors, around 55 subsectors, and over 100 subsector activities to be considered for liberalization, according to the Services Sectoral Classification List of the GATS.[191] These include business services, educational services, environmental services, tourism and trade-related services, and recreational, cultural, and sporting services. Though few, the depth of liberalization commitments in these sectors is considerable, with absolutely no restrictions for modes 1, 2, and 3, and some restrictions on movement of natural persons (mode 4) in the business and tourism and trade-related services.[192] Rwanda is considering future GATS commitments, and has set up a committee that is investigating areas where it should make offers and requests, primarily in the financial, telecommunication, and tourism sectors. However, the country will need technical assistance to determine how to structure its specific commitments.

Tourism. Tourism suffered greatly from past instability, but enhancement of the industry is

[191] *See* WTO, (1991), "Services Sectoral Classification List", MTN.GNS/W/120, July 10

[192] Rwanda's Schedule of Commitments is available at the WTO Services Gateway at: http://tsdb.wto.org/wto/WTOHomepublic.htm.

underway. Under the GATS, Rwanda committed to no restrictions on hotels and other tourist facilities. All tour operators wishing to set up a business in Rwanda must register with RIEPA. Licenses and permits that are required to establish and manage hotels are issued free of charge. A major objective to raise investment in the tourism sector is to build human capacity through rapid and extensive training, and thus increase the quality of service.

Information and Communication Technology (ICT). Rwanda has made no GATS commitments in ICT and related sectors. However, ICT is a priority in Vision 2020. Recognizing its lack of access to low-cost ICT, the country abolished duties levied on computers and other ICT equipment. Further, it seeks to raise capacities, improve infrastructure, and improve the quality of ICT services, in order to reduce trade costs. In particular, rural areas are to benefit from the installation of rural IT systems under IF funding. The principal policy instrument for ICT development is the National Information and Communications Infrastructure (NICI), an initiative lead by the Rwanda Information Technology Authority (RITA) and aligned with Rwanda's Vision 2020. NICI identifies opportunities for the local assembly of computer components and accessories either with FDI or in partnership with local investors, so as to reduce the high-import orientation of ICT.[193]

Telecommunications. Teledensity in Rwanda is one of the lowest in the world, in contrast to mobile telephony, which is growing rapidly. There is already some competition in telecommunications, and a second cell phone license has already been issued since Rwandatel (the state-owned fixed telecom operator) was privatized. In 2005, 99% of Rwandatel was acquired by Terracom, a Jersey-based company, but was put out on tender again due to disagreements between both companies. The second round saw bids from a number of companies including Vodacom (South Africa) and Celtel (Kuwait). LapGreen Networks (Libya) won the tender and paid US $100 million for an 80% stake. The company envisages investing US $87 million in the network over the next 12 months. With regards to mobile telephony, MTN-Rwandacell is 40% owned by the South African MTN and 50% by Telstar, a local company. The charges for mobile telephony are high, despite the entry of Terracom into the market. All telecommunications issues, including telephone charges and interconnectivity agreements between operators, are regulated by the Rwanda Utility Regulatory Agency (RURA). However, RURA apparently lacks the necessary capacity to deal with the regulatory issues it faces.

Investment. Investment is governed by the Investment Code of 1998, which established the Rwanda Investment Promotion Agency (RIPA), and the recently adopted Law Relating to Investment and Export Promotion and Facilitation.[194] RIPA entered into operation in 2000, and in 2004 acquired a new name, Rwanda Investment and Export Promotion Agency (RIEPA). RIEPA is a public body charged with promoting and facilitating investments and exports in Rwanda. It is a one-stop center for investors, receiving and processing applications for the registration of projects, and providing support to investors seeking to establish and operate their projects.

Subject to the provisions of the new law that came into force in 2006, foreign investors may invest in all forms of activity in Rwanda and are granted national treatment. In particular, natural persons and commercial companies incorporated under the laws of COMESA members receive equal treatment to that conferred to domestic investors. A commercial company incorporated under the laws of Rwanda may be regarded as a "local investor" if over 50% of its shares is owned by citizens of Rwanda or COMESA member states. In either case, the investment must amount to at least a minimum of US $100,000 capital to qualify as an investor under RIEPA, as opposed to capital requirements for foreign investors, which are higher (US $250,000). Further, investors enjoy several fiscal and nonfiscal incentives, and have the right to obtain visas and residence permits for three expatriates. The law also speeds up registry procedures and provides for free economic zones, namely export-processing zones, single enterprise export-processing zones, and free trade zones.

[193] *See* Privatization Secretariat, ""Rwanda Privatization" (2004), at. 6–7.

[194] *See* Law No. 14/98 of 18 December 1998 establishing the Rwanda Investment Promotion Agency, which replaces Law No. 21/87 of 5 August 1987 establishing the Investment Code and Law No. 26/2005 of 17 December 2006 Relating to Investment and Export Promotion and Facilitation.

Implementing Institutions

Ministry of Commerce, Industry, Investment Promotion, Tourism and Cooperatives (MINICOM) and Ministry of Finance and Economic Planning (MINECOFIN). MINICOM mainly conducts trade policy formulation and implementation, in collaboration with MINECOFIN. A Presidential Economic Council, without formal ties to the ministries, advises the president on trade issues. Further, depending on the issue, trade policy is also coordinated with other relevant ministries and institutions, such as the Ministry of Lands, Environment, Forestry, Water and Mines (MINITERE), the Ministry of Justice (MINIJUST), Ministry of Public Service and Labour (MIFOTRA), the National Bank of Rwanda (BNR), Rwanda Environment Management Authority (REMA), Rwanda Information & Technology Agency (RITA), Private Sector Federation (PSF), Rwanda Revenue Authority (RRA), Immigration & Emigration, Land Registry Commission, and the Business Law Reform Committee. Several private sector support institutions that also play an important role are the RIEPA, the Rwanda Bureau of Standards (RBS), and the Centre for the Support of the small and medium-sized enterprises (CAPMER).

Customs and Excise Department. This department of the RRA is the primary trade facilitation agency in Rwanda. Customs relies on cooperation with counterpart services in neighboring countries to coordinate activities (including the effective sharing of information) aimed at thwarting smuggling rings and attempts at customs evasion.

With respect to all these institutions, Rwanda faces considerable budgetary constraints to finance and train its personnel in the field of trade and, therefore, relies on donor funding to execute its trade-related trainings and workshops. At present, the low level of knowledge on trade and the lack of financial and human resources prevent the country from reaping the full benefits of participation in the multilateral trading system.

High staff turnover is an issue of the public service in Rwanda. Voluntary departures of an important share of qualified staff are common. Between January and September 2002 some 700 out of 8,500 civil servants left, mainly for better remunerated jobs. Only 6.5% of public servants have some university education and 2.7% have a university degree. Refugees or decedents of refuges who returned to Rwanda after the genocide and found employment in the public sector have not fully compensated for their loss of skills. Many managerial, professional, and technical positions are still vacant, filled by expatriates or poorly qualified staff.[195]

Key Implementing Institutions

- Ministry of Commerce Industry, Investment Promotion, Tourism, and Cooperatives (MINICOM)
- Ministry of Finance and Economic Planning (MINECOFIN)
- Rwandan Revenue Authority: Customs and Excise Department
- Rwandan Tourism Board
- Rwanda Investment and Export Promotion Agency (RIEPA)
- Rwanda Bureau of Standards
- Center for Support to Small and Medium Enterprises in Rwanda (CAPMER)
- Stakeholders

Rwanda, unlike other developing members of the WTO, has not much benefited from tangible technical assistance before. Apart from installation of the WTO Reference Centre in June 2003, and the national seminars on Trade Policy Review (June 2003), Multilateral Trading System (October 2003), and the Workshop on Customs Valuation (June 2004), further assistance is expected.

Moreover, a particular need for assistance in order to train the staff of RBS and RIEPA, as well as Customs personnel, including examiners and other officials of a future section on rules of origin, has been identified. Assistance is requested for training in investment and trade promotion, trade negotiations, and project planning and evaluation.

Specific trade-related financing and personnel needs in the Customs sphere include the following:

- Computerizing Customs, restructuring the Customs Valuation Division, strengthening the inspection process, and establishing two sections on rules of origin and post-clearance auditing, respectively
- Training Customs officials in the revised Customs legislation
- Fraud control
- Post-clearance audit facilities and methods

[195] Republic of Rwanda, "Public Administration Country Profile" (2004), at 13.

- Rules of origin
- Training the private sector on Customs procedures.

Rwanda Bureau of Standards (RBS). The RBS established in 2001 is not yet fully operational and requires, among others, technical assistance to develop and implement a national certification and accreditation system, and support in setting up a central standardization and food quality-control laboratory, since the country's laboratories lack technical facilities.

Coordination. Coordination is a major challenge of Rwanda's trade policy reform. For example, in the area of reducing transport cost and increasing the return to exports (the first priority in the DTIS), among responsible bodies executing priority actions are MININFRA, MINAGRI, MINALOC, as well as MINICOM, MINECOFIN, RRA, RURA, and RITA, without taking into account the donors and foreign partners (e.g., ADB, EU, WB).

Due to membership in COMESA and EAC, Rwanda must deal with obligations that result from such agreements, as well as the ACP-EU Cotonou Agreement, AGOA, and WTO, in order to coordinate the interplay of these obligations. However, because many of the parties involved do not have sufficient knowledge on trade issues, the creation of two important bodies is anticipated.

First, a Foreign Trade Board (FTB) will study and propose procedures for the implementation of general foreign trade and licensing policy; give its views on the rules and procedures applied and suggest corrective measures; express its views on annual and pluriannual import and export forecasts and propose adjustments; examine and propose export promotion measures; give its opinion on any issue relating to foreign trade, either on its own initiative or at the request of the Minister for Foreign Trade or the governor of the BNR; and study questions relating to regional integration and other international economic matters. However, the FTB is still not in operation due to the financing, capacity, and technical constraints.

Second, to address WTO issues, the government has also planned creation of a National Committee on WTO Issues so as to gain an understanding of WTO rules and their implications for the economy; monitor the implementation of WTO agreements on a periodic basis; inform the public and private sectors of market access conditions and potential trading opportunities in traditional and nontraditional markets; equip the government with adequate information on the sectoral impact of the relevant agreements, in order to review and adjust its policies to the changing environment; assist the government in identifying obligations requiring the enactment or change in domestic law or administrative practices for implementing the WTO agreements; and issue trade policy recommendations to be adopted by the government.

At the time of this diagnostic, the FTB and the Committee had not yet been created. Though the creation of such bodies would be a step in the right direction, the current situation raises doubts about the country's ability to create such trade-coordinating bodies in a manner that provides the necessary depth of analysis, or to make consistently informed judgments on trade policy.

Crosscutting institutional issues. In light of the constraints discussed in the previous two sections, all trade institutions have limited research and analytical capacity. There is virtually no empirical analysis on trade issues taking place within the ministries, and a basic understanding of WTO regulation lags behind.

Furthermore, implementation of WTO agreements, especially with regard to sanitary and phytosanitary measures, is still pending, given that the RBS needs support in setting up an internationally accredited laboratory to carry out certifications to meet export requirements, with regard to standards and food quality, as discussed above.

Though the government has taken considerable steps to improve the knowledge base in trade, there is a serious lack of quality data available for use by ministries or by outside researchers and the private sector. There are several important official websites, such as the websites of the government of Rwanda, the BNR, the Rwanda Tourism Board, and the RIEPA. Some of these websites are not functional. They are out-of-date and offer little substantive value. An important exception to this critique is RIEPA, which is user-friendly and contains a significant amount of practical information. However, many pages on this website are not yet fully-functional either.

Rwanda's e-participation index,[196] a measure reflecting the extent to which the government websites offer information on policies and programs, budgets, laws, regulations, and other briefs of major public interest, highlights the need for improvement. With a score of 0.017 (1.000 points is the highest score) and a rank of 36 out of 37 for a total of 191 countries, it is a poor result. Rwanda is performing better than comparator countries Burundi and Kenya, is level to the e-participation practices in Malawi, Zambia, and Tanzania, and is outperformed by Mozambique and Uganda. Clearly, more must be done in order to improve access to trade-related information.

Collaboration with stakeholders. Rwanda's private sector is small but growing, mainly comprising family businesses and small and medium-sized enterprises (SMEs), as well as a few large companies and co-operatives. The Private Sector Federation (PSF) plays an important role in representing sectoral interests, as does CAPMER.

According to the government, the private sector is consulted on an informal but regular basis on trade issues through the Public-Private Partnership Forum headed by the chairman of the PSF. The PSF supports the private sector by providing business development services and works together with other stakeholders to promote the creation and development of SMEs.

Supporting Institutions

Various government agencies. As pointed out in the previous section, there are several public and private bodies supporting the government in the implementation of trade law and policy. For example, government ministries that are interfacing with MINICOM and MINECOFIN on a regular basis, and that deal with sectoral policies affecting trade, are MINAGRI, MINITERE, MINIJUST, MIFOTRA, and MININFRA. The RRA, Immigration & Emigration, Land Registry Commission, and the Business Law Reform Committee also play an important role. In addition, independent supporting institutions are BNR, the Rwanda Tourism Board, and RIEPA. Other public bodies also providing support in the implementation of Rwanda's trade policy mentioned before include REMA, RURA, RITA and the NBS. Final steps toward the creation of a National Accounting Commission and Regulation Agency for Accountants are also being taken.

Key Supporting Institutions

- Various government agencies
- PSF and CAPMER
- Courts and arbitration tribunals
- Donors

PSF and CAPMER. On a private level, the PSF and CAPMER play a crucial role. Several producer cooperatives and farmers' associations, such as the OCIR-Café, the OCIR-Thé, and Sorwathé, also exist. However, they often lack the necessary facilities managerial capacity and capital to support their sector. A key government initiative has been to strengthen the role of cooperatives by clarifying their legal standing, and raising capacities to organize members, develop business plans, and improve access to credit, including sectors with export potential, such as horticulture. Access to credit is still a major constraint. The current legal framework for credit disfavors commercial and consumer lending, as discussed in this report's Getting Credit chapter. Laws should be reformed and consolidated, in order to provide affordable credit conditions to the private sector.[197]

Courts and other dispute resolution mechanisms. Disputes in Rwanda are settled through litigation in court. Until very recently there were no commercial courts in Rwanda. The recently established three commercial chambers offer dispute resolution. Dispute resolution methods, such as arbitration, are also being developed, given that the civil, commercial, labor codes, and administrative procedures provide for arbitration.

An Arbitration Centre was created in 1998 as a nongovernmental organization to settle commercial disputes; as discussed in this report's chapter on Enforcing Contracts, however, arbitration has not yet taken root. The government is encouraging the creation of more arbitration centers, and a Law on Arbitration and Conciliation is being drafted to provide a legal basis for improving arbitration and alternative dispute resolution.

[196] *See* UN "World Public Sector Report 2003. E-government at the Crossroads" (2003), Table 9.

