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BIZCLIR

Business
Climate
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Reform



UGANDA'S AGENDA FOR ACTION

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INTRODUCTION

This report addresses the conditions and opportunities for doing business in Uganda. Through close examination of the relevant laws, institutions, and social dynamics, it aims to inform assistance decisions by the United States Agency for International Development (USAID) and other donors in the area of business-related legal and institutional reform, as well as to provide insight and guidance about the economy to government officials, private sector representatives, and others. 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 set forth at the end of this Introduction.

WORLD BANK DOING BUSINESS CATEGORIES

	2009	2008	Change
<i>Doing Business Overall</i> (181 countries surveyed)	111	105	-6
Starting a Business	129	118	-11
Dealing with Licenses ¹	81	78	-3
Employing Workers	11	11	0
Registering Property	167	165	-2
Getting Credit	109	102	-7
Protecting Investors	126	125	-1
Paying Taxes	70	80	+10
Trading Across Borders	145	146	-1
Enforcing Contracts	117	118	+1
Closing a Business	51	51	0

reforms. The results of Uganda's efforts amount, at least in part, to an African success story: Uganda's annual growth between 1994 and 2004 averaged around 6.7%, the fourteenth highest rate for that period in the world.²

Yet Uganda remains deeply impoverished, with low per capita income (\$260 "per head"), high illiteracy (about 76% for men and 58% in women), and low life expectancy (less than 55 years for both men and women). The country recently recorded the fastest population growth in the world—its estimated population growth rate from 2004–2050 is 375.7%—and the lowest median age in the world—14.8 years. Uganda also must cope with a recent history of violence in its northern regions that, as of late summer 2008, was threatening to reemerge.³

Notwithstanding its orientation over the past generation toward economic growth, Uganda harbors severe structural impediments against turning around the economic fortunes of its citizenry. This is reflected in the most recent Doing Business report, issued in September 2008, where Uganda ranked 111th—a decrease of six places from the year before. The fact that, as noted throughout this report, official corruption persists within nearly all aspects of doing business—particularly where micro-enterprises and smaller businesses are concerned—means that the country's entrepreneurs are perennially burdened by unpredictable conditions and institutionalized cynicism that often overwhelm their prospects for success. The similarly unyielding atmosphere of outdated laws, poor access to markets, and tortured conditions for land ownership that severely hamper the economic potential of that resource means that Uganda remains ill-equipped to face the global financial turmoil that has rocked international markets in 2008.

UGANDA'S CHALLENGE: RECLAIMING THE MOMENTUM OF REFORM

For more than 20 years, Uganda has worked to overcome its nineteenth- and twentieth-century legacies of colonialism and repressive government. The country has improved education at all levels, strengthened its infrastructure, invited investment through incentives and streamlined access to business opportunities, and increased domestic connections to key technologies such as mobile telephones and the Internet. Uganda has also recognized the importance of regional trade and international markets, serving as a charter member of the East African Community (EAC), which includes the implementation of a Customs Union and other critical regional

1 In its most recent survey, the World Bank changed the designation of the category "Dealing with Licenses" to "Dealing with Construction Permits," a title that more accurately reflects the scope of its survey. That subject-matter area is not among those covered in this diagnostic.

2 Unless otherwise noted, statistics in this Introduction 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 Ugandan government's own surveys. Given the limitations in domestic information gathering, the figures cannot be said to be exact, but they do represent best estimates as accepted by the international community.

3 *Uganda: Drums of War across the Borders*, Economist (August 14, 2008).

This report examines the environment for doing business in Uganda and identifies opportunities that can help the country reclaim the momentum of its reform efforts so that, ultimately, the country's vast poverty can be reduced. Tracking seven of the ten subject-matter areas covered by the World Bank's annual *Doing Business* initiative (see box, next page; topics covered by this report are in bold text), this report reviews the legal framework, numerous public and private institutions, and social dynamics underlying conditions for reform. Based on its findings, a variety of recommendations are made.

This diagnostic took place from September 15–September 26, 2008. An eight-member team of U.S.-based consultants traveled to Uganda and conducted interviews across the public and private sectors, including with state and local officials, business owners, business associations, chambers of commerce, non-government organizations, the banking and lending community, and many others. Interviews and observations took place in and near Kampala, Malaba, Jinja, and Masaka. Special care was taken to examine the role of women in Uganda's private sector. The diagnostic culminated in a roundtable presentation and discussion on September 26, 2008, which was attended by more than 90 stakeholders in Uganda's business sector, as well as several donors. At the roundtable, team members introduced their preliminary observations, which were then subjected to feedback and elaboration from the participants. This input helped shape the final conclusions of the team, which are now found in this report.

SUMMARY OF DIAGNOSTIC FINDINGS

The findings of the seven *Doing Business* subject-matter areas examined in this diagnostic are summarized below. The Indicator Score Comparison and Indicator Score graphs reflect the team's findings and demonstrate relative strengths and weaknesses.

In general, the areas that scored highest—those with the most positive findings—were Protecting Investors and Enforcing Contracts. The weakest scores—indicating more negative circumstances than positive—emerge from the areas of Starting a Business and Closing a Business. Unlike other countries surveyed by BizCLIR, Uganda does not exhibit consistent strengths and weaknesses among the specific framework areas being considered—legal framework, implementing institutions, supporting institutions, and social dynamics. Rather, the effectiveness of these areas varies by subject-matter

area, with the best showings proving to be the supporting institutions behind Enforcing Contracts and the social dynamics underlying Trade Across Borders.

The state of the legal framework is moderate across most of the areas. Although a sound legal commercial framework is not yet in place, 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 revision. Implementing institutions and social dynamics are very weak for Starting a Business, Registering Property, Getting Credit, and Closing a Business. This combination can pose serious challenges for implementing meaningful reform even if new laws are put in place. Accordingly, it is important to build awareness and strengthen institutions in order to fully reap the benefits of legal reform. In certain instances, weaknesses in one or more supporting institutions have been identified as critical areas for reform, while in some areas, including Getting Credit and Enforcing Contracts, supporting institutions are a strength which can help drive reform.

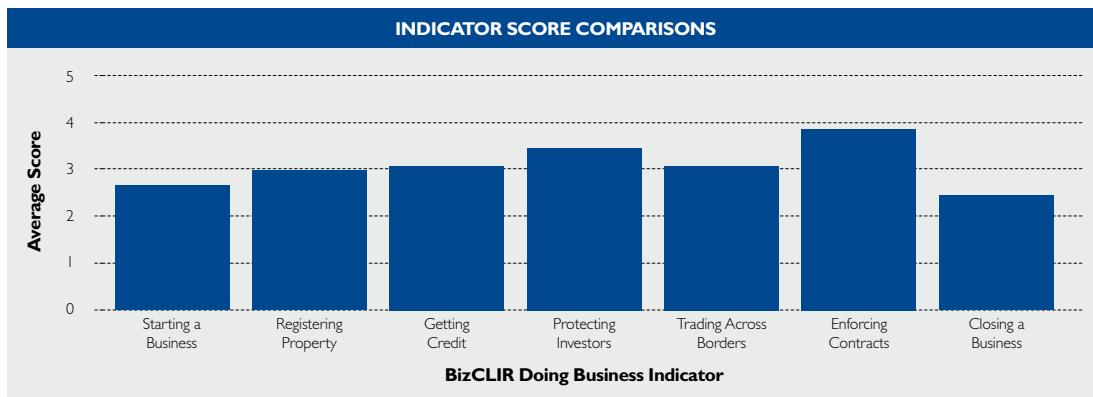
Beyond these trends, the general findings are as follows:

STARTING A BUSINESS

The private sector in Uganda consists largely of micro, small, and medium enterprises, with an estimated 800,000 such entities in the country. They contribute an estimated 20% of Uganda's GDP and employ approximately 1.5 million people. Although the administrative requirements for starting a business have been streamlined somewhat, procedures for business registration and acquiring business licenses remain daunting and expensive, especially for small enterprises and businesses located outside of the capital. Entrepreneurs seeking to enter the formal sector are particularly disadvantaged if they do business outside of the capital, where the only mechanisms for formally starting a business are located, and they are further undermined by a culture of corruption that has not yet been penetrated. A lack of vocational, entrepreneurial, and knowledge-based skills, along with widespread resistance to forming joint ventures, further constrains the emergence of new businesses and a generally healthy private sector.

REGISTERING PROPERTY

Real Property. Property issues go well beyond the economic realm in Uganda and are a major social and political challenge today, particularly in the north where



conflict has only recently subsided and periodically threatens to reemerge. Land ownership in Uganda is complicated in part because of the varying forms of land tenure available. Ultimately, real property issues constrain Uganda's business environment in two ways. First, a significant portion of Uganda's land is not readily available for use as collateral. The Land Registry estimates that approximately 80% of Uganda's land is not titled. Thus, owners cannot use this land to obtain financing for business start-up, expansion, or investment. Second, even when land is titled, tracking down the physical title in the Land Registry for the purpose of transferring land or confirming ownership for use as collateral can be a monumental task. Accordingly, accessing the wealth contained even in the small percentage of land that is titled is a major hurdle confronting the Ugandan economy. Women are particularly disadvantaged by the state of land titling, given the traditional barriers against their inheritance and ownership of land.

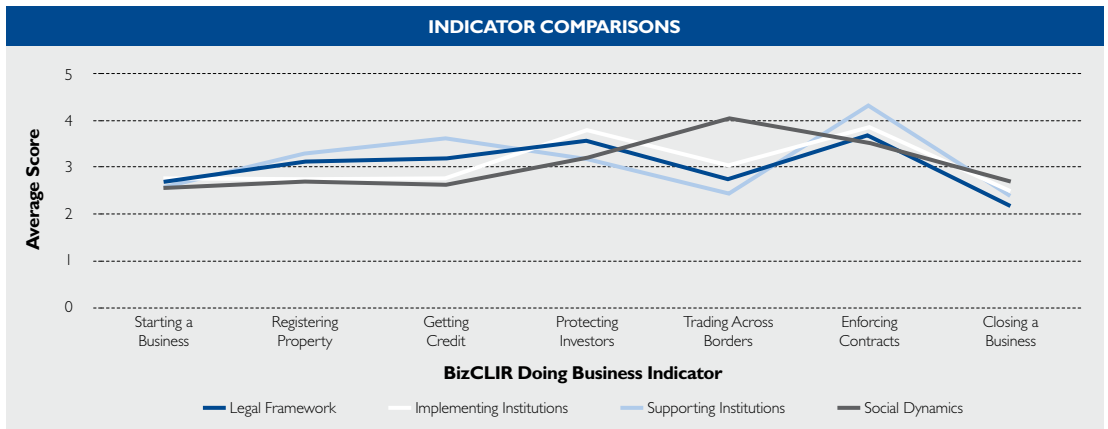
Intellectual property. IP has a thin history in Uganda, but awareness is building, particularly as regional integration advances. Although concern over the protection of trademarks, copyrights, and patents remains largely the domain of multinational companies, more local companies are also starting to appreciate the benefits of IP protection. Strengthening enforcement of IP protection in Uganda is vital to promoting innovation and investment in the country. The laws must be updated to conform to the principles adopted by the World Trade Organization (WTO) and the East African Community (EAC). Even more important, a focus on implementation and socialization is needed to make IP protection a reality and to get both the public and private sector on board with the importance of IP to Uganda's economic future.

GETTING CREDIT

Although financial institutions have dramatically increased their presence in Uganda in recent years, credit remains expensive and difficult to access, particularly for small businesses. Interest rates hover at around 20% and the interest-rate spread between deposits and loans persists at over 10%. Real interest rates (actual rates less inflation) are much higher in Uganda than in Kenya and Tanzania. Moreover, borrowing fees prove especially prohibitive for small businesses—they include loan fees to banks, costs of appraisal, and the formal and informal price of collateral registration. Borrowers report corruption by loan officers, including holding up an application until a speed payment is made by the borrower. In addition, banks find it expensive to conduct due diligence on borrowers, which includes reviewing documentation, corroborating information, and inspecting. On paper, credit in Uganda is increasing, with commercial banks' lending rising by over 12% in 2007. This growth was primarily driven by increases in foreign currency loans, however, and has not translated to a large amount of borrowing.

PROTECTING INVESTORS

In Uganda, as in many developing countries, a growing presence of foreign-owned businesses tends to bring into the economy good corporate governance practices from abroad. The practice of sound corporate governance is limited among local firms but, thanks to the work of dedicated implementing and supporting institutions, appreciation of corporate governance is on the rise. With respect to other issues of concern to investors, risks still abound. Investors identify major challenges in Uganda to include Customs, procurement, work permits, land issues, and, again, corruption. Although some government representatives contend that corruption is decreasing, this perception is not shared by the private sector. The outdated commercial



law framework is another serious constraint that increases business costs. The large size of the informal economy also impedes the competitiveness of formal companies that pay taxes and abide by the rules.

TRADING ACROSS BORDERS

Trade policy. In recent years, Uganda has enhanced its trade potential by incorporating international and regional agreements into its legal and regulatory frameworks and by creating or strengthening a variety of institutions charged with implementing these agreements. The country is a founding member of the WTO and a charter member of the EAC. In 2005, Uganda took the significant step of establishing an EAC Customs Union along with Kenya and Tanzania (Rwanda and Burundi joined in June 2007). Uganda adopted the EAC Common External Tariff (CET), replacing a four-band tariff structure with a simplified three-band tariff structure of 0%, 10%, and 25%. Recently, Uganda has joined the effort to integrate the EAC with an overlapping trade agreement, the Common Market for Eastern and Southern Africa, an initiative that will take considerable dedication, coordination, and follow-through.

Trade facilitation. Uganda has taken significant measures toward strengthening its facilitation of trade in both the import and export process. Implementation of a custom management system based on modern systems of information technology (IT) has driven the simplification and standardization of processes. Delays at the borders and at the Customs processing centers have been reduced. Efforts to fully implement the EAC Customs Union have increased harmonization and facilitation of regional customs practices, thus resulting in a higher level of predictability for the trader. All of these actions have been undertaken under the umbrella of the well-structured, well-planned Customs Modernization Program.

Despite recent successes, however, vast challenges remain. These include the needs to eliminate non-tariff barriers in the region; improve the use of risk-management practices; and address the underutilization of IT systems in the trade process and remedy the country's weak infrastructure.

ENFORCING CONTRACTS

The creation of a Commercial Court in Uganda has done much to improve the process of adjudicating commercial disputes in Uganda. Commercial judges are perceived to be knowledgeable and hard-working. Although parties sometimes complain about the length of time it takes to adjudicate some cases, the perception is that at the end of the day a judgment will be entered. This knowledge goes a long way to creating an environment for early settlement in order to avoid the needless expenditure of litigation costs. Unfortunately, this positive perception does not extend to the magistrate courts in which most court cases are resolved. Furthermore, bailiffs play the second most important role in the process of enforcing judgments in Uganda. Generally, this process is perceived to be working in that, after judgments are entered, there are efficient procedures for enforcing the judgments by arrest of the person or attachment of the person's property. Nonetheless, the work of bailiffs can be subject to interference by inappropriate outside influence. Moreover, the legal community reportedly believes that bailiffs need more accountability and supervision if their actions are going to be perceived as beyond reproach. Finally, the enactment of a new Law on Contracts will assist Uganda in becoming a more stable and predictable environment for doing business.

CLOSING A BUSINESS

There is a general consensus among the country's business and legal communities that Uganda's current framework in the area of bankruptcy is out-of-date. The

laws are found in various provisions of existing statutes rather than one comprehensive law. As a result, existing bankruptcy laws are generally not used in the country. If companies have financial problems, they do not file for bankruptcy—they simply close their doors. Attorneys practicing in the area of insolvency law agree that a new insolvency statute is long overdue. To date, a great deal of work has been done on a new insolvency law that will combine the various forms of relief available into one statute. Cases under this new law will be dealt with by the country's new Commercial Court. Although substantial work remains to complete passage of the new laws and implement its structures through the responsible institutions, those efforts appear to be moving forward.

CROSCUTTING THEMES

This diagnostic is organized so that seven components of a healthy and prosperous economy are considered discretely and in relation to each other where appropriate. 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:

I. INITIATIVES VS. IMPLEMENTATION

Since 1986, when President Yoweri Museveni took office following years of political upheaval, Uganda has been committed to change. Its economic growth rates—more than 6.5% for the ten years between 1994 and 2004—reveal a good deal of success. Yet there is a pervasive feeling, articulated by a wide variety of stakeholders over the course of this diagnostic, that talk of change has become just that—talk. Throughout this diagnostic, interviewees observed that Uganda's penchant for launching reforms is less frequently met with tangible results, particularly in the area of law reform. Examples from this diagnostic include the following:

- Since the formation of the Uganda Law Reform Commission (ULRC) in 1990, the legal underpinnings of Uganda's economy have been subject to intensive study. To date, however, virtually none of the major commercial laws that have been identified as needing improvement have been revised or replaced through the enactment of pending legislation.
- Uganda has reported improvements in its land titling system, including a reduction in the time it takes to complete a title search from 12 days to 30 minutes for the "sorted files," and reduction in time spent on mortgage transaction and

title transfers to 3 days. This assertion of change, however, does not comport with the experience of many private sector representatives. Future planned reforms include computerizing the registry for all land records in the country, linking up the systems of all the district land boards, improving the facilities of the registry, and training staff. A contractor is expected to be selected by the end of November 2008, so the launch of this process is apparently imminent, although proposals on this land information system go back as far as 1996, suggesting that skepticism within the private sector is not unfounded.

- In 2000, the ULRC formed a taskforce to review and update the country's laws pertaining to intellectual property rights. Supported by USAID, the taskforce consisted of representatives from a variety of agencies. Yet the Copyright Law brought to Parliament in 2006 was enacted as a result of the promotion efforts of local artists, not of government representatives. The bill was intended to be part of a package of IP laws under consideration, but as progress on that package stalled, local artists took action to push through the reforms separately.
- In 2005, the Ministry of Finance attempted to encourage agricultural lending by granting tax exemptions for interest earned on agricultural loans. The Uganda Revenue Authority failed to implement the exemptions, however, and the separate accounting required proved too cumbersome for banks. The policy did not improve either the rates or the volume of agricultural loans.
- Through a Presidential Investors Roundtable (PIR), the government encourages public-private dialogue, an important foundation for pursuing sound reform in the business environment. Yet lack of progress beyond dialogue has been a source of frustration for the private sector. Private sector participants in the PIR express frustration because action has not been taken on most of the recommendations it has made so far. Each year, a new set of recommendations is made without any conclusions drawn on the ones made the year before. This reality tends to contribute to the sense that dialogue rather than action is the focus of the PIR.

All of these points, and several more noted in this report, relate to the perception that the launching of important initiatives is not met with meaningful implementation. Such perception leads to cynicism, an attitude

that Uganda cannot afford as it strives to strengthen its foundation for doing business. Certain important reforms appear to be just around the corner—including the substantive integration of the EAC and the Common Market for Eastern and Southern Africa (COMESA), as discussed in this report's chapter on Trading Across Borders—so a clear focus on implementation, rather than just discussion, is necessary for this initiative and other important projects to be successful.

2. BUILD HUMAN RESOURCES TO MEET MODERN BUSINESS DEMANDS

To a debilitating extent, the Ugandan workforce lacks skills, particularly the type of vocational, entrepreneurial, and knowledge-based skills that are critical for a sound economic future. 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 Ugandan government placed education on the “front burner” of its development activities nearly a generation ago. School fees for primary education were significantly abolished and efforts were made to build more schools and improve school curriculums. In addition, the government established admission policies to encourage female university enrollment, which resulted in women outnumbering men in tertiary institutions—albeit with some reports of women segmented into less desirable majors. In January 2009, the government will also begin enforcing compulsory universal primary education through local inspectors. Economic disincentives such as cost and cultural barriers such as early marriage may complicate these efforts, but they are nonetheless important.

Indeed, constraints on accessing education at all levels remain a problem for many. The percentage of students that finish the full seven years of primary education remains low—government statistics from 2006 show that there is a 28% “survival rate” through primary 7, and a 25.1% rate for girls.⁴ About 25% of boys proceed through secondary school, while the rate of girls attending secondary school is less than 20%.⁵

The government's Business, Technical and Vocation Education and Training (BTJET) policy, introduced in 2003, has produced mixed results. Although enrollment has been increasing, it faces several challenges. The BTJET system lacks a legal framework and does not have a central coordination system. Furthermore, insufficient human and physical infrastructure and low staff salaries have hindered its effectiveness.

Less than 5% of Ugandans attend university. Critical skills are therefore lacking throughout the economy, with tangible consequences including the following examples:

- In Uganda, the median-value added per worker, used as a measure of productivity, is only \$1,085 per year, making labor in the country more than 28% less productive than labor in Tanzania and 68% less than in Kenya.
- Since banks seldom venture into agricultural lending, their staff generally lack appraisal skills and market knowledge specific to the sector. Training is a large cost for banks and financial institutions, especially as trained staff tend to move to better-paying jobs in higher-tier institutions or with competitors.
- Business and finance graduates often do not have the necessary skills in business, accounting, and finance that Uganda'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.
- Entrepreneurs often do not adhere to good book-keeping 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.
- 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.
- Uganda also does not fare particularly well with respect to entrepreneurial preparedness for technology-oriented pursuits in business. The World Bank's Knowledge Economy Index (2007) ranks Uganda 112 out of 140 countries surveyed for its readiness to work as a knowledge-based economy.⁶

All these issues, and many more noted in this report, relate to Uganda's skills deficit. Although 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, and teachers—that comprise the middle class.”⁷

4 Republic of Uganda, Ministry of Education and Sports, *Education Sector "Factfile"* (2006).

5 *Id.*

6 World Bank, *Knowledge Economy Index (KEI) 2007 Rankings*.

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

3. WEAK INFRASTRUCTURE STILL HINDERS UGANDA'S ECONOMY

Within nearly all of this report's chapters, the importance of infrastructure emerges as an issue—whether it refers to the critical matter of roads, trains, and marine transport in Uganda's landlocked business and trade regime, or access to electricity and technology. For example:

- Entrepreneurs seeking to start a business are especially burdened if they do not live in Kampala, because the only access to the national registry of businesses is there. Given Uganda's lack of urbanization (about 15%), this includes most potential entrepreneurs. Poor roads and rail transport discourage efforts toward joining the formal economy, due to the time, expense, and inconvenience of doing so.
- For commercial financial institutions, weak infrastructure outside the capital city creates prohibitive risks and costs. Poor rural feeder roads increase the labor and transportation costs required to assess and monitor loans. These conditions may raise the interest costs and fees that borrowers pay, or price them out of the market altogether.
- Payment systems pose another cost for disbursement and collection. There have been some pilots for automatic teller machines (ATMs) in rural areas, but results have not yet been widely seen. Mobile banking is still in the pilot stage in Kampala.
- With respect to domestic and international trade, weak infrastructure is the most significant contributor to high transaction costs in Uganda. Estimates are that as much as 35–40% of the final cost of manufactured goods is attributable to overland transport, much more than the established international norm of around 15%. Costs continue to escalate, with a nearly 50% increase already recorded in 2008. Since early summer 2008, export shipping costs have risen from \$68/ton to \$97/ton. Continual fluctuations make it difficult to predict final sale costs, although the price must be agreed upon in advance of shipment.

Strengthening infrastructure is a long and complex process, but to neglect the importance of this issue would have critical implications for the future of Ugandan commerce.

4. PERVASIVE CORRUPTION INCREASES RISK AND DECREASES INVESTMENT APPEAL

Perceptions of corruption in Uganda are high: the country ranks 126 out of 180 countries surveyed in the most recent *Corruption Perceptions Index* issued

by Transparency International.⁸ In some areas of its economy, Uganda has acknowledged the importance of reducing corruption and has taken a variety of steps to address the issue. For example, in 2005, the Ugandan Revenue Authority and the Customs agency directly confronted the issue, with positive results. Top-level management made a strong and sustained commitment to improved integrity standards, putting in place an administrative process to achieve their goals. Top-level officers suspected of corrupt behavior were terminated, resulting in a new contingent of management personnel now in place. Salaries are now generally competitive with the private sector. Staff only suspected of wrongdoing were rehired but closely monitored and then terminated if further evidence developed. This effort resulted in the removal of about 50 more officers since 2005, almost 10% of total staff. The message of intolerance of corrupt behavior is continually reinforced at all levels, although the vast majority of trade invoices filed by medium-sized traders are still estimated to contain false information.

Yet deep within so many of Uganda's institutions—the various registries, state procurement offices, the banks, and others—petty transaction fees persist and, as a result, public confidence is lacking. Even worse, there is great cynicism and even complicity on behalf of the users of public services. For the most part, the average citizen or businessperson cannot even think of launching a business or trade-related activity without paying a series of informal fees.

Specific examples of corruption cited in this report include the following:

- When enterprises seek to formally register with the state, fees to the Registrar General are paid through banks. Office staff reportedly expects, however, to be paid extra fees or bribes to facilitate the process. This corruption adds extra expense to the already high costs of registering a business and makes it even more difficult for small businesses to comply.
- Corruption among loan officers is a widely reported problem: one practice is for loan officers to hold up an application until a speed payment is made by the borrower.
- In Ugandan universities, classes are crowded and corruption in exams and awarding of grades is alleged to be common.
- Corruption is a particularly serious issue in terms of government tenders. A recent study by the Millennium Challenge Corporation (MCC) found

⁸ Transparency International, *Corruption Perceptions Index* (2007).

THE INTERNATIONAL FINANCIAL CRISIS AND UGANDA

The world is currently experiencing a financial crisis that has included a credit shortage. The financial crisis has been the biggest factor in a significant slowdown in the global economy. Recent forecasts by the OECD predict that America, Japan, the Euro zone and the OECD as a whole will have negative growth in 2009, and many economists believe that several OECD economies are already in recession. The OECD predicts that in 2009 U.S. output will shrink by 0.9% and the Euro zone economy will contract 0.5 % while the unemployment rate will climb to 7.5% and 9% in the U.S. and the Euro zone respectively.

This slowdown in OECD countries will have an effect on Uganda. On October 30, Uganda announced that it was cutting its estimated 2008/09 economic growth rate from 8% to 5 or 6%. Depending on the severity and length of a recession in the OECD countries, Uganda's growth rate could slow further. This is because a prolonged recession in OECD countries could lead to depressed prices for Uganda's exports, a destabilized currency, and slow or reverse investment flows into the country. Uganda has already seen a decrease in coffee prices (its largest export) and depreciation of the Shilling against the U.S. Dollar, and Ugandan stock market prices appear to have decreased due to repatriation of foreign investments.

Uganda's economy would be significantly impacted by any decrease in aid flows and remittances as well. Foreign aid is about \$800 million annually, and remittances are about \$900 million per year, significant amounts in a country with annual GDP of approximately \$11 billion. Remittances from Ugandans who work abroad and send money home will probably decrease as unemployment increases in Europe and the U.S. It is unclear whether and to what extent aid flows will drop while developed countries are in recession.

However, Uganda has less dependence on foreign export, capital, and financial markets than many countries, so the global financial and economic problems are unlikely to trigger a major recession. Exports are less than 15% of GDP, and most Ugandans work in agriculture for domestic markets (agriculture employs over 80% of Ugandan workers). As Uganda's financial sector primarily operates on domestic capital, there will be little impact from the contraction of credit in global financial markets as well.

that more than UGS150 billion is lost each year due to procurement-related corruption.

- In a recent survey conducted by Steadman and Associates, approximately 60% of those surveyed found the police to be "very corrupt;" 28% found the military to be "very corrupt;" 32% found the law courts to be "very corrupt;" 26% found the presidency to be "very corrupt;" and 22% found the Parliament to be "very corrupt." When including the percentage that found these institutions to be "somewhat corrupt," the total percentage is well above 50% in each area. When asked specifically about bribery in selected institutions, 79% of those surveyed refused to answer. This fact suggests a real concern both with corruption and with the consequences of exposing it.

The challenge before Uganda is to rise to the rigorous expectations of transparent and accountable conduct that their potential trading and investment partners will demand. Elimination of the country's culture of corruption in the business environment is fundamental.

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.⁹ The indicators now substantially align with the structure of the World Bank's enormously influential *Doing Business* country reports.¹⁰

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

⁹ Detailed information about BizCLIR can be found at www.bizclir.com.

¹⁰ See generally World Bank, *Doing Business 2009* (2008), and accompanying literature at www.DoingBusiness.org.

in relation to per-capita income. The World Bank now gathers data from 181 economies and ranks each, thereby demonstrating how their respective regulatory environments compare to others throughout the world.

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 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."

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

LEGAL FRAMEWORK

The chapters first examine Uganda'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?

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 Uganda 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.

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,

USAID/BIZCLIR DIAGNOSTIC TEAM

Elizabeth Shackelford, Booz Allen Hamilton, Team Lead; *Protecting Investors*; *Registering Property*

Stephanie Le, Booz Allen Hamilton, Deputy Team Lead; *Trading Across Borders (trade policy)*

Andrew Colburn, USAID, *Starting a Business*

Joe Lowther, Emerging Markets Group, *Getting Credit*

Judge Michael Williamson, U.S. Bankruptcy Court, Middle District of Florida, *Enforcing Contracts*; *Closing a Business*

Anastasia Liu, USAID, *Getting Credit*

Stuart Kerr, Millennium Challenge Corporation, *Enforcing Contracts*

Joanne Cornelison, Independent Consultant, *Trading Across Borders (trade facilitation)*

DESK STUDY

Sameera Pochiraju, Booz Allen Hamilton, *Trading Across Borders (trade policy)*

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

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 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.

INDICATORS

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 the country. 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.

THE BIZCLIR RECOMMENDATIONS: TOP PRIORITIES

This report contains over 100 recommendations that suggest—in terms ranging from the very broad to the highly specific—a variety of approaches to improving Uganda's business environment. Although each of the report's recommendations contributes to an overall vision for how Uganda can continue its emergence into the world economy, the following can be considered the **top** priorities:

ALL SUBJECT-MATTER AREAS

No. Recommendation

1. Implement benchmarking and progress assessments to ensure that the funds put into business environment reform programs are well utilized and that reform moves forward swiftly.
2. Push through the new commercial law legislation that is in line with international best practices and regional standards.
3. Strengthen efforts to combat corruption and ensure accountability through a transparent process that reaches all levels of government. Action must be taken so that anticorruption efforts are not perceived to be directed only at low level officials and political targets.