[197] *See* USAID "Business Climate Legal and Institutional Reform: Study of East African Laws on Secured Lending" (2008).

Donors. Donors have been strong partners in building the capacity of Rwanda's trade policy-making institutions and processes, under the IF.[198] Though support from Western countries suffered under the controversial involvement of the country's security forces in the Democratic Republic of Congo, donors such as the United Kingdom, Sweden, and Belgium generally back the government because of Rwanda's relatively good track record in poverty reduction and economic governance.

Rwanda initially signed a three-year enhanced structural adjustment facility (ESAF) with the IMF in 1998, which later became a poverty reduction and growth facility (PRGF), providing balance-of-payments support. The PRGF expired in 2002, and a new one was agreed upon in 2003, after difficult negotiations between the government and the IMF about its fiscal stance.[199]

The development and implementation of a poverty reduction strategy (PRS) is a core requirement of the PRGF in order to obtain debt relief under the IMF-World Bank heavily indebted poor countries (HIPC) program. The government developed its first PRS in 2001, focusing on rural recapitalization, human resource development, the promotion of the private sector, state capacity building, and the improvement of governance. The PRS expired in 2005 with an evaluation, pointing out that it had been too focused on social sectors and insufficiently interested in stimulating broad-based, poverty-reducing economic growth. A second PRS began in 2006 and, as discussed at the outset of this report, became the economic development and poverty reduction strategy (EDPRS). This new strategy focuses on stimulating broad-based, poverty-reducing economic growth. The EDPRS was finalized in 2007.

In 2005, Rwanda had reached completion point under the HIPC initiative, leading to a 100% debt relief on behalf of the IMF and 80% on behalf of the World Bank. Total external debt was thus brought down from US $1.5 billion in 2005 to US $354 million in 2006. The debt service is a percentage of the export of goods and thus fell from 7.2% in 2005 to a projected 2.7% and the net present value (NPV) of the remaining debt has been estimated at US $162.5 million in 2006, which translates into a 114% of estimated export earnings, a manageable amount if the government controls fiscal spending.

A major challenge is to limit external debt, given the large resource needs that may arise from the EDPRS. Simulations undertaken at HIPC completion point by MINECOFIN together with the IMF suggest that Rwanda may accept new loans worth up to US $100 million per year, provided that they are highly concessional. To this end, a borrowing strategy that may limit the NPV of debt-to-export ratio to below 125% in the long term has been defined.

Social Dynamics

Political leadership. The first democratic Constitution of Rwanda was adopted by referendum in 2003, followed by presidential and parliamentary elections that same year. Governance and security are at the forefront of the national agenda, and institutional and regulatory reforms have been aimed at improving transparency and the rule of law to facilitate trade on a national and international level. However, the passing of a draft law on governance – an important effort in the right direction – faces considerable resistance on behalf of the government. A liberal economic policy and private sector empowerment are core aspects of the development strategy of the government. International trade is viewed as a source of economic growth and the political leadership is engaged in a trade-related dialogue with foreign governments, particularly at the regional level with COMESA and EAC countries. Nonetheless, lack of competition, poor human capital, and trade-related infrastructure impede the achievement of poverty reduction objectives.

Private sector engagement. Some private sector organizations are indeed working together with the government on trade issues that affect the sector, in the context of the Public-Private Partnership Forum. However, this is done on an informal basis.

The government has also relied on traditional practices such as the Gacaca (genocide tribunals), the Ubudehe (community participatory planning),

[198] In order to benefit from the Integrated Framework, countries must fulfill certain criteria, including: (i) the country must make a firm commitment to integrate trade into its national development strategy and Poverty Reduction Strategy Paper (PRSP); (ii) the country must prepare a PRSP; (iii) the country must at least be at the preparatory stage for forthcoming meetings of the World Bank Consultative Group or UNDP Round Table; and (iv) the country must provide a conducive operating environment (e.g., infrastructure level; resource base of the World Bank, IMF, and UNDP country offices; donor response; and pace of domestic reform).

[199] Rwanda's total public expenditure represented 21 percent of its GDP, and its fiscal deficit was as high as 9 percent share of the GDP in 2002. *See* Rwanda's Diagnostic Trade Integration Study (2005) for details.

and the Umuganda (community labor sessions). Umuganda promotes socioeconomic development through a culture of broad-based participation and community mobilization. It is a colonial practice recently revived and has been used to raise awareness among Rwandans on PRSP issues. The formulation of legal frameworks, policies, initiatives, and development programs is done in a broad consultative manner, and involves all stakeholders, including minorities.[200] However, in the view of the international donor community, this has not been enough to render a meaningful participatory process, and some institutions lack the necessary capacity to operate effectively. Changes are needed to improve the dialogue structure between the private sector and the government, and thus provide a level playing field for enterprise development in Rwanda.

As the previous experience with the Gacaca shows,[201] communication channels that may greatly contribute to sensitizing the private sector on trade policy and law issues are radio and print materials, preferably in Kinyarwanda, but also in French. The information to be channeled should include objectives, modus operandi, responsibilities of the community, and the advantages of the Umuganda process, as well as a programmatic content on trade issues affecting communities.

In order to empower the private sector, the government may also make use of other tools, such as e-decision-making and e-consultation processes. The e-participation index is a measure of the willingness of the government to use ICT to provide high-quality information and effective communication tools to empower people for able participation in consultations and decision making, both in their capacity as consumers of public services and as citizens. According to the index, improvement is needed.

Meaningful ways to improve the current situation, which would greatly benefit from development projects in the ICT sector, are the creation of more information dissemination channels for timely access and use of public information, including web forums, e-mail lists, newsgroups, and chat rooms. Further, the government could make use of e-consultation mechanisms and tools, engaging citizens in the decision-making process and giving feedback on the outcome of specific issues, such as trade negotiations. Public policy topics for online discussion with real-time and archived access to audios and videos of public meetings may further raise the interest in private participation on trade policy.

Competition. COMESA's competition policy is about to be introduced and will be applied as soon as the Council of Ministers adopts the relevant provisions. The draft provisions on competition prohibit *inter alia* restrictive business practices; abuse of a dominant position; agreements fixing prices; collusive tendering and bid-rigging; market or consumer allocation agreements; allocation of sales and production quotas; collective action to enforce arrangements; concerted refusal to purchase goods or services from a potential supplier, or to supply goods or services to a potential purchaser; and collective denial of access to an arrangement or association that is crucial to competition. The provisions also set out merger and acquisition control procedures and establish mandatory notification of annual turnover of assets in the region exceeding a certain threshold (which is yet to be determined). The establishment of a Competition Commission is also envisaged.

Moreover, thanks to privatization reform and the creation of the RIEPA, privatization projects in the field of telecommunications and tourism have brought measurable results and are slowly improving competition in key sectors of the Rwandan economy. Competition in Rwanda is discussed further in the Starting a Business chapter of this report.

[200] *See* African Peer Review Mechanism, "Country Review Report for the Republic of Rwanda" (2006) for details.

[201] A study on the Gacaca revealed a low level of knowledge about the Gacaca law and jurisdictions, but favorable attitudes toward the process, and a high level of willingness to participate. About 45% of the respondents were not literate in any language and practically all who were literate could read. Kinyarwanda. The study identified radio as an appropriate channel of communication for disseminating information about the Gacaca law, accompanied by print materials in Kinyarwanda and French. This would ensure that people receive information from various sources, thereby maximizing impact. See Gabisirege and Babalola, *Perceptions About the Gacaca Law in Rwanda: Evidence from a Multi-Method Study* (2001).

Human capital. In Rwanda's Vision 2020 and PRSP,[202] a major objective is to increase productivity, quality, and professionalism via vocational training. This requires considerable investment in human resources development that will double from RWF 17 billion in 2002 to RWF 35 billion in 2010, representing nearly 30% of the public investment. Priority programs in the field of education focus on improved access to education (textbooks); quality of teaching and teacher training in primary education; quality of teaching and equipment in secondary education; building and equipment for vocational education and training; science and technology promotion, including ITC; and higher education and technological development.

The illiteracy rate in 2006 was 35.1%, and enrollment in primary schools (both urban and rural) has increased substantially from 74% to 86% over the period 2000 to 2006. The quality of primary education is poor but improving: in 1996, 47% of primary school teachers were trained, but by 2003, this rose to 85% and is still on the rise. Despite this improvement, only a small fraction (roughly 10% net enrollment) completes primary education and goes on to secondary education.[203]

Gross enrollment in tertiary education in 2004 was 2.7%, up by 1% from the 2000 level, and roughly equal to the Sub-Saharan African average. There are around 12,200 students in the six public institutions, and 8,200 in private institutions. The government has made efforts to give the education system a labor-market orientation, and in 1997 established the first vocational tertiary education institution, the Kigali Institute of Science and Technology (KIST). Since 2006, KIST has been seeking to upgrade to university status, but the process is not yet completed, although the institution's management students have been transferred to the School of Finance and Banking in Kigali.

On a regional level, Rwanda's Human Capital Index[204] registers 0.58 (1.00 being the highest score). The country is performing better than Burundi and Mozambique, but worse than Kenya, Malawi, Tanzania, Uganda, and Zambia. As clearly outlined in the previous section on financing and personnel, human capital shortcomings are also reflected in the trade sphere: the lack of capacities and technical expertise in trade impede Rwanda from grasping the opportunities that may result from international trade negotiations and greater income through human-capital-intensive exports and tourism services.

Corruption. The country has set up the necessary institutional framework to fight corruption: the Office of the Auditor General of State Finances; the Rwanda Revenue Authority; the National Tender Board; the Office of the Ombudsman; and the upcoming Anti-corruption Commission. In particular, the Office of the Auditor General, established in 2003, has registered important anticorruption achievements. Following an audit of 57 public bodies in 2005, it found over US $8 million of expenditure lacking the required documents and over US $5.5 million of tenders issued did not follow proper procedures. The auditors also noted that most public entities did not keep proper accounts. Compared to regional trends, the reported sums are relatively low, making Rwanda one of the least corrupt countries in the region.[205]

In the trade field, most companies report that the RRA is an efficient body that has contributed to reducing customs and tax corruption. International companies in the country claim that there is less

[202] Upon expiration of Rwanda's PRSP, the government launched the Economic Development and Poverty Reduction Strategy (EDPRS), focusing on broad-based economic growth strategies not contained in the PRSP. The EDPRS outlines six areas of work, namely, transformation of the agricultural sector to reduce poverty; human development through improved education and health; economic infrastructure; human resources and capacity building; private sector development; and, finally, good governance.

[203] *See* AfDB/OECD, "African Economic Outlook 2006" (2007), at 465–66.

[204] The Human Capital Index is a composite measure of the adult literacy rate and the combined primary, secondary and tertiary gross enrollment ratio, with two-thirds of the weight given to adult literacy and one-third to the gross enrollment ratio. *See* UN, "World Public Sector Report 2003" (2003), Table 9 and Republic of Rwanda, "Public Administration Country Profile" (2004), at 15.

[205] In a recent survey funded by USAID, 223 Clearing and Forwarding Agents (CFAs) operating in the five countries of the EAC, pointed out that inefficiency in clearing goods is the main cause of corruption. Out of 1,115 consignments passing through 14 clearance points, 28 percent attracted a bribe. Corruption levels varied across countries, Tanzania recording 59 percent, Uganda and Burundi 17 percent each, and Kenya 15 percent. Rwanda recorded zero consignments attracting a demand for bribe. *See* USAID, "Inefficiency in Clearing Goods is the Main Cause of Corruption on the Northern Corridor."

corruption than before, although some local operators assert that unofficial payments to state officials are not uncommon. Most likely, the reorganization of Customs will play a key role in reducing corruption. The entry points at Rwanda's borders are increasingly being equipped with computers, which should allow faster and more reliable processing of information. In the past, bribing Customs' officials to avoid paying levies was easy. Paying a bribe allowed traders to obtain exit certificates in order to pretend that their goods were only in transit, when in fact they stayed in Rwanda to be sold there.

Trade-related infrastructure. Trade-related infrastructure has been identified as the major stumbling block to Rwanda's development efforts. Due to its landlocked position, the country relies on neighboring countries for access to the sea. Almost all the country's trade travels over 1,500 kilometers by road through Uganda to or from the port of Mombassa, Kenya, or by road and rail to or from Dar es Salaam, Tanzania, resulting in immense transport costs for trade. Further, road transport infrastructure was greatly damaged during the genocide of 1994. This affected Rwanda's ability to export by adding US $160 per ton in terms of costs for freight being transported.[206]

According to *Doing Business* 2008, the number of days needed to export goods from Rwanda is 47, while import requires a total of 69. Since the transport distance from ports remains the same, differences in the results for exports and imports are mostly explained through increased documentation requirements and handling procedures for imports. Though the time for exporting and importing has been considerably reduced since 2006, it is still detrimentally high, and represents barriers that directly raise costs to trade.

In order to tackle this major supply-side constraint in Rwanda – which also endangers the effective implementation of its growth and poverty reduction strategy – the country prioritized major actions in its DTIS and has been benefiting from assistance under the IF to solve these constraints.[207] Since then, the IMF and World Bank have disbursed considerable infrastructure spending in Rwanda under the PRPS, and roads are being increasingly well maintained.[208] There are about 1,100 kilometers of tarred roads, and 12,000 kilometers of unpaved main and secondary roads, which are vulnerable to rain damage, needing further investment. Moreover, reforms relating to customs, discussed in the previous section, are already reducing the costs and time of handling trade, and are bound to improve the situation. Further, the EAC countries plan a number of infrastructure development initiatives that will improve Rwanda's situation, such as the railway to Isaka, Tanzania, which it to be linked to a rail service running to Dar es Salaam. If developed, a considerable reduction of transport costs is envisaged.

Recommendations

To raise the Doing Business scores . .

- Harmonize Rwanda's laws with WTO rules.
- Implement the WTO Customs Valuation Agreement. To do so, train Customs officials in the content and implementation of the agreement, including the application of the transaction value method.
- Prioritize and implement the following needs:
  - revision of Customs legislation
  - computerization of Customs administration
  - restructuring of the Customs Valuation Division

[206] *WTO (2004), "Trade Policy Review. Report by the Government", Trade Policy Review Body, WT/TPR/G/129, 31 August. WTO (2004), "Trade Policy Review. Report by the Secretariat", WT/TPR/S/129, 13 April.*

[207] The Diagnostic Trade Integration Study (DTIS) is a tool of the Integrated Framework (IF) to identify trade constraints and develop a plan of action to successfully integrate trade. Rwanda's DTIS classifies trade constraints into four broad categories in an indicative order of priority, namely, barriers that directly raise trade costs and limit linkages with markets; constraints on the ability of households to initiate commercial activities; weaknesses in the investment climate and for private sector development; and a lack of institutional support for trade and export diversification. *Rwanda Diagnostic Trade Integration Study*, Final November 1, 2005

[208] In October 2007, the World Bank agreed to disburse US $49 million for the construction and maintenance of the Kigali-Ruhengeri road. US $38 million of this had originally been donated by the United Kingdom. Being a main artery between Rwanda and Uganda, it is heavily used and in need of repair. The Economist Intelligence Unit, "Country Report. Rwanda" (2007).

- strengthening of the inspection process
- establishment of two sections on rules of origin and post-clearance auditing
- training of Customs officials in the revised Customs legislation
- fraud control
- post-clearance audit facilities and methods
- rules of origin
- training the private sector in Customs procedures.

- Support the Rwanda Bureau of Standards (RBS) in the preparation and adoption of domestic standards, in circulating the relevant information, and in setting up a quality-control system. The RBS will also need support in order to develop and implement a national certification and accreditation system, and in the setup of a central standardization and a food quality-control laboratory.

- Standardize procedures on revenue collection, cargo examinations, and inspection programs, as well as internal policies and management practices promoting the integrity and professionalism of bodies such as RRA, RIEPA, and RBS.

- Train RBS and RIEPA staff and Customs personnel (in particular the staff that is part of the "GATT Commission"), as well as examiners and other officials of the future section on rules of origin.

To strengthen the overall environment for Trading Across Borders . . .

- Assist Rwanda in negotiating international trade agreements. Technical assistance will require the identification of sectors and issues that are important for Rwanda; the acquisition of negotiating techniques via training, and the identification of reforms that are required to implement the results of the negotiations. For services negotiations in particular, Rwandan negotiators need to become knowledgeable on how to structure specific commitments.

- Train the staff that will implement and enforce the new industrial property law.

- Incorporate automated systems into customs-related processes and online services for information dissemination and greater private sector participation.

- Strengthen the institutional capacities of RITA and RURA, so that privatization and competition in the different sectors (i.e., ICT and telecoms in the case of RITA and RURA) maximize the expected returns.

- Establish a training module and workshop(s) on data forms, simplification of documents, and e-trade systems

- Support the creation and implementation of e-trade framework.

- Explore the creation of a "one-stop shop" (either via new agency or an existing agency) for trade.

- Develop a database on trade figures that will improve risk profiling and inspections.

ENFORCING CONTRACTS

Introduction

"Next to criminal law, there is no body of law more important to a developing country than contract law."[209] The words of Cornell Law School Professor Robert Summers[210] aptly summarize the central role that contract law and, more specifically, the enforcement of contracts plays in a working commercial legal system. Without an adequate, well-defined body of contract law and the means to enforce those contracts, other laws considered essential to a modern economy become meaningless. For example, a law on secured transactions presupposes the existence of an underlying contract law and a mechanism to enforce those contracts. In this regard, secured transactions are nothing more than a particular species of contract that must be enforced according to their contractual terms. The same holds for other essential commercial laws such as the laws governing mortgages, personal property leases, and negotiable instruments. Even the law on bankruptcy presupposes the existence of binding contractual debt obligations that can be equitably adjusted or discharged through the bankruptcy process.

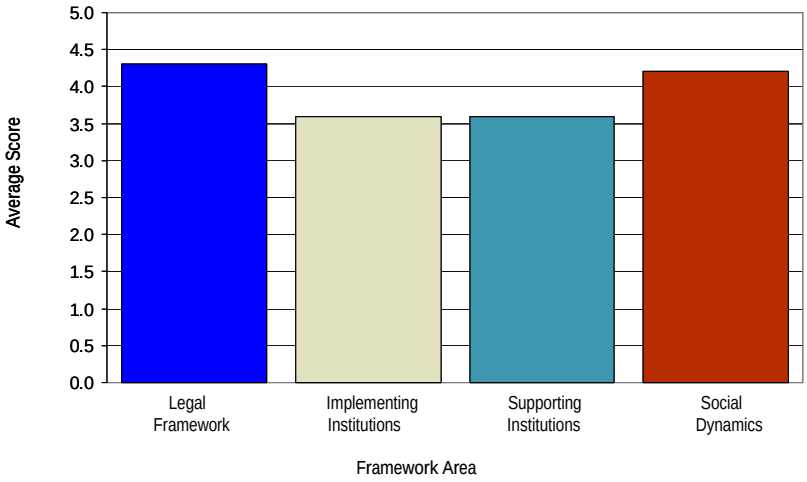
While customary law can provide for the creation and enforcement of contracts, in modern formal commercial legal systems, there are two components to enforcing contracts. First, there must be laws establishing the rules for the creation, interpretation, and performance of contracts. These rules in a formal system either can be set forth in statutory enactments or, in common law systems, can be found in published decisions of judges. Second, a working system of commercial law enforcement must have a means of adjudicating and enforcing contractual rights. In formal modern economies, the adjudicatory bodies are either the courts or, where parties agree, by private arbitration. If businesses do not have a working forum for adjudication of their disputes, a severe curtailment of business opportunities and expansion inevitably results.[211] In addition, transaction flexibility may be limited because of the need to structure transactions in ways that limit disputes.[212] The result is an economy that curtails its potential for growth and prosperity.

Enforcing Contracts

Doing Business Ranking 2008	44
Doing Business Ranking 2007	44
Procedures	24
Duration (days)	310
Cost (% of claim)	78.7

Rwanda's current legal framework and institutional environment for enforcing contracts are generally perceived as workable.[213] There are a number of shortcomings, however, that result in a perception that the enforcement of contracts in Rwanda is difficult.[214] These shortcomings can be divided into two areas. First, the framework laws dealing with

BizCLIR Doing Business Scores: Enforcing Contracts



[209] "Law School Team Continues to Update Rwanda's Laws," *Cornell Chronicle Online* (Dec. 6, 2007).

[210] Professor Summers is the co-author of the Uniform Commercial Code, the most widely cited treatise on commercial law in the United States.

[211] World Bank Group, *Doing Business 2008* (2007), at 43.

[212] Id.

[213] Compared to other countries that are included in the World Bank's Doing Business 2008 compilation, Rwanda ranks 44th. This compares favorably to other African nations: Tanzania 35; Zambia 86; Kenya 107; Uganda119; Mozambique 138; Burundi 148. Id. at 45–46.

contracts are archaic and ill suited to a modern commercial economy. Second, the court system is not perceived to be efficient or to have the necessary capacity to deal with complex commercial transactions. As discussed in this chapter, both of these problems are the subject of ongoing progressive legal reform that should continue to be supported in future development efforts.

Enforcing Contracts is Rwanda's best ranking in the *Doing Business* analysis; the BizCLIR diagnostic scores, demonstrated in the graph at the beginning of this chapter, generally reflect this positive review. The legal framework and social dynamics for Enforcing Contracts are substantially positive, and the implementing and supporting institutions are also catching up.

Legal Framework

The legal system of Rwanda derives, historically, from the French/Belgian civil law tradition including laws promulgated in the Belgian colonial territory of Rwanda, Urundi, and Congo Belge. Since July 1994, there has been a gradual introduction of the Anglo-Saxon common law system. The advent of the common law system is attributed in part to Rwandans returning from exile in neighboring countries (e.g., Uganda) that follow the common law system and the impeding accession to the EAC.[215] In addition, because a number of the new draft laws considered to be international best practices come from common law systems, the effect of the new laws may be to move Rwanda to a system strongly influenced by the common law system.[216]

Current laws. The current provisions of Rwandan law governing commercial contracts are found in the Decree of 2 August 1913 on Traders and Evidence of Commercial Transactions and the Civil Code Book III (Civil Code).[217] While these laws enumerate and deal with some types of commercial contracts, they do not deal comprehensively with the important concepts of contract formation, capacity, consideration, interpretation, discharge, and remedies. Moreover, the provisions these laws contain are considered to be "scattered, incoherent, and therefore not user-friendly."[218] As a result, the contract laws are considered to be insufficient and not comprehensive enough to deal with the types of different commercial transactions encountered in modern economic systems. As a consequence, "disputes are frequent and their resolution more difficult."[219] In summary, the current laws on contracts are outdated and need to be replaced with "principles and concepts of a modern law on contracts."[220]

Key Laws

Current Laws

- Decree of 2 August 1913 on Traders and Evidence of Commercial Transactions
- Civil Code

Draft Laws

- Proposed Contract Law
- Law Establishing Commercial Courts
- Law on Arbitration, Mediation and Conciliation

Rwanda Commercial Law Reform Project. Following a project started by the Government of Rwanda and the World Bank in 2000 dealing with competitiveness and the legal environment, it was recognized within the government that outside assistance in the area of commercial legal reform was needed. That is, commercial law reform was needed to encourage both foreign and domestic investment to include the largely small-scale business sector of the Rwandan economy.[221] It was also recognized, however, that the scope and type of assistance should be shaped by Rwanda's internal needs and circumstances rather than simply be the product of non-Rwandan legal consultants. That is, it was best to have Rwandans determine what Rwanda needed to become competitive from the perspective of a commercial legal environment conducive to business development and growth.

As a result, in mid-2005, the Ministry of Justice (MoJ) appointed six Rwandan legal and financial experts to a business law reform cell (Reform Cell) with the directive to assess the current state of Rwanda's framework laws and implementing institutions (e.g.,

[214] Rwanda, African Economic Outlook (AIDB/OECD 2007), at 462.

[215] United Nations Conference on Trade and Development and International Chamber of Commerce, An Investment Guide to Rwanda—Opportunities and Conditions 2006 (2006), at 43.

[216] International Law Institute African Centre for Legal Excellence, Rwanda Commercial Law Reform Project—Final Report (August 3, 2007)(ILI Aug. 2007 Report), at 13.

[217] Business Law Reform Cell, Report on the Reform of the Business Regulatory Framework in Rwanda (Rwanda Ministry of Justice, December 2005), at 18.

[218] Id.

[219] Id.

[220] Id. at 19.

[221] ILI Aug. 2007 Report. at 3.

courts and commercial registries). Over the following four-month period, the members of the Reform Cell reviewed the texts of the existing commercial laws, consulted with numerous stakeholders, including in workshops conducted in October and December 2005, and drew on their own experience within the Rwandan commercial environment to determine the new laws and other reforms needed to make Rwanda's commercial legal environment conducive to commercial growth.

Concurrent with the work being conducted by the Reform Cell, the MoJ requested proposals from various international legal consultants to review and revise a number of key commercial laws. Following the work of the Reform Cell, the list of originally identified laws that needed drafting was modified to take into account the conclusions of the Reform Cell members. Among these laws as relevant to the enforcement of contracts were Law Establishing Commercial Courts; Law on Arbitration, Mediation and Conciliation; and Law on Contracts.[222]

The contract to perform the Rwanda commercial law reform (Reform Project) was awarded to the International Law Institute–Uganda African Centre for Legal Excellence (ILI), and a contract was signed by the MoJ and the ILI on January 21, 2006. In accordance with the contract, work on the Reform Project commenced on February 15, 2006.[223] The first step in the process was the recruitment by ILI of a project team (Project Team) to oversee the writing and legislative process leading up to enactment of the 16 designated laws dealt with by the Reform Project.[224]

On March 1, 2007, the new Reform Project team members reviewed the work of the Reform Cell, as well as relevant existing Rwandan laws that had a bearing on the work of the Reform Project.[225] After the initial meeting, the Project Team met with and solicited input from various stakeholders: the Ministry of Commerce, Industry, Investment Promotion, Tourism and Cooperatives; the Ministry of Finance and Economic Planning; the Ministry of Public Service and Labour; the Ministry of Infrastructure, Technology and Energy; the Rwanda Information Technology Agency; the National Bank of Rwanda; the Bankers Association of Rwanda; the Rwanda Stock Exchange; the Centre for Arbitration; the Private Sector Federation;[226] the Supreme Court; the Kigali Bar Association; and various individuals interested in the area of commercial law reform.[227] These stakeholders have continued to be consulted throughout the process of moving these draft commercial laws through the legislative process.

Proposed contract law. The member of the Project Team responsible for overseeing the drafting of the new law on contracts (Proposed Contract Law) was Professor Robert Summers of Cornell Law School. The Proposed Contract Law was derived by Professor Summers from the American *Restatement of the Law of Contracts (Second)*. The *Restatements of the Law* are treatises published by the American Law Institute.[228] The *Restatement of the Law of Contracts (Second)* represents the American best practices and legal thought on all aspects of contract formation, interpretation, and enforcement. It is one of the most highly recognized and frequently cited legal treatises in the American legal system in the area of contract law. As a result, the Proposed Contract Law is well suited to deal with all aspects of contract formation and enforcement in a modern economy.

[222] ILI Aug. 2007 Report, at 3.

[223] Id.

[224] The Project Team members were Professor Don Wallace of Georgetown University Law Center, Eva Jhala, Simeon Sahaydachny, and Steven Musalia Mwenesi. Also assisting in the drafting of various laws were Professor Robert Summers of Cornell Law School and Professor Robert Breetz of the University of Connecticut Law School.

[225] ILI Aug. 2007 Report, at 5.

[226] As detailed in other chapters of this report, the Private Sector Federation (PSF) is a professional organization, dedicated to promote and represent the interests of the Rwandan business community. *See generally* Private Sector Federation website (http://www.rpsf.org.rw/aboutrpsf/about.html).

[227] ILI Aug. 2007 Report, at 5.

[228] The American Law Institute is a nonprofit organization whose members consist of judges, practicing lawyers, and legal scholars from all areas of the United States as well as some foreign countries, selected on the basis of professional achievement and demonstrated interest in the improvement of the law. While the *Restatements* are not technically laws and are considered as secondary authority themselves, they do set forth the current state of the common law in the United States as formulated by judicial decisions over time. The *Restatements* are considered to be highly persuasive in the American court system because they represent years of extensive input from law professors, practicing attorneys, and judges, and thus reflect the consensus of the American legal community as to what the law is (and in some areas, what it should become).

Implementing Institutions

Courts. The court system is the essential implementing institution in the area of contract enforcement in Rwanda. Before 1994, Rwanda's judiciary was perceived to be weak. In addition, there was widespread lack of capacity among the members of the judiciary, which was composed of largely untrained personnel. Given this environment, corruption was widespread. The events of 1994 aggravated an already deplorable situation. The infrastructure of judicial institutions was completely destroyed. The courts, the prosecution service, and the police ceased to function. Many members of the judiciary were killed – with others fleeing into exile. The legal system basically ground to a halt.[229]

Since early 1995, there has been a concerted effort to restore the rule of law. These efforts have been largely successful. As a result, investors assess the judicial system as generally fair. However, there is the continued reservation that the judicial system could be more efficient in the handling of commercial cases. In this regard, the most important constraints are the lack of resources and qualified personnel devoted specifically to commercial cases, which creates a backlog of cases, and the lack of judges with adequate training and substantive knowledge able to deal with technical commercial issues.[230]

Existing court structure. The judicial system begins with the courts of first instance. These courts have a maximum monetary jurisdiction of five million francs (approximately US $10,000). Above these courts are the higher instance courts in which most commercial disputes are initially filed. Sitting above the higher instance courts is the High Court, which has its primary office in Kigali with branches in each of the five provinces of the country. These are essentially appellate courts although they do exercise original jurisdiction as trial courts in a small portion of their cases. Finally, at the apex of the judicial branch is the Supreme Court. While the Supreme Court has limited original jurisdiction (e.g., to try the president or hear constitutional cases), it is essentially the final appellate court. Appeals to the Supreme Court from the High Court cannot be taken as a matter right; rather, leave to appeal must be granted by the Supreme Court.[231]

Key Implementing Institutions

- Courts
- Arbitration tribunals

Practice under the 2004 Civil Procedure Code. The practice and procedure of the courts is governed by the Code of Criminal Procedure as well as the Code of Civil, Commercial, Labor, and Administrative Procedures.[232] While the creation of specialized commercial courts (discussed below) will result in commercial disputes being dealt with more expeditiously and, most importantly, by judges with specialized knowledge in commercial law, the actual procedures for adjudication of commercial disputes will generally follow existing procedures mandated by the 2004 Civil Procedure Code. These procedures are generally regarded as effective.