STARTING A BUSINESS

No. Recommendation

1. Develop a comprehensive SME policy and provide incentives and assistance for small businesses to start up.
2. Focus more donor resources in business development services for SMEs.
3. Make registration process more accessible to businesses outside of Kampala.

REGISTERING PROPERTY

No. Recommendation

1. Promote the rapid implementation of the planned land reform program to address the inefficiencies of the Land Registry, including training registry staff, computerizing the registry, and linking up the district land boards with the central office.
2. Clarify within the legal text the rights of squatters to the land they occupy and the rights of title holders.
3. Educate public sector representatives, particularly those charged with enforcing IP protections (such as the police force), on the importance of IP and best practices for enforcement.

GETTING CREDIT

No. Recommendation

1. Increase financial institutions' access to longer-term capital to allow them to make longer-term loans.
2. Through the Bank of Uganda, establish a proper regulatory authority for MFIs and SACCOs. Enact regulatory legislation to provide that MFIs be registered, subject to corporate governance and transparency laws, and required to fully disclose fees, interest charges, penalties, etc., to all borrowers in advance.
3. Consolidate and harmonize into a single law the current legal framework pertaining to loans secured by movable property and provide for a single registry of moveable property (debentures).

PROTECTING INVESTORS

No. Recommendation

1. Support the ICG and UIA in efforts to socialize corporate governance principles.
2. Promote better coordination between the Company Registry, the URA, and banks to enhance enforcement of sound business practices and good corporate governance.

TRADING ACROSS BORDERS

No. Recommendation

1. Advance the current rudimentary level of risk management within Customs to improve targeting of high-risk cargo and facilitation of compliant shipments.
2. Establish a private-sector steering committee to work with public agencies on customs reform strategy. Delegate to this group the authority to assist in the development of the program, provide oversight of implementation, prepare feedback, and provide accountability.
3. Institute a one-stop shop for importers and exporters at major business centers. Such a facility should include representatives of all public agencies whose authorizations are required to move imports and exports across borders.

ENFORCING CONTRACTS

No. Recommendation

1. Conduct specific courses for the chief magistrate judges with respect to their expanded jurisdiction over commercial cases to include courses on case management practices and mediation practice as those areas have been pioneered and instituted in the Commercial Court.
2. Develop private-sector conducted mediation under the supervision of CADER and phase out court-conducted mediation.
3. Develop a comprehensive system for the licensing, training, and oversight of bailiffs.

CLOSING A BUSINESS

No. Recommendation

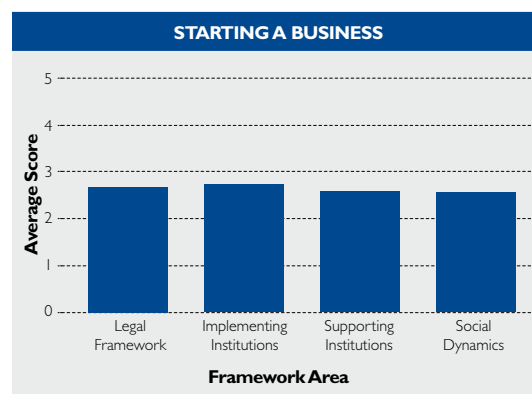
1. Continue the ongoing efforts to pass the Insolvency Bill. This should be followed by a prompt promulgation by the Ministry of Justice of the accompanying regulations.
2. Once the Insolvency Bill is enacted, conduct a comprehensive workshop with the Commercial Court, the Official Receiver, and representatives of the ULS devoted to discussing case management issues and how to most efficiently process insolvency cases under the new law.



STARTING A BUSINESS

Perhaps nothing is more revealing about the business-enabling environment of a country than the ability to start one's own business. Thousands of people around the world have innovative ideas and dreams of running their own enterprise, yet in many countries those dreams are never realized as the legal constraints are often too burdensome, too difficult to understand, or too expensive. Even for those businesses that overcome the often onerous and costly requirements of registering and licensing their businesses, markets are frequently dominated by large enterprises or state entities that make it impossible for other businesses to consider entering the market. These same constraints can similarly face international investors and prevent them from effectively doing business in a country.

STARTING A BUSINESS	
<i>Doing Business</i> Ranking 2009	129
<i>Doing Business</i> Ranking 2008	111
Procedures (number)	18
Duration (days)	25
Cost (% gross national income per capita)	100.7
Paid in minimum capital (% gross national income per capita)	0



This chapter provides an in-depth examination of the challenges to effectively starting a business. It reviews not only the legal framework for registering and running a business in Uganda, but also looks at the implementing institutions, the supporting institutions, and the social dynamics that either promote or constrain business growth. With input from small, medium, and large enterprises operating in Uganda, the chapter examines questions that confront new businesses, including the following:

- What assistance is provided to fledgling small businesses or international investors considering Uganda?
- Why do businesses choose to register legally or why do they opt to remain in the informal sector?
- Do the social dynamics and culture in Uganda generally promote the spirit of entrepreneurialism?
- Do fledgling businesses entering markets face competitive obstacles that inhibit the decision to start a business?

The private sector in Uganda consists largely of micro, small, and medium enterprises, with an estimated 800,000 such entities in the country. Micro-enterprises and SMEs contribute an estimated 20% of Uganda's GDP and employ approximately 1.5 million people.¹¹ Notwithstanding certain improvements in the administrative requirements for starting a business in Uganda, businesses—particularly small enterprises—continue to face a generally hostile atmosphere. Procedures for registering businesses and acquiring business licenses can be daunting and expensive, especially for those businesses located outside of the capital. A general lack of vocational and entrepreneurial skills, along with resistance to forming joint ventures, further constrains the emergence of successful new businesses and a healthy private sector.

The BizCLIR indicator scores for Starting a Business in Uganda is relatively negative, with each of the four areas reviewed—legal framework, implementing institutions, supporting institutions, and social dynamics—falling

¹¹ Private Sector Foundation of Uganda, *Private Sector Platform for Action* (April 2008) at 7–8.

in the “moderately negative” range. Strengthening in this area is warranted across the board, with the most pressing issue being *access* to the formal sector and greater *understanding* about the benefits of joining the formal sector.

LEGAL FRAMEWORK

BUSINESS REGISTRATION

The most recent *Doing Business* survey places Uganda 129 out of 181 economies in terms of the ease of starting a business. According to the World Bank, it takes 18 procedures and 25 days to start a business in Uganda. The average for the region is 10.2 procedures and 47.8 days, respectively. The cost of starting a business exceeds 100% of the gross national income per capita in Uganda (about US\$381). Unlike many other countries, Uganda does not have a minimum capital requirement for business registration.¹²

The procedures for starting a business are governed by the **Companies Act of 1961** which provides for the formation of three types of companies:

- companies limited by guarantee with or without share capital;
- private limited liability companies; and
- public limited liability companies.

The first step for registering a business is reserving a name at the Office of the Registrar. This procedure has recently been streamlined through the creation of a computerized database of businesses names, which enables the office to quickly determine if a name is available. According to the World Bank, the process takes two days.¹³

Once payment is made for the name registration, the next steps involve incorporation or formalization of the entity. For most new enterprises, this stage is complicated and expensive. It includes purchasing necessary forms from a bookshop; signing the A2 form (declaration of compliance) before a Commissioner for Oaths; writing articles of incorporation; filing appropriate forms with the Uganda Revenue Authority to receive a uniform tax identification number; applying for value added tax (VAT) registration; filing forms with the National Social Security Fund; and creating a company seal.¹⁴

There are fees associated with many of these steps, including UGS 25,000 name search, UGS 25,000 filing fee, UGS 50,000 registration fee, UGS 35,000 Stamp Duty, and a fee of 0.5% of shared capital.¹⁵ The World

Bank reports that these costs represent 100.7% of the gross national income per capita—clearly out of reach for the smallest businesses.

Uganda’s registration process favors larger business (that can afford the fees) and those that are located in the capital city. Anyone wishing to register a business must be in Kampala to work through the registration procedures—or hire an advocate who can represent the client through the process. As a result, small businesses located outside of Kampala are more likely to remain unregistered with the national authority. Indeed, Uganda is not a highly urbanized population—about 85% of its citizenry live in rural areas.¹⁶ In general, the costs of both traveling to and staying in Kampala to register a business or hiring an advocate to represent their interests are too high.

KEY LAWS AND REGULATIONS

- The Companies Act (1961)
- Trade Licensing Act (1969)
- Public Enterprises Reform and Divestiture Act (1993)
- Investment Code (1991)

LOCAL REGISTRATION

In addition to registering with the Office of Registrar in Kampala, businesses must register and obtain a trading license through the municipality in which they operate. This process, which is based on the **Trade Licensing Act of 1969**, varies from region to region, and usually involves not only registering with the local government, but also arranging site visits for inspectors and paying one or more sets of fees. These licenses, which also vary by the type of business, typically must be renewed annually.

Many businesses (especially those in the regions) obtain the trading license at the local level but do not register at the national level. Local municipalities tend to enforce trading licenses because they are a form of revenue generation. There is not, however, the same degree of enforcement for business registration at the national level.

PRIVATIZATION

Privatization of state-owned enterprises has come a long way in Uganda. As a result, competition from public enterprises does not appear to significantly hinder private businesses from being competitive in most industries. In the 1990s, the government of Uganda adopted a policy of Private Sector Development and a program

¹² See World Bank *Doing Business* website, Starting a Business in Uganda, at <http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=193>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Economist Pocket World in Figures (2007) at 24.

to divest itself from public enterprises. The **Public Enterprises Reform and Divestiture Act** (PERD) was enforced in 1993, establishing the Divestiture and Reform Implementation Committee (DRIC). The committee is responsible for implementing the government's policy in accordance with the PERD Act.¹⁷ As of June 2002, the state has divested from 74 enterprises out of a total of 155 enterprises set for privatization, with several of these enterprises placed on the national stock market. Uganda's privatization process has been criticized, however, for lacking transparency and being subject to corruption.¹⁸

INVESTMENT INCENTIVES

Uganda's **Investment Code** of 1991 provides incentives for international investors who invest US\$100,000 or more and for domestic investors investing a minimum of US\$50,000. These incentives include capital allowances/expenses that are deductible once from the company's income, deductible annual allowances (such as computers, automobiles, and equipment), and other annual depreciation allowances (such as buildings). Unfortunately, no national policy provides incentives for SMEs and no special incentives are available for smaller investors. Further details on the Investment Code are found at this report's chapter on Protecting Investors.

IMPLEMENTING INSTITUTIONS

OFFICE OF THE REGISTRAR GENERAL

Established under the auspices of the Ministry of Justice, the Office of the Registrar General is the primary implementing institution for business registration in Uganda. The office oversees not only business registration, but also registration of births, deaths, marriages, documents, trademarks, patents, utility models, and industrial designs. Several posters on the wall of the office attempt to help guide enterprises and others, but in general the office is far from user-friendly.

As noted, the business registration system is highly centralized, with the Office of the Registrar located in Kampala. No field offices or Internet access to its services are available. The office did recently create a computerized database of all business names which has shortened the process of registering a business name (the first step in the business registration process). All other procedures are conducted manually, and businesses wishing to register must do so in person (or use a representative advocate). Because the entire process

takes multiple days, businesses wishing to register outside of Kampala are disadvantaged—and, as a result, often forgo the registration process.

KEY IMPLEMENTING INSTITUTIONS

- Office of the Registrar General
- Local licensing authorities

Fees to the Registrar General are paid through banks. Reportedly, office staff expect, however, to be paid extra fees or bribes to facilitate the process. This corruption adds extra expense to the already high costs of registering a business and makes it even more difficult for small businesses to comply.

Local licensing authorities. Starting a business in Uganda also requires a parallel process, at the local level: acquiring a trading license. Although the implementing institutions vary from region to region in each municipality, obtaining a trading license can be difficult and expensive for a newly formed business. It typically involves regulatory inspections for workplace health and safety. This process is an important revenue-generating tool for municipalities, and the fee structure varies. Unfortunately, contact with municipal offices also produces requests for bribes, further increasing the cost of business registration.

In an attempt to improve the process of registering at the local level, the UK's Department for International Development (DFID) implemented a project called "Less is More—Better Compliance and Increased Revenues by Streamlining Business Registration in Uganda."¹⁹ This program was conducted in Entebbe, Uganda, in 2003 and introduced a simplified process of registration that resulted in a reduction of registration time from two days to 30 minutes (reducing compliance cost by 75%), an increase of 43% in businesses registering, and a 40% increase in revenue for the local municipality. The success of this program should be considered a model in standardizing registration and licensing across Uganda.

SUPPORTING INSTITUTIONS

UGANDA INVESTMENT AUTHORITY

The Uganda Investment Authority (UIA) is the primary government-supported one-stop shop for starting a business. The services it offers are extensive including investment and licensing facilitation, assistance with work permits for immigration, acquisition of secondary

17 My Uganda, *Economy: Privatization*, available at <http://www.myuganda.co.ug/economy/privatisation.php>.

18 Africa Development Bank/Organization for Security and Cooperation in Europe, *African Economic Outlook* (2008), at 323.

19 Cerstin Sander, "Less is More," *Better Compliance and Increased Revenues by Streamlining Business Registration in Uganda* (DFID Case Study for WDR 2005).

licenses, and “after-care services.” Most services are provided without cost; however, the UIA assists only large investors—international entities investing US\$100,000 or more or Ugandan businesses investing a minimum of US\$50,000. Its reputation has been as a primary business developing service provider for international investors, but UIA has made an effort to reach out and include domestic businesses.

The UIA is active in commercial law reform and serves as the Secretariat for the Presidential Investors Roundtable (PIR). The PIR brings together international and domestic investors to provide input on business constraints.

KEY SUPPORTING INSTITUTIONS

- Uganda Investment Authority
- Enterprise Uganda

Private sources generally praise the work of the UIA, although the authority is limited in the expanse of its services. The UIA facilitates the registration of new businesses, but some larger international investors suggest that the real barriers to investment come in the process of dealing with other start-up issues such as land, power, and water (for which the UIA provides little assistance).

ENTERPRISE UGANDA

If Uganda Investment Authority is the one-stop shop for the larger investor, Enterprise Uganda can be considered its counterpart for SMEs. Founded under a framework of the UNDP Enterprise Africa regional initiative, it provides comprehensive, fee-based services for small entrepreneurs.

Services include an entrepreneurship training workshop, business health checks, business opportunity identification, business counseling and advisory services, assistance with business plan preparation, credit facilitation, and management skills development. Participants are charged US\$250 for a 10-day training that includes follow-up services. Training is generally offered every three weeks throughout Uganda and typically includes 30 participants.

Enterprise Uganda also receives funding from other international donors such as the Swedish International Development Cooperation Agency and provides other services for SMEs. This includes the Business Linkage Programme, which helps large, international investors partner with Ugandan SMEs.

To date, Enterprise Uganda has provided services to approximately 6,000 SMEs. Its staff is energetic and dynamic, but it is still under-resourced for providing business development services to the 800,000 SMEs that are estimated to exist in Uganda.

SOCIAL DYNAMICS

Notwithstanding improvements in the legal framework and organizations that facilitate starting a business in Uganda, certain underlying social dynamics must be considered when evaluating the conditions for starting a business.

EDUCATING A YOUTHFUL WORKFORCE: A KEY PRIORITY FOR BUSINESS

Uganda’s government has done a remarkable job in rebuilding its education system. In 1990, adult literacy nationwide was estimated at 50%—this has improved to about 76% for men and 58% in women, according to the country’s 2002 census. In 1999, six million students were receiving primary education, compared to only two million in 1986. In 1997, free primary education was made available for up to four children per family.

The government took a two-phase approach to strengthening education. First, it rehabilitated many schools and established minimum instruction standards. Second, it improved the quality of education through teacher training and curriculum upgrading. Important long-term initiatives include establishing universal primary education, extending the existing seven-year primary cycle to eight or nine years, and shifting the emphasis in post-secondary education from purely academic to more technical and vocational training.

Students from many countries travel to Uganda for higher education. Large numbers of young people are driven to obtain high degrees from universities and pursue positions with the government or with large international firms. With thousands of students graduating each year from Uganda’s main business school, the competition is steep for the few coveted jobs. Yet the quality of Ugandan higher education is not considered especially strong; classes are crowded and corruption in taking exams and awarding grades is alleged to be common.

The presence of an educated populace is important if Uganda is going to achieve the economic reforms it needs. 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 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.²⁰

Notwithstanding the relatively high rates of enrollment in Uganda's post-secondary institutions, the Ugandan workforce is said to lack skills to a debilitating extent, particularly with respect to vocational and entrepreneurial skills. This point was stressed throughout the diagnostic, particularly by business people who are concerned with completing projects and attracting new business. Companies face a constant dearth in the skilled labor force. Once employees are trained (at the expense of the employer), they often move to higher-paying jobs.

In 2003, the Ugandan government introduced a Business, Technical and Vocation Education and Training (BTVET) policy. Through 145 public institutions and 600 private training service providers, BTVET aims to provide technical skills to post-primary school students to enable direct entry into the labor market or tertiary school. Although enrollment in BTVET programs has been increasing, from 23,206 students in 1999–2000 to 40,435 in 2006–2007, it faces several challenges. The BTVET system lacks a legal framework and does not have a central coordination system. Furthermore, insufficient human and physical infrastructure and low staff salaries have hindered the effectiveness of the BTVET system.

Finally, Uganda does not fare particularly well with respect to entrepreneurial preparedness for technology-oriented pursuits in business. The World Bank's Knowledge Economy Index (2007) ranks Uganda 112 out of 140 countries surveyed for its readiness to work as a knowledge-based economy. This index considers economic incentives and institutions, innovation, education, and information infrastructure.²¹



RESISTANCE TO “POOLING RESOURCES”

Many stakeholders interviewed during this diagnostic reported a feeling of mistrust that prevails in Uganda, especially when it comes to doing business. At a time when interest rates are high and long-term credit is difficult to obtain, one option for business start-ups is to pool resources. Yet Uganda's culture resists this, as Ugandans are not especially likely to trust each other when it comes to business and money. Some believe this mistrust is a result of the Idi Amin regime, followed by years of political conflict.

PERSISTENCE OF INFORMALITY

SMEs in Uganda have little incentive to join the formal sector and therefore eschew registration with the national authority. Aside from registering at the local level (which is often enforced), this norm is largely accepted. The prevailing feeling is that SMEs do not need to register to begin operation, but will register eventually as their businesses grow. This logic falls short when considering that lack of registration in itself can inhibit growth. Unregistered businesses are not protected by law and those without the proper documentation cannot pursue government procurements or work with many international organizations, forgoing business opportunities. Access to finance is also a challenge for unregistered businesses that do not comply with the law.

Furthermore, unlike many other countries in the region, in Uganda the informal sector is not limited to SMEs and micro-enterprises. Many major economic players in Uganda are effectively informal. This includes supermarkets, construction companies, private schools, tourism facilities, transport, and even international traders. Some such companies may be registered as

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

21 World Bank, Knowledge Economy Index (KEI) 2007 Rankings.

businesses or pay local taxes, but they avoid being part of the national tax base. There is little understanding of the benefits of formalization.

The prevalence of informal businesses, and large informal business in particular, makes it difficult for companies that are registered and paying taxes to compete effectively. Informal businesses have significantly lower costs than those that abide by the law. This reality discourages businesses from entering the market and discourages those that do from formalizing. In order to create an environment conducive to business start-up and success, formalization must be promoted both by enforcement and by building awareness of the benefits.

GOVERNMENT PROCUREMENT

Government procurement is both a major source of business within Uganda and a major avenue of corruption. Various government representatives assert that corruption is being harnessed as there is less tolerance and more cases are being pursued. In contrast, private sector representatives point out that anti-corruption efforts are carefully chosen and often political, and they have not effectively targeted significant high-level corruption. They report that bribes are expected as a cost of doing business in Uganda, particularly with public tenders. Although the current business community has largely accepted this reality, corruption remains a disincentive to those considering

joining the business community. It is particularly challenging in the procurement system because corrupt practices limit the access of newcomers to this major source of business.

RECOMMENDATIONS

- Make registration process more accessible to businesses outside of Kampala. In addition to office locations outside Kampala, the registration process and all of its forms should be available online.
- Streamline and harmonize registration and licensing processes at the local level.
- Develop a comprehensive SME policy and provide incentives and assistance for small businesses to start up.
- Focus more donor resources in business development services for SMEs. Enterprise Uganda's fee-based services are a step in the right direction, but there is room for much more work in this area.
- Promote the benefits of business formalization and increase enforcement efforts targeting informal businesses.
- Target corruption in government procurement to ensure that procurement processes are fair, open, and transparent.
- Develop, within colleges and universities, vocational and entrepreneurial skills programs to produce a workforce that can support businesses effectively.



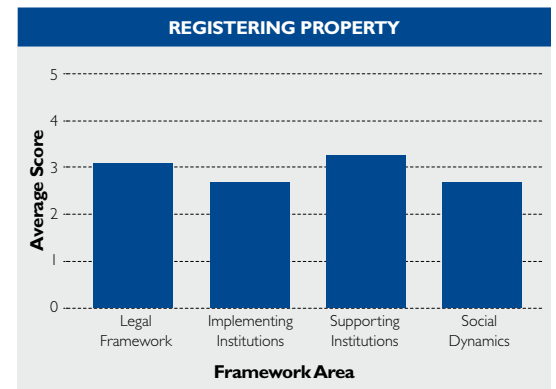
REGISTERING PROPERTY

The ability to freely own all types of property and to easily transfer and register property is a fundamental facet of economic growth in an emerging economy such as Uganda. In most economies, for example, land and improvements to land account for most of the wealth of the country. Moreover, registration and protection of intellectual property rights encourages foreign direct investment and marketing of needed consumer goods. It also supports innovative research and development of new domestic products. Thus, a strong legal and institutional framework is imperative in order for businesses to own, use, and sell all types of property; to manufacture and sell products and services; to raise capital; and to obtain credit. Secure ownership of property and an objective, transparent, and uniform system of property registration is necessary in all economies.

REGISTERING PROPERTY	
<i>Doing Business</i> Ranking 2009	167
<i>Doing Business</i> Ranking 2008	165
Procedures (number)	13
Duration (days)	227
Cost (% of property value)	4.1

This chapter is grounded upon the World Bank's *Doing Business* indicators for Registering Property. Those indicators examine the legal and institutional underpinnings of registering real property—land and fixtures on land—in a country. They first consider 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 begins with a discussion of registering real property, and then addresses Uganda's legal and institutional framework pertaining to intellectual property. (The registration of so-called movable property—automobiles, equipment, inventory, livestock, and other chattel that can be moved—is discussed in this report's chapter on Getting Credit.) As with the other topics covered by this diagnostic, the role of supporting institutions, including professional associations, trade and industry groups, universities, and the media, is also assessed.



The BizCLIR indicator scores for Registering Property fall among the weaker scores in this diagnostic. Above all, Uganda's social dynamics and implementing institutions for registration of property need continuing attention and reform. The other areas—legal framework and supporting institutions—also warrant continued constructive assistance.

REAL PROPERTY

Real property—land and permanent structures attached to the land—is considered one of the most pressing challenges to Uganda's business environment, as evidenced by the *Doing Business 2009* ranking in this area of 167 out of 181 economies. The complications and issues vary dramatically from region to region. Although a full assessment of the state of property rights in Uganda is outside the scope of this diagnostic, this section provides insight into the major challenges affecting

real property issues from a commercial and economic standpoint. Real property issues go well beyond the economic realm in Uganda and are a major social and political challenge today, particularly in the north where conflict has only recently subsided.

Land ownership in Uganda is complex in part because of the varying forms of land tenure available. Land tenure occurs in four different forms: customary, freehold, mailo, and leasehold:

- **Customary** tenure or ownership is the most common form of ownership outside the central region, although the precise nature of it differs among communities. It is governed by rules and customs of the community where the land resides.
- **Freehold** and **mailo** tenure are the two forms of ownership for titled land. The owners of such lands have full powers of ownership and can use it for any purpose, although specified conditions or restrictions may apply, such as environmental restrictions. The mailo tenure system is prevalent in the central region only and includes the land given to chiefs and community leaders by the colonial authorities in the early 1900s. Although held under owner title, mailo land is occupied and worked mostly by tenants in a similar manner to its early feudal nature where communities would have access to the mailo land held by their chiefs or leaders.
- **Leasehold** tenure is created by agreement between the owner and the lessee. Leaseholds are also used for land that is currently owned by the government and managed by the Uganda Land Commission, and such lands are leased out for longer periods, usually for 49 years but up to 99. Because foreign citizens cannot own land in Uganda, they typically retain land through lease. In many leaseholds, the rights are similar to that of ownership, only distinguished by the inability to transfer freehold ownership to another.²²

Uganda's poor showing in the *Doing Business* report clearly indicates a problem with the land registry system, but it does not reveal the reasons why or the implications of these constraints on the business environment. The *Doing Business* indicators examine the time, cost, and steps involved in registering property in Uganda. This chapter delves into the impact of the registration process and other issues on the effective use of property as a resource for building wealth.

Secure ownership rights, including the ability to freely and efficiently transfer land and use it as collateral for loans, are the greatest financial resource for most individuals and businesses, not only in Uganda, but around the globe. Constraints to secure land ownership and use must be addressed in order to enable this significant resource to be tapped for greater and more sustainable economic growth.

Property issues constrain the business environment in Uganda for two primary reasons. First, a significant portion of the land in Uganda is not readily available for use as collateral. The Land Registry estimates that approximately 80% of the land in Uganda is not titled. Because banks generally do not allow use of non-titled land as collateral, the vast majority of land remains an untapped resource. Owners cannot use this land to obtain financing for business start-up, expansion, or investment. Second, even when land is titled, tracking down the physical title in the Land Registry for transfer of land or to confirm ownership for use as collateral can be a monumental task. Accordingly, utilizing the wealth contained even in the small percentage of land that is titled is challenging. The discussion below further explores these constraints from a legal, institutional, and social perspective.

LEGAL FRAMEWORK

THE LAND ACT

The Land Act provides for four different types of land tenure, as discussed above. Although the Land Act is an improvement over the prior legislation, implementation of this law has been slow, and many districts continue to follow the old procedures in order to maintain greater control locally. For example, under the Constitution and the current land legislation, local authorities should be providing freehold ownership but some continue to only provide leases as though all the land continues to belong to the state.

The Land Act currently provides some protections for squatters who have been on the property for 12 years or more (deemed "bona fide occupants" under the 1998 Land Act), although this appears to be limited to people who have been occupying land before the 1995 Constitution came into force. For other occupants who do not have this legal standing, mediation is suggested, although it is unclear in the law how an owner can resolve this situation if mediation is ineffective. The Land Amendments currently under consideration are not

22 This information is drawn from a publication by the Ministry of Water, Lands and Environment, called "The Land Act Made Simple."

expected to clear up this situation either. If the issue of illegal or untitled occupants on titled land is not clearly resolved, land will continue to be a major source of insecurity and uncertainty within the economy. As is, many entrepreneurs buy land from private owners or from the government only to find that they receive no assistance from the government in moving squatters off the land. The value and utility of this land is, as a result, much lower, and without well-defined rights for both parties, uncertainty exists on both sides. Resolving these issues through court can be time-consuming, expensive, and unpredictable.

Many interviewees suggested that the lack of clarity in the Land Act, particularly with regard to the squatter issue, is by design. The perception is that squatters and their families make up a significant part of the voting populace, so it would be politically unwise to disadvantage them. Certainly, this is a common observation that must be addressed even if unfounded, and it highlights the strong need for clarification on the rights of title holders and occupants that fairly considers the needs and rights of both and the economic implications of various potential solutions.

KEY LAWS

- Constitution (1995)
- Land Act (1998)
- Land Amendments (draft)
- Customary tenure systems

CUSTOMARY LAND

Reportedly, the customary land system, common outside Kampala, works significantly better than the title system in terms of clear ownership. Members of a community know who owns what land, and traditional leaders are generally regarded as capable of resolving disputes as they arise. From a societal view, this is good and important, but it does not change the fact that the economic potential of customary land remains untapped as long as banks are unwilling to provide loans using this land as security.

Outside the central region, the vast majority of land is held through customary tenure. In an attempt to reconcile modern commercial practices with customary ones, the Land Act has provisions for obtaining customary ownership certificates. According to representatives at the Land Registry, however, no certificates have been issued since 1998 because they have no real utility. These certificates are not considered sufficiently sound

for collateral by banks (although some microfinance institutions will accept them),²³ so anyone interested in obtaining a certificate for that purpose generally will take the extra effort to obtain title.

Conflict over land in customary areas is generally border-related and often involves disputes within families. Some believe that customary land tenure does not impede development, but the reality is that the economic potential of such land cannot be fully realized, so its contribution to a growing economy is stunted.

TITLED LAND

Titled land in Uganda includes freehold land and mailo land. The Land Registry estimates that only 20% of land in Uganda is titled. The process for obtaining title for land that is not titled (e.g., customary land) is lengthy, requiring an application to the relevant district land board, adjudication by the area land committee to verify ownership and make a recommendation to the land board, and a survey of the land paid for by the applicant. At the conclusion of this process, the applicant must go to Kampala to obtain the title, although the districts should soon be able to issue title as well. The cost of a survey by a private surveyor is reportedly prohibitively expensive, and this was cited as one of the primary reasons that more rural land owners do not opt to obtain title. A pilot program by the government that provided free land surveying in certain rural areas was well received, so finding more ways to reduce surveying costs across the country may reduce the disincentives for titling. The district land boards are also a significant delay in this process because these boards only meet every two months. Although it may only take a month to obtain an initial title in Kampala, it may take six months or more in other districts.

IMPLEMENTING INSTITUTIONS

Implementing institutions related to land ownership and use must conduct their duties with efficiency, consistency, and transparency in order to improve the security and viability of land ownership and use in Uganda. Better coordination among these institutions, in terms of both capacity and will, is needed, and reforms on the horizon should bring improvements. However, reform has been exceedingly slow to date. Without an increase in the political will to implement substantial reforms in land regulation, land will remain a contentious issue and constraint on business.