Two provisions of the 2004 Civil Procedure Code most cited by stakeholders as contributing to its effectiveness are the requirement that all cases be "adjudicated in a period not exceeding six months starting" when the case is filed[233] and the requirement that "all judgments must be written and delivered within thirty (30) days" of the conclusion of the trial.[234] The failure to issue a timely ruling "may lead to disciplinary action being taken against the trial judges."[235]

The 2004 Civil Procedure Code is otherwise relatively straightforward and consistent with international best practices. After the action is filed, the clerk issues a summons ordering the defendant to appear to answer the complaint at a set place, date, and time.[236] The summons must be personally served on the defendants by the court bailiff, clerk, or other competent person.[237] There must be at least eight days from the date the summons is served

[229] Investment Guide to Rwanda-Opportunities and Conditions 2006, at 43.
[230] United Nations Conference on Trade and Development Investment Policy Review – Rwanda (United Nations 2006) (advance copy), at 51.
[231] United Nations Conference on Trade and Development and International Chamber of Commerce, An Investment Guide to Rwanda-Opportunities and Conditions 2006 (2006), at 44.
[232] Law No. 18/2004 of 20 June 2004 Relating to the Civil, Commercial, Labour and Administrative Procedure (2004 Civil Procedure Code).
[233] 2004 Civil Procedure Code, Article 11.
[234] Id. at Art. 149.
[235] Id. at Art. 149.
[236] Id. at Art. 25.
[237] Id. at Art. 29.

until the date of the appearance in court.[238] A public trial is then scheduled within the six-month time period at which both parties are given the full opportunity to present documentary and testimonial evidence, cross-examine opposing witnesses, and present argument to the court.[239] As noted above, the judge must enter written judgment within 30 days of the trial. The judgment must be read in open court and must contain findings of fact and conclusions of law and reasons for accepting or rejecting evidence offered by the parties.[240]

Appeals from judicial decisions can only be made at the conclusion of the trial on the merits. Appeals that seek reversal of a judicial decision made during the pretrial stages must await the final judgment before they can be filed.[241] This is an important provision as multiple appeals from numerous pretrial rulings can greatly delay the final resolution of the dispute.

Seizure of assets both before and after obtaining a judgment is also allowed under the 2004 Civil Procedure Code. Seizures are accomplished through a court bailiff who then auctions off the property to pay the debtor's creditors.[242] Based on anecdotal examples received from attorneys and bankers, it appears that when a commercial dispute is based on a notarized document such as a promissory note, "self-help" without significant court intervention through the offices of independent bailiffs is the customary practice.

Commercial Courts. Rwanda has no history of having specialized commercial courts. As a result, commercial cases have been heard by a court system that also deals with numerous other criminal and civil cases. This has resulted in a significant backlog of cases. In the High Court in Kigali, this backlog had reached approximately 2,000 cases as of the beginning of 2008. This has created problems in the investment environment as commercial disputes are not able to be expeditiously resolved.[243] In addition, judges of the trial courts are not perceived as having the capacity to effectively deal with the complexities of commercial disputes.

The courts have attempted to accommodate the need to quickly resolve commercial disputes by putting such cases on a "fast track." However, requests for fast-track treatment have escalated and are being made in noncommercial cases as well. One leading jurist indicated that he spent a significant amount of time each week deciding approximately 20 fast-track requests. In this respect, the fast-track requests for commercial cases have had to compete with fast-track requests from litigants who view their needs as equally important in areas such as criminal matters, domestic violence, labor, and land disputes.

The 2004 Civil Procedure Code attempted to deal with the problem of the judiciary's lack of commercial law expertise by including a provision that established Specialized Chambers within the courts of first instance in which the regular judges would be assisted by "assessors" in commercial cases. These would be individuals presumably drawn from the business community who could lend their commercial expertise to the resolution of commercial legal disputes. Unfortunately, this concept was not successful in practice. Because the position of an assessor was not compensated, there was a general inability to recruit qualified professionals from the business community to serve.[244] Furthermore, the law did not define who could serve as an assessor. As a result, individuals who were willing to serve as assessors in practice were little qualified to adjudicate commercial matters.

Another problem with the Specialized Chambers in practice was that they were limited to the courts of first instance and did not apply to the higher courts, which handle appeals or have original jurisdiction over more substantial commercial disputes. Thus, whatever benefits of having judges develop expertise in the Specialized Chambers were lost when the case went up on appeal.

As a result of the deficiencies in the Specialized Chambers approach contained in the 2004 Civil Procedure Code as well as the need to avoid competing demands for fast tracking of cases, it was apparent to the judges, the Reform Cell, and the ILI that a stand-alone commercial court was necessary to address the need for speedy courts with knowledgeable jurists able to deal with commercial disputes. Accordingly, new legislation has been passed that creates commercial courts in the capital city of Kigali, as well as the regional cities of Huye and Musanze.[245] There will be 22 commercial court

[238] Id. at Art. 38.
[239] Id, at Art. at 61.
[240] Id, at Arts. 147, 149.
[241] Id, at Art. 162.
[242] Id. at Arts. 221, 222, 255, 309, 310.
[243] ILI Aug. 2007 Report, at 6.
[244] ILI Aug. 2007 Report, at 6.
[245] Land Law Concerning the Establishment of Commercial Courts and Determining Their

judges in all, six of whom will sit on the High Commercial Court in Kigali.

The Commercial Court Law amends the 2004 Civil Procedure Code to create commercial courts with original and appellate jurisdiction over commercial disputes such as contract disputes, banking transactions, corporate governance disputes, and commercial bankruptcies.[246] The Commercial Court Law created three lower commercial courts with jurisdiction over commercial disputes of less than RWF 20,000,000 (approximately US $40,000). One commercial high court is created with original jurisdiction to hear commercial cases involving amounts in controversy above RWF 20,000,000 as well as appeals from the lower commercial courts.

Having specialized courts staffed with trial and appellate judges well versed in commercial law will greatly improve the adjudication of commercial disputes. However, there is currently a lack of capacity within the Rwandan judiciary with respect to dealing with commercial cases, resulting in a shortage of qualified judges to fill the new positions. As a result, the Commercial Court Law provides that judges who are citizens of other counties may serve as commercial judges.[247]

Current plans are to hire eight judges from other countries. The initial search has been for judges from Mauritius because they are bilingual in French and English, because of the similarity in the types of cases to be decided, and because Mauritius enjoys a relatively high ranking on the *Doing Business* indicators.[248] To enhance the capacity of existing Rwandan judges who have been accepted to serve on the commercial courts, arrangements have been made to send eight Rwandan judges for postgraduate legal training in the commercial area at Witwatersrand University in South Africa.[249]

Importantly, in further recognition of the need for judicial technical capacity in general, heightened standards for entry into the judiciary have been established in a recently enacted Judicial Qualifications Law.[250] The Judicial Qualification Law sets minimum standards for those seeking judicial office. For example, judges of the Commercial Court will need to hold a bachelor's degree in law, possess a certificate issued by a judicial training institution recognized by the government, and have either four years of professional experience in the field of commercial law or a doctorate degree and two years of professional experience in the field of commercial law.[251] In addition, a new Institute for Legal Practice and Development located in the Western Province of Nyanza has been established with a primary purpose of judicial education.

Arbitration. Arbitration has long been used by developed countries as an alternative to formal court proceedings for the resolution of commercial disputes. In this regard, Rwanda is in the process of modernizing its arbitration laws and procedures. While the 2004 Civil Procedure Code did provide for arbitration,[252] it contained some fundamental flaws that made it unworkable. Specifically, it simply substituted the arbitral forum for the court of first instance subject to the same procedures for appeals that created delays in the court system.

The prior law also limited arbitration as a substitute only for the courts of first instance and did not allow arbitration for cases in which the higher courts had original jurisdiction.[253] There has also been a problem cited by stakeholders with respect to the administration of the current Arbitration Centre that, while established on the premises of the PSF, was separately managed. Use of the Arbitration Centre has reportedly been sparse, with parties opting instead to retain private arbitrators.

The newly proposed arbitration law makes arbitration awards final and enforceable the same as a final judgment of a court except in extraordinary circumstances (e.g., collusion or fraud by the tribunal). The law is derived from the UNCITRAL model law on arbitration and is consistent with the arbitration laws of key trading partners, Kenya and Uganda. The consistency in application of these laws is important for facilitating transactions between businesses of these countries.

Organisation, Functioning and Jurisdiction (Commercial Court Law).

[246] Commercial Court Law, Art. 3.

[247] Id. at Art. 6.

[248] Felly Kimenyi, "Rwanda: Mauritian Judges Hired for Commercial Courts," *New Times,* December 11, 2007, *available at* http://allafrica.com/stories/200712110145.html.

[249] Report on Doing Business Workshop held on November 16, 2007 in Kimhurura (on file with author).

[250] Law N° 46/2007 of 11/09/2007 amending and complementing Law n° 06 bis/2004 of 14/04/2004 on the statutes for judges and other judicial personnel (Judicial Qualification Law).

[251] Judicial Qualification Law, Articles 4 and 6.

[252] 2004 Civil Procedure Code, Art. 365, 367.

[253] Id.

Supporting Institutions

There is a general view that much needs to be done in the area of capacity building within the community most affected by the new laws. This community includes the lawyers who will have to deal with the new laws in their daily practices, the commercial judges who adjudicate disputes under these laws, the bankers who will have to structure their commercial transactions in compliance with the new laws, the university professors who will need to adjust the business curriculum of their academic institutions, and the members of the business community who in the end are the most affected by these laws. Unless this "knowledge vacuum" is adequately addressed, the process of reform may be rendered ineffective.

Kigali Bar Association. To serve some of these interests, a number of supporting institutions are in place. The Kigali Bar Association, in its modern form, has existed for about 10 years and currently regulates the practice of law in Rwanda.[254] There are currently about 340 members of the association. Within the association is a training commission, which is charged with assisting in the training of new lawyers and providing continuing legal education for experienced lawyers. The bar association serves as a link between donor programs and its membership and aspires to provide comprehensive training in the new commercial law regime in the future.

Rwanda Private Sector Federation. The PSF is a professional organization dedicated to promote and represent the interests of the Rwandan business community. As discussed in the Starting a Business chapter of this report, the PSF is an umbrella organization including nine professional chambers. It was established in December 1999, replacing the former Rwanda Chamber of Commerce and Industry.[255]

Key Supporting Institutions

- Judges and the legal profession
- Kigali Bar Association
- Private Sector Federation (PSF)
- Rwanda Bankers Association
- Institute for Law Practice and Development

Rwanda Bankers Association (RBA). This association represents the interests of the approximately nine commercial banks in Rwanda. The RBA is a member of the COMESA Bankers' Association, which is one of the official organs of the COMESA. The COMESA Bankers' Association has worked to promote and strengthen links between banks in the subregion. Meetings of the RBA are held quarterly. The RBA from time to time conducts educational programs in conjunction with the National University's School of Finance and Banking.

Institute for Law Practice and Development (ILPD). This institute has recently been set up to offer a one-year program after law school that will allow someone who has completed law school and passed the bar exam to become a qualified lawyer without the two years of practical experience that is currently required. Additionally, the institute's curriculum, which is still being determined, will be geared toward practical skills development. The ILPD promises widespread contribution to the development of the legal profession. It will provide training for current and candidate judges as well, and plans include continuing legal education courses in the future. This institution will be very important in building the legal profession's capacity on a broad scale. The government and donor community should ensure that it has the resources necessary to fulfill this important role.

Social Dynamics

The social dynamics affecting commercial law reform are generally positive from two important perspectives. First, those interviewed noted the lack of corruption in government institutions such as the judiciary. This "zero tolerance policy toward corruption at all levels" has been cited by others who have reviewed the existing market for reform in the country.[256] Second, it appears that the various stakeholders have embraced the need to move forward on a comprehensive package of reform in the commercial legal area to include commercial

[254] Law Establishing the Kigali Bar Association.

[255] *See generally* Private Sector Federation website (http://www.rpsf.org.rw/aboutrpsf/about.html); ILI Aug. 2007 Report, at 5; RPSF Strategic Plan 2007-2010, *available at* http://www.rpsf.org.rw/publications/RPSFplan0710.pdf.

[256] *See, e.g.,* United Nations Conference on Trade and Development. Investment Policy Review – Rwanda (United Nations 2006) (advance copy) (Investment Policy Review), at 84.

laws governing contracts and the establishment of commercial courts.

The source of the anticorruption policy most often cited by interviewees is leadership at the highest level of government. Of course, this sort of top-down leadership positively impacts the social dynamics affecting the ability of reformers to achieve their goals. In addition, the legal profession and business community appear to be generally satisfied with the pace of reforms and their inclusion in the process.

That Rwanda needs to replace an outdated and little-used framework for its commercial legal system is evident. The timing of drafting, passage, and implementation of these new laws and commercial courts, however, is important to their eventual effectiveness. It appears that the members of the Reform Cell and the ILI are very aware of the need to include various stakeholders in the process of drafting, passage, and implementation to include the capacity building that these new laws will require. On the other hand, there is a perception that there is an urgent need to pass and implement these laws in the near future.[257]

While this raises the question of whether there has been a sufficient opportunity for stakeholders to be part of the implementation process, those interviewed from various sectors of the legal, academic, and business communities consistently confirm that they have been given the opportunity to participate in the process of these legal reform efforts. In various instances, they had participated. In other instances, they had not availed themselves meaningfully of these opportunities. However, there was a general view that the immediate commercial legal reform areas must be viewed in the context of reform efforts that have been going on for several years.[258]

Recommendations

To raise the Doing Business scores . . .

- Support passage in the current legislative session of most laws drafted through the efforts of the ILI and the Business Reform Cell.
- Plan and implement educational activities in conjunction with passage and implementation of the new commercial laws to include the Rwandan legal, banking, business, academic, and judicial communities.

To strengthen the overall environment for Enforcing Contracts . . .

- Identify existing planned educational programs and provide assistance and support for such programs.
- Create programs of formalized and regular judicial training on basic economic and business principles to include study of the new laws and how they relate to everyday commercial transactions.
- Support implementation of the new arbitration law through:
    - Providing assistance in establishing a commercial conciliation and arbitration centre[259]
    - Developing and supporting programs for attorneys in arbitration practice and procedure.
- Develop programs in conjunction with the Institute for Legal Practices and Development in Nyanza for both judges and lawyers in the area of commercial law.
- Create an outreach program involving the universities to assist in the training of professors in commercial concepts and laws with a view of developing a curriculum designed to educate law students on modern commercial concepts.

[257] ILI Aug. 2007 Report, at 12.
[258] Id.
[259] Investment Policy Review, at 111.

CLOSING A BUSINESS

Introduction

Economic development – and the accompanying start-up and growth of privately owned businesses – carries with it a corresponding risk of failure. That is, freedom to succeed in an environment in which enterprises are free to prosper carries with it the freedom to fail. Accordingly, an advanced commercial legal system must not only provide the framework for success but must also contain a working mechanism to deal with the consequences of the inevitable failures. These business failures typically result when businesses are not able to meet their financial obligations as they become due for a myriad of reasons ranging from mismanagement to a change in the marketplace.

When these failures occur, efficient legal systems must provide for the orderly liquidation of assets to pay the claims of creditors. The absence of an efficient system to close a business can inevitably result in conflicting claims of creditors competing for a debtor's limited assets. Moreover, inefficient or nonexistent bankruptcy systems prevent the redistribution of income-producing assets and employees, with an overall negative impact on the local communities in which previously solvent businesses once operated.

While there are provisions of existing law in Rwanda that deal with insolvency and the dissolution of business enterprises, they are little used. In practice, bankruptcy is almost nonexistent as a viable method of dealing with insolvency in Rwanda. In the World Bank *Doing Business* survey, Rwanda shared the lowest ranking in the world – "No practice" – in the bankruptcy category with Afghanistan, Albania, Bhutan, Burundi, Cambodia, Cape Verde, Chad, Comoros, Dominica, Equatorial Guinea, Eritrea, Grenada, Guinea-Bissau, Iraq, Kiribati, Lao PDR, Madagascar, Sao Tome and Principe, Seychelles, St. Kitts and Nevis, St. Vincent and the Grenadines, Sudan, Timor-Leste, Trinidad and Tobago, and West Bank and Gaza.[260]

As current reform efforts are implemented and basic commercial laws such as those dealing with contracts, negotiable instruments, and secured transactions become law, commercial credit will become more available. This will inevitably result in an increase in business failures with a resulting need for an efficient insolvency system. In this regard, included among Rwanda's commercial law legislative priorities is a comprehensive law dealing with insolvency. Passage of the law, however, will only be a first step in the creation of a working insolvency system. Without a corresponding effort to develop the institutions to support such a system as well as capacity among the parties involved in the insolvency process – judges, attorneys, accountants, and other bankruptcy professionals – the system will not be able to achieve its full potential.

Closing a Business

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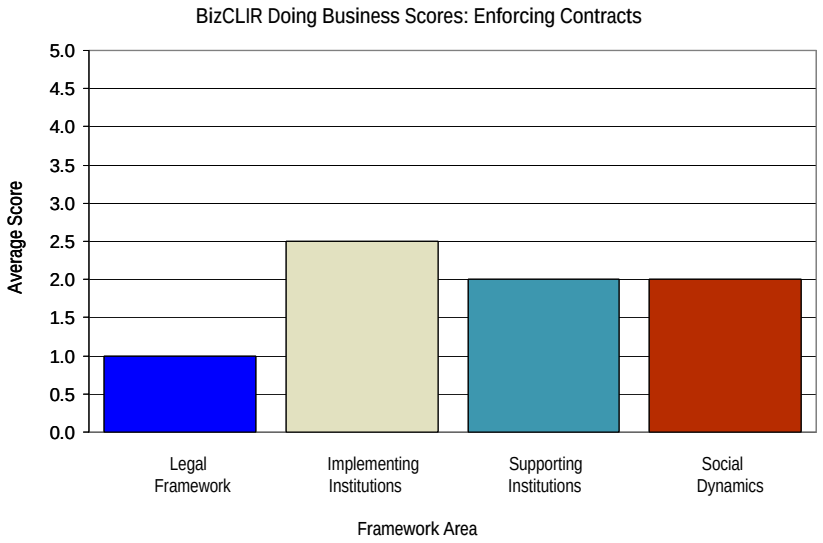
Doing Business ranks Rwanda near the bottom of the world for Closing a Business, and this category similarly falls at the bottom of the BizCLIR indicator scores, as demonstrated in the graph at the beginning of this chapter. Substantial reforms are necessary in all aspects of Closing a Business. As detailed in this chapter, reforms will begin with enactment of the Draft Insolvency Law, which is recommended to take place as soon as possible.



[260] World Bank, *Doing Business 2008* (2007).

Legal Framework

As noted, formal bankruptcy proceedings are relatively rare in Rwanda. This may be in part due to the archaic and outdated laws that govern bankruptcy proceedings. These are found in the Decree of 27 July 1934 (as modified in 1956), the Decree of 12 December 1925, and the Colonial Decree of 1888 (Existing Bankruptcy Laws). [261] Interviewees suggest that businesses with financial problems that are unable to continue simply close their doors, with the owners relocating and starting anew elsewhere. The few anecdotal references to actual bankruptcy cases reflect a high level of dissatisfaction with the existing legal framework.

Two of the banks interviewed both shared an example of a bankruptcy filing of what appears to be the same debtor to which both banks had made loans. The case, which had been pending for a number of years, appeared to be heading toward a consensual resolution with respect to the auction of the remaining equipment when the governmental taxing authorities asserted a belated priority tax claim as to all proceeds from the sale.

Reorganization does not exist nor is it available under the existing laws on bankruptcy. A discharge of the debts of an individual and fresh economic start after bankruptcy is also not available under existing law. Thus, there is currently no viable working bankruptcy system in Rwanda to deal with an insolvent private enterprise.

Key Laws

- Decrees pertaining to business insolvency
- Draft Insolvency Law

Proposed legislation. The World Bank Draft Action Plan to implement reforms recognizes the need to build capacity with respect to bankruptcy and insolvency laws in Rwanda.[262] It has made four recommendations to move forward in this area: (1) build the capacity of current lawyers and accountants (work with legal and accounting professionals); (2) work with the Rwanda Bankers Association to be involved with the process of implementing any new bankruptcy laws; (3) build the capacity of the new commercial courts with training and recruitment of judges specifically to work on bankruptcy cases; and (4) pass a new bankruptcy law based on international best practices.[263]

In keeping with these objectives, there is currently under consideration a Draft Insolvency Law that appears to deal effectively with insolvency cases – striking an appropriate balance between the need to promote reorganization of viable businesses and the closure of nonviable ones with the speedy liquidation of assets for the benefit of secured and unsecured creditors.[264] The Draft Law incorporates many of the UNCITRAL best practices. [265] It is also based in part on the German insolvency law. The Draft Law is currently with the Ministry of Justice where comments from various stakeholders are under consideration for inclusion in the draft, which is expected to be submitted to the Parliament by April 2008.

Jurisdiction of commercial bankruptcy cases under the Draft Insolvency Law is placed with the recently created commercial courts.[266] It applies to all commercial insolvency proceedings whether involving private persons or business enterprises.[267] The Draft Law creates the new office of the Chief Insolvency Administrator for the purpose of licensing and regulating the profession of insolvency administrators and to provide oversight and technical assistance for the conduct of insolvency proceedings in Rwanda. This new position will serve directly under the Registrar General of the Rwanda Commercial Registration Services Agency.[268]

Except in limited circumstances, the court will appoint an insolvency administrator to serve in each case with the duties and powers to sell or otherwise dispose of the property of the debtor, carry on the business of the debtor where it is in the interest of the estate, and institute or defend any action or other legal proceeding relating to the property of

[261] Business Law Reform Cell, Report on the Reform of the Business Regulatory Framework in Rwanda (Rwanda Ministry of Justice, December 2005), at 18.

[262] World Bank, "Draft Action Plan," *Doing Business 2008* (2007), at 6.

[263] Id.

[264] Draft Insolvency Law (on file with the Rwandan Ministry of Justice) (Draft Insolvency Law).

[265] *See* United Nations Commission on International Trade Law, Legislative Guide on Insolvency Law (adopted June 25, 2004) (UNCITRAL Guide), at 11.

[266] Draft Insolvency Law, at Art. 4(1). For a discussion of the commercial courts see the section of this report dealing with Enforcing Contracts.

[267] Draft Insolvency Law, at Art. 1.

[268] Id. at Art. 8.

the debtor.[269] The Draft Insolvency Law creates a significant role for functioning creditors' committees in all cases – unlike the system in the United States, which limits creditors' committees to Chapter 11 cases.[270] The members of the creditors' committee are charged with monitoring the insolvency administrator's execution of specified duties and have the right to obtain information on the debtor's financial affairs and the progress of the case. They also have the right, where applicable, to participate in the development of the reorganization plan.[271]

A bankruptcy case may be commenced under the Draft Insolvency Law by application of either a creditor or the debtor. The basis for initiating a case is the debtor's insolvency. Insolvency exists if either the debtor is unable to pay debts as they come due (equitable insolvency) or the debtor's assets are worth less than the debtor's liabilities (balance sheet insolvency).[272] If the court concludes that the debtor is insolvent, the court will enter an order commencing the case, which appoints the insolvency administrator and gives notice to creditors of a bar date by which to file claims.[273] The initial notice also schedules meetings of the creditors to hear a report from the insolvency administrator on the status of the case and a meeting to verify the allowed filed claims.[274]

The Draft Insolvency Law contains an automatic stay similar to its U.S. counterpart.[275] Thus, upon the commencement of the bankruptcy case, all proceedings concerning the assets or liabilities of the debtor are stayed. This includes actions to perfect or enforce security interests, execute judgments, terminate contracts, or encumber or otherwise dispose of any assets of the estate.[276] This stay remains in effect during the course of the bankruptcy case until either the court grants relief from the stay to allow a secured creditor to proceed against its collateral or a reorganization plan becomes effective.[277]

Relief from the stay may be granted by the court if the secured creditor shows that the encumbered asset is not necessary to a reorganization or sale of the debtor's business; the value of the encumbered asset is diminishing as a result of the commencement of bankruptcy case and the secured creditor's interest cannot be adequately protected against such diminution of value; or in a reorganization case, a plan is not approved within the time set by the court.[278] As an alternative to granting relief from stay, similar to the U.S. Bankruptcy Code, the court may grant adequate protection in the form of cash payments to the secured creditor, additional collateral, or such other protection as the court determines.[279]

Upon commencement of the case, certain restrictions and duties are imposed upon the debtor. For example, once a case is filed, the debtor's right to manage and transfer the assets involved in the bankruptcy case vests in the insolvency administrator.[280] Any transfer by the debtor after the commencement of the case is void.[281] The debtor is also required to cooperate with the insolvency administrator and disclose all information as requested by the court, the insolvency administrator, and the creditors' committee.[282]

Executory contracts are also dealt with comprehensively by the Draft Insolvency Law. These are contracts in which the continued performance by the debtor may produce a value in excess of the cost of performance. An example of such a contract is a below-market lease. Third parties are often willing to pay a premium to take an assignment of these contracts and assume the obligations under the lease in exchange for the benefits to which the debtor had been entitled to under the contract. In this regard, the Draft Insolvency Law provides that the insolvency administrator "may decide to continue the performance of a contract where it would be beneficial to the insolvency estate."[283] Moreover, just as under U.S. law, any provision that automatically terminates the contract solely based

[269] Id. at Art. 13(1).
[270] Compare Draft Insolvency Law, at Art. 19. with 11 U.S.C. §1102.
[271] Draft Insolvency Law, at Art. 20.
[272] Id. at Arts. 27 and 28.
[273] Id. at Arts. 36 and 37.
[274] Id. at Art. 38.
[275] Compare Draft Insolvency Law, at Art. 62 with 11 U.S.C. 362.
[276] Id. at Art. 62(1).
[277] Id. at Art. 62(4)(a).
[278] Id. at Art. 62(6).
[279] Compare Draft Insolvency Law, at Art. 62(5), with 11 U.S.C. §361.
[280] Draft Insolvency Law, at 63(1).
[281] Compare Draft Insolvency Law, at Art. 64 with 11 U.S.C. §549.
[282] Draft Insolvency Law, at Arts. 75 and 76.
[283] Id. at Art 80(2).

on the filing of the bankruptcy case is unenforceable against the insolvency administrator.[284]

The insolvency administrator is also granted broad rights to set aside transactions that occurred before bankruptcy that were fraudulent in that they were intended to defeat, delay, or hinder the ability of creditors to collect claims.[285] The Draft Law also provides a similar right where the pre-bankruptcy transfer was constructively fraudulent in that it was a gift or was in exchange for a nominal or less than equivalent value.[286] Importantly, preferential transfers, that is, transfers that preferred certain creditors and allowed them to more than their pro-rata share of the debtor's assets at a time when the debtor was insolvent, may also be avoided and the value of those transfers be collected by the insolvency administrator from the preferred creditors for ultimate distribution to all creditors on a pro rata basis.[287]

Upon commencement of the insolvency proceeding, the insolvency administrator immediately assumes possession and management of the debtor's business.[288] After making an inventory of the debtor's assets and compiling a list of creditors,[289] the insolvency administrator holds a meeting at which the insolvency administrator reports on the economic situation of the debtor.[290] A decision is then made with creditor input on whether the debtor's business should be closed down or continued.[291] The insolvency administrator thereafter proceeds to liquidate the assets of the insolvency estate consistent with the decisions made at the meeting of creditors.[292]

The proceeds from the sale of the debtor's assets are then distributed – first to the costs of the sale transaction, then to any secured creditor holding a valid lien on the debtor's assets, with the balance being held for distribution to unsecured creditors.[293] Prior to any distribution to unsecured creditors, their claims must be determined. The first step in this process is the filing of written claims together with supporting documentation by the creditors.[294] A hearing is conducted with respect to claims at which claims are verified as to both amount and priority.[295] Following verification of the claims, distribution to creditors is commenced based on their priority.[296] The priority of unsecured creditors is similar to the U.S. system, with the costs of administration being paid first, and then priority being accorded to certain types of claims such as claims arising from unpaid obligations for wages, marital support, taxes, leases, unemployment insurance, and workers' compensation.[297]

As an alternative to a simple liquidation of assets and immediate distribution to creditors, the debtor's financial problems may be resolved through an "insolvency plan."[298] Similar to the U.S. system, the insolvency plan designates classes and treatment of creditors, provides the means for the plan's implementation, deals with executory contracts, and may provide for either the continuation of the debtor's business or the sale of the business and the distribution of the proceeds to creditors.[299] Upon satisfaction of the plan requirements with respect to creditors, the debtor is then discharged from any further liability on account of the pre-bankruptcy claims.[300] In order for the plan to be approved, the plan must receive the affirmative vote of each class of creditors as to both majority in number of creditors and amount of debt.[301]

The Draft Insolvency Law also creates the status of a "debtor-in-possession" with the right to manage and dispose of the assets involved in the insolvency proceeding under the oversight of a custodian.[302] The custodian's role, similar to an examiner in U.S. Chapter 11 practice,[303] is limited to an investigatory and monitoring function.[304] A debtor's request to operate as a debtor-in-possession will be denied in cases where the debtor was involved in fraudulent conduct, dishonest practices, or gross mismanagement.[305]

[284] Compare Draft Insolvency Law with 11 U.S.C. §365(e)(1).
[285] Draft Insolvency Law at Art. 89(2)(a).
[286] Id. at Art. 89(2)(b).
[287] Id. at Art. 89(2)(c).
[288] Id. at Art. 95(1).
[289] Id. at Arts. 98, 99.
[290] Id. at Art.103.
[291] Id. at Art. 104.
[292] Id. at Art.106.
[293] Id. at Art. 117(1).
[294] Id. at Art. 121(1).
[295] Id. at Art. 123.
[296] Id. at Arts. 133(1), 135.
[297] Id. at Art. 135.
[298] See generally Draft Insolvency Law, Chapter 5.
[299] Id. at Art. 161(3).
[300] Id. at Art. 167.
[301] Id. at Art. 183.
[302] Id. at Art. 209.
[303] 11 U.S.C. §1106(b).
[304] Draft Insolvency Law at Art. 213.
[305] Id. at Art. 211(3)(a).