²³ Centenary Bank reportedly does accept customary certificates as collateral in some cases, but it is a microfinance commercial bank that also has a social mission, and its position on customary land as collateral is unique.

“Before, it was physically impossible to find your title. Now the system is beginning to function. You may have to bribe someone to get it, but at least it can be done.”

—Public Sector Representative

Reform in the land sector is slow in part because such reform may impact entrenched interests of those benefiting from the non-transparent system as it currently operates, and it could put jobs at risk as increased automation is utilized. Implementing institutions need to focus on the needs of the business community and larger society and prioritize these needs sufficiently so that the momentum of reform can overcome such entrenched interests.

LAND REGISTRY

Uganda's Land Registry is part of the government's Justice, Law, and Order Sector (JLOS), which also houses the Uganda Registration Services Bureau, the Commercial Court, and the Law Reform Commission. The registry is in disorder and in need of a wholesale overhaul. The image alone suggests a dysfunctional system: stacks of paper everywhere and in no obvious order; no reception or signs to guide customers, and many people doing much waiting. The good news is that the overhaul is planned and, according to the public sector, expected to be completed within a year. This reform falls under the land component of the Private Sector Competitiveness Project (PSCP) II. Procurement for a contractor to conduct this reform work is under way now. The bad news is that no one believes this. The clear message from the private sector was that they had heard about these reforms for years and had essentially stopped asking about them. They do not believe that the necessary political will to change exists.

KEY IMPLEMENTING INSTITUTIONS

- Justice, Law, and Order Sector (JLOS)
- Land Registry
- Uganda Land Commission
- District land boards

The extent to which the current chaos in the Land Registry impedes businesspeople differs, and some interviewees said that it is not in fact problematic. This suggests that certain connected businesspeople and lawyers are able to navigate the system, likely with the assistance of influence or facilitation fees. This is not the same as having an effective registry that works for all parties, and it does not reduce the uncertainty in the process. As one interviewee indicated, as long as influence and facilitation fees are needed to succeed, the reliability of the services—that they will be available when needed and the results legitimate (clean and sound title)—remains questionable.

Surprisingly, the current state of the Land Registry actually reflects an improvement in recent years. The registry had been severely understaffed, but five additional registrars were added two years ago, improving the capacity significantly. Reportedly, to address the problem of fake titles, the decision was made to limit the number of officers who had authority to conduct title transfers. With the recent addition of more registrars, the backlog was entirely cleared by mid-2008, but it is starting to build up again. As one public sector representative explained, “Before, it was physically impossible to find your title. Now the system is beginning to function. You may have to bribe someone to get it, but at least it can be done.”

According to the Competitiveness and Investment Climate Strategy (CICS) 2007 Annual Report, measurable improvements have been seen, including a reduction in the time it takes to complete a title search from 12 days to 30 minutes for the “sorted files,” and reduction in time spent on mortgage transaction and title transfers to 3 days.²⁴ What constitutes “sorted files” is unclear, however, and this does not comport with the experience of many private sector representatives interviewed.

The planned reform includes computerizing the registry for all land records in the country, linking up the systems of all the district land boards, improving the facilities of the registry, and staff training, among other things. A contractor is expected to be selected by the end of November 2008, so the launch of this process is apparently imminent, although proposals on this land information system go back as far as 1996, suggesting that the private sector's skepticism is not unfounded. Regardless, representatives within the Land Registry are confident that significant improvements will be seen in one year.

Because it can take many months, and in some cases reportedly over a year, to track down a title at the registry, the economic potential of land often goes untapped. Nearly all loans are secured against real property, so this creates a significant impediment to extending credit for economic opportunities. Until the Land Registry reforms are completed, unpredictable access to titles will continue to impede access to credit. Under the current system, it is also reportedly challenging to transfer title and register leases.

UGANDA LAND COMMISSION

The Uganda Land Commission is the trustee of all land owned by the government, according to constitutional mandate. Although the commission reportedly has authority to sell this land, its practice is only to lease government land for periods of up to 99 years, with most

²⁴ Competitiveness and Investment Climate Strategy Annual Report (2007), at 5.

leases being a maximum of 49 years. The commission's decisions to lease are guided by optimal allocation or use of the land. The impact of the decision on "optimal allocation" is unclear, so transparency with regard to how decisions are made, particularly when applications are unsuccessful, should be increased so that decisions are predictable and understandable. In order to ensure that lessees utilize the land as they assert they will, the initial lease is only for five years, and if at that time the lessee has not pursued the stated purpose for the land's use, the commission may end the lease. The commission is largely independent and can lease the land as it sees fit, although the Ministry of Land has been known to influence such decisions from time to time.

Although the leasing process is reasonably straightforward and the commission is open to renewing leases for successful commercial uses, the leasing option inevitably has some impact on business decisions based on the increased risk in not having clear title. Additionally, delays in the application process can be common and without explanation. Some local investors found the leasing application process challenging, time-consuming, and uncertain. Leasing is not unworkable, but it will take time for the commission to instill confidence in the business community regarding the stability of the leasing option, and increasing transparency in the process is a start.

Most stakeholders consulted were not put off by the leasing option, but the practice does limit predictability of investments, and may have significant influence on land use choices. For example, some investors may choose not to build a factory on leased land because of the concern that the investment would be lost after the lease expires if the commission chooses not to renew. After the commission has shown a long-standing pattern of renewing leases for commercial use when renewal is sought, this insecurity will be minimal. Indeed, long-term leasing from the Crown is common in London, and this causes no concern because it is a well-worn and reliable practice in England. The commission must ensure that it exercises its authority in this regard in a sound and reassuring manner that does not increase business risks for investors.

Importantly, with the exception of the conclusion of the initial five-year lease period, the commission cannot take the land away prior to conclusion of the lease because it is a contract. Although any land can be taken under certain specific circumstances in the public interest (and with prompt compensation), a lease is considered a secure right to property, at least during the lease period.

The primary complaint regarding the Land Commission is that it can take a long time to secure a lease, but private sector representatives did not appear concerned at this time that their leases, once obtained, would not be renewed as long as they engaged in their purported activities. As pressure on the land increases over time, however, both public and private sector representatives indicated that they are unsure what may result.

DISTRICT LAND BOARDS

When dealing with property outside of the central district, district land boards are the point of contact. The effectiveness of these boards varies based on staffing and the level of complexity of land issues in that area. Reportedly, most district land boards function reasonably well because relatively little land is titled outside the central region, so their responsibilities are few. Because they meet infrequently, however, it can take a long time for leases or titles to be transferred when they are involved. Linking the district land boards with the central Land Registry should improve land services outside the central region, but increasing capacity of these boards in certain districts should certainly be considered if backlogs are resulting.

KEY SUPPORTING INSTITUTIONS

- Courts and other dispute resolution mechanisms
- Community leaders and mediators
- Uganda Investment Authority (UIA)
- Property developers and owners

SUPPORTING INSTITUTIONS

Several supporting institutions have found creative ways to facilitate the economic use of land in Uganda. Although this is useful and important, these solutions are not a substitute for improving the policies, laws, and implementing institutions relating to property in order to reduce constraints faced by businesspeople and other stakeholders in accessing and utilizing land.

COURTS AND OTHER DISPUTE RESOLUTION MECHANISMS

Land disputes make up a significant portion of the cases in courts, and they reportedly take a long time to resolve. One business representative consulted has seven land disputes in Kampala and the surrounding areas that are currently in court, and none have ever been resolved.



Disputes on customary land are generally more about boundary issues than competing occupancy rights. Such disputes tend to be settled either by traditional local leaders or by local councils, which are a separate system set up as an alternative to the courts. This was intended to reduce backlog in the courts and to provide dispute resolution that is both closer to home and more in line with customary practices. The local councils have received mixed reviews so far. Some private sector representatives suggested that the local council system is corrupt and bribes are rampant, but in many areas outside of Kampala, the nearest municipal court is far away and too expensive to utilize, so people are pleased with this cheaper option. However, the local council system in many areas is merely a layer on top of the traditional dispute resolution system whereby local community leaders determine the outcome of land disputes. Local council decisions are reportedly based primarily on the testimony of community leaders anyway, so the outcomes are generally the same, but with the additional cost paid to the local council. The issue of land disputes is discussed in more detail in this report's chapter on Enforcing Contracts.

COMMUNITY LEADERS AND MEDIATORS

Traditional community leaders continue to play a role in land disputes, as mentioned above. In most regions, local traditional leaders are the first point of consultation on land disputes even if disputes are ultimately taken to the local council. Traditional leaders engage in mediation to resolve disputes as well, including some commercial ones. The role of the traditional leaders in land disputes remains significant, although the nature of this role in relation to the local council may depend on the particular community.

UGANDA INVESTMENT AUTHORITY (UIA)

The UIA has a dedicated Land Desk to assist qualifying investors (those with investments greater than US\$50,000 for locals and US\$100,000 for foreigners) with information on determining land tenure, finding suitable land for investments, and navigating the purchasing and titling processes. The UIA Land Desk also assists investors in negotiating with squatters, community leaders, and other stakeholders as necessary to help bring forth solutions suitable for all parties and to increase access to economically viable property. The UIA also assists foreign investors in overcoming the prohibition of foreign ownership of land. The UIA has set up a system whereby it holds the title to land in trust for foreign "owners" who effectively lease it from UIA for a small fee.

The asserted goal of the Land Desk is to find workable solutions and win-win situations for investors and other stakeholders, and the results appear quite positive. However, although these creative solutions are proving useful and successful, this assistance is not available to the average local investor who continues to face serious challenges in maximizing the economic potential of property. Further, these solutions are only ad hoc and cannot be a substitute for the long-term solution of a sound and predictable legal and institutional framework for property rights.

PROPERTY DEVELOPERS AND OWNERS

Some property developers in Uganda also have experience dealing with challenging land issues and have found successful ways to mediate resolution between title holders and occupants. The UIA has introduced this method of compromise to some land owners and developers in the area, and it has been well received by stakeholders on all sides.

Some property owners have also been taking on this compromise method. One private sector representative discussed how she had a squatter community living on property she bought from the government, and the government would not assist her in removing them from her land. The solution she chose after receiving no assistance from the government was to give six months' notice for them to move and to compensate them for her housing. Although this is a cost to her, it is less of a cost than the loss of the property use, so this compromise may be the best available resolution. However, not all occupants have accepted this compromise, so she may be required to go to court anyway. Without a clear law, resolution through court remains unpredictable. Regardless, this flexible approach may be the best case option until the rights of all parties are clarified under the law.

One property developer described his business's approach to squatters on land to be developed. The developer considers all occupants as stakeholders coming into the process. This is a reasonable approach because most of the occupants are not in fact trespassers—many inherited the land or bought it from someone else (often through fraudulent transactions of which they were unaware) but do not hold title. Under current law, these occupants have rights as long as they honestly believed at the time of the transaction that it was not fraudulent. The company's policy is to offer occupants the full and clean title to one-third of the land they occupy in return for their vacating the remaining two-thirds. The developer also offers clean title to community institutions, such as churches or hospitals, that are already on the land, and this builds goodwill with the community. The land becomes free of encumbrances and is opened up to economic development and use by both sides. The company meets with the community leaders at the outset to negotiate a mutually beneficial agreement.

This compromise has strong benefits for both sides. The occupant may lose some land but will then be able to sell the land he or she retains or use it as collateral for a loan, thus releasing the economic potential that property holds. The occupant also benefits from services brought to the area by the developer, including improved water, road, and power services, as well as police stations in some neighborhoods. The developer (or other owner) will have free and clear use of the remaining two-thirds and will not have to undergo the costs of taking the occupant to court, which would regardless hold an uncertain outcome. As mentioned above in the discussion on the UIA, these creative solutions provide a great interim approach, but these are not comprehensive or long-term solutions. Until competing rights over land are clarified under the law, however, this approach appears to be the best bet. This developer suggested that this process was not common within the industry, but given its success, hopefully it will catch on.

According to property developers and agents, squatters are the main challenge in land transactions, and finding title and dealing with the Land Registry is in fact easy. This does not comport with the claims of many other businesspeople, however, suggesting that those who deal frequently with the registry have an advantage—through familiarity with the process or with the individuals involved.

SOCIAL DYNAMICS

POLITICAL WILL

Land is a contentious and highly politicized issue within Uganda, and it affects a wide range of people across the country. As discussed above in the Legal Framework section, it is commonly believed that the political will to bring clarity to the land policy regime in Uganda is weak because of vested interests in retaining ambiguity. Strong stakes exist on either side of the issue, particularly with regard to title holders and untitled occupants, and no one wants to risk angering a significant constituency. Although the business community would presumably hold more clout, the “squatter” community necessarily holds more votes. On the high policy level, this is a disincentive to bringing clarity to the system. On the civil servant level, improvements to the system would likely result in lost jobs and lost opportunities for facilitation fees and other perks. Overcoming the weak political will to push forward the planned land reforms and also to revise the Land Act to provide clarity on competing land rights is imperative to bringing any resolution to the murky land issues Uganda faces. This will only be a start, however, and implementation, education, and improvements in dispute resolution will be necessary next steps.

SQUATTERS

As addressed above, squatters (both illegal occupants and legal occupants) are a serious constraint to land use for titled owners. Competing ownership claims often involve valid ownership by both sides since the land regime has been unclear for so long, thus providing opportunities for multiple ownerships to result. The Land Act does not provide clear guidelines on how to deal with these situations. Although, from a western point of view, it would appear that titled owners should be able to remove squatters from their land, many squatters are bona fide owners in their own right, having purchased or inherited the land under a different but also valid system. Fraud is frequently involved, but if the occupant purchased the land unaware and through accepted customary practices, it would be unjust to not acknowledge those rights or provide compensation.

No easy fix exists for this issue. A thorough solution will require mediation, compromise, and compensation, but a sound structure for hierarchy of rights, criteria for legal ownership (both for current owners and for the system moving forward), and clear methods for resolution must be developed. Currently, resolution is largely ad hoc, and courts and other dispute resolution mechanisms have been unable to effectively, predictably, and transparently address these challenges.

WOMEN

As noted, documented land ownership is rare among both men and women in Uganda: over 90% of both male and female heads of households do not have any land certificates. In practice, between 8% and 40% more female heads of households than male heads cannot sell, bequeath, rent, or use land as collateral. About one-third of the clientele for a rural branch of a leading bank, for example, are women, but virtually none of them apply for loans with land as collateral. Microfinance is especially important for women, who make up about 50–60% of MFIs and SACCOs' (savings and credit cooperative organizations) clients. When it comes to actually getting credit, however, men are three times as likely to obtain a loan from a SACCO.²⁵ Land inheritance is generally patrilineal to keep land within the clan, and women have little say over the use or sale of communally owned land. In disputes over land, more female heads of households than male ones must resolve the issue with the extended family, especially in rural areas. This exposes women to land-grabbing and even eviction by the clan.

Law enforcement officials again tend to view land ownership as a private family issue. The proposed Domestic Relations Bill protects women's property rights in marriage, among other rights, but has yet to be passed in Parliament. Since so many women work in subsistence agriculture, strengthening their property rights will be vital to improving the efficiency of farming and land use.

RECOMMENDATIONS

- Promote the rapid implementation of the planned land reform program to address the inefficiencies of the Land Registry, including training registry staff, computerizing the registry, and linking up the district land boards with the central office. Implement benchmarking and progress assessments to ensure that the funds put into the land reform program are well utilized and that reform moves forward swiftly.
- Clarify within the legal text the rights of squatters to the land they occupy and the rights of title holders. Outline specific means of resolution, including mediation, but also what the outcome is when mediation is not successful. Conduct educational campaigns on these issues to inform all stakeholders of their rights and how these issues are resolved. The government must take a clearer stance on this issue to increase certainty in dealing with land.

- Reduce the cost of land surveys for title applicants. This could be done by government subsidies of the survey cost, tax incentives for private land surveyors, or an increase in the capacity of the government to conduct such surveys in-house.
- Encourage consistent, reliable, and transparent practices by the Land Commission in leasing government land for business purposes in order to provide reassurance of the security of businesses built on leased land. This is particularly important for securing increased foreign investment.
- Review the activities and resources of district land boards to determine whether they have adequate capacity to address their responsibilities. Provide training to district land board members in how to benefit from and use the computerized registry once that is in place.

INTELLECTUAL PROPERTY

Intellectual property (IP) is not addressed by the World Bank's *Doing Business* indicators. As with real property, however, a sound legal and institutional framework is needed for intellectual property in order to foster investor confidence and economic growth. IP has a thin history so far in Uganda, but awareness is building, particularly as regional integration advances. It remains largely the domain of multinational companies, but more local companies are starting to appreciate the benefits of IP protection too.

Strengthening enforcement of IP protection in Uganda is vital to promoting innovation and investment in the country. The laws must be updated to conform to the principles adopted by the WTO and EAC, but more important, a focus on implementation and socialization is needed to make IP protection a reality and to get both the public and private sector to understand the importance of IP to Uganda's economic future.

LEGAL FRAMEWORK

The legal framework for intellectual property in Uganda is outdated and inadequate. The **Trademarks Act** is from 1964, patterned off a 1938 British law, and the **Patents Act** is from 1993. Only the **Copyright Act** has been recently updated with a new law passed in 2006, but this was thanks to a concerted effort by private sector stakeholders, led by the Uganda Performing Rights Society, who managed to successfully push a private members bill through Parliament. Other areas of IP are in serious need of an update. A sound IP legal

25 DFID Financial Services Deepening Project, *Results of a national survey on access to financial services in Uganda* (2006).

framework will require not only that Uganda pass new laws but also that the government sign and implement a number of key IP agreements, and that the new laws conform to those agreements as well.

The Uganda Law Reform Commission, which is promoting updated laws in a variety of commercial areas, has proposed several new IP laws. These laws are meant to be fast-tracked in Parliament, but it is unclear when they may be heard.

INTERNATIONAL AGREEMENTS

Uganda is a member of the WTO and is also a party to some of the key international IP agreements, such as the Agreement on Trade-Related Intellectual Property Rights (TRIPS Agreement) and the Paris Convention for the Protection of Industrial Property (covering patents, industrial designs, utility models, industrial designs, marks, and unfair competition). However, implementation of these agreements is slow, and both protection and awareness of IP rights in the country remain limited. Several key IP agreements have not been signed by Uganda as well, although some aspects of these agreements have been incorporated into Ugandan law. For example, the new Copyright Act does address certain concepts included in the Berne Convention on Protection of Literary and Artistic Works.

KEY LAWS

- Trademarks Act, 1964
- Patents Act, 1993
- Copyright Act, 2006
- Draft Anti-Counterfeiting Law

Signing the remaining key IP agreements is a major step towards building the confidence of potential foreign investors who worry that their products and intellectual capital will not be protected, but implementing these agreements, and the laws on the books, is imperative as well. Until Uganda has conformed its IP legal framework to international standards and has proven an ability to implement that framework to effectively protect IP rights, both local and foreign investors will continue to be discouraged from bringing innovative ideas to Uganda's economy.

TRADEMARKS ACT

The Trademarks Act covers trademark registration and protection, but its protection provisions are far from comprehensive. In particular, it does not currently cover service marks at all. Another limitation of the

Trademarks Act is the lack of recognition of foreign trademarks under the law, so all trademarks must be registered in Uganda in order to be protected within the country. As a result, registration of trademarks is used by some importers to establish control over certain businesses. For example, the same product may be imported by two importers, but neither is the producer. However, they race to register the trademark locally in order to obtain right to that product.

The Draft Trademarks Act under consideration specifically addresses service marks and would make significant strides towards bringing the legal framework for trademarks and service marks in line with international best practices, including obligations under the TRIPS Agreement.²⁶ Furthermore, trademarks protections are not all covered under the Trademarks Act. Some are included under the Penal Code Act instead, so consolidating all such provisions under one law is important for clarity and transparency. The draft law attempts to bring all provisions under a single legal instrument.

COPYRIGHT ACT

The new Copyright Act of 2006 has brought significant improvements to the legal framework regarding copyright. This law was brought to Parliament as a private members bill and was passed as a result of the efforts of local artists to promote it. The bill was intended to be part of a package of IP laws under consideration, but as progress on that package was stalled, local artists took action to push through the Copyright Act separately. Although this is a great success, it was not a quick one. The first draft was proposed in 1992, and strong lobbying has occurred since that time.

The prior Copyright Act was from 1964 and inherited at independence. It only provided civil sanctions for copyright infringement, and even these sanctions were largely unenforced. Although criminal sanctions are included in the 2006 law, enforcement of these provisions is weak as many police, and even many state attorneys, do not yet appreciate the importance of IP protection.

Implementation of the new law is the existing challenge. A culture of IP protection has yet to take hold in Uganda, and resistance has been particularly strong with regard to copyright. Traditionally, music belonged to the community, not the individual, so the concept of copyright is foreign. Now that artists have begun to assert and fight for these rights, the perception is changing, but slowly.

²⁶ See Uganda Law Reform Commission, *A Study Report on Intellectual Property Rights—Trademarks and Service Marks Law* (2004), at 2.

PATENTS ACT

Uganda's Patents Act provides only limited protections, but a greater challenge than the law is the limited innovation that requires protection. Patents are not registered in Uganda, but are registered at the patent registry of the African Intellectual Property Organization, which is supported by the United Nations Development Program and WIPO. Uganda produces hardly any locally generated patents, but the government has embraced this aspect of IP in an attempt to encourage more innovation in the economy.

COUNTERFEITING

Counterfeiting is a major issue for the business community in Uganda. Although some laws address this issue in part, such as laws dealing with the National Drugs Authority and the Standards Bureau, Uganda does not yet have a comprehensive legal framework to target counterfeiting. Suits can be brought for "passing off" or putting forth your product as someone else's, but these are rare, and the legal framework does not provide adequate remedies and provisions for enforcement. A Draft Anti-Counterfeiting Law is before Parliament for consideration, and there is hope it will be passed by the end of the year.

IMPLEMENTING INSTITUTIONS

INTELLECTUAL PROPERTY REGISTRY

The IP Registry is housed within the Uganda Registration Services Bureau and covers registration of trademarks, patents, and copyrights, although patents are actually registered with the Africa Regional Intellectual Property Organization (ARIPO). Because copyrights do not need to be registered in order to be protected (although they can be by choice), the registry deals primarily with trademarks, and registration is active. Approximately 100 trademarks are registered each month.

KEY IMPLEMENTING INSTITUTIONS

- Intellectual Property Registry
- Ministry of Justice and Constitutional Affairs
- Courts

The procedure for registering trademarks is identical for nationals and foreigners, although the fees differ. Additionally, foreign applicants must appoint an agent within Uganda who has power of attorney.

The first step for registration is to search the register to ensure that the trademark is still available. If the trademark is available, a fee will be assessed for payment to the bank for the application. Once the fee is paid, the applicant takes out a notice in the Official Gazette for 60 days to allow time and notice for objections to be made. The fee for notice is approximately UGS 200,000. If no objections are made during this period, the applicant submits a registration form and pays the registration fee. The first registration is for 7 years, and any subsequent renewal is valid for 14 years.

In order to object to a proposed trademark, an objection must be filed and a fee paid. The applicant is then given a chance to make a counter-statement. The registry invites the objector and applicant to discuss the objection and, after hearing both sides and reading the submissions, makes a ruling. These decisions can be appealed to the High Court, but they are rarely challenged. Reportedly, most objections made to trademark applications are valid.

With regard to trademarks registration, the registry is considered more of a clearinghouse than an analytic body. If no objections are made to a proposed trademark during the period of publication, the registry will generally allow it. No in-house analysis appears to be made regarding the validity of the trademark sought. This is in part a matter of capacity within the registry, but active consideration of the trademark application should be one of the primary functions of this institution.

Patent applications take a longer period because the IP Registry in Uganda does not have search capabilities. Applications are forwarded to the ARIPO office in Harare for searches to be conducted. The search takes between one and three months, and if a conflict is found regarding the application, ARIPO suggests how to improve the patent application, and the registry passes on these suggestions to the applicant.

Regarding the capacity of the IP Registry, automation is under way for the entire registry and should be completed by 2009. Currently, manual input of registrations is being done. The staff is well trained and experienced, and the system is organized and fairly straightforward.

MINISTRY OF JUSTICE AND CONSTITUTIONAL AFFAIRS

This ministry houses the IP Registry and is ultimately responsible for IP protection. The ministry's responsibilities extend to the criminal prosecution of IP violations, but

that function does not appear to be active. There is little public information available about the ministry's involvement in protecting IP rights beyond their registration.

COURTS

When IP disputes arise, the courts are the primary resource for enforcement. IP cases are heard by the commercial division of the High Court (Commercial Court), but they are not common. Although few judges have expertise or experience in this area, lawyers with experience with IP in the courts have been generally pleased with the level of thoughtfulness and knowledge of the judges. However, until the laws catch up with international best practices, even if the judges understand the issues well, they do not have the legal authority to make decisions that are in line with such practices.

Because of the serious problem of counterfeits in Uganda, the Commercial Court, in response to pressure from multinational companies, now fast-tracks all IP cases so that they are dealt with in six months. This policy emerged in 2007. Although the six-month standard has not been entirely adhered to, this has increased awareness of the problem and has improved resolution time for such disputes.

Counterfeit cases are the most common IP cases brought to court. Local trademarks disputes are fairly uncommon. The typical issue is the use of similar packaging to mislead the consumer. Patent disputes are rare.

SUPPORTING INSTITUTIONS

UGANDA LAW REFORM COMMISSION/ TRIPS TASKFORCE

In 2000, the Uganda Law Reform Commission (ULRC) formed a task force to review and update the country's law pertaining to intellectual property rights. Supported by USAID, the main objectives of the task force were:

- to document and publicize Uganda's obligations under the TRIPS agreement;
- to study existing legislation relating to the TRIPS agreement and identify necessary legal reforms;
- to carry out a comparative analysis with foreign jurisdictions in their experience in updating domestic legislation to conform to international obligations under the TRIPS agreement; and
- to propose amendments and, where necessary, new legislation to update Uganda's laws to conform to its TRIPS obligations.

Representative stakeholders on the task force included representatives from the ULRC, the Ministry of Justice, the Uganda Law Society, the Commercial Court, the Uganda Investment Authority, the Ministry of Tourism, Trade and Industry, and the National Council for Science and Technology. At the time, the task force was regarded as the main forum through which public policy on IP would be developed. The task force was divided into five committees, each for the purpose of reaching out to the following categories of stakeholders:

1. Publishers, writers, and academic writers;
2. Broadcasters, performers, and composers;
3. Manufacturers, investors, designers, and artists;
4. Herbalists, agricultural researchers, and pharmacists; and
5. Administration of justice and law enforcement agencies.

CUSTOMS

As discussed further in the Social Dynamics section below, counterfeiting is likely the biggest challenge to IP protections in Uganda today. Counterfeit products are imported to Uganda with ease because currently no framework provides for enforcement of IP protections at the border. As long as products meet the requirements of the Bureau of Standards and taxes are paid, those products are generally allowed into Uganda. No organized cooperation exists between Customs and the IP Registry to allow Customs officers to stop counterfeit goods at the border, although reportedly some collaboration between Customs and IP rights holders has occurred.

In practice, if counterfeit goods are detected, inspectors can inspect for adherence to the quality standards of the Bureau of Standards, but if products meet the quality standards, they are released. In order to try to harness this problem, the Bureau of Standards and Customs officials can contact the owner of the trademark regarding the counterfeit goods, and the owner can then get a court injunction. Customs impounded counterfeit goods in the value of US\$442,000 in 2007 as a result of such collaboration, and 10 court cases are pending. However, injunctions are often not issued in time to prevent release by border agencies, and the process is not efficient or sufficiently effective. Creating a framework to enable greater cooperation directly between Customs and the IP Registry would make such efforts significantly more fruitful.

“Because music traditionally belonged to the community rather than the individual, socializing the idea of copyright protection has been challenging.”

ARTISTS AND OTHER IP RIGHTS HOLDERS

The Uganda Performing Rights Society's efforts to push forward the passage of a new Copyrights Act is a good example of how active rights holders can play a major role in improving the environment for IP in a community. This organization began in 1984 and has been educating the public and the government on the importance of IP protections ever since. Through strong lobbying and education efforts over a long period of time, this dedicated group of stakeholders was able to attain significant improvements in the legal framework for copyright and has come far in socializing the importance of IP protection. Many trademark holders as well are actively fighting the battle against counterfeiting by urging the government to formulate a strategy to target this problem and by working with Customs and the Bureau of Standards to fight counterfeiting on a case-by-case basis. Private sector actors affected by counterfeiting and other IP rights violations should continue to work together and with the government to push the IP reform agenda. Though many skeptics still exist in all facets of the public and private sector, even among those who would benefit from improved IP protection, change is under way, and efforts by the private sector to build public awareness in this area remain important.

LEGAL PROFESSION

Uganda has a small number of lawyers with expertise in IP, but these lawyers are informed and engaged in the issue. Lawyers working in the IP field provide guidance on registration and assist with litigation. They have also been engaged in advising on new IP laws under consideration. Expanding knowledge of IP within the profession is important, and this has already begun. IP is now taught as a full subject at the law faculty, covering trademarks, copyright, and patents, although industrial property and design is not yet addressed.

SOCIAL DYNAMICS

CULTURE OF IP PROTECTION

In Uganda, IP is not well protected or understood. This is particularly problematic with regard to copyright protections. Because music traditionally belonged to the community rather than the individual, socializing the idea of copyright protection has been challenging. Even copyright holders are not always on board. Many

musicians believe that it is a favor to them when broadcasters play their music, so they often oppose imposing fees themselves. Some within the public sector also view the pirated music and video industry as big business that employs many people, so the incentive to crack down on it is minimal.

The work of the Uganda Performing Rights Society, for example, has been successful but slow, and because of the traditional treatment of artists' rights, the group has faced pushback from all parts of the music industry. Thanks to concerted efforts by this group, this perception is beginning to change. The organization now has 1,000 local members as well as reciprocal agreements in several countries, whereby they represent members of the other organizations within Uganda, and their members are represented and protected elsewhere. They have managed even to get a few converted broadcasters in their ranks as a result of the reciprocal agreements in place.

This historical lack of appreciation for IP protections extends throughout society and severely hampers enforcement, particularly as even many police do not understand why these infringements should be criminalized. Continuing and expanding the socialization of these concepts, particularly in terms of their importance to the economy, will be key to changing the face of IP protection in Uganda.

COUNTERFEITING

Counterfeiting is perhaps the biggest challenge to IP protection in Uganda. By some estimates, the majority of products sold in Uganda are counterfeit. When it comes to consumables, particularly pharmaceuticals, this becomes a major health concern. Awareness of this issue is growing as multinational companies, who suffer significantly from counterfeiting of their products, are putting resources into drawing attention to it.

Although counterfeiting persists, competition between firms engaging in counterfeiting and those that do not will remain unfair and a detriment to companies conducting business by the book. Although some, particularly within the public sector, are concerned that enforcing provisions against counterfeiting could lead to unemployment since this is such a large part of the economy, counterfeit trade is a serious impediment to trade and to attracting investors and, thus, will ultimately cost jobs as well and have a broader negative impact on the economy.

INNOVATION

Uganda is primarily an economy of consumers. Very few patents are locally generated, and innovation is limited. This is one area of IP that the government has embraced and encouraged. In an attempt to increase Uganda's industrial success, the government is encouraging artisans and innovators as well as creativity through reverse engineering to re-create products that can be produced in Uganda. Continuing to support innovation is key to building up a sustainable economy.

RECOMMENDATIONS

- Educate public sector representatives, particularly those charged with enforcing IP protections (such as the police force), on the importance of IP and best practices for enforcement.
- Support the automation of the IP Registry as well as capacity-building and staff-training efforts, and enhance the registry's ability to be an analytic body that actively considers the validity of trademark applications beyond the review of objections alone.
- Review the pending IP legislation for compliance with international best practices and obligations under international agreements, and push forward passage of these laws in order to bring the legal

framework governing IP in Uganda up to international standards.

- Assist with development of a resource center within the IP Registry to allow for greater access to knowledge and information regarding IP, the registration process, defense of IP rights, and benefits thereof.
- Provide education on the provisions and implications of the new Copyright Act, including generally on the concept and benefits of copyright protection.
- Create a framework that allows for coordination between Customs and the IP Registry to empower Customs agents to stop counterfeit goods at the border.
- Engage in partnerships with other countries in the region to enable regional efforts to target counterfeit goods.
- Ease the procedures for destruction of counterfeit goods.
- Promote innovation through public awareness campaigns and education, and activities such as competitions offering awards and support for innovative ideas. This could be done in partnership with the Private Sector Foundation of Uganda or specific private sector businesses.



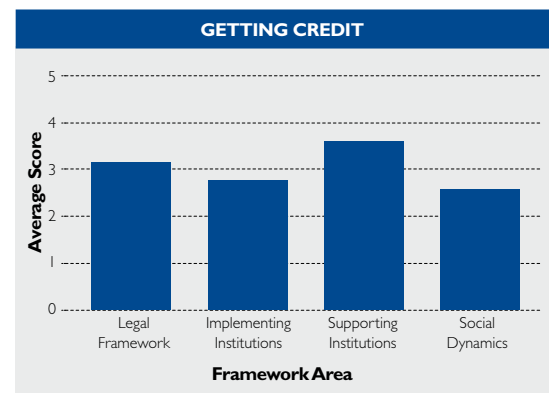
GETTING CREDIT

Lending to the private sector is one of the keys to growing an economy. Companies in developing economies need capital to upgrade production equipment, to hire employees, and to access new markets. This is particularly true of micro-enterprises and SMEs, which need investment in productive assets so that they are capable of accessing value chains and public procurements.²⁷ In Uganda, most such enterprises lack access to productive resources and find the high cost of maintenance, spare parts, and machinery to be major obstacles to growth.²⁸ Only 24% of Ugandan firms report receiving loans in the last five years.²⁹ Not surprisingly, micro-enterprises and SMEs have made only limited upgrades to their productive assets.

GETTING CREDIT	
Doing Business Ranking 2009	109
Doing Business Ranking 2008	102
Credit information index	0
Public registry coverage (% adults)	0
Private registry coverage (% adults)	0
Legal rights index	7

In its most recent *Doing Business* report, the World Bank ranks Uganda 109 out of 181 countries for Getting Credit, seven places below its previous showing. With respect to the specific aspects of Getting Credit, Uganda scores reasonably well on the survey's **legal rights index**, which measures the degree to which collateral and bankruptcy laws protect the rights of borrowers and lenders. This diagnostic found, however, that although the laws that govern lending and enforcement of defaulted loans are generally sufficient "on paper," implementation of the laws is hampered by state institutions that need to modernize. Antiquated state institutions, banks' lack of long-term capital, and other factors described in this chapter make borrowing expensive and loan products insufficient to meet the needs of borrowers. As a result, lending in the Ugandan economy is low and financial institutions are not adequately serving rural areas and certain key sectors in the economy.

Ugandan banks still primarily offer **short-term loans** secured by immovable collateral (land and some buildings). These short-term loans—usually two years or less—are due mainly to banks' limited access to medium and long-term capital. The requirement of



immovable collateral is due chiefly to the difficulty in enforcing unsecured debt or foreclosing on movable property. Out-of-court foreclosure on immovable property collateral is generally efficient, but, as discussed below, amendments to the Mortgage Law that are currently in Parliament may result in a negative impact to the lending environment.

Credit in Uganda is very expensive, particularly for small businesses. **Interest rates** hover around 20% and the interest-rate spread between deposits and loans has been over 10% in recent years. In 2004, the spread for Uganda was 12.9%, compared to Nigeria and South Africa at 5.48% and 4.74%, respectively. Real interest rates (actual rates less inflation) are much higher than in Kenya and Tanzania (see Real Lending Rates figure, below). U.S. dollar-denominated loans offer lower interest rates (both nominal and real), but must be repaid in dollars. Furthermore, **fees** are expensive for small businesses. They include loan fees to banks, the costs of

27 G. Ranis & F. Stewart, *Goods and the Role of the Urban Informal Sector in Development*, *Economic Development and Cultural Change*, 47,2: 259–88 (1994); R. Reinikka & J. Svensson, *Confronting Competition: Investment, Profit and Risk*, in *Uganda's Recovery: The Role of Farms, Firms, and Government*, Kampala (R. Reinikka & P. Collier eds. 2001).

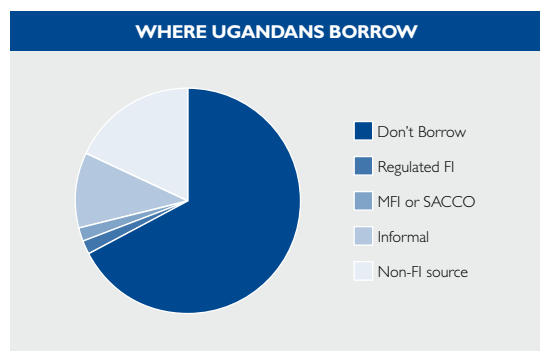
28 E. Ishengoma & R. Kappel, *Business Constraints and Growth Potential of Micro and Small Manufacturing Enterprises in Uganda*, GIGA Working Papers (May 2008).

29 Id.

appraisal, and fees for collateral registration. Corruption among loan officers is a widely reported problem: one practice is for loan officers to hold up an application until a speed payment is made by the borrower. Moreover, banks find it expensive to conduct due diligence on borrowers, which includes reviewing documentation, corroborating information, and inspecting.

Financial institutions have dramatically increased their presence throughout Uganda. As of December 2007, there were 193 commercial bank branches, up from 123 in 2000. Many more are planned. Also as of December 2007, there were 328 automated teller machines (ATMs), 183 of which are located in Kampala.

Credit is increasing, with commercial banks' lending growing by over 12% in 2007. This growth was primarily driven by increases in **foreign currency loans**. Nonetheless, borrowing levels are still quite low. Credit in rural areas remains limited by a lack of registered titles to land for use as collateral, as well as by poor infrastructure and agricultural support services that restrict productivity and limit access to markets. Furthermore, most businesses are single owner or family owned and lack sufficient expertise in management and accounting to become credit worthy. A recent survey by FinScope Uganda found that only 33 percent of Ugandans have ever received a loan and that a majority of the country does not have access to financial services.³⁰



Consumer credit is increasing, mainly through salary loans and mortgages. Salary loans will likely evolve eventually into credit cards. Banks are increasing their participation in the mortgage market, mainly because of increasing demand for home ownership from the growing middle class. Housing Finance, set up after Ugandan independence as a joint venture between the government and Commonwealth Development Corporation of the United Kingdom, was for many years the only provider of mortgage finance. But now Housing Finance

has several competitors. For example, Stanbic offers mortgages in dollars and Ugandan shillings, and Standard Chartered last year launched a 17 percent mortgage with a 15-year maturity.

Microfinance in Uganda has received substantial assistance from USAID and other donors and in many ways it is well developed. Microfinance has made the transition from donor-subsidized to commercialized, with donor grants having decreased over the last 10 years. Some microfinance institutions have become deposit-taking and thus regulated by the Bank of Uganda. MFIs increased their total assets by 24 percent in 2007. They also registered strong growth in deposits (50 percent), loans (21.7 percent), and return on equity (14 percent). Nonetheless, the microfinance industry is not yet meeting all the financing needs of micro-enterprises, and loans remain relatively expensive.

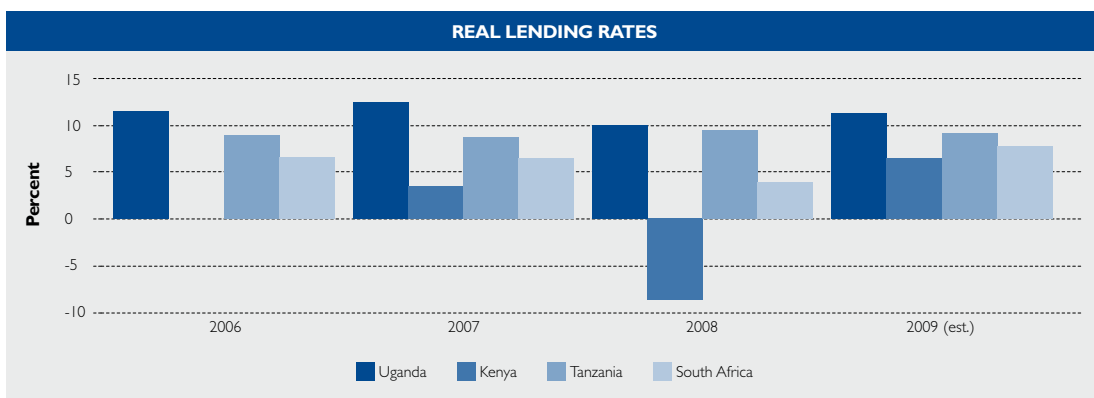
The government's strategies for increasing **access to finance** for SMEs and rural households include implementation of the Microfinance Outreach Plan (MOP) and its associated Rural Financial Services Programme (RFSP). Implementation of the RFSP aims to develop a financial infrastructure of savings and credit cooperatives (SACCOs) that are capable of reaching the population throughout the country.

Leasing is slowly but steadily developing in Uganda but is not yet close to its potential to provide a key means of financing for SMEs. Leasing represents less than 1 percent of private sector capital formation (and approximately 5 percent of total private sector credit), compared to an average of 14 percent in emerging markets and 31 percent in the United States.³¹ DFCU Leasing has the only significant leasing program in Uganda—its value is less than \$25 million. Some Ugandan commercial banks offer leasing but the volume is low. Some MFIs also engage in some micro-leasing. A leasing law submitted to Parliament has not yet been passed, a fact cited by financial institutions as a major shortcoming of the legal environment.

Factoring is another advantageous SME financing mechanism, but it does not appear to be offered in Uganda. In factoring, all trade debts (accounts receivable) are purchased and responsibility for collecting the debts passes to the "factor." Typically, the factor will advance the trade creditor a percentage of the invoice value with the remainder paid on payment of the debt by the debtor. The arrangement can be with or without recourse, which is normally reflected in the percentage

30 FinScope Uganda, *Results of a National Survey on Access to Financial Services in Uganda* (2006).

31 Juma Kisaame, *Case Study of DFCU Leasing Company—Uganda* (2003).



rate offered or other terms agreed between the parties. An alternative in many countries is receivable financing whereby accounts receivable are taken as collateral for a loan or line of credit. It is unlikely that these forms of financing will be widely offered in Uganda any time soon, because accounts receivable are usually unsecured and collection of unsecured debts through the court or otherwise is difficult, time-consuming, and expensive.

The availability of **trade finance** is a key to exports and to participation in international value chains. To facilitate global trade, creditors in Uganda have developed a variety of products to bridge the time from which an exporter begins spending money on an export activity until the time the exporter is paid. In addition, financial institutions help secure payments and money flows across borders and insure against commercial and currency risks. The larger Ugandan banks offer trade finance products, including letters of credit, guaranties, documentary collections, and invoice discounting. These appear to be geared toward larger clients and financial institutions that serve smaller borrowers and do not have sufficient trade finance products and expertise.

The BizCLIR indicator scores for Getting Credit are consistent with Uganda's middling *Doing Business* ranking; namely, the area of access to credit shows a generally equal array of strengths and weaknesses. Supporting institutions represents a relative strength. This chapter points out opportunities for reform, and further presents a lengthy list of recommendations to improve the country's performance in this area.

LEGAL FRAMEWORK

The legal and regulatory framework for lending has a great impact on the volume and efficiency of private-sector lending. Strengthening creditor rights and improving key institutions such as land and company registries,

courts, and credit-reporting bureaus reduce the cost of credit and expand the number of borrowers. Laws and regulations that enable more financial products allow financial institutions to provide businesses with the type of financing they need. Growing businesses may need a line of credit for working capital, financing for equipment that will increase quality and productivity, or use of a variety of collateral types—whether immovable (land and fixtures), movable (vehicles, equipment, inventory), or even intangible (intellectual property, accounts receivable) to secure a loan.

Uganda has a number of key laws that provide an enabling environment for the extension of credit, including laws that govern and protect the banking system, laws that provide for a variety of financial institutions and credit products, and laws that allow lenders to foreclose on collateral and collect debts. Many of these laws were enacted in recent years and meet international standards and best practices; certain others are outmoded and need to be amended to keep pace with the needs of the Ugandan financial sector and the needs of borrowers.

THE BANK OF UGANDA ACT OF 1993

The Bank of Uganda Act of 1966 was replaced by the Bank of Uganda Act of 1993. The 1993 Act vested authority in the Bank of Uganda for monetary policy, external reserve assets, issuance of currency, financial advice to the Government, management of public debt, acting as banker and clearinghouse for financial institutions, and supervision and regulation of financial institutions. Along with the Ugandan Constitution Articles 161 and 162, the Act establishes the Bank of Uganda (BOU) as the only authority in Uganda to formulate and implement monetary policy. Thus the Bank adopted the Reserve Money Program (RMP) as the operating framework to facilitate indirect monetary control.

Monetary policy instruments have been developed to regulate liquidity in the economy and the RMP has helped to keep inflation relatively low and stable. The Act also provides guidance for governance and operations of the BOU.

FINANCIAL INSTITUTIONS STATUTE OF 2004

Replacing the Financial Institutions Act of 1993, this statute strengthened the prudential regulations governing banks and deposit-taking, non-bank financial institutions. It raised minimum capital and ongoing capital adequacy requirements, strengthened restrictions on insider lending and large loan exposures, and introduced a requirement for mandatory, prompt corrective action to be imposed on distressed banks by the Bank of Uganda. The law also set up the Deposit Protection Fund to which every deposit-taking financial institution must contribute. Deposits are protected up to UGS 3 million.

Despite supervision that is generally seen as thorough and effective, there are some areas in which the Bank of Uganda could improve. For example, disclosure by financial institutions in compliance with International Accounting Standards, which Uganda adopted in 1999, is poor:³²

The requirement to classify and provision any loan with no payment after three months may prevent banks from developing some new products, including agricultural lending products that require maturity dates that are in line with the seasonal nature of the business. During this

South Africa recently enacted a new Credit Law and established a credit regulatory agency that is separate from the central bank. The central bank looks after prudential regulation, i.e., concerned with the level of risk that the lender is taking on, including, for example, capital adequacy norms or reserve and liquidity requirements. The credit regulator looks after non-prudential regulation, i.e., concerned with the level of risk the borrower is taking on, including, for instance, consumer protection and truth-in-lending requirements. While there is broad agreement that even non-deposit-taking MFIs should be subject to some minimal requirements, for example, transparently stating their interest rates and other fees, many people think that the South African law goes too far. For example, if a borrower defaults, the onus is on the lender to "prove" that it did a thorough credit check before making the loan; otherwise the government can forgive the loan.

diagnostic, bankers also commented that the requirement to collect 100% of a defaulted loan within one year is not conducive to loan workouts.

Uganda's regulatory and supervisory requirements are set forth in the Financial Institutions Statute and in the **Financial Institutions Regulations**, which are also consistent with international norms. Increases in the minimum paid-in capital have helped strengthen the capital base of the banking system. Uganda's capital adequacy requirements of 8% core and 12% total capital help to maintain financial system stability. To encourage the use of formal funds transfer systems and efficient money remittance and foreign exchange ("forex") transfer, the Foreign Exchange Regulations of 2006 provide that the Bank of Uganda licenses money remittance businesses. In addition, the bank has recently promulgated two sets of regulations on consolidated supervision and mortgage banks and mortgage lending.

MICRO FINANCE DEPOSIT-TAKING INSTITUTIONS ACT OF 2003

This law created a new category (Tier 3) of financial institutions—the Micro Finance Deposit-Taking Institution (MDI)—to be regulated and supervised by Bank of Uganda. The law was drafted in consultation with microfinance institutions (MFIs), donors, and other stakeholders, and established parameters for licensing, regulation, and supervision of microfinance deposit-taking institutions (MDIs).³³ Four MDIs are currently licensed by the Bank of Uganda to take deposits and conduct lending within a two-year time frame to SMEs and poorer households.

Although the law allows MDIs to collect savings from the public and use them to make loans, other activities of MDIs are significantly restricted as compared to those of a commercial bank. The MDI Act, along with its accompanying regulations, outlines risk-weighted capital adequacy requirements and portfolio exposure limits, as well as governance guidelines for management, auditing, and reporting. MDIs are also required to report borrower information to the not-yet-established credit reference bureau. The Bank of Uganda has legal authority to suspend operations or take over management of non-compliant MDIs and to put troubled MDIs under receivership or into liquidation as necessary. The statute provides for a separate MDI Deposit Protection Fund at the central bank. All these provisions differ significantly from those for commercial banks (for example,

32 Samuel K. Seijaaka, *Compliance with IAS Disclosure Requirements by Financial Institutions in Uganda*, J. of African Business, Vol. 6 (December 2006).

33 David Kalyango (Bank of Uganda), *Uganda's Experience with the Regulatory and Supervisory Framework for Microfinance Institutions* (IRIS Center, University of Maryland, May 2005).

MDIs must write off non-performing loans (NPLs) after 180 days, which is half the time permitted for commercial lenders).

Over 1,000 credit-only MFIs (which cannot accept intermediate deposits) and SACCOs remain largely self-regulated.³⁴ SACCOs can only accept and on-lend deposits from members and are under the purview of the Cooperative Statute of 2001, which has provisions only for enterprise registration and not for licensing or prudential management of financial institutions. Currently, different articles of the penal code, contracts law, and cooperatives law must be applied to prosecute individuals involved in fraud. Few such cases are successful in court.

KEY LAWS AND REGULATIONS

- The Bank of Uganda Act (1966) (amended 1993)
- Financial Institutions Act (2004)
- Financial Institutions and MDI Regulations
- Micro Finance Deposit-Taking Institutions (MDI) Act (2003)
- Warehouse Receipts Systems Act (2006)
- The Chattels Transfer Act
- The Companies Act—Part IV, Registration of Charges
- The Mortgage Act
- The Civil Procedure Act—Part III, Execution
- Credit Reference Bureau Regulations

Uganda's current approach to credit-only MFIs is consistent with common practices to leave them un-regulated or only lightly regulated, under the theory that non-deposit-taking MFIs do not need to be regulated so formally because they are not "playing with other people's money." Nevertheless, a lack of regulation of non-deposit-taking MFIs can lead to inadequate governance and management capacity, limited outreach, unhealthy competition, limited access to funds, unfavorable image, and lack of performance standards. On the other hand, the lack of oversight can also allow MFIs to innovate in providing microfinance services. Thus, although there is some disagreement and inconsistency among approaches to regulation of non-deposit-taking MFIs, there is a general consensus that they should be regulated lightly and only for two main regulatory objectives: (1) consumer protection; and (2) systemic credit monitoring. The best practice is to treat them in relation to the risks they pose to financial regulatory objectives, including: risk that consumers will be defrauded or treated unfairly; and risk that they will create a systemic issue.

The latter risk is unlikely in Uganda, given the small amount of MFI loans compared with commercial bank loans. Accordingly, MFIs in Uganda should:

- be registered as MFIs;
- be subject to all the same corporate governance and transparency laws as any other formal business, and
- be required to fully disclose all fees, interest charges, penalties, etc., to all borrowers in advance of giving a loan.

At least two elements of Uganda's MDI legal and regulatory framework appear to warrant revision:

- the ceiling on exposure to a single borrower, which limits the ability to diversify up-market without abandoning the microloan client base; and
- the strict provisioning rules that, while adequate for short-term lending, tend to trap the MDIs into purely short-term business by imposing high provisioning rates for relatively short delays in installment payments. This tends to discourage the MDIs from entering into markets that may require longer terms or flexible repayment schedules.

There is an issue of who should regulate and supervise non-deposit-taking MFIs. Possible alternatives include the Bank of Uganda, the Ministry of Finance, a new regulatory authority, or self-regulation and supervision anchored in the national Association of Microfinance Institutions of Uganda (AMFIU). The Bank of Uganda lacks the manpower to supervise the numerous SACCOs and MFIs. The government has drafted a bill to set up a new, independent body to regulate SACCOs, which is now being considered in Parliament. SACCOs and the government are to fund the proposed regulatory authority together, which brings into question its ultimate sustainability.

CREDIT FOR AGRICULTURE

The legal framework supporting agricultural financial products is patchy. The **Warehouse Receipt System Act of 2006** recognizes warehouse receipts as negotiable documents. Warehouse managers licensed for specific categories of goods are responsible to depositors and their banks for the stored commodities. Lenders can register charges on the goods at the central registry of the Uganda Commodity Exchange.

The Ministry of Finance also attempted to encourage agricultural lending by granting tax exemptions in 2005 for interest earned on agricultural loans. The Revenue Authority failed to implement the exemptions, however;

³⁴ AMFIU, 2008, available at http://www.amfiu.org.ug/index.php?option=com_content&task=view&id=95&Itemid=109.

and the separate accounting required proved too cumbersome for banks. The policy did not improve either the rates or volume of agricultural loans.³⁵

SECURED TRANSACTIONS

Uganda has two major laws relating to movable property as collateral and one law relating to immovable property as collateral. All three laws are outmoded and limited and urgently need to be amended.

First, the **Chattels Transfer Act** provides for the creation of security interests in certain types of movable property, as well as for registration of security interests in movable property, priorities, implied covenants, and remedies. The law does not apply to charges granted by a registered company (which are dealt with in the Companies Act). The Chattels Transfer Act provides for creation of a security interest through an instrument to secure payment, including several specific types of documents. The law does not encompass several types of immovable property, including fixtures, assignments for the benefit of creditors, securities, and bills of lading. It also does not set forth the manner in which a security interest is attached or when this event happens for purposes of priority. Although the statute includes registration provisions, it does not provide for perfection of a security interest, and in fact there is only a mechanism for companies to perfect security interests—in the Debentures Registry. The law states that the parties can agree on non-judicial foreclosure as a remedy upon default.

The **Companies Act (Part IV, Registration of Charges)** requires registration of charges on property of any company registered in Uganda. It provides for registration of security interests for floating charges and for a fairly wide range of assets, including book debts (receivables), immovable property, goodwill, intellectual property, bills of sale, and shares. Several sections of the law discuss the requirement for a company to register charges and consequences for failure to do so.

The **Mortgage Act** should be Uganda's primary source of law regarding lending secured by immovable property. Because this law has limited scope, however, the common law, the Registration of Title Act, and the Land Act also provide guidance on certain aspects of lending against real property. The Mortgage Act merely sets forth remedies available to the lender upon default. These remedies include non-judicial foreclosure, which is quite beneficial to Ugandan lenders. The Mortgage Act does not provide for the rights and obligations of each party to a mortgage, nor does it contain provisions

mandating disclosure by the mortgagee to the mortgagor. The Mortgage Act requires spousal consent for a mortgage, which causes some difficulties because "spouse" is not adequately defined in the law. Thus, there are cases where someone claiming to be a spouse (such as someone purportedly married under customary law) can hold up foreclosure in a court case with difficult evidentiary issues.

Some bankers also feel that their risks and costs under the Mortgage Act are increased by the ability of borrowers to get injunctive and other relief from foreclosure. Unfortunately, it appears that draft amendments currently in Parliament will worsen this situation for banks. Among other things, the amendments provide that a foreclosing lender must exhaust all other remedies before conducting a foreclosure sale and that a borrower can get relief from payment requirements even before there has been a foreclosure. Such a change to the law could result in a severe chilling effect on lending.

LEASING

Although leasing is developing in Uganda, there is no formal leasing law. This has led to a few constraints to development of this valuable mechanism for financing equipment and other assets, including the following:

- Uganda's legal framework does not provide for a modern leasing transaction which is primarily a three-party transaction. In a typical modern leasing transaction, the lessor has acquired the equipment from a supplier only at the lessee's request and specifically for the lease. These circumstances require different legal treatment from the traditional case in which a lessee simply selects from an inventory that the lessor maintains in general.
- Judges and lawyers do not sufficiently understand leasing and do not have a law to fall back on. Thus, there are problems when a lessor seeks to enforce a lease after default and repossess leased property.
- The law needs to enable operating leases and to distinguish between operating leases and capital leases. In an *operating lease*, the lessor transfers only the right to use the property to the lessee. Since the lessee does not assume the risk of ownership, the lease expense is treated as an operating expense in the income statement and the lease does not affect the balance sheet. In a *capital lease*, the lessee assumes some of the risks of ownership and enjoys some of the benefits. Consequently, the lease is recognized both as an asset (e.g., equipment) and as a liability (for the

³⁵ Bank of Uganda, *Plan for Modernisation of Agriculture, Agricultural Finance Year Book* (2007).

lease payments) on the enterprise's balance sheet. The firm gets to claim depreciation each year on the asset and in some countries can also deduct the interest expense component of the lease payment each year.

- Uganda's legal framework needs to exempt leases from VAT, especially since loans do not have VAT attached. Under current Ugandan law, a lease is subject to VAT. In addition, a new leasing law should provide for exemption of interest from VAT.
- A further expansion of leasing toward micro-enterprises and SMEs is limited by the tax deductibility of capital depreciation by the lessee rather than by the lessor. Since many small firms have little or no tax obligations, they cannot benefit from this deductibility.

One study found that for every eight to nine points in leasing's growth in a country, GDP grows an average of 1 percent.³⁶ Leasing provides a financial product that reaches businesses that are often unable to get traditional bank loans, especially SMEs. Lessors will often assume a greater degree of risk on leases because lessors, as owners of the leased assets, may be able to repossess the equipment more easily than a bank can foreclose on collateral. Leasing also helps to develop an organized secondary market for used equipment and vehicles, increases competition among financial products, and tends to expand domestic capital as it needs its own funding.

The Bank of Uganda is working with the IMF and other advisors to draft a leasing law. In the meantime, leasing is offered mainly by financial institutions with donor partners and comprises around 1 percent of private sector lending in the country.³⁷

CREDIT INFORMATION

The Bank of Uganda enacted **Credit Reference Bureau Regulations** for the purpose of setting up a new Credit Reference Bureau, scheduled for operation by the end of 2008. All regulated financial institutions are required to subscribe. They must provide positive and negative credit information, although in order for positive information to be reported, the borrower must sign a consent form.

ENFORCEMENT OF CREDIT ARRANGEMENTS

As discussed in other chapters of this report, Uganda's law on enforcement (the **Civil Procedure Act—Part**

III) is adequate but requires amendment to improve the work of bailiffs. Improvement of this law—particularly its implementation—will impact lending and, if properly enforced, lower costs of credit products. The current law's granting to creditors of the ability to have borrowers arrested and incarcerated for up to six months for non-payment of loans—even when no fraud is involved—is unnecessarily harsh.

IMPLEMENTING INSTITUTIONS

A number of key institutions must operate efficiently and effectively in order for a credit system to properly function. In Uganda, most of these institutions function reasonably well, although users report corruption in banks, the Land Registry, and the Debentures Registry.

Uganda has 20 commercial banks, 25 insurance companies, 7 credit institutions, 4 deposit-taking microfinance institutions, and 72 foreign exchange bureaus. These financial institutions are generally in good financial health and many are expanding their operations. As discussed in the Introduction to this chapter, however, their services still only reach a limited number of Ugandans. There are also over 1,000 microfinance institutions registered as NGOs, companies, or SACCOS.

ACCESS TO FINANCE BY LOCATION, ADULTS OVER 18

Financial services	Rural	Urban	Nation-wide
Formal services from banks or MDIs	14%	32%	18%
Semi-formal services from MFIs or SACCOs	3%	3%	3%
Informal financial group services	18%	13%	17%
Unserviced	65%	52%	62%

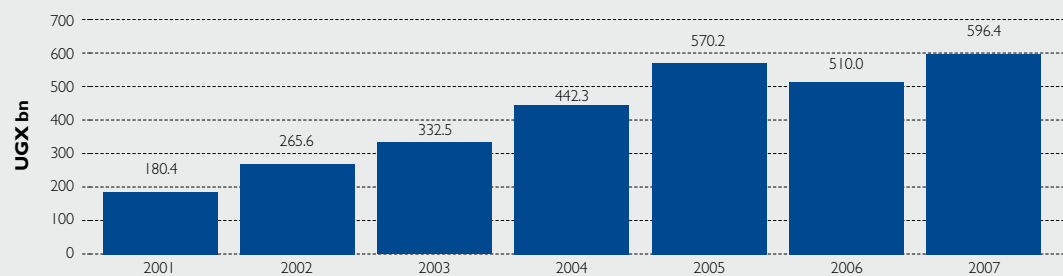
BANK OF UGANDA

Uganda's central bank was established in 1996 to provide regulatory, supervisory, and advisory functions in the financial sector. It controls and regulates the money markets and manages the entire financial system. The Bank of Uganda regulates deposit-taking financial institutions, including commercial banks, credit institutions, and microfinance deposit-taking institutions. By all accounts, the Bank of Uganda has done a good job of supervision since Governor Emmanuel Tumusiime Mutebile took over in 2001. Audited annual accounts are available on a timely basis and the bank adequately conducts on-site inspections and off-site surveillance, as well as monitors

³⁶ Leaseurope, *The Leasing Market In Europe Compared With Some Macro-Economic Indicators: An Empirical Analysis* (July 1999).