A discharge of an individual's debts may also be obtained under the Draft Insolvency Law. These provisions are found in Chapter 8, which creates a framework similar to Chapter 13 provisions under U.S. law.[306] Under these provisions, if the debtor is an individual, the debtor may obtain a discharge of all debts not satisfied during the bankruptcy case if the debtor assigns to the bankruptcy trustee garnishment of the debtor's future income for a six-year period.[307] However, similar to U.S. law,[308] a discharge will generally not be available to debtors who have violated the requirements of the bankruptcy laws, for example, by giving false statements in connection with a bankruptcy case, or in cases where the debtor received a discharge within the ten previous years in a prior case.[309] Also similar to U.S. law,[310] certain types of debts will not be discharged. These include claims arising from willful torts and alimony.[311]

The Draft Insolvency Law also incorporates the Model Law on Cross-Border Insolvency adopted by the United Nations Commission on International Trade Law (UNCITRAL) on May 30, 1997.[312] It is designed to assist nations to equip their insolvency laws with a modern, harmonized, and fair framework to address more effectively instances of cross-border insolvency.[313]

Summary. The Draft Insolvency Law is a comprehensive structure for dealing with insolvencies and incorporates international best practices for such laws. In this respect, the Draft Law provides equality among similar creditors while providing for appropriate but limited priorities to certain classes of creditors. It also adequately protects the interests of secured creditors while limiting their rights to immediately obtain their collateral in cases where there is equity that would benefit other creditors or where the property is needed for an effective reorganization of the debtor's business.

It also satisfies one of the purposes of a centralized bankruptcy proceeding, which is to prevent the race to the courthouse that would otherwise result if creditors were left to pursue the assets of the debtor independently. In this regard, the Draft Law provides for the recovery of preferences and fraudulent conveyances made to benefit favored creditors or to shield assets from the reach of creditors generally.

The Draft Law also provides adequate procedures for a timely and efficient resolution and dissolution of the debtor's affairs. These procedures are relatively simple with the rights and duties of the participants – the debtor, creditors, and insolvency administrator – clearly delineated. Importantly, the debtor's obligation to provide information about its financial affairs to the insolvency administrator and other interested parties also are clearly delineated.

Often preservation of going-concern value can only be achieved by a reorganization of the debtor's finances and a continuation of the debtor's business. The Draft Insolvency Law provides a relatively straightforward, simple approach to reorganization through the process of obtaining creditor and court approval of an insolvency plan. Such plans cannot only deal comprehensively with the adjustment of the debtor-creditor relationships, but also effectively provide for the utilization of estate assets to maximize on return to creditors.

The Draft Law deals with the concept of an individual discharge from debts. While this right is limited to a proceeding similar to a Chapter 13 under U.S. law, it nevertheless does provide a mechanism for individuals beset with personal debt, often associated with guaranties of business debt, to discharge that debt after making a meaningful attempt to repay a portion of such debt over the term of the bankruptcy case.

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306 *See* 11 U.S.C. §1301 et seq.
307 Draft Insolvency Law at Arts. 228, 229.
308 *See* 11 U.S.C. §727.
309 Draft Insolvency Law at Art. 232.
310 *See* 11 U.S.C. §523.
311 Draft Insolvency Law at Art. 244.
312 Id. at Chapter 11.
313 See UNCITRAL website, http://www.uncitral.org/uncitral/en/uncitral_texts/insolvency/1997Model.html.

Implementing Institutions

Courts. The primary implementing institution in the area of bankruptcy is the court system. It is up to the courts to administer, interpret, and enforce the rights and duties of the respective parties in a bankruptcy case. As discussed in more detail in the Enforcing Contracts chapter of this report, Rwanda is in the process of creating commercial courts. Included within the jurisdiction of these courts are "actions arising from commercial bankruptcy."[314]

Key Implementing Institutions

- Courts

Specialization of courts in the commercial area has been found to be an effective approach to dealing with the complex nature of commercial disputes in a number of countries. This is particularly so in the area of bankruptcy. While Rwanda has historically had few bankruptcy case filings, with the development of its commercial economy and the improvement of its commercial legal framework and institutions, commercial activity will increase to include the wider availability of commercial credit. This will inevitably lead to an increase in the number of businesses needing bankruptcy relief in the form of liquidation or reorganization.

No doubt, the new commercial courts will develop expertise over time with the experience gained from presiding over bankruptcy cases. However, it is currently recognized that the major impediment faced by the newly created commercial courts is lack of capacity in the area of commercial law in general among the existing Rwandan judiciary. Because bankruptcy brings into play all of the debtor's commercial transactions and related issues, lack of capacity among judges in the handling of bankruptcy cases will be acute.

Thus, there is a need to develop and implement training for new commercial judges and for continuing education throughout their tenure on the commercial court. This training should, of course, cover the provisions of the Draft Insolvency Law. Just as importantly, because bankruptcy is at the intersection of all laws that deal with the creditor-debtor relationship, this training should include other commercial topics such as contracts, secured transactions, mortgages, and personal property leases.

Supporting Institutions

Judges, the legal profession, and other related professions. While the courts are the key implementing and most important institution with respect to an effective bankruptcy system, a working bankruptcy system also depends greatly on the presence of individuals and institutions that can support the practice. These institutions include individuals who regularly serve as bankruptcy attorneys, accountants specializing in the insolvency area, and workout consultants. They also include auctioneers, appraisers, and individuals willing and able to serve as insolvency administrators. Associations of bankruptcy professionals are also an important part of the fabric of a working insolvency practice. These institutions, such as bankruptcy bar associations, regularly meet to share ideas, cross-market services, and participate in educational programs.

Because of the absence of any significant bankruptcy practice in Rwanda, these institutions have not had the opportunity to develop in Rwanda. That is, no professionals or institutions with a primary specialty of bankruptcy currently exist in Rwanda. In addition, there are no associations of attorneys and other professionals dedicated to the promotion and enhancement of the insolvency profession. There are also no judges' organizations dealing specifically with bankruptcy.

As a result, there currently is no group of legal professionals that can promote education in the bankruptcy and related commercial law areas or that will be available to monitor the need for legislative reform and amendments and can be relied upon to

Key Supporting Institutions

Existing

- Judges and the legal profession
- Kigali Bar Association
- Rwanda Bankers Association
- Private Sector Federation

Future

- Accountants (for insolvency)
- Auctioneers and appraisers
- Workout consultants
- Insolvency administrators

[314] Land Law Concerning the Establishment of Commercial Courts (Commercial Court Law), at Art. 3(9).

lobby for change. While development of these organizations will not occur until a bankruptcy system is started and professionals and judges begin work on actual cases, they are essential to a maturing bankruptcy system over the long term in the input they provide to the improvement of the system, both from a legislative perspective as well as in providing continuing legal education in bankruptcy-related topics.

Kigali Bar Association, Rwanda Bankers Association, and the Private Sector Federation (PSF). There are other organizations, however, that are supportive of the legal system and have been involved in the ongoing legislative process with respect to commercial legal reform. These include the Kigali Bar Association, the Rwanda Bankers Association, and the PSF. As bankruptcy cases begin to be filed once the Draft Insolvency Law is enacted, these organizations could sponsor, from within their membership, subcommittees devoted to the insolvency area. In addition, current training programs of the Institute for Legal Practice and Development (ILPD) can be directed to building expertise in bankruptcy areas and the commercial areas that are necessarily implicated in bankruptcy cases.

Social Dynamics

The social dynamics overall in Rwanda are favorable for the development of a commercial legal system to include an efficient bankruptcy system. These favorable dynamics can generally be broken into the following areas.

First, the process of reform in the commercial law area, to include the bankruptcy law, has been inclusive of the various stakeholders. Importantly, the Business Reform Cell, which was established by the Ministry of Justice in 2005 for the purposes of assessing the state of Rwanda's framework laws and implementing institutions, shaped the course of the commercial reforms from a Rwandan perspective.

This perspective in turn was incorporated in the scope of work undertaken by the International Law Institute (ILI) when it commenced work on the draft legislation in 2006. This process has continued with various stakeholders being provided drafts of the proposed laws for review and comment. These stakeholders have included the Private Sector Federation, the Kigali Bar Association, the Rwanda Bankers Association, and various professors in the country's universities.

Second, government corruption, so prevalent in many countries, does not appear to be systemic in Rwanda. There appears to be a widely held perception that institutional corruption is simply not a problem in the court system or the ministries involved with overseeing commercial and other implementing and supporting legal institutions. Moreover, it is also generally perceived that this institutional culture against unethical conduct originates at the highest levels within government and is carried through and implemented throughout the government.

Third, the deficiencies with the Rwandan commercial legal system have been recognized and are being dealt with proactively. Besides the need for new laws and an improvement to the court system through the creation of a commercial court, these deficiencies primarily relate to a lack of capacity among the judiciary and the related supporting institutions in the commercial area. Recognizing this capacity problem, steps are ongoing for the training of judges as part of the creation of the new commercial courts as well as training for new attorneys by the ILPD.

Recommendations

To raise the Doing Business scores . . .

- Pass the Draft Insolvency Law in the 2008 legislative session.
- Once the Draft Insolvency Law becomes law, plan and execute educational activities for the legal, banking, academic, and judicial communities in Rwanda.
- Provide assistance to the Kigali Bar Association to offer an introductory course for the new commercial laws to include the Draft Insolvency Law. This assistance could include funding for the expenses of hosting the program, expenses of speakers, and payment of printing costs.
- Create a workshop for the banking community to familiarize bankers with the new law and bankruptcy concepts generally.

To strengthen the overall environment for Closing a Business . . .

- Establish programs on commercial subjects common to bankruptcy cases as part of the core curriculum for the ILPD judicial training

programs. These areas should include courses on bankruptcy, secured transactions, mortgages, negotiable instruments, and contracts.

- Design and implement an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view of developing curriculum designed to educate law students on bankruptcy and other commercial concepts.

APPENDIX A:

Recommendations by Crosscutting Theme

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Starting a Business	Support public awareness campaigns on entrepreneurialism, business opportunities, and the benefits of joining the formal sector.	Assist the PSF with business development and management training, which should address leadership, marketing, accounting, and business ethics.	Lower the threshold for local investors to qualify for investment incentives.	Assist CAPMER with training on business development and management for SMEs, including training specifically geared toward women.		Make all laws available to the public in a more user-friendly format than the current Official Gazette.
	Assist with establishment and capacity building for BDS centers throughout the country.		Assist RIEPA and CAPMER in making information on commercial laws relevant to these institutions available to the public in a simple, access ble, and understandable form.			Support public awareness campaigns and education on new laws as they are promulgated.
	Build awareness about the institutions available to help small and large businesses through radio programs, television programs, and billboards.					Continue extensive private sector consultations periodically once new laws have been passed to ensure that they are amended as necessary.

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Dealing with Licenses	Continue development of master plans and zoning rules through transparent processes and a mindfulness of economic development priorities.	Create a Developers Manual that sets forth all the existing and anticipated legal and regulatory aspects of a construction project in Rwanda.	Improve the accessibility of MINITERE and all other ministries through improved "customer service," beginning with better signage and buildings and strengthened ministry websites.			Publish the universe of commercial laws and regulations in a single, accessible, and adequately maintained place.
	Within REMA, continue providing guidance and instruction about the creation of EIAs.	Within REMA, continue public awareness and education initiatives that increase basic understanding about the relationship between economic development and environmental stewardship.	Establish a one-stop shop for construction licenses, including an integrated, online "planning portal" and other agency-integration methods.			Continue review and streamlining of business licensing environment in Rwanda generally. Support the institution ultimately commissioned to oversee this effort. Create a legislative, regulatory, and institutional reform program that addresses necessary reforms.
		Encourage and support more productive relationships between universities and the private sector, including through university participation in BDS centers.	Within local planning agencies, clarify and post the specific procedures for obtaining a building permit, including a list of time frames and costs.			Enact a national building code, accompanied by a plan for public education and legal implementation.
						Support RIEPA's efforts to obtain and make available information on businesses, business sectors, and trade in Rwanda.

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Employing Workers	Through the establishment of a dedicated office or agency, as well as public education and information programs, support efforts of small farmers to understand the advantages of processing and selling their goods collectively through cooperatives.	Continue support for improvements to primary and secondary education systems, with particular emphasis on encouraging higher rates of primary-school completion and progress to secondary school.	Train judges in the resolution of employment disputes. Reinforce the role of the judge as that of enforcing the law, rather than that of "protecting" the interests of one side or the other.	Examine how, particularly with respect to girls, issues of infrastructure and sanitation impact the decision to pursue secondary education.	Clarify and publicize reforms to system of immigration and work permits. Investors unable to find local workers with the skills they require should be better enabled to employ expatriate workers meeting their skill needs.	Engage in a long-term consensus-building activity that would get to the root of the relationship between labor law and economic productivity. Rather than rushing to adopt a new law, seize the opportunity to learn from lessons throughout the world and to use the new labor code as a tool toward implementing the overall economic objectives of the government, the private sector, and the workforce.
	Encourage informal producer organizations to formalize as cooperatives so they will be able to take advantage of the various benefits that come with business formality, including information-sharing and training opportunities.	Strengthen and expand opportunities for vocational education and training. Specifically provide support to the association of vocational schools.	Study, propose, and implement options for creating tax breaks or other incentives for companies that invest in worker training.	Continue to examine the question of how women who are not part of a community's formal economy spend their days and how the productivity of daily life might be enhanced, thereby allowing time for other things. Is there consistent access to electricity, clean water, efficient transportation, titled property, markets, health care, child care, police protection, telecommunications services, and so forth?		In a short-term study based on a wide sample of cases, quantify the exact costs of hiring and firing workers (both skilled and unskilled) in Rwanda. Identify which costs can be changed through legal reform, and which are matters of implementation and education. Develop a clear plan for addressing each of these issues.
	Analyze and develop a "map" of government licensing and regulation regimes affecting agricultural producers, and work with cooperatives to press for streamlining and simplification of these regimes.	Study and propose reforms to Rwanda's system of higher education				Publish the universe of labor and employment-related laws and regulations in a single, accessible, and adequately maintained place.