³⁷ Hentie Stemmet, *Large-scale leasing in Uganda: The case of Stanbic Bank*, *Agricultural Finance Year Book* (2007), at 64–65.

TOTAL LOANS DISBURSED TO AGRICULTURAL SECTOR BY LICENSED FINANCIAL INSTITUTIONS



Source: Bank of Uganda & Plan for Modernisation of Agriculture, *Agricultural Finance Year Book* (2007).

and evaluates regulated financial institutions' internal risk management systems and corporate governance. There does not appear to be substantial political pressure on supervisors to tolerate violations of prudential rules.

Throughout the 1970s and 1980s, Uganda's banking system had been in disarray, first because of the economic collapse and political instability caused by the Idi Amin years and later because of a government monopoly over the banking sector. The state-owned banks received automatic liquidity support from the Uganda Central Bank (UCB) (predecessor to the Bank of Uganda) up until the early 1990s. The UCB would supply banks with money to prevent their financial collapse even if they had been making irresponsible and irretrievable loans, often to allies of the various political regimes. By the mid-1990s, bad loans, many to the well connected, were running at more than 30 percent and several banks collapsed.

As a result of reforms made in the late 1990s, including establishment of a modern and independent central bank, banks are now well capitalized. Uganda follows Basel I capital adequacy requirements and the ratio of core capital to risk weighted assets has been well over 15 percent since 2003. The level of non-performing loans dipped below 4 percent by March 2008. The Bank of Uganda also administers an electronic payment system for banks.

COMMERCIAL BANKS

Uganda has seen a rapid expansion of commercial banks over the last decade. But they still mainly lend to larger businesses and do not have sufficient reach or products to substantially increase lending to micro-enterprises and SMEs. Because commercial banks have a short-term deposit base mainly from domestic deposits, they have had difficulty providing longer-term loans.

Nonetheless, lending, leasing, and other forms of financing are expected to increase and better penetrate rural areas, as banks open more branches and experience increased competition. More branches will allow banks to better monitor loans and collateral in rural areas.

At the end of 2007, four international banks—Stanbic, Standard Chartered, Barclays, and Citi—owned 65 percent of total commercial bank assets. Stanbic's growth has been spurred by its acquisition of the Uganda Commercial Bank and its 65 branches, although in comparison with its rivals, Stanbic is more invested in government debt than in lending. Standard Chartered has recently focused on expanding its retail interests, adding 3 branches in 2007, though it has only 10 branches, compared with Stanbic's 72. In 2008, Standard Chartered planned to add 15 ATMs, for a total of 25, and further planned to launch mobile banking services. Barclays has 53 branches, including the 22 it acquired when it purchased Nile Bank. But its after-tax profits fell 57 percent in 2007, primarily due to the costs of acquiring Nile, merging the IT platforms of the two banks, and building new branches.

Crane has the most assets among the domestic banks, and last year showed a 50 percent increase in after-tax profits.

The Bank of Uganda lifted its moratorium on new banks in 2007. Seven new banks—including six foreign banks—opened since the moratorium was lifted. Kenya Commercial Bank and Fina Bank are from Kenya, while United Bank of Africa and Global Trust are from Nigeria. Ecobank has a presence in 25 central and western African countries and is expanding to eastern and southern Africa. Toom Bank is a unit of the Abu Dhabi Group. In early 2008, Housing Finance Bank became a commercial bank, although mortgages remain its focus, with a 70 percent market share. The National Islamic Bank of

Uganda, formed recently following a merger between International Investment House (IIH) of Abu Dhabi and the local National Bank of Commerce (NBC), expects to begin operations in 2008. The National Islamic Bank's strategy is to use inexpensive technologies to access the "un-banked" part of the population, employing information communication technologies (ICT) for distribution rather than rolling out a physical branch network. It will be the first bank in Uganda basing service delivery on Sharia compliance.

MICROFINANCE

In 2006, institutions committed to microfinance, including MDIs, MFIs, and SACCOs, held about 20 percent of total outstanding loans in Uganda.³⁸ Although microfinance has existed in the form of SACCOs and other institutions since before the Amin era, market penetration is not deep. MDIs, like commercial banks, mostly lend to urban residents and SMEs, leaving rural smallholders to rely on SACCOs and MFIs. Because women can seldom hold land titles, microfinance is especially important for them, and about 50–60 percent of MFIs and SACCOs' clients are women. When it comes to actually getting credit, however, men are three times as likely to obtain a loan from a SACCO.³⁹

MDIs are mostly self-sufficient, offering loans to groups and SMEs ranging between US\$5,000 and \$30,000, with interest rates of about 2–4 percent per month (27–60 percent per annum). Over the past two years, the government has focused its resources on SACCOs, aiming to support one in every county with preferential wholesale loans from the Microfinance Support Centre, start-up funds, and training for the staff and board from the Rural Financial Services Programme, provided that the SACCO meets prudential management standards. In practice, SACCOs borrowing from the government set their interest rates internally at annual general meetings among members. Rates vary but seldom fall within the government-preferred rate of 13 percent per annum.

Nonetheless, over time MDIs and banks have offered more diverse products for their customers. With competition from new banks, a leading MDI has introduced fixed-deposit accounts which offer higher interest than regular savings, as well as savings accounts for children. Salary loans are a dominant product for rural institutions, although these are limited to clients who work in the formal sector.

Supervision and management of MFIs and SACCOs remain a key concern for their long-term credibility

and sustainability, especially given their exposure. For example, one large SACCO reportedly manages a UGS 2 billion portfolio. Many unregulated institutions in Uganda have collapsed from poor portfolio management and collection enforcement. Some SACCOs invest savings in business or financial operations rather than in loans to their members, and cases of fraud occur regularly. Until better regulation is implemented, managers can move to different SACCOs even after defrauding the cooperative at their previous jobs. Wage levels in SACCOs are often insufficient to retain able managers in their far-flung posts. In 2006, about a quarter of SACCO managers were unpaid; managers generally get about UGS 100,000 to 150,000 a month, and security guards UGS 50,000 to 80,000 a month, about a quarter of their counterparts' pay at some MFIs.

The Bank of Uganda has undertaken some ad-hoc inspections of MFIs, mainly SACCOs, to investigate complaints from the police and public that the MFIs were illegally taking deposits from the public. But the Bank of Uganda does not currently have the resources to effectively oversee SACCOs and other non-deposit-taking MFIs. As noted, a draft bill has been crafted to set up a new, independent body to regulate SACCOs.

Looking ahead, the entrance of new commercial banks into Uganda's community of financial institutions is pushing the industry into new markets—often the rural regions and customers that MFIs and SACCOs currently serve. About a month before this diagnostic, Uganda Microfinance Limited (UML), a leading MDI in the country, merged with Equity Bank, a major Kenyan microfinance bank. The CEO of UML expects commercial banks to buy out other MFIs soon. This will likely lower rates and expand options and access for the Ugandan public, although it is unclear whether rural smallholders or urban SMEs will benefit more from the expansion.

AGRICULTURE CREDIT INSTITUTIONS

As with the rest of the economy, agriculture credit suffers from high rates, short-term limits, and poor access because of collateral constraints. There is a dearth of loans for investment in value addition and market research. Banks and credit institutions generally see agriculture as a high-risk area where they cannot obtain liquid, immovable assets for collateral. For both agricultural lending and microfinance, recovery in case of default incurs the highest cost for lenders. Once an asset or borrower disappears, financial institutions have trouble locating them, especially without local registries

38 Ministry of Finance, Planning and Economic Development, *Report of Census of Financial Institutions in Uganda* (2006).

39 FinScope Uganda, *Results of a national survey on access to financial services in Uganda* (2006).

of movable property. A major MDI had a default rate of about 10–15 percent, with 5 percent of all loans becoming non-performing. The volume of agricultural loans has increased steadily in recent years, with large traders and processors probably accessing most of the credit. Smaller enterprises and individual producers have much less access because of their real and perceived risks.

Even large agricultural enterprises with donor guarantees face interest rates of 19–21 percent. Loan structure often does not match demand. One major MDI requires monthly or more frequent payments on loans, and thus loses most of its agricultural business to MFI competitors. Enterprises seeking to strengthen their value addition with longer-term investment beyond five years cannot find financing, mainly because banks are constrained by the short-term nature of their own funds.

There is anecdotal evidence that rural multi-borrowing is prevalent, though it may end if the Credit Reference Bureau reaches rural areas. With better credit information available, banks generally believe that responsible borrowers will enjoy expanded collateral options and improved terms.

The Finance Minister's 2008 budget proposed to guarantee 50 percent of agricultural loans offered by commercial banks, although the ministry has yet to specify an amount and timeline for the program. If rolled out, this guarantee program might serve as an effective way of leveraging private funds for agriculture, but several interviewees noted the importance of clarifying the funds as loans and not government grants. Even with donor or government guarantees, however, most banks avoid lending to smallholders who lack land titles or other collateral.

COLLATERAL REGISTRIES

Registration of collateral takes place at the **Land Registry** (immovable property collateral) or the **Debentures Registry** at the Company Registry (movable property where the debtor is a legal entity). Both registries operate manually, with almost no use of ICT tools for record-keeping or access to information.

In the Debentures Registry, filings are made with paper forms, usually generated by the lender or its attorney. First, the filing party must pay a stamp duty by depositing the duty into the bank account for the Uganda Revenue Authority. Then the filing party takes the proof of payment of stamp duty, along with the filing forms, to



the Debentures Registry, where they are stamped and placed in files, with certified copies given to the filing party. Fees are fairly reasonable, with the recording fee 1 percent of the value and UGS 25,000 for searches. During this diagnostic, some banks reported instances of forged documents, corruption, and mistakes in the Debentures Registry.

Land tenure issues and problems in the Land Registry make it difficult and expensive to use immovable property as security for loans. Much of the land in Uganda is held in customary tenure or as communal land, and rights in this land are difficult to access as collateral. Some banks take certificates of customary ownership as collateral for loans. The Land Registry is not computerized and there are delays in processing land registration and mortgage registration. Moreover, users report that corrupt practices by Land Registry staff are common. These issues increase the cost and time of searching title and registering property, and increases lending risks—among the causes of expensive loans. Issues regarding land titling and registration are discussed in detail in this report's chapter on Registering Property.

The Company Registry, including the Debentures Registry, is supposed to be computerized under the World Bank-funded Private Sector Competitiveness Project. This project is reportedly behind schedule, however, and has not commenced.

CREDIT INFORMATION

In many countries, the combination of credit bureaus and statistical risk-scoring techniques has helped to increase the availability of credit to small businesses and lower-income groups. In Uganda, a new **Credit Reference Bureau** is scheduled to be launched by

the end of 2008. It is housed by the Bank of Uganda but will be managed by a private firm. The banks interviewed for this diagnostic are quite enthusiastic about the bureau and believe that it will reduce their risks. Through a signed agreement, all regulated financial institutions are required to subscribe to the bureau and must provide positive and negative credit information, although, for the reporting of positive information, the borrower must sign a consent form. At the outset, credit reporting will be relatively simple, but within one to three years, a system of credit scoring is envisioned. Financial institutions must pay branch fees, monthly fees, and training fees, as well as fees for inquiries. Individual borrowers are required to obtain a Financial Identification Card. The card costs US\$5, but will be subsidized for at least one year so the cost will be \$2. The plan is for only a two-day turnaround from the time the data is inputted in a branch and the Financial Identification Card is received in the branch. Companies are required to get a financial identification number. The bureau is doing a lot of training and providing public information, particularly regarding the ID cards and training for banks and businesses.

Credit information services raise privacy issues. Corrupt database managers may sell information to unauthorized parties. Tax authorities may use the database to pursue unregistered enterprises. Borrowers can be hurt by inaccurate information in the database, although guaranteeing them access to their own credit histories can lower this risk. There is no data protection law in Uganda so data protection issues are covered in the regulations and agreements with financial institutions.

SUPPORTING INSTITUTIONS

Insufficient access to certain institutions and their services can limit private sector growth; this is certainly the case for micro-enterprises and SMEs in Uganda. The problem is most acute for those based outside of Kampala.

LENDER ASSOCIATIONS

The **Uganda Bankers Association** is an effective advocate for the banking sector. It has monthly meetings with the state representatives to discuss various issues that affect banks and their customers. The association also conducts intensive advocacy on current issues that affect bank operations. For example, the association has engaged an advocate to promote its view that

KEY SUPPORTING INSTITUTIONS

- Uganda Bankers Association
- Association of Microfinance Institutions of Uganda
- Uganda Cooperative Savings and Credit Union
- Farmer associations
- Insurance companies
- Appraisers, receivers, auctioneers
- Legal profession
- Courts
- Capital markets
- Media

some of the provisions in the amended Mortgage Act would be harmful to the economy. The **Association of Microfinance Institutions of Uganda** (AMFIU) represents microfinance practitioners, including banks, MDIs, MFIs, and some SACCOs, while the **Uganda Cooperative Savings and Credit Union** (UCSCU) is the main industry association for SACCOs. The government consults these two groups about regulatory issues, such as for SACCO representation in the proposed new regulatory authority.

FARMER ASSOCIATIONS

According to Uganda's National Agriculture Development Services, there are about 45,000 groups of primary producers and 20 farmer associations in the country, which coordinate producers mainly for marketing purposes but also for obtaining credit. Some of the loan and leasing products most successful in reaching smallholders have been arranged through the processor buying primary commodities. Processors often distribute inputs or funds to farmer groups and pay the bank during harvest. This system gives more market power to processing enterprises, however, especially those that are already monopolies.

INSURANCE COMPANIES

Uganda's formal insurance industry is small but growing quickly in the face of a difficult institutional environment and weak insurance culture in the economy. There are currently 21 insurance companies, which provided individual or group insurance for about 400,000 Ugandans in 2007, about 1.3 percent of the population. Of these, 50,000 received micro-insurance.⁴⁰ Overall premiums grew by an average annual rate of 17.7 percent between 2002 and 2006, whereas non-life business premiums grew on average by 18.1 percent per annum over the same period.⁴¹ Non-life insurance accounted

40 Uganda Insurance Association, citing Uganda Insurance Commission data (2007).

41 Uganda Insurance Commission, Annual Insurance Market Report (2006).

for 94 percent of premiums in 2006. The most popular products insure against various accidents, motor vehicle damage, losses in transit, and losses from fires. Insurance companies are required to establish and maintain a security deposit at the Bank of Uganda of at least 10 percent of prescribed paid-in capital.

Many of the same institutional gaps limiting credit also pose challenges for insurance companies. Insurers have trouble assessing informal businesses' creditworthiness and shy away from agricultural risk. Poor building code enforcement complicates assessment of property value, and there are no independent loss adjusters. Identification documents, including driver's licenses, are often forged and difficult to verify. All this uncertainty makes claims assessment a lengthy and costly process that ultimately adds to premium rates. Ultimately, most insurers will only insure a portion of the covered asset. The new credit reference bureau may help reduce these costs and expand access to insurance if it effectively records the risk profiles of individuals and businesses.

Within the insurance industry itself, weak corporate governance and high cost ratios from the family business model have hampered growth. Lack of reinsurance cover as well as technical know-how limits the scope of activities that companies can insure. On the demand side, according to some individuals interviewed for this diagnostic, price-sensitive small businesses may not see any value in purchasing insurance. Other enterprises that purchase insurance may not understand the agreement's conditions and essentially forfeit their coverage to inadequate precautions.

APPRAISERS, RECEIVERS, AND AUCTIONEERS

Uganda needs a stronger cadre of professionals who can support the foreclosure process in Uganda. Most banks appear to have access to appraisers, receivers, and auctioneers who are professional and reliable. But there are reports of corrupt practices by these professionals and they are not adequately regulated by an outside body or through self-regulation.

THE LEGAL PROFESSION

Ugandan attorneys are generally professional and well trained through accredited law schools and the Law Development Center. There are many lawyers who specialize in commercial and financial law, mainly in litigation. Banks have in-house counsel who appear to be well qualified and active in documentation, compliance, risk management, and litigation. Loan documentation is standardized and fairly straightforward, although

the gaps in legislation discussed above make lenders less comfortable with the standardized language than they should be and there should be more disclosure by lenders in the documents than is currently required.

COURTS

As discussed in this report's chapter on Enforcing Contracts, Uganda's courts are for the most part effective and fair; but they sometimes take too long to dispose of borrowers' actions to enjoin foreclosures. Borrowers first seek a temporary restraining order and then an injunction to stop a foreclosure. As discussed in this report's chapter on Closing a Business, formal bankruptcy is rare in Uganda, but bankruptcy cases could be useful in situations of insolvency when there are multiple creditors. The Commercial Court has a good reputation with lenders and their attorneys, although some report that the court has gotten slower in making decisions in the last year. The court has a Users Committee and there is regular dialogue between the court and attorneys and businesses that appear often in the court.

CAPITAL MARKETS

One of the solutions to banks' inability to raise longer-term capital would be listing bonds on the capital market. So far, only Standard Chartered Bank and Stanbank have done bond offerings. There is not a legal constraint that would stop banks from listing bonds, but thin capitalization of the Uganda Securities Exchange makes it difficult to raise substantial funds for long-term capital. Ugandan capital markets are covered in greater detail in the Protecting Investors chapter.

MEDIA

Uganda's media is relatively free and open, except for a few persons who appear to be off limits. Journalists and the public have access to information about regulated financial institutions, mainly through the Bank of Uganda. There are some journalists who specialize in economic and financial issues. But this specialization is not taught in journalism school, and because of the problems during the 1970s and 1980s there has not been a corps of senior journalists to mentor the current generation of journalists.

OTHER SUPPORTING INSTITUTIONS

Another means for banks to access longer-term capital could be borrowing from insurance companies or the National Social Security Fund (NSSF). It is beyond the scope of this diagnostic to analyze the opportunities and constraints related to this option. Remittances are

an important source of income in Uganda. They are also a source of capital for entrepreneurs and for the economy in general. There are 26 licensed money remitters in Uganda.

SOCIAL DYNAMICS

PRIVATE-SECTOR PARTICIPATION IN POLICY DEVELOPMENT.

There is regular dialogue between the private sector, financial institutions, and the government. For example, the Association of Commercial Banks meets monthly with government representatives and the Bank of Uganda to discuss regulatory issues and other current topics. The Association of Micro Finance Institutions meets regularly with the Ministry of Finance, although the frequency of meetings has decreased recently. In most cases it appears that the private sector and financial institutions can obtain meetings with the government on issues that arise. The question is whether anything comes out of the meetings. A familiar complaint among Ugandan businesses and financial institutions is that many of the meetings seem to be more formality than substance, with little to show for the time spent.

ACCESS TO SERVICES

Although Uganda has grown increasingly sophisticated in recent years in the range of credit tools and opportunities it offers, a large segment of the country's population still cannot effectively access these services.

Preliminarily, difficult and expensive business registration processes in the Company Registry limit the ability of firms to formalize. In turn, most lenders cannot or will not extend credit to unregistered businesses. The problems in the business registration process are described in detail in this report's chapter on Starting a Business.

Notwithstanding a plethora of donor-funded initiatives to provide business development services in Uganda, they have not succeeded in strengthening the sophistication of most Ugandan business operations and financial management. Moreover, micro-enterprises and SMEs in Uganda have insufficient access to quality auditing and accounting services. Many accountants, auditors, and bookkeepers cannot produce financial management and financial statements, and audit services are expensive. This also limits firms' room to grow from micro-enterprise borrowers to small business borrowers since financial institutions will require some degree of accuracy in the books and financial statements of borrowers.

Furthermore, weak infrastructure outside the capital city creates prohibitive risks and costs for commercial financial institutions. Poor rural feeder roads increase the labor and transportation costs required to assess and monitor each loan. These may raise the interest costs and fees that borrowers pay, or price them out of the market altogether. Payment systems pose another cost for disbursement and collection. There have been some pilots for ATMs in rural areas, notably a biometric ATM pilot under Stanbic expecting closure by January 2009. Mobile banking is still in the pilot stage in Kampala.

Ugandan banks offer many services that require access to computers and the Internet. For example, banks offer online banking as well as some services via mobile phone, which could help to increase banking penetration, particularly in rural areas. However, potential customers often lack the sophistication to use these services. Although mobile phone services are strong throughout the country, Internet access is not widely available in many parts of Uganda.

THE CREDITOR-DEBTOR RELATIONSHIP

There is a general respect for contracts and the rule of law in Uganda. This translates to a fairly low default rate and the ability of lenders to enforce loan agreements and security interests.

Nonetheless, financial training and education is relatively weak in financial institutions and among users, although the more competitive banks have highly qualified staff. Since banks seldom venture into agricultural lending, their staff generally lack appraisal skills and market knowledge specific to the sector. Training is a large cost for banks and financial institutions, especially as trained staff tend to move to better-paying jobs in higher-tier institutions or with competitors.

More generally, users may not fully understand their rights and obligations as a depositor or borrower. Large MDIs use translators to inform customers, but 36 percent of all financial service users do not receive a written contract.⁴² Rural consumers in particular mostly inquire about interest rates, but do not typically understand interest calculation on the remaining balance or processing fees, which can significantly raise borrowing costs.

Financial education is especially important for SACCOs, whose boards are elected from members. Since there is no minimum education requirement for board members, they may not be able to supervise management and prevent fraud or overexposure to risk. SACCO members

42. DFID Financial Services Deepening Project, *Results of a national survey on access to financial services in Uganda* (2006).

vote to set the interest rates for savings and lending, but may not be equipped to consider sustainability and growth in membership and deposits for this decision.

Repayment expectations are a fundamental issue for microfinance. Proposed and current government support for microfinance and agricultural finance can certainly expand access to loans. However, because of the timing of past financing, there is a widespread perception that loans from government-supported institutions such as SACCOs are political handouts and do not need to be repaid. This poses a serious challenge to sustaining these financial institutions and promoting their credibility to potential depositors. The government recognizes this problem, but has proven unable to influence these expectations.

WOMEN'S ACCESS TO CREDIT

Traditionally, women in Uganda do not inherit land (except in Central Uganda), so they often lack the collateral necessary to obtain a loan. Representatives of women entrepreneurs state that women at times have more difficulty than men in dealing with government authorities, probably due to assumptions about their traditional roles in society. This includes business formalization, enforcement in court, and customs.

Women may also have limited opportunities to become entrepreneurs. Business requires risk-taking and movement, but in parts of Uganda society women are expected to stay at home to take care of the home and family. Domestic violence is also reported to be an issue, as some men are unhappy that their wives are traveling for trade and conducting business. Unfortunately there is little data on the state of female entrepreneurs in Uganda.

OTHER SOCIAL DYNAMICS

Squatters' rights can cause problems for businesses and lenders, as discussed in the Registering Property chapter. A lender that forecloses on immovable property may have to contend with squatters on the property and in addition to the difficulties in evicting squatters, there is potential criminal liability for infringing on their rights.

RECOMMENDATIONS

- Through a variety of mechanisms, increase financial institutions' access to longer-term capital, thereby allowing them to make longer-term loans. Encourage bond offerings by banks by creating a transparent capital market with management listing requirements, and providing tax advantages for bondholders. Guarantee the long side of loans or bonds. Supervise loan securitization with an interest in providing more long-term capital for banks. Engage insurance and pension funds as a source of longer-term capital for lending.
- Amend the Mortgage Law to require guidance on the rights and obligations to be included in a mortgage instrument; the disclosure of the annual percentage rate and fees; the rights of the borrower to other information; and borrowers' rights to prepay and discharge the loan.
- Consolidate and harmonize into a single law the current legal framework pertaining to loans secured by movable property and provide for a single registry of moveable property (debentures). A new secured transactions law needs to be broader and more flexible in terms of creation of a security interest and the types of property that can be pledged as collateral. Factoring should be provided for in the law and the drafters should consider including leasing in the law (or it could be the subject of a separate new law).
- Enact regulatory legislation for MFIs and SACCOs. The legislation should provide that MFIs be registered as MFIs, be subject to corporate governance and transparency laws, and be required to fully disclose all fees, interest charges, penalties, etc., to all borrowers in advance of giving a loan. The legislation should also increase the ceiling on exposure to a single borrower, and relax the fairly strict provisioning rules. A self-regulating mechanism may not be effective, particularly since funding would be questionable and it would take time and effort for such a body to develop the necessary expertise. Thus a proper regulatory authority for MFIs and SACCOs should be established through the Bank of Uganda.
- Enact a new law on leasing, which provides for neutral tax treatment for leasing compared with lending. Donors, the government, vendors, commercial banks, and other lessors should collaborate to expand leasing the industry, including through a public education campaign and consumer protection of lessees.
- Develop leasing programs particular to farm equipment makers with products that are appropriate to the Ugandan market.

- Support simple and standardized reporting of portfolio management performance by MFIs and SACCOs to facilitate supervision by members and the public. Link this reporting to awareness training on repayment responsibilities.
- Learning from previous attempts, coordinate efforts to focus on increasing lending to small businesses outside of Kampala. These efforts could include coordination of business development services in cooperation with banks, outreach campaigns about using finance to grow a business, and education for bankers on how to help small businesses to apply for loans.
- Improve coordination among donors to increase access to finance and develop indicators for those projects. These indicators could include number of loans, number of new borrowers, loans by region, and employment created by loans.
- Enact a regulation that requires banks to disclose in writing to borrowers their interest rates and fees, including the actual annual percentage rate of the offered loan, before the borrowers sign loan documents. The regulation should also require that the actual annual percentage rate be published in any communication to the public about loan products.
- Move quickly to enable computerized online filing of business registration and registration of debentures (movable collateral), and establish a land registry office in every district.
- Improve rural infrastructure in roads, power, and telecommunications to improve businesses' ability to trade and grow, lower banks' lending costs in site visits, and strengthen support for mobile banking.
- Through the recommendations set forth in this report's chapter on Starting a Business, encourage greater formalization of micro-enterprises and SMEs, so that they may take advantage of credit opportunities available only to enterprises in the formal sector.
- Encourage more sophisticated management by borrowers and potential borrowers, particularly in financial management. This could include training events by each bank branch on what is necessary to obtain a loan in terms of application documentation, financial statements, and business planning. These events could help increase the banks' lending and profitability in the branches by exposing potential borrowers to the banks and helping to ingrain good business practices. Banks could also provide training to their loan officers on ways to improve their borrowers' management.
- Encourage the use of ICT in all aspects of the economy, including financing. This includes online banking accessible through bank branches and at local government institutions, online business registration, and online searches of credit histories and liens on moveable and immovable property. Better ICT would improve access by borrowers, particularly those in remote parts of the country, and reduce corruption as face-to-face interaction among businesspeople, government employees, and bank employees is lessened and there is an electronic record of communications.
- Target sectors with growth potential and create financial products tailored to their needs. For example, industries like agriculture and tourism that have seasonal production or uneven cash flows need products that fit their cash flow needs. Provide loan guarantees for lending to those sectors or technical assistance for development of financial products for the target sectors.
- License more new banks, which can deepen and broaden the financial market. Increased competition may provide incentives for banks to create products suiting micro and agricultural customers' payment schedules and investment needs.
- Collect and publish disaggregated life expectancy data to facilitate offering and reinsurance of life insurance, which can be one form of non-land collateral.



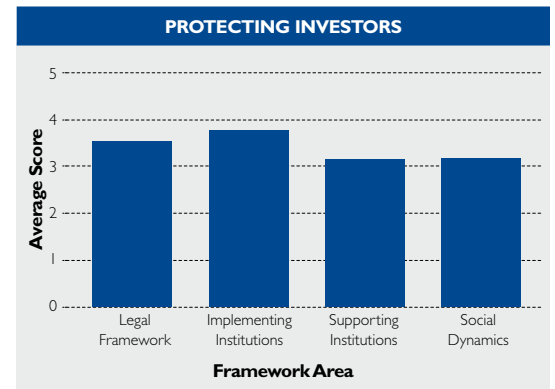
PROTECTING INVESTORS

Uganda's *Doing Business* ranking of 126 out of 181 countries surveyed for Protecting Investors fairly represents the limited enforcement of corporate governance principles in the country and the absence of a strong corporate governance culture. As in most developing countries, significant foreign-owned businesses tend to bring with them their good corporate governance practices from abroad. The practice of sound corporate governance is limited among local firms but appears to be picking up. Largely due to the work of dedicated implementing and supporting institutions, appreciation of sound corporate governance is on the rise. Indeed, Uganda's business community supports an Institute of Corporate Governance that is currently almost entirely supported by membership and training fees, and this fact alone suggests that corporate governance ideals are beginning to take a foothold.

PROTECTING INVESTORS	
<i>Doing Business</i> Ranking 2009	126
<i>Doing Business</i> Ranking 2008	125
Disclosure Index	2
Director Liability Index	5
Shareholder Suits Index	5
Investor Protection Index	4

However, potential investors, both local and foreign, consider a wide range of issues when determining where to invest, and corporate governance is only one aspect of this. Although investors do consider the state of corporate governance within a country, they often can get around weak corporate governance standards by importing and abiding by their own. Many foreign companies, and foreign-influenced companies, operate this way today, and that is helping to build a stronger culture of corporate governance. Other shortcomings and risks in the business environment are harder for companies to structure around.

For this reason, the BizCLIR approach to Protecting Investors looks not only at corporate governance, but also at other incentives and disincentives to investment, as well as treatment of foreign investors in particular. Each of these areas has a significant impact on an investor's cost-benefit analysis when considering whether to invest in Uganda. Overall, protecting investors is about mitigating the risks that investors face in



order to increase the appeal of investing. Accordingly, attracting and retaining investors depends largely on building and retaining a healthy business environment.