Encourage and support more productive relationships between universities and the private sector, including through university participation in BDS centers.	Continue attacks on HIV/AIDS, including through employer-based counseling, testing, and treatment programs.				Clarify the role and reporting responsibilities of labor inspectors.
					Reconcile the role of staff delegates with other legally authorized worker representatives. Consider whether the presence of staff delegates in fact contributes to economic productivity and overall labor relations of the country.

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Registering Property	Clarify ambiguities in the land law. Optimal land use is important in land-scarce Rwanda. Suggested solutions for consolidating land and "villagisation" need to be well elaborated, sequenced, and participative, including clear articulation of "public purpose" expropriation for national "optimal land use."	Build staff capacity. Details of the new institutions have not yet been determined in terms of composition and participation of different groups; appropriate institutions for effective land administration will also require building staff capacity.	Make land commissions representative of society. The composition of the land commissions should include representatives of those "voiceless" sections of society who are most easily marginalized.	Monitor implementation of the inheritance law and provide direct assistance to women who seek to enforce their rights under the law.	Promote accession to additional IP conventions and treaties.	Publicize the Land Law more broadly. The Land Law and policy require further dissemination.
	Accelerate the strategic road map. It is important to accelerate the road map and land reform implementation process to limit speculation and support smal holders.		Raise awareness. There is lack of knowledge of the land reform process among all stakeholders; communication, awareness, and broad participation is recommended through "managed engagement." Participation of all stakeholders, especially the rural poor, should be given priority.	Conduct further research into the effects of HIV/AIDS on land rights, particularly for women and children, and use the results to guide amendments to Land Law and policy.	Revise the Draft Law on the Protection of Intellectual Property to correct inconsistencies and clarify the intended effect of unclear provisions.	Reinterpret existing laws. Given the new administrative units in Rwanda, the Land Law and policy need to be reinterpreted and adjusted for coherence, especially concerning how new proposed land institutions will be affected.
	Inventory households and types of problems of livel hoods facing households caught up in the rural-urban enclave – l kely victims of "public purpose" expropriation.					Involve civil society organizations in policy implementation, especially through raising awareness and dissemination of the key aspects of policy, capacity building, and monitoring of the socioeconomic and gender impacts of land consolidation and "villagisation."

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Getting Credit	Establish specialized products to support agricultural activity, including agricultural lending.	Increase the quality of and quantity of providers teaching business skills.	Create a private information registry. To do so, adopt necessary laws and provide investment incentives if necessary to attract private investors, and enable cross-border processing so that investors can capture economies of scale through regional approaches.		Develop internationally recognized finance products for Rwandan use.	Continue implementation and revision of the FSDP as a comprehensive strategy for lowering costs and risks of lending in Rwanda, including all factors listed in this report.
	Develop supporting institutions for the land market, such as surveyors, appraisers, and real estate agents and brokers.	Develop special training programs for government officials to introduce them to business skills and risk-assessment principles. Supplement or substitute training by lending institutions with commercial training providers, possibly through the Bankers Association and the MicroFinance Association.	Establish a movable property lending regime based on a notice registry system and international best practice.		Permit and encourage employment of competent accountants from neighboring countries, at least for the next 5 to 10 years, to provide services and train Rwandans.	Develop tailored regulatory requirements for each type of lending institution: banks, MFIs, and NBFIs, including reduced reserve requirements for nondepository institutions.
	Establish private ownership of real property.	For all legal and regulatory reforms, develop new curriculum for law and business schools, plus continuing education for all legal professionals, bankers, tax authorities, and appropriate private sector stakeholders.	Establish the legal and regulatory framework for banks to establish mobile banking.		Complete and implement the draft accounting law to establish a single accounting standard for banking and tax use based on IAS.	Complete any necessary additional improvements to the switching system, along with necessary regulations for use of ATMs and telephone banking services.
	Develop and disseminate clear, transparent, and appropriate standards for land redistribution programs under way, along with mechanisms for ensuring fair and timely compensation and appeal from dispossession.	Provide free training to borrowers to enable them to meet new credit standards when loan officers are better trained.			Establish an accountants association in concert with an international organization such as IFAC, the International Federation of Accountants.	Revise existing leasing law to introduce hire-purchase agreements; better support operational leases; and eliminate double taxation.

	Increase education and training in accounting and bookkeeping under a regional certification program aimed at company accountants. (This should not be a full CPA program.)			Increase education and training in accounting and bookkeeping under a regional certification program aimed at company accountants. (This should not be a full CPA program.)	Introduce receivership for troubled institutions under BNR oversight along with capacity to manage purchase and assumption agreements and other lower cost solutions.
	Identify, develop, and distribute basic accounting software and training materials to taxpayers and loan applicants.				Improve and enhance BNR's public information registry. Capture microloans; improve the timeliness of information; and establish a regional information-sharing capacity.
	Provide incentives (such as better interest rates, tax deductions, or other monetary incentives) for those who complete recognized courses.				

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Protecting Investors	Support public awareness and training on good business practices and basic corporate governance through the PSF, CAPMER, and BDS centers. Create education and training programs on basic business management, with an emphasis on training rural entrepreneurs.	Train RCRSA staff in the complicated corporate governance provisions of the Draft Company Law once it has been passed.	Assist the PSF and RIEPA with training programs and building public awareness on the implications of new commercial laws for the business community.	Within the cadre of education and training programs pertaining to basic business management, direct supplementary curriculum specifically directed to women investors.	Encourage engagement between the local business community and international companies and larger local companies that can increase the socialization of good business management and corporate governance.	Revise the Draft Company Law to account further for the limited resources and nature of private, closely held companies by simplifying their compliance requirements. Also, edit it for readability and to clarify provisions that are currently confusing or incomplete.
		Support the ILPD in its efforts to improve commercial training and capacity in the legal profession, particularly with regard to the new legal framework that is being developed. This training should specifically address judges as well.				Push forward implementation of the certification program, code of ethics, and community of professionals for the accounting profession. Engage the accounting community in capacity-building efforts and education on the new corporate governance requirements when they are passed and the IASs.
						Create for the Registrar General a set of procedures or regulations to guide its decisions and actions in order to ensure transparency and fairness.

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Paying Taxes	Investigate ways to bring farmers into the tax net.	Conduct VAT education and interpretation workshops.	Enhance the role of the RRA to include outreach and education for micro and small enterprises.		Rationalize refunds or credits on inputs for re-exported goods.	Improve the capacity of the RRA, promoting greater clarity in tax regulations and full consistency of the three-language versions of the fiscal laws and regulations.
	Replace overly aggressive enforcement with service orientation.		Provide clear guidelines to businesses for tax exemptions.			Eliminate double VAT taxation on equipment leases.
			Make allowances universal and ensure allowances are not overly generous.			Revise the VAT reporting requirements from monthly to quarterly returns.
						Minimize the impact of taxation on companies' cash flow, including the removal of anticipatory payments on corporate income tax and the 3% tax on the value of invoice for the winners of public tenders.

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Trading Across Borders	Support the Rwanda Bureau of Standards (RBS) in the preparation and adoption of domestic standards, in circulating the relevant information, and in setting up a quality-control system. The RBS will also need support in order to develop and implement a national certification and accreditation system, and in the setup of a central standardization and a food quality-control laboratory.	Train RBS and RIEPA staff and Customs personnel (in particular the staff that is part of the "GATT Commission"), as well as examiners and other officials of the future section on rules of origin.	Explore the creation of a "one-stop shop" (either via new agency or an existing agency) for trade.		Harmonize Rwanda's laws with WTO rules.	Prioritize and implement the following needs: revision of Customs legislation; commputerization of Customs administration; restructuring of the Customs Valuation Division; strengthening of the inspection process; establishment of two sections on rules of origin and post-clearance auditing; training of Customs officials in the revised Customs legislation; fraud control; post-clearance audit facilities and methods; rules of origin; training the private sector in Customs procedures.
		Train the staff that will implement and enforce the new industrial property law.	Support the creation and implementation of e-trade framework.		Implement the WTO Customs Valuation Agreement. To do so, train Customs officials in the content and implementation of the agreement, including the application of the transaction value method.	Standardize procedures on revenue collection, cargo examinations, and inspection programs, as well as internal policies and management practices promoting the integrity and professionalism of bodies such as RRA, RIEPA, and RBS.

	Establish a training module and workshop(s) on data forms, simplification of documents, and e-trade systems	Incorporate automated systems into customs-related processes and online services for information dissemination and greater private sector participation.		Assist Rwanda in negotiating international trade agreements. Technical assistance will require the identification of sectors and issues that are important for Rwanda; the acquisition of negotiating techniques via training, and the identification of reforms that are required to implement the results of the negotiations. For services negotiations in particular, Rwandan negotiators need to become knowledgeable on how to structure specific commitments.	Strengthen the institutional capacities of RITA and RURA, so that privatization and competition in the different sectors (i.e., ICT and telecoms in the case of RITA and RURA) maximize the expected returns.
					Develop a database on trade figures that will improve risk profiling and inspections.

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Enforcing Contracts		Create programs of formalized and regular judicial training on basic economic and business principles to include study of the new laws and how they relate to everyday commercial transactions.	Plan and implement educational activities in conjunction with passage and implementation of the new commercial laws to include the Rwandan legal, banking, business, academic, and judicial communities.			Support passage in the current legislative session of most laws drafted through the efforts of the ILI and the Business Reform Cell.
		Support implementation of the new arbitration law through programs for attorneys in arbitration practice and procedure.	Identify existing planned educational programs and provide assistance and support for such programs.			Provide assistance in establishing a commercial conciliation and arbitration centre
		Develop programs in conjunction with the Institute for Legal Practices and Development in Nyanza for both judges and lawyers in the area of commercial law.				
		Create an outreach program involving the universities to assist in the training of professors in commercial concepts and laws with a view of developing a curriculum designed to educate law students on modern commercial concepts				

	Agriculture as the cornerstone of the Rwandan economy	Addressing the skills deficit	Access, opportunity and connections	The underplayed role of women in Rwanda's economic development	The growing significance of regionalism	Building foundations of trust through law, institutions, and freedom
Closing a Business		Design and implement an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view of developing curriculum designed to educate law students on bankruptcy and other commercial concepts				
		Provide assistance to the Kigali Bar Association to offer an introductory course for the new commercial laws to include the Draft Insolvency Law. This assistance could include funding for the expenses of hosting the program, expenses of speakers, and payment of printing costs.	Once the Draft Insolvency Law becomes law, plan and execute educational activities for the legal, banking, academic, and judicial communities in Rwanda.			Pass the Draft Insolvency Law in the 2008 legislative session.
		Create a workshop for the banking community to familiarize bankers with the new law and bankruptcy concepts generally.				

	Establish programs on commercial subjects common to bankruptcy cases as part of the core curriculum for the ILPD judicial training programs. These areas should include courses on bankruptcy, secured transactions, mortgages, negotiable instruments, and contracts.				

APPENDIX B:

Compilation of Recommendations

STARTING A BUSINESS	
No.	**Recommendation**
1.	Make all laws available to the public in a more user-friendly format than the current *Official Gazette.* Assist RIEPA and CAPMER in making information on commercial laws relevant to these institutions available to the public in a simple, accessible, and understandable form.
2.	Lower the threshold for local investors to qualify for investment incentives.
3.	Support public awareness campaigns on entrepreneurialism, business opportunities, and the benefits of joining the formal sector.
4.	Support public awareness campaigns and education on new laws as they are promulgated.
5.	Assist CAPMER with training on business development and management for SMEs, including training specifically geared toward women.
6.	Assist the PSF with business development and management training, which should address leadership, marketing, accounting, and business ethics.
7.	Implement a tax policy strategy that educates rather than punishes those that seek to practice sound corporate governance and bookkeeping.
8.	Continue extensive private sector consultations periodically once new laws have been passed to ensure that they are amended as necessary.
9.	Build awareness about the institutions available to help small and large businesses through radio programs, television programs, and billboards.
10.	Assist with establishment and capacity building for BDS centers throughout the country.
11.	Support RIEPA's efforts to obtain and make available information on businesses, business sectors, and trade in Rwanda.

DEALING WITH LICENSES	
No.	**Recommendation**
1.	Establish a one-stop shop for construction licenses, including an integrated, online "planning portal" and other agency-integration methods.
2.	Within local planning agencies, clarify and post the specific procedures for obtaining a building permit, ncluding a list of time frames and costs.
3.	Create a Developers Manual that sets forth all the existing and anticipated legal and regulatory aspects of a construction project in Rwanda.
4.	Continue review and streamlining of business licensing environment in Rwanda generally. Support the nstitution ultimately commissioned to oversee this effort. Create a legislative, regulatory, and nstitutional reform program that addresses necessary reforms.
5.	Publish the universe of commercial laws and regulations in a single, accessible, and adequately maintained place.
6.	Continue development of master plans and zoning rules through transparent processes and a mindfulness of economic development priorities.
7.	Enact a national building code, accompanied by a plan for public education and legal implementation.
8.	Improve the accessibility of MINITERE and all other ministries through improved "customer service," beginning with better signage and buildings and strengthened ministry websites.
9.	Within REMA, continue providing guidance and instruction about the creation of EIAs.

10.	Within REMA, also continue public awareness and education initiatives that increase basic understanding about the relationship between economic development and environmental stewardship.
11.	Encourage and support more productive relationships between universities and the private sector, ncluding through university participation in BDS centers. Entrepreneurship can be directed especially toward "green" activities – that is, the establishment of businesses that can take advantage of the country's new emphasis on environmental stewardship, such as tourism.