Investment in Uganda is on the rise, and the economic growth rate, at almost 9% by some estimates this year, is impressive. According to the Uganda Investment Authority (UIA), 439 projects were licensed in the 2006–2007 time period, an increase in nearly 100 projects over the prior period. The largest sector in this group was manufacturing. About 30% of the new projects in this group were local, as a result of the UIA's focus on high-value investments. Foreign investments came primarily from Kenya, India, Pakistan, and China.⁴³

Yet this growth and expansion in the economy is beginning from a low base, and risks for potential investors still abound. These risks continue to discourage many

⁴³ Private Sector Foundation Uganda, *Private Sector Platform for Action* (April 2008), at 8.

“Investors identify major challenges in Uganda to include customs, procurement, work permits, land issues, and corruption.”

potential investors from locating in Uganda. Investors identify major challenges in Uganda to include customs, procurement, work permits, land issues, and corruption. Customs has been improving significantly, as discussed in this report’s chapter on Trading Across Borders, and some within the government believe that corruption is decreasing as well, although this perception is not shared by the private sector. The outdated commercial law framework is another serious constraint that increases business costs. Additionally, the large size of Uganda’s informal economy, detailed in this report’s chapter on Starting a Business, impedes competitiveness of formal companies that pay taxes and abide by the rules.

Although business reforms are coming slowly in most areas, the government should be well aware by now of the importance of pushing through these reforms. The private sector has had many opportunities for discourse with the government, and the message on reform needs for business has been strong. Although the private sector is skeptical as to whether this message is being heeded, there is evidence that it has been heard loud and clear at the highest levels. When President Bush met with President Museveni in September 2008, Museveni made certain to address the need in Africa to lower the cost of doing business in order to attract foreign direct investment.⁴⁴ Museveni has acknowledged that strengthening the business environment is key to moving forward with effective and sustainable economic growth, and attracting investment, local and foreign, is a major part of that. Taking this sentiment to the next step—real and demonstrated commitment by the government to prioritizing the business environment—is the challenge, and that is what investors need to see.

The BizCLIR indicator scores illustrate an environment for Protecting Investors that is not without its negative attributes, but nonetheless shows promise. All four areas reviewed show more positive than negative attributes, with legal framework and implementing institutions registering especially well. As detailed in this chapter, there are considerable opportunities for continued reform in the area of Protecting Investors.

LEGAL FRAMEWORK

Significant reform efforts concerning the commercial legal framework are under way in Uganda, but progress has been painfully slow. With 44 commercial laws identified for amendment or drafting, and 17 such laws prioritized, major changes are expected soon. The private sector remains skeptical, however, about assertions that

these laws will be coming through quickly. The impression in the business community is that they have been asking for these laws to be passed or updated for years, to no avail. Today, many business people have determined how to function within the existing framework, and these individuals assert that the legal framework is not a major constraint to their daily activities. Despite this, many businesses continue to struggle within the current system, and potential foreign investors see the outdated legal framework as a disincentive. The opaque and unclear nature of the current legal framework invites abuse and corruption, so until this is resolved, the legal framework will remain a serious constraint in the business environment.

If the government’s claims that these laws are being effectively fast-tracked are true, this could be a considerable development in terms of improving the commercial legal framework, and that would be a major step in improving Uganda’s appeal to investors.

CORPORATE GOVERNANCE

Corporate governance requirements in Uganda today are minimal, and those that exist are not enforced. The Companies Act dictates these limited requirements, but this law is outdated. According to public sector representatives, a new Companies Act should be passed in the near future. For now, the only legal incentives for practicing sound corporate governance are those imposed by tax requirements.

KEY LAWS AND REGULATIONS

- The Companies Act (1961)
- Capital Markets Authority Act
- Collective Investment Schemes Act
- Investment Code (1991)
- Draft Investment Code Amendment Bill

The current Companies Act is based on the 1948 Companies Act of the United Kingdom. Although the United Kingdom has significantly revised and amended this law, the Companies Act in Uganda has only had minor and isolated amendments since its passage in 1961. Although the underlying principles of the Companies Act will not change, the proposed Companies Act will be significantly different in style, structure, and content.⁴⁵ Issues covered in the proposed law that are either ignored or inadequately covered in the current Companies Act include piercing of the corporate veil, minority shareholder rights, corporate

⁴⁴ Remarks by President Bush and President Museveni of Uganda, Waldorf Astoria Hotel, New York, NY (September 23, 2008).

⁴⁵ Uganda Law Reform Commission, *A Study Report on Company Law* (2004), at xiii.

governance code, penalties for non-compliance with annual return requirements, and fiduciary and disclosure duties for directors. It is also more accommodating to the needs and limitations of small firms in terms of simplifying operations and requirements they face.

The new Companies Act should provide a much more thorough coverage of corporate governance, including more explicit provisions on issues such as conflict-of-interest disclosure, director responsibilities, and shareholder rights. Importantly the corporate governance provisions should also reflect the reality that most companies in Uganda are family owned, and for smaller family-owned companies, corporate governance requirements should be realistic in terms of what such companies will do and need to do. This bill was approved by the Cabinet in July 2008 and as of August 2008 was scheduled to be published in the Gazette.

CAPITAL MARKETS AUTHORITY

The Uganda Securities Exchange (USE), Uganda's only stock exchange, is governed by the **Capital Markets Authority Act**, which deals with a wide range of activities, and the **Collective Investment Schemes Act**, which governs unit trusts (mutual funds). A wide range of regulations, laws, and rules affect the stock exchange, and these are all available on the Capital Markets Authority (CMA) website (www.cmauganda.co.ug).

The CMA was established in 1996 after the Capital Markets Authority Act was enacted. The CMA regulates and promotes development of the capital markets in Uganda; approves stock exchanges; licenses brokers/dealers, investment advisors, fund managers, and collective investment schemes; and approves all offers of securities to the public.⁴⁶ Although the CMA regulates and oversees the capital markets industry, the USE is the actual market where the products are traded. The market has three products: shares, collective investment schemes, and government and corporate bonds.

The CMA and USE are hailed by public and private sector representatives as well-functioning entities that are guided by clear laws and guidelines reflecting international best practices. Although some delay in development has resulted from the slow pace of Parliament in passing new laws, particularly those providing for electronic trading, these entities have good and supportive relationships with their customers and the general public. Both the CMA and USE are also working closely with their regional counterparts in

order to bring the Ugandan laws and regulations in line with international best practices and to move towards an integrated East African market.

The CMA and USE are discussed at greater length below in the section on Implementing Institutions.

INVESTMENT INCENTIVES AND ACCESS

The 1991 **Investment Code** established the Uganda Investment Authority (UIA), Uganda's investment promotion agency also charged with providing investment licenses and assisting investors with various regulatory activities associated with their investments. Foreign investors must have an investment of at least \$100,000 to obtain an investment license, and local investors a minimum of \$50,000 (although a license is not required for local investors). No charge is applied in obtaining the investment license.

Although foreign investors in Uganda claim to be satisfied with the assistance they receive from the UIA and with the government's generally pro-investment position, many commented on the lack of investment incentives within the law, such as tax breaks, that reportedly makes Uganda less appealing than some other comparable economies. The current Investment Code provides few tax incentives, although a new investment incentive regime was introduced in the 1997 Income Tax Act and established substantially greater tax breaks for investors.⁴⁷ Notably, experience and research have shown that "tax holidays" are ineffective in attracting investment and that it is better to have a lower overall tax rate and a sound investment environment. The experiences of other countries in using tax incentives to boost investment should be carefully considered before revamping the current incentives structure.

Another frequently cited disincentive for foreign investors in the legal framework was the inability of foreigners to own property. This constraint, set forth within the Constitution and the Land Act, creates a challenge and risk for foreign investors. This is discussed further in the chapter on Registering Property. Notably, the Investment Code does not require foreign businesses to have local partners. Expropriation of property and business, another common investor concern, is also addressed in the Investment Code and Constitution. Expropriation is not allowed except in specified circumstances, and prompt and fair compensation is required if expropriation occurs. No one consulted in this study raised this issue as a concern.

⁴⁶ Capital Markets Authority, "Frequently Asked Questions" Brochure.

⁴⁷ Details regarding this investment structure are available on the UIA's website at <http://www.ugandainvest.com/ui.php?uhpl=incentives&&uhpl=Incentives>.

The government hopes to improve Uganda's appeal to investors through the **Investment Code Amendment Bill** currently under consideration. This bill seeks to amend the 1991 Investment Code to establish UIA as a one-stop shop for investment and ease the registration process. Although the UIA purports to be a one-stop facilitator for investment, this new law could give it authority to deal more directly in-house with a variety of regulatory issues faced by investors, such as sector-specific licensing. The Amendment Bill also creates additional incentives in rural areas and provides for quick procurement of secondary permits for investors. The bill includes local investors in the incentives regime and increases facilitation for foreign investors. It has been submitted to the Cabinet for consideration.

ACCESS TO LAWS

Access to Uganda's commercial laws is a challenge, and this makes it difficult for potential investors to understand the processes and resolutions available for different business issues. Although the UIA's website provides the Investment Code, many other laws are of interest to potential investors, including laws on commercial dispute resolution, property, and taxation. These laws too should be made readily available to potential investors, local and foreign. Although law reports began to be developed in 1997 and are current up to 2002, it is difficult to obtain copies of these law reports, and they are far from comprehensive.

The Southern African Legal Information Institute (SAFLII) has an online database of legal texts from throughout Southern Africa (www.saflii.org), including an extensive list of Ugandan laws and many court decisions. It is unclear how up-to-date or how well utilized this resource is, but tools of this sort could be better publicized even if a resource is not specifically linked with the government.

IMPLEMENTING INSTITUTIONS

Implementing institutions in Uganda should play a strong role in promoting both corporate governance and an improved environment for investment. Although some implementing organizations are robust and active in these areas, such as the CMA and UIA, others are not adequately fulfilling their roles due to both limited capacity and limited will.

COMPANY REGISTRY

The Company Registry's primary role in protecting investors is as the source of corporate governance requirements for businesses generally, but few corporate

KEY IMPLEMENTING INSTITUTIONS

- Company Registry
- Uganda Revenue Authority
- Capital Markets Authority
- Uganda Securities Exchange
- Courts
- Uganda Investment Authority

governance requirements are in effect, and those that exist under current law are not enforced. The Company Registry is the location where businesses are registered and where any subsequent filings, such as those on annual statements and changes in ownership, are to be filed. Despite some filing requirements, most private sector representatives indicated that they filed nothing additional with the Company Registry and that no enforcement of those requirements is actually done. Surprisingly, even most banks reportedly do not expect to see proof of compliance with such requirements when lending, and this is a reflection of the reality that few companies comply with these requirements at all. Although some banks may ask to review audited accounts, the primary focus is on collateral and cash flow. Companies that do not comply with filing requirements are supposed to be struck from the registry, but no private sector representatives were aware of this ever occurring.

The only real enforcement of corporate governance provisions occurs for sectors that are regulated by other bodies, such as the banking industry and companies listed on the stock exchange. Indeed, corporate governance provisions in these sectors are extensive and closely monitored. With stronger corporate governance being promoted and required in these areas, the corporate governance culture is likely to continue to grow in Uganda. This growth, however, would certainly be facilitated if the Company Registry were to start enforcing the corporate governance provisions under its authority.

UGANDA REVENUE AUTHORITY (URA)

Tax authorities in any country typically provide the strongest incentive for the average company—at least the average registered company—to follow basic corporate governance principles. This is true in Uganda as the Company Registry does not enforce any corporate governance provisions, but at least good books should be kept to keep tax penalties at bay.

The URA was established in 1991. It has recently undergone a significant restructuring process to become more customer focused and get closer to the business community. According to both public and private sector representatives, this initiative has been successful in improving the relationship.

Despite these advances, the message is taking some time to disseminate. Many private sector representatives still have negative feelings towards the tax authorities and fail to see how taxes provide benefits to them. Therefore, the efforts to reach out to the private sector should be continued and expanded. Companies that understand and appreciate the tax authorities and the benefits they derive from taxes are less likely to strive to avoid compliance.

Noncompliance with tax requirements continues to be a major issue, as evidenced by the thin tax base. Many large local firms remain outside the formal sector, and political connections are reportedly used to retain this status. Tackling the problem of tax evasion is critical, for the economy generally and for attracting investors. Foreign and local investors who comply with tax and other regulatory requirements will remain uncompetitive against those who do not pay taxes if this challenge is not overcome.

Cross-checking between the URA, the Company Registry, and banks providing loans (which are often provided a different accounting of income) would be useful in improving tax enforcement. A uniform national identification card system would be a great tool for this purpose. Such a system would prevent citizens from moving from one business to another and one bank to another obtaining multiple loans against the same collateral or not paying taxes, and it would give banks significantly more confidence in loan applications.

Tax compliance is part of sound business practices and good corporate governance. Although the URA is reportedly moving in the direction of improved tax compliance, greater improvement is necessary, and tackling the major players avoiding taxes is imperative.

CAPITAL MARKETS AUTHORITY (CMA) AND UGANDA SECURITIES EXCHANGE (USE)

The CMA is responsible for the regulation, licensing, and supervision of the capital market and for increasing public awareness of this resource. It also licenses market players such as brokers, fund managers, and investment

advisers, and tests are being developed as part of an effort to build a regional certification program for these professionals. With regard to education on the market, the CMA conducts seminars for businesses and students, has a writing competition for secondary school students on the subject, conducts office-to-office programs to explain the investment opportunities, and has radio and television programs as well as written publications in English and local languages. Most of the outreach so far has been in the central region, but the CMA plans to expand this. The CMA also wants to develop a university curriculum on capital markets specifically, and it has introduced a subject in secondary school on entrepreneurship that is in the pilot stage. This course covers the capital markets and basic business education such as balance sheets, business plans, and raising finance. Out of its staff of 24, 4 CMA employees are dedicated entirely to public education efforts.

The USE is the enforcement body for the stock exchange and is regulated by the CMA. The first listing on the USE was in 1998. CMA's board must approve rules passed by USE's board before they can be put into force. Both the CMA and the USE work closely with relevant stakeholders for input on rules and processes and in order to educate on the stock exchange. This collaboration should continue and be supported.

The rules and requirements for listed companies, and other information about the stock exchange, are available on the USE's website (www.use.or.ug), which is easy to navigate and informative. The USE works closely with the East African Securities Exchange Association to work towards international best practices and to benefit from the knowledge of more experienced exchanges in the region. This regional organization is working on developing rules on corporate governance and market malpractices to incorporate across the East African Community.

Although the USE is still young, interest is picking up in using it as an avenue for raising capital and for savings and investment. Professionals and the middle class are the primary purchasers of shares. The stock market's listed companies are primarily government divestitures that became privatized through floating on the market. The market is yet to support a private IPO. This has been a significant challenge, and the CMA took on a project in 2006 to work with 12 private companies to try to prepare them for listing on the exchange. At the end of this project, only one of the companies was prepared to submit a prospectus, but before this occurred,

“An educated and informed investor is a protected investor!”

—CMA representative



it was bought out by a foreign bank. Currently, the main products of the stock exchange are equity and corporate bonds. Government bonds are primarily under the Central Bank's regulation.

The presence of the stock exchange in Uganda has been beneficial for corporate governance promotion because those companies that hope to list on the exchange must improve their corporate governance dramatically to qualify. Reportedly, the listed companies practice sound corporate governance, and noncompliance is typically due to lack of expertise rather than lack of will to comply. The USE addresses such situations by pointing out noncompliance and allowing opportunities to rectify such mistakes. This approach is important for relatively new and complex topics such as corporate governance, and it has promoted a collaborative effort between the USE and the listed companies.

Increasing the numbers of listed companies would greatly contribute to improving the corporate governance culture in Uganda and would also create more opportunities for individuals to invest and for companies to raise funds to expand. However, the barriers to listing are significant, the greatest one being corporate governance compliance. Because many businesses have a history of poor practices that would come to light if they were to apply for listing, the government should consider providing tax amnesty for past poor practices for companies seriously pursuing listing. This would give companies the incentive to incorporate better practices without fear of penalty for past behavior if they choose to take part in the capital market. In these early days of the exchange, the government may also consider

offering additional incentives and tax breaks in order to encourage companies to make the effort to pursue listing until a critical mass of companies is reached on the exchange.

The CMA has established corporate governance guidelines, based on OECD best practices, that are distributed to listed companies and available on the CMA's website. These guidelines should be widely distributed to other companies interested in improving their own governance whether or not they are ultimately interested in listing. Thanks to the good practices of companies on the stock exchange, the benefits of corporate governance and transparency are beginning to be seen.

COURTS

Although courts are not often faced with questions of corporate governance in litigation, these issues are raised and presumably will arise more often as the economy continues to expand and a greater number of larger businesses enter the market. Though rare, even shareholder derivative suits are seen from time to time. Accordingly, it is vital that the courts, particularly the Commercial Court, understand corporate governance sufficiently to rule fairly on such cases. The generally impressive impression of the courts' ability to handle commercial disputes, discussed at length in this report's chapter on Enforcing Contracts, is that the courts are challenged but improving, and private sector representatives are particularly pleased with improvements in the Commercial Court.

UGANDA INVESTMENT AUTHORITY (UIA)

The UIA is a strong and dynamic organization that has been a significant factor in easing the integration of large investors, particularly foreign ones, into Uganda's economy. It is the investment promotion agency and provides a one-stop shop for large investors. The UIA is meant to be a resource to assist in obtaining land, work permits, utility services, and other requirements for the investor. However, some investors suggested that, while it is useful for newcomers in assisting with registration, the UIA is not as effective in assisting with the tough issues, such as land, power, and water.

The UIA acts as the interface between the public and private sector in this area. It has approximately 4,000 businesses in its database and has representatives in each district to bring its services outside of Kampala. It provides business registration within two days, investment permits within two days, and also assists with land

registration for large investors. In order to facilitate various processes for investors, UIA has a desk for URA, the Land Office, and Customs on its premises. The UIA also has a useful and user-friendly website where much information on investing in Uganda is available.

There is some concern in the business community that foreigners are overly favored with regard to investment, and the UIA's focus on assisting foreign investors is part of that concern. The UIA has a specific Uganda Desk focused on assisting qualifying local investors in an effort to increase its impact on the local business community, but perceptions within the local business community suggest that its impact is either limited or largely unknown. When asked whether the government is investor-friendly, the answer differs dramatically based on citizenship status. A first step in addressing this perception would be for the UIA to increase its focus on larger local businesses, perhaps through expanding the capacity and influence of the Uganda Desk and increasing the capacity of resources aimed at assisting smaller businesses in a similar way. Enterprise Uganda, discussed in the chapter on Starting a Business, is directed at assisting smaller businesses, and increasing its capacity as a business services resource for SMEs would be useful. Ultimately, most investment in any healthy economy should be local, so the government should take care to offer as much assistance to this constituency as to the foreign one.

SUPPORTING INSTITUTIONS

Supporting institutions play a significant role in promoting investor protections. Uganda has specific institutions aimed at supporting improvements in both the investment climate and corporate governance culture. Advances in corporate governance are slow but coming. With regard to the investment climate, however, supporting institutions are frustrated that their message is not getting through.

COMPETITIVENESS AND INVESTMENT CLIMATE STRATEGY SECRETARIAT

This body—supported by the European Union, Austria Development Agency, and Ugandan government—is charged with promoting reforms necessary to improve the investment climate, which is key to attracting and retaining investors in Uganda. It was set up in May 2003 as the central body to link together the government, private sector, and donor community to support the implementation of the Competitiveness and Investment Climate Strategy (CICS). The first phase of planning for competitiveness was

captured in the CICS 2000–2005, and the current framework for competitiveness planning is the CICS 2006–2010. This strategy is meant to guide policy development and resource allocation with regard to improving the nation's productivity and competitiveness. It is intended to address pillar II of Uganda's Poverty Eradication Action Plan.⁴⁸

KEY SUPPORTING INSTITUTIONS

- Competitiveness and Investment Climate Strategy (CICS) Secretariat
- Presidential Investors Roundtable (PIR)
- Private Sector Foundation of Uganda (PSFU)
- Institute of Corporate Governance (ICG)
- Accounting profession
- Legal profession
- Local and foreign companies with sound business practices
- Effective board members
- Uganda Bureau of Statistics
- Media

The secretariat coordinates and monitors implementation of the CICS by tracking performance indicators, benchmarks, and policy actions, and it advocates for reforms to improve competitiveness.⁴⁹ It initiates and promotes dialogue between the public and private sector on issues affecting competitiveness. Although it has been successful in building dialogue, the secretariat's impact has been limited because it has no enforcement or implementation capabilities and must rely on what it can convince the government to do. Action beyond dialogue has been limited, and reforms in this area have been slow. This is an issue of political will, discussed further in the Social Dynamics section below. As long as the government does not prioritize the activities promoted by the CICS Secretariat, advancements in this area will be few. The secretariat must continue to leverage its position with the private sector and the government to increase pressure and awareness concerning necessary business environment reforms. Strongly highlighting the importance of such reforms in attracting investment is key.

PRESIDENTIAL INVESTORS ROUNDTABLE (PIR)

The PIR is in its third year and convenes every six months to allow the business community an opportunity to discuss major business constraints directly with the president. The UIA is the secretariat and chooses the sectors of focus each year. For each year, 20 local

⁴⁸ More information on CICS is available on the CICS website: <http://www.cics.go.ug>.

⁴⁹ See <https://www.cics.go.ug/secretariat.php>.

and foreign investors are chosen to participate, and this group makes recommendations to the president on what activities should be prioritized in terms of business environment reform.

The PIR is another good example of public-private dialogue, which is an important foundation for pursuing sound reform in the business environment. When it comes to dialogue, public and private sector representatives agree that there is ample and open discussion. However, lack of progress beyond dialogue has been a source of frustration for the private sector:

This lack of progress is one of two major challenges that limit the effectiveness of the PIR in promoting an improved business environment. The private sector participants in the PIR are frustrated because action has not been taken on most of the recommendations made so far. Each year, a new set of recommendations is made without any conclusions drawn on the ones made the year before. This reality tends to contribute to the sense that dialogue rather than action is the focus, and many private sector representatives see such initiatives as a distraction alone. Specifically benchmarking activities taken in response to investors recommendations each year, and documenting why actions are not taken in some areas, would shed light on the role this group is playing and would improve accountability of the government in this exercise.

A second challenge is that many within the private sector are focused on short-term reforms and narrow interests rather than on pushing reforms that can really improve the business environment overall. This is in part due to the types of businesses included in the PIR. It is unclear how or why particular participants are chosen, although the focus does appear to be primarily on large investors. If these large investors are well connected, their challenges may be different from those facing other investors, both local and foreign. Care should be taken to ensure a well-rounded representation of investors is included in the PIR each year.

PRIVATE SECTOR FOUNDATION OF UGANDA (PSFU)

The PSFU began in 1995 through a joint government and donor effort to build the middle class in Uganda. The PSFU is the umbrella organization for the private sector and includes 125 business associations, corporate bodies, and public sector agencies. The organization focuses on advocacy for the private sector and aims to work with the government to improve the business

environment in Uganda. It is a forum for discussion of policy issues and provides training and business development services to assist in capacity building for the private sector. It is self-financed through membership activities but also receives donor funding for specific projects it manages. The PSFU is currently busy with donor projects, including a US\$71 million project funded by the World Bank on private sector competitiveness, which limits the organization's capacity to focus on policy activities. As the central private sector organization for Uganda, the PSFU should ensure that it retains the capacity to effectively advocate for the private sector and be a resource for private sector needs.

INSTITUTE OF CORPORATE GOVERNANCE (ICG)

The ICG is a private institution supported almost entirely by membership and training fees. It began as a government and donor effort eight years ago, but government support has been withdrawn, and donor support now is limited. It currently has 48 corporate members and 325 individual members. The institute focuses on building awareness and conducting training on corporate governance. It conducts between 6 and 10 seminars a month, with most seminars lasting 3 days. The fact that there is enough demand from private businesses and other organizations seeking training and support on corporate governance to keep this institution afloat suggests that the corporate governance culture in Uganda is indeed growing. Because there is no real enforcement of corporate governance outside of particular sectors, much of the interest in these trainings comes from a desire to have better business practices rather than outside incentives.

The bulk of ICG's activity is training, primarily of senior managers and directors of private companies and NGOs. The ICG has worked with the PSFU as well to reach a greater number of business people with these trainings. Although most of the training is conducted in Uganda, the ICG has conducted trainings in South Sudan, South Africa, and Tanzania as well, and is hoping to become a resource for all of southern Africa. Trainings thus far have focused on basic principles and practices—the role of the board, competencies for board members, operating environment challenges, business strategy, ICT, the law, director duties, human resources, board committees, conflicts of interest, financial statements, and risk management. However, corporate social responsibility has recently been introduced, and demand is growing for more advanced training modules in other areas.

After trainings, trainees are encouraged to stay in touch with the institute and follow up on corporate governance progress.

ICG would be interested in producing books and other materials based on its experience and expertise, but funds for these activities are limited.

ACCOUNTING PROFESSION

Accountants in Uganda provide services for taxation, auditing, company registration, and business advising. The accounting profession has improved significantly in recent years with the increasing demand caused by the growing economy. Accountants are a strong resource for building corporate governance awareness because assisting companies in keeping good books and good practices is their business. Courses on corporate governance are specifically included in the accounting degree.

Several major international accounting firms are located in Kampala, and they serve primarily NGOs, donor-funded projects, and multinational organizations. The major accounting firms also hold workshops on corporate governance for their clients and others, contributing to the growing corporate governance culture in the country. These firms contribute to the profession by providing significant in-house training for local accountants they hire.

The accounting profession, however, is not always consistent in its promotion of good corporate governance, particularly with regard to smaller, local clients. Reportedly, some clients request assistance with the necessary paperwork for loan applications, and this often requires "creative" paperwork, such as backdating annual reports since such businesses are not compliant with corporate governance standards in the first place. Because it is clearly understood that no one (outside particular sectors such as banking) is expected to comply with corporate governance requirements, some accountants fulfill such requests. Tolerance of such requests enables businesses to continue to function with poor and even fraudulent governance practices. The profession should take corporate governance seriously at all levels and encourage better practices across the board, even for smaller or local clients.

LEGAL PROFESSION

According to private sector representatives, lawyers in Uganda are competent in their areas, but few have experience and expertise in corporate governance issues. Including more extensive education on corporate

law in the legal faculty would be beneficial. The ICG is working with the Law Society on training for lawyers, so this should be improving. Lawyers who have experience in Uganda with these issues should be tapped to share their experiences in these areas as part of building a stronger corporate governance culture in the country.

LOCAL AND FOREIGN COMPANIES WITH SOUND BUSINESS PRACTICES

A great resource for encouraging a stronger corporate governance culture is successful companies in country that demonstrate sound corporate governance. The companies listed on the stock exchange are a good place to start when looking for good corporate governance practices. Partnering with these companies to spread the word on the importance and the utility in exercising these sound business practices based on their experiences, such as the increased value in the company, would be powerful. They can also advise on the role of the board, the requirements of an effective board member; the benefits of using international accounting standards, and the role of internal and external auditing. Although training is already handled by other organizations, such as the ICG, having real life examples to see the benefits in action can be effective.

EFFECTIVE BOARD MEMBERS

With its brief history of capitalism and an open market, it is not surprising that Uganda's companies have a shallow pool of potential board members from which to choose. For this reason, the most qualified board members tend to sit on several boards. There is a strong need to increase this pool, and training on the role of the board will be key in this respect. Additionally, making guidelines available regarding how to choose an effective board member is important to assist this process. Those board members that are effective should be used as resources and examples of best practice.

UGANDA BUREAU OF STATISTICS

The Uganda Bureau of Statistics is a wealth of information on the economy in Uganda. With limited capacity, the bureau is not yet engaging in analysis of the data it collects, but the information it pulls together is significant. The bureau conducts several sector-specific surveys as well as general surveys on the business environment, and almost all of the information it collects is available on the bureau's website (www.ubos.org). Although it is not the easiest website to navigate, the information is available. Delivering more of this information through the UIA, already a wealth of information on investment opportunities in Uganda and the primary contact source

for potential investors, would ease the access to business information on Uganda for those considering investing. Accessing a wide variety of information on a country's economy is important for serious investors in weighing risks and benefits. Even with a sound investment climate, if potential investors cannot learn about that climate, they cannot properly assess the opportunity. It can also be useful for investors, local and foreign, already in the country in determining whether and where to expand their business. Accordingly, once the work is done to compile this information, the next step should be to ensure that the public is aware of the available information and has access to it in easy-to-use forms.

MEDIA

The media is an important tool to inform both the local and foreign business community of developments within the economy and the government. Access to accurate information about the business environment is important for potential investors in any country. In Uganda, the media is becoming more active in addressing business issues and corruption more generally. Coverage of business on a deeper level, however, is limited. For example, the media reports on business and political scandals but typically from a political approach rather than a business one, so the root causes are often missed, such as the lack of transparency and accountability that opens the door for corrupt practices.

Media has become much freer in recent years, with 200 radio stations and 44 television stations, of which only one is government run. Privatization of the media is well under way. Although the media is not actively censored, it is well known within the industry that certain areas are sensitive, and critical coverage of specific aspects of the government is not well tolerated. Intimidation remains an issue, but key players in the media continue to struggle to increase media freedom, and they appear to be winning this battle. Most stakeholders seem happy with the progress in this area as the media has only been open for about 12 years, and freedom of the press has come a long way in that period.

SOCIAL DYNAMICS

CORPORATE GOVERNANCE CULTURE

The major challenge to sound corporate governance practices in Uganda is the limited corporate governance culture. Most companies are family-owned, owner-managed businesses, and those responsible for the business do not see the benefits or need for exercising strong

corporate governance. Maintaining control and building a family inheritance are often the main concerns. Additionally, as discussed in the chapter on Starting a Business, Uganda has a significant informal sector that functions well outside the realms of sound corporate governance. By some estimates, informal or semi-formal (registered but not paying taxes) businesses account for more than 50% of the economy. These businesses create a competitive disadvantage for businesses functioning by the book because they are outside the tax base and thus have far fewer costs than those working within the system.

Because good corporate governance requires disclosure and transparency, it does not allow for the poor business practices that are common in Uganda among both formal and informal businesses, such as keeping multiple books. Without an understanding of the real benefits corporate governance brings, many business people will certainly continue to push back against changing these practices.

Despite its importance, corporate governance is still not well understood even in most large local companies. The concept must be socialized more, particularly in terms of how good corporate governance promotes long-term sustainability of businesses. However, the corporate governance culture should also reflect reality by providing that smaller closely held and family-owned businesses do not require the same corporate governance requirements as larger ones held by different stakeholders. The new Companies Act should carefully address this distinction.

The ICG and the UIA are both working to increase awareness and appreciation of corporate governance. Each year, the UIA gives an award to the new investor of the year, and has recently added a review of the corporate governance structure to the criteria. Part of the education and awareness by both bodies should focus on how effective use of corporate governance enables expansion of a business without loss of control. This would allay fears of losing the business and enhance the understanding of the benefits to be realized through exercising sound corporate governance practices.

SECURITY

Security concerns were recently a major disincentive to investment in Uganda, particularly with regard to the instability in the north. However, this perception (and reality) is changing. Even the conflict in the north of the country has settled significantly. Uganda is indeed one of

the most politically stable countries in the region, and its relatively long-term peace in most of the country, particularly when compared to its neighbors, is appealing to local and foreign investors alike.

CORRUPTION

Corruption in Uganda is a problem in both the public and private sectors, and this remains one of the primary disincentives for investors. It is reportedly challenging to conduct business by the book because of the competitive disadvantage this creates. Uganda's ranking in Transparency International's global Corruption Perceptions Index dropped this year from 105 to 111. The reality of corruption is not only a disincentive to potential investors because of the challenge it creates for assessing risks and costs, but it is also a drain on the country's budget through unintended costs and reduced tax revenue. Additionally, because so many companies maintain multiple books in order to pay minimal (if any) taxes, companies that play by the rules find it almost impossible to compete successfully.

Corruption is a particularly serious issue in terms of government tenders. A recent study by the Millennium Challenge Corporation found that more than UGS150 billion is lost each year due to procurement-related corruption.⁵⁰ Additionally, in a recent public opinion survey conducted by Steadman and Associates on behalf of the government, approximately 60% of those surveyed found the police, 28% found the military, 32% found the law courts, 26% found the presidency, and 22% found the Parliament to be "very corrupt." When adding the percentage that found these institutions to be "somewhat corrupt," the total percentage is well above 50% in each area. When asked specifically about bribery in selected institutions, 79% of those surveyed refused to answer! This suggests a real concern both with corruption and with fears of exposing it. Additionally, awareness of efforts to fight corruption was low.

Corruption is not only prevalent in the government, but in the private sector as well. Corporate governance can be a significant tool to battle corruption, particularly this societal corruption that was discussed by many public and private sector representatives as a major constraint to a sound business environment in Uganda.

By some accounts, now it is not as easy to engage in corruption and bribery openly as it had been before. Some high-level officials have been held to account recently, although some suggest that this is primarily for political reasons rather than on the basis of enforcing

anti-corruption measures. If this is the case, the deterrent effect of such efforts will be minimal. The message must be that corruption is tolerated by no one, at any level. Uganda has a long way to go before that is the case.

POLITICAL WILL

Along similar lines, the lack of political will to prioritize certain aspects of business environment reform is a challenge to attracting businesses. There is no shortage of dialogue, reports, and initiatives concerning business environment reform, but actual action is not as forthcoming in most areas. Where the will to improve the investment climate does exist, it is reportedly focused on easing the process for foreign investors, and local investors are reportedly left behind.

Stakeholders view the political will issue in different ways. Some view the culture of process and extensive discussion as traditional in Uganda, a reflection of the customary practice of community leaders talking issues out until a resolution is reached. The long period of initiatives and dialogue may be seen as part of this larger cultural tendency. Others perceive that there is no will to make processes and laws more transparent and efficient because some within the government, and some private sector individuals connected with the government, have vested interests in maintaining the status quo as the current system provides ample room for corruption. The extensive effort put into the various initiatives, reports, and dialogues with such minimal action, while progress is made quickly in more politically popular areas, suggests this theory may have some validity.

There is no doubt that certain large businesses have strong connections with the government, and that some have benefited significantly from government policies and actions. Although this is neither surprising nor unique to Uganda (or even to the developing world), it does contribute to perceptions within the private sector, and with potential investors, that Uganda is not a predictable and sound investment environment.

Most representatives are not so cynical (at least not openly), however, and they believe it is more an issue of priorities for the government and Parliament. While commercial reform does not appear to be a major priority, certain areas of the business environment—such as customs, discussed in the chapter on Trading Across Borders—have undergone significant reform. Regardless, greater political will is indeed necessary if the many initiatives behind commercial reform are to be translated into real results. Some private sector representatives are hopeful that corporate

⁵⁰ Private Sector Foundation of Uganda, *Private Sector Platform for Action* (April 2008), at 32.

governance in particular will become a stronger focus of commercial reform efforts as a result of the report from the African Peer Review Mechanism expected to be released soon. Corporate governance was one of the four pillars of this review, so a variety of recommendations for reform in this area are forthcoming.

The approach of the government to reform also poses challenges even when such efforts are pushed through. Because the initial stages of reforms—the planning and discussion stages—often end before the follow-through, new systems and initiatives are being set up on top of one another.

One way to ensure greater political will and follow-through in reform efforts is to match donor initiatives with government priorities. While donor funds may be flowing in to support certain projects, if these projects are not ones that the government supports, such projects are destined to result in little if any real action. Donors should take better care to match their support with initiatives that the government is enthusiastic about in order to ensure that these funds are effectively used.

Furthermore, greater effort must be made to benchmark progress on donor-funded activities to ensure that funds are being well utilized and that, if they are not, discussions can ensue on the reasons for ineffective use of such funds. If donor funds aimed at improving the business environment are being misspent, these funds will have no positive impact on improving Uganda's appeal to investors. Many private sector (and some public sector) representatives felt strongly that, in the current system, donor funds are financing mismanagement and subsidizing corruption because genuine accountability is not required. Donors must take care to ensure that their support is used in a way that promotes an increase in fiscal responsibility in the government rather than a decrease. Such accountability would also encourage the government to focus more on how to obtain more revenue from its citizens, which would in turn encourage more work on improving tax compliance.

WORKFORCE CAPACITY

Limited workforce capacity is a major hindrance for investors in Uganda. Education, while better than in many neighboring countries, is still insufficient, and corruption in the school systems has allowed many students to graduate without the skills they should be learning. The median value added per worker, used as a measure of productivity, is only \$1,085 per year, making labor in Uganda more than 28% less productive than labor in Tanzania and 68% less than in Kenya.⁵¹

Businesses must provide significant and time-consuming training for new hires, and trained employees often leave for other jobs. Unskilled workers and the necessary investment in training, combined with the high turnover, result in significant costs to businesses, and this is a real disincentive to potential investors. One private sector representative asserted that due to these specific challenges, his factory had been unable to achieve 50% of his planned production. Because of this challenge, a greater focus on improving education and building skills capacity is needed.

RECOMMENDATIONS

- Promote government ownership of reforms and better benchmarking and auditing of reform projects and donor funds to determine their utility and effectiveness in improving the business environment.
- Push through the new commercial law legislation that is in line with international best practices and regional standards.
- Conduct trainings for Parliament on the draft commercial laws under consideration and their importance to economic growth.
- Increase the capacity of Enterprise Uganda, or another organization, to provide business development services and guidance to SMEs.
- Improve coordination of government agencies and donors and follow-through on initiatives.
- Support the ICG and the UIA in efforts to socialize corporate governance principles. Assist with development of relevant local case studies revealing the importance of corporate governance principles in instilling sound business practices and reducing opportunities for corruption.
- Encourage partnership efforts with local companies that have strong corporate governance practices to help socialize the concept.
- Support training and education on the role of an effective board member and effective management. This could be done in partnership with the ICG or the PSFU.
- Support UBS and UIA efforts to better coordinate and package economic environment information for delivery to potential investors.
- Provide a tax amnesty provision for businesses that list on the stock exchange to encourage businesses that have a history of unclean books to improve their practices with the possibility of listing.

51 Ministry of Finance, Planning and Economic Development, *Competitiveness and Investment Climate Strategy (CICS), 2006–2010—Popular Version* (December 2007), at 5.

- Promote better coordination between the Company Registry, the URA, and banks to enhance enforcement of sound business practices and good corporate governance. Implement a national identification card system to assist with this coordination.
- Widely distribute the code of corporate governance utilized by the CMA throughout the business community as a reference tool on good corporate governance practices.
- Carefully consider and review the experiences of other countries in using tax incentives to boost investment before revamping the current incentives structure.



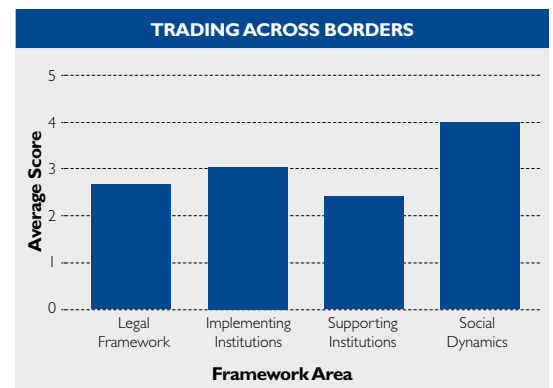
TRADING ACROSS BORDERS

In recent years, Uganda has enhanced its trade potential by incorporating international and regional agreements into its legal and regulatory frameworks and by creating or strengthening a variety of institutions charged with implementing these agreements. The country is a founding member of the World Trade Organization (WTO) and a charter member of the East African Community (EAC). In 2005, Uganda took the significant step of establishing an EAC Customs Union along with Kenya and Tanzania (Rwanda and Burundi joined in June 2007). Uganda adopted the EAC Common External Tariff (CET), replacing a four-band tariff structure with a simplified three-band tariff structure of 0, 10, and 25%. Uganda has also undertaken significant and largely successful reform efforts within its Customs agency, efforts that, if sustained, could lead to tangible rewards in the future.

TRADING ACROSS BORDERS	
<i>Doing Business</i> Ranking 2009	145
<i>Doing Business</i> Ranking 2008	146
Documents for export (number)	6
Time for export (days)	39
Cost to export (US\$ per container)	3090
Documents for import (number)	7
Time for import (days)	37
Cost to import (US\$ per container)	3290

Notwithstanding recent developments, however, a great number of reforms have yet to take place. With respect to trade in goods, a number of bureaucratic delays and other regulatory constraints continue to limit the competitiveness of Ugandan exports. Trade in services is similarly not reaching its potential, due in significant part to continuing restrictions on the free movement of labor. In addition, Uganda has not committed to certain important international standards in trade facilitation. It has not signed the International Convention on the Simplification and Harmonization of Customs Procedures (the Revised Kyoto Convention) and does not yet engage critical international transit procedures.

This chapter is divided into two parts: trade policy and trade facilitation. Trade policy pertains to Uganda's commitment to building formal trade relations with its immediate neighbors, with the African continent, and with international markets, through such mechanisms as mutual tariff reductions and streamlining of trade processes. Trade facilitation



refers to simplifying and harmonizing a country's international trade procedures in line with current best practices and globally accepted standards. Such an environment is required for a country to seize the opportunities offered by the global trading market and the economic benefits that full participation offers toward reducing poverty.

The BizCLIR scores for Trading Across Borders confirm persistent weaknesses in the implementing and supporting institutions, but very promising social dynamics.

TRADE POLICY

Uganda participates in two regional trade agreements: the East African Community and the Common Market for Eastern and Southern Africa (COMESA). Uganda's most notable trade policy in recent years has been joining the EAC Customs Union and adopting its CET in 2005.⁵²

⁵² Uganda Diagnostic Trade Integration Study, 2006.

LEGAL FRAMEWORK

In 2007, Uganda completed a **National Trade Policy**, scheduled for update in late October 2008, which sets forth the government's trade agenda and its trade liberalization program. The main objectives of the trade policy are to achieve poverty reduction, create jobs, and promote export diversification. The idea behind the National Trade Policy was to pull together various trade priorities across Ugandan institutions and sectors and create a single, comprehensive agenda for trade. The National Trade Policy also contains the Public Enterprises Reform and Divestiture program and the Commercial Law Reform program. A great deal of emphasis is placed on the private sector to help implement policies that drive economic growth.⁵³ Uganda has also adopted a **National Development Plan**, the PEAP, which features trade policy.

The extent to which the National Trade Policy serves as the guiding authority for the various institutions it affects is not clear. There is considerable evidence that individual institutions continue to act according to their own priorities and leadership.

INTERNATIONAL TRADE AGREEMENTS

Uganda is an original member of the World Trade Organization. It also benefits from duty-free access under the EU's "Everything But Arms" initiative and the United States' Africa Growth and Opportunity Act (AGOA). Uganda and other East African countries initiated an interim Economic Partnership Agreement (EPA) with the EU to replace the African, Caribbean, Pacific (ACP)-EU Cotonou Agreement, which expired at the end of 2007. Uganda also receives a Generalized System of Preferences (GSP) from Australia, Belarus, Canada, Iceland, Japan, New Zealand, Norway, Russia, Switzerland, and Turkey. These countries allow Uganda's exports duty-free access. Uganda does not participate in the Agreement on the Global System of Trade Preferences (GSTP).⁵⁴

Uganda has signed various bilateral trading agreements with developing countries, granting them most favored national treatment. Some of these countries include Egypt, Sudan, Pakistan, India, Iran, and Nigeria.

REGIONAL TRADE AGREEMENTS

Uganda participates both in COMESA and the EAC and has been actively promoting regional integration. In 2005, Uganda joined the EAC Customs Union, along with Kenya and Tanzania. By joining the Customs

Union, Uganda adopted the CET and removed virtually all internal tariffs between member countries. EAC members have also harmonized customs procedures, rules of origin, import prohibitions, and trade remedy regulations.⁵⁵ However, the CET raised Uganda's average duty rate from 11.3% to 12.9%. Tariffs on food and live animals face the largest increases.⁵⁶

Uganda is a founding member of COMESA. Under COMESA, Uganda has reduced its tariffs by 80%, greatly promoting trade with member countries. Uganda's export trade with COMESA countries equals its trade with the EU. The government remains hesitant to join the COMESA free-trade area, however, over concerns that zero tariffs will hurt the manufacturing sector and diminish government revenue.⁵⁷

KEY POLICIES, AGREEMENTS, AND LAWS

- National Trade Policy (2007) and related government policies
- International trade agreements
- Regional trade agreements
- Public Enterprises Reform and Divestiture Act (2000)

Although regional integration is critical to enhancing trade, overlapping regional trade agreements have posed some problems. The EAC Customs Union has had difficulty in promoting the free internal movement of goods between EAC countries, because border controls are necessary to ensure that EAC preferences are not accidentally granted to Southern Africa Development Community (SADC) and COMESA countries, which frequently trade with Uganda. Some of these countries, however, are also members of EAC and must be granted preferential treatment. This issue of overlapping regional trade agreements has added extra costs and delays to the trading process. In addition, it is not feasible for Uganda to join the customs unions of both EAC and COMESA, which it has considered joining, because the two trade agreements have different customs and CET requirements.⁵⁸

Increased coordination, cooperation, and commitment to ease of trade within EAC is needed to achieve and sustain harmonization and standardization of trade facilitation efforts. Uganda's commitment to regional integration needs to be elevated and reinforced, recognizing the mutual benefits to be derived.

53 WTO Uganda Trade Policy Review, 2006.

54 WTO Uganda Trade Policy Review, 2006.

55 Uganda Diagnostic Trade Integration Study, 2006.

56 Id.

57 EIU Country Profile, 2008.

58 Uganda Diagnostic Trade Integration Study, 2006.

In October 2008, the EAC, COMESA and the SADC announced its intention to form a single free-trade bloc and a single customs union, stretching from South Africa to Egypt, and from the Democratic Republic of Congo to Kenya. The three organizations agreed to create a road map for the free-trade area within six months, a proposed legal framework, and a list of specific measures to facilitate the movement of business people (trade in services). A tripartite Council of Ministers is charged with convening in one year to determine the time frame for implementing the free-trade zone.

The pace and success of this most recent initiative is hard to gauge at this time. Although ambitions are high, recent efforts in regional cooperation have produced mixed results, such as the promulgation of non-tariff trade barriers following the harmonization of tariffs. Throughout the region, national interests are well entrenched. The benefits of regional integration have not been effectively sold to the business community.

TRADE IN GOODS

In 2007, coffee was Uganda's primary export earner, with fish and flowers evidencing a decline. The agriculture sector's contribution to the economy has been declining, from 39.9% in 2001–2002 to about 30% in 2007–2008. The drop in the agricultural sector can be attributed to a decline in food crop prices, a prolonged drought, an inadequate infrastructure, problems with plant and livestock disease, and HIV/AIDS. Although agriculture's share in the economy has been declining, about 80% of the population relies on agriculture for employment.⁵⁹

The European Union is the major destination for most of Uganda's exports. Almost two-thirds of Uganda's exports travel to the EU, mainly to the Netherlands, France, Belgium, and Germany. Exports to other African countries, specifically COMESA countries, have increased significantly and now make up about 30% of export earnings. Kenya, Sudan, DRC, and Rwanda are Uganda's main regional export markets. Kenya is also the main regional source of Uganda's imports, followed by Swaziland and Egypt. Asia is the second largest importer to Uganda, followed by Europe.⁶⁰

Uganda's trade deficit increased from US\$1.10 billion in 2005–2006 to US\$1.24 billion in 2006–2007.⁶¹

TRADE IN SERVICES

The service sector is the fastest growing sector in Uganda and it now makes up the largest share of GDP. Services grew at 9.2% in 2005–2006, compared to 8.7% in

2004–20005.⁶² Services now constitute 49% of GDP. The leading subsectors of services are wholesale and retail trade, construction, transport, and communication. Private investment in construction and telecommunications has attracted considerable foreign direct investment.⁶³

PRINCIPAL IMPORTS 2006	
	\$USM
Machinery and transport equipment	677
Chemicals and plastics	285
Mineral fuels	289
Basic manufactures	125

Source: Economist Intelligence Unit

Tourism is also a dynamic subsector in Uganda, although the conflict in the northern regions of the country has deterred tourists. Over 80% of tourists arrive from other African countries, mainly Uganda's neighboring countries. Tourists from Europe accounted for 9.6% of arrivals in 2004, followed by those from North America and Asia. Hotels, restaurants, and bars, which mainly cater to tourists, are the third largest employer in the non-agricultural sector.⁶⁴ Tourism and telecommunications are the only two services covered under Uganda's commitments to the General Agreement on Trade in Services (GATS). There are no restrictions to foreign ownership in the tourism subsector, and prices are market-driven. Since 2001, there have been no state-owned enterprises remaining in the tourism sector.

MANUFACTURING SECTOR

Uganda's manufacturing sector is relatively small and has struggled to keep up with other sectors of the economy. Currently, manufacturing accounts for about 8% of GDP. Uganda's large-scale industries are tobacco, beverages, construction materials, and chemicals. The energy crisis of 2007–2008, however, has resulted in frequent electricity shortages and significantly undermined output. Manufacturing output fell by 1.6% in 2005–2006 and was only able to improve by 2.5% in 2006–2007. Ugandan manufacturers also fear competition from Kenya, as all internal tariffs between the two countries will be removed by 2010 under the EAC CET. The Ugandan government intends to boost this sector by offering tax incentives to manufacturers and endeavoring to attract more foreign investment.⁶⁵

GATT COMPLIANCE

The General Agreement on Tariffs and Trade (GATT) was drafted in 1947 to establish free trade between countries by limiting or eliminating tariffs and quotas. The

59 EIU Country Profile, 2008.

60 WTO Uganda Trade Policy Review, 2006.

61 African Development Bank/OECD, 2008.

62 WTO Uganda Trade Policy Review, 2006.

63 African Development Bank/OECD, 2008.

64 WTO Uganda Trade Policy Review, 2006.

65 EIU Country Profile, 2008.

GATT calls for reducing trade distorting measures (such as agricultural subsidies and quotas), reducing and binding tariffs, and practicing non-discrimination between member countries (MFN treatment). Although it is a full member of the World Trade Organization—the international body charged with implementing the GATT provisions and its various amendments over the years—Uganda continues to maintain many barriers against free trade, including an export tax on several goods, a small number of “bound” tariff lines, and rising import tariffs. Overall, Uganda has a more restrictive trade regime than the average Sub-Saharan African country. While adopting the CET has boosted trade between partner countries, it has not liberalized trade between Uganda and non-EAC countries.⁶⁶

An increased emphasis is now needed on non-tariff barriers to trade—that is, impediments to free trade that take forms other than tariffs, such as quotas, import bans, and national quality standards. Implementation of EAC trade policies in Uganda has been undermined by the reality of line officers lacking a commitment to administer those policies equitably. The improvements at Uganda’s Mombasa Port, “24/7” service, and quality standards need to be sustained. Non-tariff barriers should not be created, as they undermine the benefits of lowering tariff barriers. Overall, there needs to be more cooperation and a commitment to ease of trade facilitation.

BOUND LINES

When a country “binds” its tariffs, it makes a commitment to other member countries that it will not raise the tariff above an agreed amount. If a country decides to raise a tariff above the bound rate, it must compensate the affected countries.

Only 15.8% of Uganda’s tariff lines are bound. Thus, the majority of tariff lines are unbound, indicating that Uganda has not fully committed to tariff liberalization.

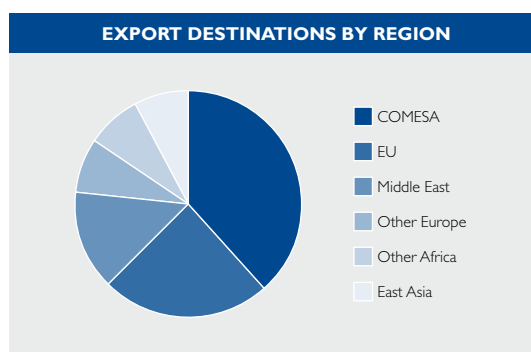
RESTRICTIONS ON IMPORTS

When Uganda adopted the CET in 2005, it eliminated its import license commission of 2% and withholding tax of 4%. Internal tariffs between the three EAC countries have been largely removed. The CET has a 0% tariff rate for raw materials, capital goods, and medical and educational supplies. A 10% tariff rate is applied to intermediate goods, and a 25% rate applies to finished goods. In practice, the CET has raised Uganda’s average duty rate, particularly on food and live animals. The import tariff on coffee, tea, tobacco leaves, vegetables, fruits, nuts, vanilla, and honey is 25%. The import tariff on maize is 37.5%.

Uganda imposes a few non-tariff barriers on imports. For example, imports of agrochemicals must have an approval from the country’s Agrochemicals Board. Drugs and medications require approval from the National Drug Authority. Seeds and plants require a phytosanitary certificate. A health certificate is required for live animals.⁶⁷

RESTRICTIONS ON EXPORTS

Since 2001, Uganda has imposed a 20% export tax on raw hides and skins. The export tax is designed to develop the domestic tanning and leather industry. This industry has yet to substantially materialize, however; because the quality of hides is considered relatively poor. Uganda also imposes a 1% export tax on coffee and a 2% tax on cotton. Uganda does not have any quantitative restrictions.



SANITARY AND PHYTOSANITARY (SPS) MEASURES

The EU banned fish exports from Uganda from 1997 to 2000 because it was feared that Lake Victoria contained cholera bacteria and unsafe levels of pesticides. With the assistance of international donors, Uganda was able to meet EU standards, and the ban was dropped in 2001.⁶⁸ Although Uganda has developed SPS measures related to the fish industry, it lacks a broader strategy to protect human, plant, and animal health. Potential contamination of maize and coffee has limited exports of these products.⁶⁹

Uganda has no **anti-dumping, countervailing, or safeguard legislation**. Anti-dumping, countervailing, and safeguard measures protect the domestic market by restricting imports of products that compete with local production.

RULES OF ORIGIN

Preferential trade agreements use rules of origin to ensure that non-members do not benefit from preferential treatment that members are granted. For example, rules of origin specify the amount of processing

66 World Bank, Uganda Trade Brief, 2008.

67 Uganda Diagnostic Trade Integration Study, 2006.

68 EIU Country Profile, 2008.

69 Uganda Diagnostic Trade Integration Study, 2006.

a product must undergo in a partner country so that it can qualify for market access under the preferential agreement. However, Uganda's rules of origin vary and overlap across the various regional agreements it is party to, creating additional costs and delays in the trading process.⁷⁰ There are too many existing protectionist measures to guard national products.

COMPETITION LAW AND POLICY

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

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

Uganda does not have national legislation on competition. Currently, the Sale of Goods Act, the Customs Management Act, the Limitations Act, and the Penal Code contain some general provisions on competition. Petrol distribution and sugar production have been identified as anti-competitive practices by authorities.

PRIVATIZATION

Uganda's government initiated a privatization program in 1996, followed by the **Public Enterprises Reform and Divestiture Act of 2000**. The privatization unit within the Ministry of Finance, Planning and Economic Development is responsible for monitoring state-owned enterprises and conducting privatization. Thus far, the telecommunications, transport, and energy sectors have been privatized. In the agriculture sector, tea and cotton have been privatized. Privatization has increased competition by allowing foreign companies to enter the market and contribute to product innovation. Foreigners can fully own privatized companies without restriction.⁷¹

IMPLEMENTING INSTITUTIONS

The **Ministry of Tourism, Trade, and Industry** (MTTI) is officially designated as Uganda's main trade policy institution. By all accounts, the MTTI lacks adequate staff levels and funding. Current staff displays a wide variation in level of skill. In recent years, the MTTI has hired new staff and provided training in trade policy. MTTI has not displayed the leadership necessary to drive trade policy, however, leading other ministries to take on the MTTI's functions. For example, although the MTTI is responsible for maintaining links with the WTO, Ministry of Foreign Affairs staff has taken up this role in practice. The private sector expresses frustration with the MTTI, contending that its staff is often not in the office because a large portion of their time is taken up attending meetings and training abroad. A criticism of the MTTI is that much of donor funds given to the ministry goes towards staff travel. The MTTI also lacks basic equipment such as a scanner.

KEY IMPLEMENTING INSTITUTIONS

- Ministry of Tourism, Trade, and Industry
- Uganda Export Promotion Board
- Ministry of Finance, Planning, and Economic Development, Department of Economic Policy and Research
- Inter-Institutional Trade Committee

MTTI does not, moreover, evidence a strong command of the straightforward and accessible tools that are available to make it a more effective and responsive institution. Its website, which should be a point of access for the many domestic and international constituents that are interested in doing business in Uganda, is out-of-date by a matter of years. The key laws that it should provide are not available; nor does MTTI provide the wide range of additional information that is necessary to show that Uganda is interested in attracting tourists, trade, and industry.

UGANDA EXPORT PROMOTION BOARD (UEPB)

A department of MTTI, the UEPB is a comparatively competent body that, with its limited staff (20–25 people) and funding, is making positive strides in expanding and assisting exporters. Its activities include capacity building, advocacy, promotion, marketing assistance, and resource center, with its primary focus on those smaller companies struggling to initiate export activities. Lobbying efforts to

70 Id.

71 WTO Uganda Trade Policy Review, 2006.

address some common issues such as high and unpredictable energy costs and implementation of a tax holiday for exporters of finished goods have not been successful. In contrast to MTTI, the UEPB uses electronic resources effectively and maintains a sound web presence that provides information about events and opportunities for Ugandan companies seeking to export or make connections with possible business partners.

MINISTRY OF FINANCE, PLANNING, AND ECONOMIC DEVELOPMENT (MFPED)

The MFPED is widely perceived as a more effective ministry than the MTTI and has stepped in to fill in many of the gaps left by the MTTI. Within Uganda, the MFPED has a reputation for attracting the best staff. The MFPED controls funding given to line ministries and conducts EAC and EPA negotiations. The MFPED's **Department of Economic Policy and Research** has increasingly taken on a leadership role in monitoring the overall economy and formulating trade policy.⁷²

INTER-INSTITUTIONAL TRADE COMMITTEE (IITC)

This committee is responsible for interministerial coordination, as well as consultation with stakeholders. The IITC is made up of 50–60 staff members, who are divided into sub-committees that focus on specific issues. The MTTI is charged with evaluating and implementing advice given by the IITC to the government. In practice, however, the effectiveness of the IITC is undermined by the weakness of the MTTI.⁷³ For example, due to poor coordination, there is a lack of cooperation among government agencies administering border controls. A policy change occurred that allowed for “24/7” coverage at border posts, but other agencies at the border were not notified of the policy change.

SUPPORTING INSTITUTIONS

PRIVATE SECTOR

Aside from the IITC meetings, there is little government consultation with the private sector regarding trade policies that affect business. The private sector largely supports the IITC's efforts, but is skeptical about how much impact the IITC can actually make, given its dependence on the MTTI to implement change. Although Uganda has a well-established commitment to promoting the private sector, the private sector does not perceive itself as having the capacity to institute change.⁷⁴

DONORS

Donors play a significant role in promoting exports, particularly in developing the floriculture export industry, building the construction subsector, and updating SPS measures following the EU fish import ban.⁷⁵

KEY SUPPORTING INSTITUTIONS

- Private sector
- Donors

SOCIAL DYNAMICS

RELATIONS WITH NEIGHBORS

As a landlocked country, Uganda relies heavily on transport through Kenya to access foreign trading markets. Kenya's poorly run ports and rail services, however, constitute severe barriers to Uganda's trade activity. Despite its landlocked position, Uganda's access to Lake Victoria and the Nile has allowed fish to become the leading non-traditional export of the country. Due to recent discoveries of oil, Uganda potentially can also become an oil producer by 2009.⁷⁶

HUMAN CAPITAL

Uganda has achieved significant progress in education outcomes after the introduction of universal primary education in 1997. As a result of this action, the primary enrolment rate is 90%, increasing from 3.4 million in 1996 to 7.4 million in 2004 (although the rate at which students *complete* their primary education is 28% for boys and 25% for girls). The adult literacy rate currently stands at 70%. Secondary school enrollment rates remain low, however, at 34%. High school fees and a lack of facilities stand as major barriers to higher enrolment rates.⁷⁷

The contribution of human capital to total productivity is less than 10%. To address this problem, the government created a **Business, Technical and Vocation Education and Training** (BTJET) policy in 2003. Through 145 public institutions and 600 private training service providers, the BTJET programs aim to provide technical skills to post-primary school students to enable direct entry into the labor market or tertiary school. Although enrollment in BTJET programs has been increasing, from 23,206 students in 1999–2000 to 40,435 in 2006–2007, it faces several challenges. The BTJET system lacks a legal framework and does not have a central coordination system. Furthermore, insufficient human and physical infrastructure and low staff salaries have hindered the effectiveness of the BTJET system.⁷⁸

“The biggest impact of improved logistics in Africa may be on good governance. Prompt payment of customs dues by logistics companies on behalf of their clients and paperless transit have increased tax revenues and reduced government corruption. It is harder for a customs official to hold out for a bribe when the system is computerized and tracked by a logistics company's bar code—although not impossible: in grubbier ports, officials sometimes hold cargo to ransom by refusing to press the return key on the keyboard.”