EMPLOYING WORKERS	
No.	**Recommendation**
1.	Publish the universe of labor and employment-related laws and regulations in a single, accessible, and adequately maintained place.
2.	Clarify and publicize reforms to system of immigration and work permits. Investors unable to find local workers with the skills they require should be better enabled to employ expatriate workers meeting their skill needs. This calls for eliminating the arbitrary limits on employing foreign employees, and relying on new skill-training incentives for employers for the purpose of phasing in local workers to key positions.
3.	Clarify the role and reporting responsibilities of labor inspectors.
4.	Reconcile the role of staff delegates with other legally authorized worker representatives. Consider whether the presence of staff delegates in fact contributes to economic productivity and overall labor relations of the country.
5.	Train judges in the resolution of employment disputes. Reinforce the role of the judge as that of enforcing the law, rather than that of "protecting" the interests of one side or the other.
6.	In a short-term study based on a wide sample of cases, quantify the exact costs of hiring and firing workers (both skilled and unskilled) in Rwanda. Identify which costs can be changed through legal reform, and which are matters of implementation and education. Develop a clear plan for addressing each of these issues.
7.	With respect to the process of revising the Labour Code, engage in a long-term consensus-building activity that gets to the root of the relationship between labor law and economic productivity. Rather than rushing to adopt a new law, seize the opportunity to learn from lessons throughout the world and to use the new code as a tool toward implementing the overall economic objectives of the government, the private sector, and the workforce.
8.	Study, propose, and implement options for creating tax breaks or other incentives for companies that nvest in worker training. There are many models for such a system throughout the world, including government training grants or subsidies, tax credits, and public-private training partnerships. These warrant further consideration from the perspective of what would work best in Rwanda.
9.	Improve the accessibility of MIFOTRA through improved "customer service" – better signage, clarity of rules, and a more welcoming approach to stakeholder input.
10.	Strengthen and expand opportunities for vocational education and training. Specifically provide support to the association of vocational schools.
11.	Continue support for improvements to primary and secondary education systems, with particular emphasis on encouraging higher rates of primary-school completion and progress to secondary school.
12.	Examine how, particularly with respect to girls, issues of infrastructure and sanitation impact the decision to pursue secondary education.
13.	Study and answer with tangible conclusions the following questions: → What is the relationship among Rwanda's current system of higher education generally, its current system of professional education specifically, and the country's potential for sustained economic growth? → How can Rwanda achieve a well-working indigenous system of university and professional education?
14.	Encourage and support more productive relationships between universities and the private sector, ncluding through university participation in BDS centers.

15.	Through the establishment of a dedicated office or agency, as well as public education and information programs, support efforts of small farmers to understand the advantages of processing and selling their goods collectively through cooperatives.
16.	Encourage informal producer organizations to formalize as cooperatives so they will be able to take advantage of the various benefits that come with business formality, including information-sharing and training opportunities.
17.	Analyze and develop a "map" of government licensing and regulation regimes affecting agricultural producers, and work with cooperatives to press for streamlining and simplification of these regimes.
18.	Continue to examine the question of how women who are not part of a community's formal economy spend their days and how the productivity of daily life might be enhanced, thereby allowing time for other things. Is there consistent access to electricity, clean water, efficient transportation, titled property, markets, health care, child care, police protection, telecommunications services, and so forth? An inquiry into what role women play in supporting or supplementing the livelihoods of the men in their communities will further identify what skills they already have or constraints that must be addressed.
19.	Continue attacks on HIV/AIDS, including through employer-based counseling, testing, and treatment programs.

REGISTERING PROPERTY

No.	Recommendation
1.	Publicize the Land Law more broadly. The Land Law and policy require further dissemination.
2.	Clarify ambiguities in the law. Optimal land use is important in land-scarce Rwanda. Suggested solutions for consolidating land and "villagisation" need to be well elaborated, sequenced, and participative, ncluding clear articulation of "public purpose" expropriation for national "optimal land use."
3.	Accelerate the strategic road map. It is important to accelerate the road map and land reform mplementation process to limit speculation and support smallholders.
4.	Reinterpret existing laws. Given the new administrative units in Rwanda, the Land Law and policy need to be reinterpreted and adjusted for coherence, especially concerning how new proposed land nstitutions will be affected.
5.	Build staff capacity. Details of the new institutions have not yet been determined in terms of composition and participation of different groups; appropriate institutions for effective land administration will also require building staff capacity.
6.	Involve civil society organizations in policy implementation, especially through raising awareness and dissemination of the key aspects of policy, capacity building, and monitoring of the socioeconomic and gender impacts of land consolidation and "villagisation." There are large gaps in capacity between urban-based NGOs and rural organizations, and national and international organizations. It is important to build the capacity of local NGO networks to advocate for the land rights of the poor. There is an urgent need to create a workable strategy to promote non-farm activities, based on realistic projections, rather than an overly optimistic model, because of the large number of people who may become landless in the near future. This should involve regional as well as national solutions, and the EAC, COMESA, AU, and other organizations should be directly involved.
7.	Monitor implementation of the inheritance law and provide direct assistance to women who seek to enforce their rights under the law.
8.	Conduct further research into the effects of HIV/AIDS on land rights, particularly for women and children, and use the results to guide amendments to Land Law and policy
9.	Make land commissions representative of society. The composition of the land commissions should nclude representatives of those "voiceless" sections of society who are most easily marginalized.
10.	Inventory households and types of problems of livelihoods facing households caught up in the rural-urban enclave – likely victims of "public purpose" expropriation.

11.	Raise awareness. There is lack of knowledge of the land reform process among all stakeholders; communication, awareness, and broad participation is recommended through "managed engagement." Participation of all stakeholders, especially the rural poor, should be given priority.
12.	Promote accession to additional IP conventions and treaties.
13.	Revise the Draft Law on the Protection of Intellectual Property to correct inconsistencies and clarify the ntended effect of unclear provisions.

GETTING CREDIT

No.	Recommendation
1.	Improve and enhance BNR's public information registry. Capture microloans; improve the timeliness of nformation; and establish a regional information-sharing capacity.
2.	Create a private information registry. To do so, adopt necessary laws and provide investment incentives if necessary to attract private investors, and enable cross-border processing so that investors can capture economies of scale through regional approaches.
3.	Establish a movable property lending regime based on a notice registry system with the following characteristics: → A specific, extensive list of properties and rights that can be pledged combined with general clauses permitting property pledges not captured by the list, → Notice registration only: contracts and underlying documents should not be registered, → Internet-based registration, with fees based on cost recovery only (no more than US $10 per transaction), → Registration of real property interests and liens in the movable property registry, → Registration of lease interests in movable property registry, → Attachment of priority to tax liens only upon registration, → Fast, effective enforcement mechanisms, → Clear rules for self-help in enforcement.
4.	Establish specialized products to support agricultural activity, including agricultural lending.
5.	Continue implementation and revision of the FSDP as a comprehensive strategy for lowering costs and risks of lending in Rwanda, including all factors listed in this report.
6.	For all legal and regulatory reforms, develop new curriculum for law and business schools, plus continuing education for all legal professionals, bankers, tax authorities, and appropriate private sector stakeholders.
7.	Develop tailored regulatory requirements for each type of lending institution: banks, MFIs, and NBFIs, ncluding reduced reserve requirements for nondepository institutions.
8.	Complete any necessary additional improvements to the switching system, along with necessary regulations for use of ATMs and telephone banking services.
9.	Reinforce customer-service orientation of BNR.
10.	Introduce receivership for troubled institutions under BNR oversight along with capacity to manage purchase and assumption agreements and other lower cost solutions.
11.	Establish the legal and regulatory framework for banks to establish mobile banking.
12.	Develop internationally recognized finance products for Rwandan use.
13.	Develop and disseminate clear, transparent, and appropriate standards for land redistribution programs under way, along with mechanisms for ensuring fair and timely compensation and appeal from dispossession.
14.	Establish private ownership of real property.
15.	Develop and enforce effective, timely foreclosure procedures.
16.	Develop supporting institutions for the land market, such as surveyors, appraisers, and real estate agents and brokers.
17.	Revise existing leasing law to introduce hire-purchase agreements; better support operational leases; and eliminate double taxation.

18.	Supplement or substitute training by lending institutions with commercial training providers, possibly through the Bankers Association and the MicroFinance Association.
19.	Provide free training to borrowers to enable them to meet new credit standards when loan officers are better trained.
20.	Improve regulation and oversight of lending practices by BNR to ensure that training is utilized.
21.	Complete and implement the draft accounting law to establish a single accounting standard for banking and tax use based on IAS.
22.	Establish an accountants association in concert with an international organization such as IFAC, the International Federation of Accountants.
23.	Increase education and training in accounting and bookkeeping under a regional certification program aimed at company accountants. (This should not be a full CPA program.)
24.	Permit and encourage employment of competent accountants from neighboring countries, at least for the next 5 to 10 years, to provide services and train Rwandans.
25.	Develop a program to pair accounting and business services with banks and tax authorities.
26.	Provide basic services to those seeking loans or having problems with tax accounting.
27.	Identify, develop, and distribute basic accounting software and training materials to taxpayers and loan applicants.
28.	Develop public education materials on basic business skills and concepts, especially: (1) Commingling of business and personal funds, (2) The nature of market-based contracts and how they are enforced differently than social agreements.
29.	Develop special training programs for government officials to introduce them to business skills and risk-assessment principles.
30.	Increase the quality of and quantity of providers teaching business skills.
31.	Provide incentives (such as better interest rates, tax deductions, or other monetary incentives) for those who complete recognized courses.

PROTECTING INVESTORS	
No.	**Recommendation**
1.	Revise the Draft Company Law to account further for the limited resources and nature of private, closely held companies by simplifying their compliance requirements. Also, edit it for readability and to clarify provisions that are currently confusing or incomplete.
2.	Train RCRSA staff in the complicated corporate governance provisions of the Draft Company Law once it has been passed.
3.	Assist the PSF and RIEPA with training programs and building public awareness on the implications of new commercial laws for the business community.
4.	Support public awareness and training on good business practices and basic corporate governance through the PSF, CAPMER, and BDS centers. Create education and training programs on basic business management, with a special emphasis on training rural entrepreneurs.
5.	Within the cadre of education and training programs pertaining to basic business management, direct supplementary curriculum specifically directed to women investors.
6.	Encourage engagement between the local business community and international companies and larger local companies that can increase the socialization of good business management and corporate governance.
7.	Push forward implementation of the certification program, code of ethics, and community of professionals for the accounting profession. Engage the accounting community in capacity-building efforts and education on the new corporate governance requirements when they are passed and the IASs.
8.	Support the ILPD in its efforts to improve commercial training and capacity in the legal profession, particularly with regard to the new legal framework that is being developed. This training should specifically address judges as well.

9.	Create for the Registrar General a set of procedures or regulations to guide its decisions and actions in order to ensure transparency and fairness.

PAYING TAXES	
No.	**Recommendation**
1.	Eliminate double VAT taxation on equipment leases.
2.	Revise the VAT reporting requirements from monthly to quarterly returns.
3.	Rationalize refunds or credits on inputs for re-exported goods.
4.	Minimize the impact of taxation on companies' cash flow, including the removal of anticipatory payments on corporate income tax and the 3% tax on the value of invoice for the winners of public tenders.
5.	Improve the capacity of the RRA, promoting greater clarity in tax regulations and full consistency of the three-language versions of the fiscal laws and regulations.
6.	Enhance the role of the RRA to include outreach and education for micro and small enterprises.
7.	Replace overly aggressive enforcement with service orientation.
8.	Conduct VAT education and interpretation workshops.
9.	Provide clear guidelines to businesses for tax exemptions.
10.	Investigate ways to bring farmers into the tax net.
11.	Make allowances universal and ensure allowances are not overly generous.

TRADING ACROSS BORDERS	
No.	**Recommendation**
1.	Harmonize Rwanda's laws with WTO rules.
2.	Implement the WTO Customs Valuation Agreement. To do so, train Customs officials in the content and mplementation of the agreement, including the application of the transaction value method.
3.	Prioritize and implement the following needs: → revision of Customs legislation → computerization of Customs administration → restructuring of the Customs Valuation Division → strengthening of the inspection process → establishment of two sections on rules of origin and post clearance auditing → training of Customs officials in the revised Customs legislation → fraud control → post-clearance audit facilities and methods → rules of origin → training the private sector in Customs procedures.
4.	Support the Rwanda Bureau of Standards (RBS) in the preparation and adoption of domestic standards, in circulating the relevant information, and in setting up a quality-control system. The RBS will also need support in order to develop and implement a national certification and accreditation system, and in the setup of a central standardization and a food quality-control laboratory.
5.	Standardize procedures on revenue collection, cargo examinations, and inspection programs, as well as nternal policies and management practices promoting the integrity and professionalism of bodies such as RRA, RIEPA, and RBS.
6.	Train RBS and RIEPA staff and Customs personnel (in particular the staff that is part of the "GATT Commission"), as well as examiners and other officials of the future section on rules of origin.

7.	Assist Rwanda in negotiating international trade agreements. Technical assistance will require the dentification of sectors and issues that are important for Rwanda; the acquisition of negotiating techniques via training, and the identification of reforms that are required to implement the results of the negotiations. For services negotiations in particular, Rwandan negotiators need to become knowledgeable on how to structure specific commitments.
8.	Train the staff that will implement and enforce the new industrial property law.
9.	Incorporate automated systems into customs-related processes and online services for information dissemination and greater private sector participation.
10.	Strengthen the institutional capacities of RITA and RURA, so that privatization and competition in the different sectors (i.e., ICT and telecoms in the case of RITA and RURA) maximize the expected returns.
11.	Establish a training module and workshop(s) on data forms, simplification of documents, and e-trade systems.
12.	Support the creation and implementation of e-trade framework.
13.	Explore the creation of a "one-stop shop" (either via new agency or an existing agency) for trade.
14.	Develop a database on trade figures that will improve risk profiling and inspections.

ENFORCING CONTRACTS	
No.	**Recommendation**
1.	Support passage in the current legislative session of most laws drafted through the efforts of the ILI and the Business Reform Cell.
2.	Plan and implement educational activities in conjunction with passage and implementation of the new commercial laws to include the Rwandan legal, banking, business, academic, and judicial communities.
3.	Identify existing planned educational programs and provide assistance and support for such programs.
4.	Create programs of formalized and regular judicial training on basic economic and business principles to nclude study of the new laws and how they relate to everyday commercial transactions.
5.	Support implementation of the new arbitration law through: → Providing assistance in establishing a commercial conciliation and arbitration centre [315] → Developing and supporting programs for attorneys in arbitration practice and procedure.
6.	Develop programs in conjunction with the Institute for Legal Practices and Development in Nyanza for both judges and lawyers in the area of commercial law.
7.	Create an outreach program involving the universities to assist in the training of professors in commercial concepts and laws with a view of developing a curriculum designed to educate law students on modern commercial concepts.
8.	Improve access to the laws.

CLOSING A BUSINESS	
No.	**Recommendation**
1.	Pass the Draft Insolvency Law in the 2008 legislative session.
2.	Once the Draft Insolvency Law becomes law, plan and execute educational activities for the legal, banking, academic, and judicial communities in Rwanda.
3.	Provide assistance to the Kigali Bar Association to offer an introductory course for the new commercial laws to include the Draft Insolvency Law. This assistance could include funding for the expenses of hosting the program, expenses of speakers, and payment of printing costs.

[315] Investment Policy Review, at 111.

4.	Create a workshop for the banking community to familiarize bankers with the new law and bankruptcy concepts generally.
5.	Establish programs on commercial subjects common to bankruptcy cases as part of the core curriculum for the ILPD judicial training programs. These areas should include courses on bankruptcy, secured transactions, mortgages, negotiable instruments, and contracts.
6.	Design and implement an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view of developing curriculum designed to educate law students on bankruptcy and other commercial concepts.

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