—The Economist, Logistics in Africa: Network Effects, October 16, 2008

72 Uganda Diagnostic Trade Integration Study, 2006.

73 Id.

74 Id.

75 Id.

76 African Development Bank/OECD, 2008.

77 IU Country Profile, 2008.

78 African Development Bank/OECD, 2008.

CORRUPTION

In its most recent *Corruption Perceptions Index*, Transparency International ranks Uganda as the 126th most corrupt of 180 countries surveyed. According to service delivery surveys, a high proportion of the public frequently pays bribes to access services in health, education, and law. With respect to trade, it is common for inspectors to be given bribes to issue phytosanitary certificates. Falsification of certificates of origin to face lower tariff rates is also a common problem.⁷⁹

The government is working to combat the problem of corruption. In 2005, an anti-corruption policy was launched as part of a national strategy. An Inspectorate of Government was also hired to investigate and prosecute corruption in public office. The Directorate of Ethics and Integrity is mandated to promote ethics and integrity in the public sector.⁸⁰

RECOMMENDATIONS

- Reduce the EAC CET, particularly on food items.
- Remove export taxes on raw hides, coffee, and cotton, which have hurt local producers.
- Increase the number of bound tariff lines, and increase emphasis on non-tariff barriers.
- Strengthen the capacity of the MTTI by improving training, minimizing excessive overseas travel, and investing in better equipment.
- Expand modern business practices to compile, track, and analyze trade data to improve risk management practices and accountability.
- Promote full utilization of IT capacity (findings report and examination officer designation).
- Establish legal framework for BTVET and address infrastructure problems.

TRADE FACILITATION

In recent years, Uganda has taken significant measures toward strengthening its facilitation of trade in both the import and export process. Implementation of a custom management system based on modern systems of information technology (IT) has driven the simplification and standardization of processes. Delays at the borders and at the customs processing centers have been reduced. Efforts to fully implement the EAC Customs Union have increased harmonization and facilitation of regional customs practices, resulting in a higher level of predictability for the trader. All these actions have been undertaken under the umbrella of the well-structured, well-planned Customs Modernization Program.

Despite recent successes, however, vast challenges remain. These include the need to:

- eliminate non-tariff barriers in the region;
- improve the use of risk-management practices;
- address the underutilization of IT systems in the trade process; and
- remedy the country's weak infrastructure.

LEGAL FRAMEWORK

ACCESS TO LAW

The EAC's Customs Management Act, adopted in Uganda in 2004, sets the legal basis for the Common External Tariff (CET) and for the administration of the day-to-day customs operations by the respective National Revenue Authorities of the EAC members. The EAC protocol provides for the elimination of internal tariffs, other similar charges, and non-tariff barriers; the establishment of common external tariffs; rules of origin; anti-dumping measures; subsidies; and countervailing duties to meet the requirements of the Customs Union.

Uganda's laws regulating trade across borders are generally accessible in hard copy to insiders and outsiders visiting the country, but they also lack clarity and are not considered to be user-friendly. Primarily, customs legislation and regulations are not effectively maintained on the website of the Uganda Revenue Authority, the parent agency of the Customs Agency. In 2007, the Uganda Revenue Authority (URA) discontinued the updating of information when it began redesign of its online system. The updated legal framework will reportedly be available beginning in late 2009; it is intended to provide more complete and current information in a more user-friendly manner. None of the Uganda's trade laws are set forth at the World Bank's *Doing Business* law library, which is an important resource for outsiders seeking to do business in the country. The U.S. Commercial Service has not published a Commercial Guide to Doing Business in Uganda, a document that it publishes in many other countries, including Kenya, and can be an important resource when determining legal constraints and obligations.

At this time, notifications of revised trade procedures are disseminated to local stakeholders in writing and distributed through the clearance agents and freight-forwarding organizations, with sufficient notice generally given prior to implementation.

79 Uganda Diagnostic Trade Integration Study, 2006.

80 UK Department for International Development, 2007.

KEY LAWS

- EAC Customs Management Act (CMA) and accompanying regulations
- WTO Agreement on Customs Valuation
- COMESA Common External Tariff
- Plant Protection Act (1962)
- Uganda National Board of Standards Act (1983)
- Coffee Act (1994)
- Intellectual property laws (see this report's chapter on Registering Property—Intellectual Property)

VALUATION OF IMPORTS

The determination of the value of an import is a critical decision in the trade process, in that it impacts the duty that may be charged when entering a country. In 2001, Uganda accepted the WTO's basis for valuation. The **WTO Agreement on Customs Valuation** (ACV) calls for greatest possible use of transaction value, that is, the price paid or payable for imported goods. The ACV provides the rules for this method of valuation. When it is in place both legally and practically, stability, predictability, and transparency for the trade sector result.

Despite an earnest effort to implement the ACV, Uganda has not achieved full conformity to the general standards of valuation. As an example, the value of imported sugar is fixed by Customs and typically does not reflect the actual price paid for the commodity. Moreover, Uganda faces the problem occurring in most developing countries with low levels of trade compliance. That is, 80% of invoices submitted by small to medium traders who import finished goods for resale are estimated to be undervalued. Trade in used articles that proliferates throughout East Africa also presents unique valuation challenges. Trying to balance the country's WTO commitments with revenue protection interests is an ongoing concern in Uganda.

Uganda has adopted 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.

CUSTOMS ADMINISTRATION

The overarching legal framework for customs administrations in East Africa is the EAC **Customs Management Act** (CMA) of 2004 (entered into force in January 2005).

In 2006, the EAC published it implementing regulations. The CMA and its accompanying regulations are substantially based on law that existed until 1977, when the previous iteration of the EAC was abolished. The CMA grants Customs the authority of the national police force in regulating the borders. It further outlines the measures Customs may take to exercise the necessary controls.

The WCO (World Customs Organization) **Revised Kyoto Convention** was used to assist in drafting of the CMA. This international convention is considered the blueprint for trade facilitation by providing for simple, efficient procedures, harmonization of documentation, employment of risk management, and optimal use of IT.

At this time, the CMA is not a quality legal framework that allows Ugandan Customs to fully adapt its practices along internationally accepted principles to facilitate and control trade. Because the law had to act as a common baseline for customs departments in various stages of development, it is too general in some of its provisions. This causes a wide range of interpretations, thereby destroying the harmonization it was designed to accomplish.

In general, the CMA lacks the specificity to insure the legal foundation for modern practices. One particular example deals with application of IT. Although the law states that national customs agencies may determine how to use IT systems to modernize operations, it does not specifically give the agencies the authority to exchange data among neighboring countries, with the exception of electronic signatures or the shift to a paperless environment. Passage of an electronic evidence law would address some of these issues.

Another problem under the CMA pertains to record-keeping. Although Customs has the right to trace shipments back for five years in conducting its audits, the importer has no legal obligation to maintain records for that time period.

The CMA outlines penalties that Customs can impose for various infractions in an attempt to standardize and harmonize this process within the region. However, because the provisions generally state only the amount that cannot be exceeded, that objective has not been achieved. Clear guidelines in how to determine proper fines is lacking so that there is no predictability or equity for assessments, even from post to post within a country. Also, the right of Customs to penalize fraudulent

actions by assessing fines up to three times the value of the goods, a right given explicitly to the judicial authorities in the CMA, is questionable and results in vastly different fines levied throughout the region.

A draft set of revised CMA Regulations was completed in 2008 but has not yet been approved. New regulations should clarify some areas now subject to a wide variation of interpretations and also eliminate some obsolete requirements that are not based on modern trade practices. For example, the regulations would abolish the current requirement that air carriers complete a special manifest document rather than Customs using the manifest data of the carrier.

OTHER TRADE LAWS

Although there is fairly clear delineation of functions and authority on those agencies tasked with quality control of imports and exports, the laws under which the border agencies other than Customs operate are old and do not accommodate modern trade practices. One such example is the **Plant Protection Act of 1962**, which regulates the import and export of agricultural products and is implemented by the Phytosanitary and Quarantine Inspection Services (PQIS) of the Ministry of Agriculture.

The law under which the Bureau of Standards operates, the Uganda **National Board of Standards Act**, dates from 1983 and similarly needs to be updated to accommodate modern threats to the safety of public health and business practices. Penalties for importation of contaminated goods range from \$12 to \$15US per shipment and are too low to act as an effective deterrent. Perishable goods currently must be held until final disposition by the court even though evidence of contamination and deterioration is apparent.

Another law that does not reflect modern international trade facilitation practices is the 1994 **Coffee Act**, which institutionalizes outmoded approaches of government control over the subsector. International practice now endorses quality control of coffee as a matter that is left to the private sector. Ugandan standards for grading of coffee do not match the realities of current production. Moreover, coffee certificates required for export are of little use, since testing carried out by the exporter's laboratories is more respected in the international marketplace than the government's judgment.

IMPLEMENTING INSTITUTIONS

Many public institutions have some regulatory authority over the flow of international goods. Trade facilitation should result from a national strategy that incorporates all stakeholders in the supply chain. Strong and sustained political will at the highest level, sufficient technical and financial assistance, and a well-functioning partnership between government agencies and the private sector are key ingredients for success.

UGANDA REVENUE AUTHORITY (URA)

In 1991, Uganda created the autonomous URA. In 2005, a restructuring of the URA took place for the purpose of refocusing the agency on its core mission to improve revenue collection, tackle corruption, and improve trade facilitation. The URA is now under the umbrella of the Ministry of Finance. Increased salaries commensurate with the higher-paid managers at the largest public organizations were awarded and managers delegated more decision-making authority, including the ability to discipline and fire employees for misconduct. Steps to reduce departmental corruption included the termination of those who were known to have abused their authority, the required filing of a periodic asset declarations, and adoption of a strong code of conduct with enforcement provisions.

The East African Community (EAC) is the primary focus of regional integration efforts that should produce dramatic improvements in standardization, simplification, and predictability for traders with transactions both inside and outside the trading bloc. The original three countries within EAC, Tanzania, Kenya, and Uganda, formed a Customs Union in January 2005 as the first step in the process. Rwanda is now a member as well. A common external tariff (CET) is now in place. This consists of three tariff bands, 25% for final products, 10% for intermediate, and 0% for raw materials. Because Uganda had some of the lowest tariff rates in Sub-Saharan Africa, adoption of the CET raised the tariff on finished goods from 15% to 25%.

TRADE FACILITATION—KEY IMPLEMENTING INSTITUTIONS

- Uganda Revenue Authority
- Customs and Excise Department
- Bureau of Standards
- Phytosanitary and Quarantine Inspection Services
- Ministry of Internal Affairs

Currently intra-trade between Uganda and Tanzania is free of duty as are imported goods from Uganda and Tanzania destined for Kenya. However, 413 products from Kenya currently are taxed at 4%. This will be reduced to 0% over a five-year period.

Many challenges remain to implementation of a fully functioning Customs Union. Various levels of current processes and practices make integration and harmonization difficult. Different levels of commitment that continually fluctuate depending on national priorities are evident. Multiple interpretations of the common legal and regulatory framework are ongoing and the EAC's central authority has no authority to mandate compliance. Progress will depend on developing within each member the belief that the union is essential for their continued economic growth and that partnership enhances each one's ability to compete in the international marketplace.

CUSTOMS AND EXCISE DEPARTMENT (CUSTOMS)

Customs is one of six departments within the URA. The vast majority of administrative procedures and regulations regarding cross-border trade are developed and implemented by this institution.

In 2006, Customs initiated a Modernization Program as part of the URA's overall efforts to transform the agency into a more efficient, effective, and client-oriented organization. The United Kingdom's Department of International Development (DFID) partnered with Customs to provide the needed funding and technical expertise. The goals of the strategy were clearly defined: to streamline import-export processes; to maximize revenues; to protect industry and society through increased trade compliance and interdiction efforts; and to upgrade the staff in both professional skills and integrity awareness. If successful, a stable, predictable, and transparent environment that encourages investment, economic growth, and therefore poverty reduction would result.

To date, significant improvements in trade facilitation have resulted from these efforts. Customs has taken ownership of the program with those responsible having a clear vision of the sequential steps that need to be taken to fully achieve the goals. In general, processes have been reengineered and streamlined, officer discretion minimized, information technology used to expedite processing, risk-management principles introduced, illegal activity by officers reduced, and a basic foundation for a culture of service and cooperation between the agency and the trade community established.

Actions to reduce border delays under the EAC Customs Union initiative have proven successful. Some of Uganda's major border posts are now operating "24/7." Joint inspections are conducted by both national authorities to expedite processing with only one stop on the entrance side of the border required. Delays between Kenya and Uganda, the major trade route, are now not longer than two hours, unless clearance requiring examination is performed there. Only about 10 to 15 shipments per day out of a total of 350 are cleared with inspections.

In some respects, the speed of change has overtaken Customs' ability to absorb and manage it. According to a variety of stakeholders, managers need training in how to use the new processes and data available to them to exercise more effective and innovative oversight and to be less involved in the daily operations. Customs' staff also needs an improved sense of its role in the trade facilitation process so that staff actions reinforce rather than subvert new initiatives. There is also concern that efforts to stem the flow of illegal goods across borders have not yet proven successful, and more attention should be devoted to this issue.

Human resources. Total Customs staff numbers 684 with salaries for the Customs officers ranging from US\$900–1200 per month and managers in the range of \$1,850–\$2,950 per month. A planning unit, reporting directly to the Commissioner of Customs, is responsible for strategy development and tracking of results. There are 34 border posts, 8 of which are major and represent 80% of all commercial trade.

Customs is divided into five units:

- Field Services (Operations)
- Audit
- Business Analysis and Compliance
- Enforcement
- Trade (Valuation, Classification, and International Programs).

Effective human resource management is critical to successful reform. Without quality public institutions, the steps to facilitate processes will either not occur or not be sustainable beyond a rudimentary level. Customs has a cadre of capable officers, hired and promoted through a process that is free of political influence and based on merit. Pay comparable to the private sector is in place to attract quality candidates, and performance appraisals that are conducted two times a year are effective. The URA has a dedicated training facility. Although an

annual training plan properly identifies the needs of the organization, insufficient resources are available for full implementation. Better training must be accompanied by improved oversight and accountability.

General operations. Customs does not collect any duties or taxes directly. Rather, payments are made directly to the bank by the importer. Although the banks currently record payment of duty and taxes in Customs' IT system, paper copies of bank receipts must be attached to entry documents.

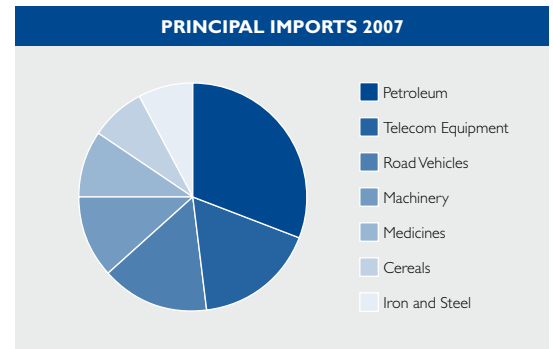
A system does exist through which major importers can deposit funds on a periodic basis and Customs can draw against that account as import declarations are received. This measure is used, however, only by a small number of major companies with significant financial resources.

Revenue from Customs collections continues to hold at about 50% of all URA collections, despite the free and reduced tariffs within the region. From July 1, 2007, to June 30, 2008, collections increased by 25% from the previous year to a record US\$1.0 million. The increase is due to the rise in imports from Asia on which the duty rates are 15 to 25%.

IT applications. The use of a modern IT system is a critical part of an overall reform and modernization strategy for any customs agency. Used properly, these applications simplify, consolidate, and standardize procedures in accordance with international best practices and create a transparent and predictable trade environment. In 1996, Uganda initiated the use of the modern customs management IT system, UNCTAD's ASYCUDA. It migrated to the more advanced ASYCUDA ++ model in 2003. Continual upgrades have occurred and plans have been approved for future migration to the newest version, ASYCUDA World, a web-based system, once funding and planning have been completed.

Currently, Uganda's IT system is operational at 26 of the 34 posts and captures 95% of all import, export, and transit transactions. Traders are responsible for lodging the required data into the system, either directly from their offices or their clearance agents' offices or through use of one of the 40 privately operated service bureaus. Customs provides system access, training, and support assistance free of charge.

According to a variety of stakeholders interviewed for this diagnostic, the application of IT to the import/export process has strengthened the facilitation of



trade in Uganda. Officer discretion, processing delays, and contact between Customs officers and the clearance agents all reportedly have been reduced. Selectivity in examinations of cargo is now well established and the capability of electronic payments is under development.

Despite these advances, challenges remain. Full utilization of the system capabilities does not yet take place. Customs does not yet capture examination findings or the identity of the examining officer. Activation of these features is essential to advance risk analysis and decrease officer discretion.

Moreover, lack of adequate infrastructure at some border points limits system availability. Clearance agents, whose job is to represent traders before Customs, often are unable to take advantage of the full range of system capabilities because of the sectors' underdevelopment in the area of modern business practices. This gap will widen as more modules such as electronic payments are made available.

Currently the other public agencies that regulate imports and exports are not linked to ASYCUDA, and releases and most examinations are not well coordinated. However, initial plans are under way for development of a "single window" with assistance from UNCTAD. This would allow Customs' IT system to capture all actions related to clearance of goods and share data among all the affected agencies. Such harmonization of actions and data sharing is a significant trade facilitative measure.

In October 2007, Uganda and Kenya jointly introduced a Revenue Authority Digital Exchange (RADDEX). This system accommodates the automated data exchange of import/export data between the participating countries, allowing shipment data to be transferred electronically from one national system to the next

though an intermediate server as it crosses the border. RADDEX eliminates re-input of data by the Customs clearance agents at the border, reducing the possibility of clerical error.

The potential of RADDEX to expedite border processing and reduce opportunities to avoid proper declaration of goods is not yet being realized. Clearance agents continue to “re-input” data rather than using the new technology. In July 2008, 745 transactions were the result of transfer of data via RADDEX, while the total declarations exceeded 25,000. Reportedly, border agents fear that progress in processing information will eliminate the need for their services. Low usage is also attributable to sparse Internet access, which is required to use RADDEX.

Risk management. Risk management (RM) is recognized as best approach for border agencies to balance facilitation of legitimate cargo with their need to interdict improper transactions. Under RM, initial screening is performed on all shipments, preferably using pre-arrival data, and only those with identified risk factors are reviewed in-depth or physically examined.

In 2003, Uganda launched efforts to implement RM. These efforts were not well organized, however, and lacked sufficient resources and institutional commitment. Accordingly, officer discretion, rather than systematized risk assessment, remained the predominant factor in determining treatment of goods. In 2006, a reorganization within Customs addressed this failing. Customs established a risk management office with donor-supported technical assistance. Now, this unit has six full-time employees and operates under the Office of Business Analysis and Compliance within Customs.

The major purpose of the RM unit is to identify the degree of examination and verification for imported merchandise based on documented levels of risk. The following four categories are designated through ASYCUDA:

- Green (25–30% of imports): Release upon presentation.
- Yellow (20–25%): Document review.
- Blue (20%): Release, but subject to a post-clearance audit.
- Red (30–35%): Complete document review and inspection.

Although verification rates have decreased from a high of 70% in the past, the current rates have shown little variation throughout 2008. The goal is to increase the level of green over the next several years to 60%.

Since its origin, the RM unit has made little improvement in research techniques, still confining its analysis to the data lodged in the IT system. This approach is significantly hampered by the lack of input of examination findings into ASYCUDA. Intelligence gathering must be expanded to other sources and more advanced analytical processes employed. Without these enhancements, the unit will not be effective in determining accurate risk parameters to which to direct resources.

Audit. Audit is an integral part of any RM program. It involves post-entry controls through audit of the accounting books of the trader. The audit process takes place to ensure that all proper payments have been made after release. Audit takes place in lieu of verification of data at the point of entry or exit.

In 2005, Customs established its audit division. The unit is staffed by 36 professionals who specialize in one of four major commodity groupings. The staff is just beginning to use RM in the development of its yearly audit plan. Candidate recommendations are solicited from the field, enforcement, and RM. In 2006–2007, 60 audits were completed. More than 100 are projected for the current fiscal year. The vast majority of findings indicate discrepancies in declarations, most related to undervaluation. Recommendations are forwarded to the Compliance and Business Analysis Divisions for collection. Results are difficult to quantify other than on a case-by-case basis, since no system captures this data. Estimates are that 60% of additional revenue recommended is actually collected.

There are many challenges facing further development of Uganda’s Customs’ audit program. First, the high level of cash transactions in the import community adds complexity to the process. Also, there are insufficient available computers (one for every four to five staff); a lack of an audit software program to track actions and record results; and current legal uncertainty as to the trader’s responsibility for record maintenance. In addition, audit officers required continuous training to remain current with the constant evolution of modern business practices. This does not take place, due to budget constraints.

Valuation, penalties, and appeals. As noted earlier in this chapter, undervaluation of imports is a major issue facing Uganda. Undervaluation results in significant losses of revenue and unfair competition against the legitimate trader.

The valuation department within Ugandan Customs is responsible for supplying the tools by which an examining officer can make a valid determination of the correctness of the value stated on the declaration. The central valuation office is located within the Trade Division of Customs and is staffed with five officers. These officers analyze current entry data from which they develop value guidelines that are disseminated to Customs officers who review import documentation at the Customs Business Centers. These guidelines are issued periodically on particular ranges of imports. They are distributed via hard copy and without a comprehensive list and index. They are often difficult for the receiving officer to use effectively or efficiently. Updating is also difficult.

The office reviews about 5–10% of all entries after release, using the data in ASYCUDA to determine which shipments appear to be at a higher risk of improper declaration. A high percentage of those reviewed contain errors, some of which are significant. Another task for the valuation unit is pre-entry certification of value when requested by the importer. However, importers note that these validations are often not accepted by other Customs officers who might question the value during a routine road stop while the cargo is in transit. In these cases, the importer must pay the fine, which is 50% of the imported value, then proceed to challenge the action before the Tax Appeal Tribunal. Usually the decisions in these cases favor the importer and refunds are granted. However, this is only after a long period of time and after absorbing the cost of litigation. Because of these factors, most importers do not use the formal appeal process.

The current valuation guideline system is not sufficiently user-friendly or comprehensive to be effective in detecting underinvoicing practices. Needed improvements require installation of an online automated value database that can be easily accessed by the reviewing officer.

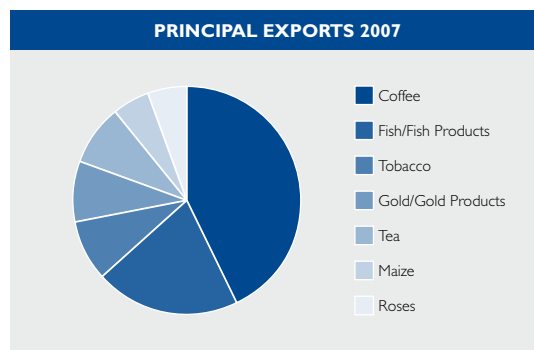
Research to establish proper value ranges for goods must be expanded beyond national import data. Efforts should be directed to the development of a regional database since undervaluation of the same range of imports is a shared problem. Intermediate steps should include the free exchange of information which is done now only if questions arise on a particular shipment.

By law, importers have the right to appeal a valuation decision by Customs. There is no institutionalized administrative procedure that clearly states where to lodge an appeal, however. Also, there is ambiguity with respect to the sequence of the reviews within the agency and the time constraints for notification of actions. Clarification of appeal procedures must be implemented so that the process is more predictable and transparent.

The current system of multiple bonds required to insure payment of lawful duties and non-diversion of cargo is both expensive and generally not effective. Estimates are that 4% of the transaction cost is attributable to meeting these demands. It is rare that Customs initiates action against the holders of the bonds. Although some improvement should occur with the implementation of the COMESA Bond Guarantee System currently in pilot, regional bonding procedures needs to be modernized.

Imports. Government policy is directed at promotion and growth of exports and internal trade while giving less priority and consideration to the import sector. Many importers believe that tariff and non-tariff barriers are continuing to increase in an attempt to slow the pace of imports and create a more favorable balance of trade. In the view of importers, many of the announced advantages to regional integration have not been realized. For example, in adopting the CET, Uganda gave little resistance to accepting a duty rate of 25% on finished goods, even though its own tariff was significantly lower at 15%. Likewise, the list of sensitive products on which tariffs continue to be levied on Kenyan goods is extensive and includes all clothing, sugar, rice, dairy products, etc.

Another factor that increases import costs relative to those of neighboring countries is Uganda's failure to become a member of the COMESA free-trade area, which Kenya has joined. As a member of that pact, Kenya may secure articles from within the broader area of COMESA with little or no duty. The same product, such as sugar, could be assessed a 100% duty if imported into Uganda. Such actions, while preserving revenue, drive up consumer costs and encourage smuggling from Kenya.



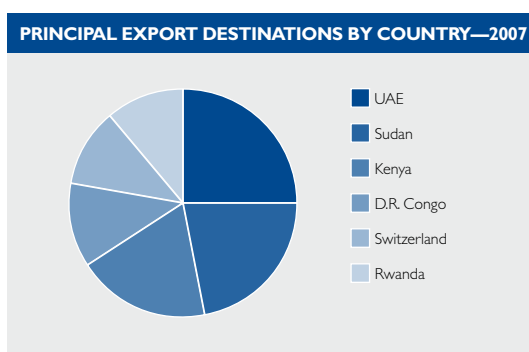
Although goods can be cleared at Uganda's borders, most proceed under a transit document to an Inland Container Depot (ICD). These facilities are privately owned and operated. They provide space for Customs officers whose function is to inspect goods.

Time from filing of Customs declaration to clearance is fairly short—about three days. This time has steadily decreased in the last several years. Customs declarations are presented to a Customs Business Center, of which there is one in Kampala and others at major trade centers within the country. Traders must pay taxes at an authorized bank prior to presentation of the entry to Customs. Proof of payment in the form of a stamped bank receipt must accompany all submissions. Personal contact between Customs officials and the clearance agents generally only occurs during a physical examination of the goods at which both parties are required to be present. This is the activity where the greatest opportunity for collusion to avoid proper payment of duties is most apt to occur.

The value on which import duties and taxes are assessed varies by mode of transport. On goods traveling overland, the value is the CIF delivered Mombasa price. For air shipments, the value is freight-on-board (FOB) point of origin, excluding the cost of air freight. The non-inclusion of inland and air freight is a government measure to reduce the impact of the distance of Uganda from foreign markets and of its landlocked position which requires use of ports in neighboring countries.

Significant improvements have been made in the duty drawback system, which is handled by the Customs audit department. This practice grants refund of tax and duty on imported materials that are then re-exported, including packaging. The paperwork for requesting refunds has been streamlined and refunds are granted usually within 30 days. Since the implementation of CET, the volume of requests has decreased dramatically, by about 10 per month.

Exports. Uganda's export processing system is generally efficient. Certificates of origin are issued by the National Chamber of Commerce within a one-day time frame; however, this action cannot be completed online. Customs is generally selective about examinations of exports. When examinations do take place, they occur at the time of loading at the exporter's premises, after which the export declaration is filed with Customs. Clearance to export is given within one day.



In 2007, exports, excluding manufactured goods, grew by 39% from a value of US\$962 million to US\$1.34 billion. About 650 exporters are responsible for these transactions. Although traditional exports include coffee, cotton, and tea, manufactured products, gold, fish, and fish products are significant. The strong export growth in 2007 is attributable to several factors, including the price of coffee on the international market and increasing trade with neighboring Sudan and the Democratic Republic of Congo (DRC).

- **Coffee.** Of the 1.1 million coffee growers in Uganda, 95% produce on less than one acre of land. All segments of the trade, from grower; processor; and exporter, are in private hands, although the Uganda Coffee Development Authority (OCDA) is responsible for policy, regulation, promotion, and quality control. Although the OCDA is a government body, its practices are heavily influenced by the private sector since it is the latter that provides its funding and takes up the majority of positions on its board of directors.

There are around 30 coffee exporters, 8 of which are international firms that control more than 60% of the trade. Coffee must be containerized, which reduces theft and damage, although insufficiency of containers at peak harvest times can be a problem. At least 80% of coffee is transported overland to Mombasa where, due to port congestion, delays are encountered. The remaining coffee is transported by rail, also to Mombasa.

The coffee sector is heavily regulated both at the national and international level. Multiple certifications are required and include a quality verification and International Coffee Organization (ICO) form issued by the OCDA, an SPS certificate from the Ministry of Agriculture, Animal Industry, and Fisheries, and a certificate of origin required



by the country of destination. (In Uganda, this is issued by the National Chamber of Commerce.) All these requirements require manual processing and none are coordinated to reduce data redundancies. The law requires OCDA to complete its regulatory process on each export within 24 hours and generally this time frame is met.

- **Fish.** Exports of fish and fish products are the second largest export commodity but in both value and volume the sector has been in decline due principally to the depletion of stock in Lake Victoria. In 2008 a drop of US\$6 million is projected.

Sixteen processors currently export fish, both fresh and frozen, with a few by-products such as oil. Seventy% of the exports are destined for the EU. Transport is principally by air; a cost that represents about 60% of product cost. In Kenya, these costs are only 40% of the final price. High transport fees are due to lack of direct and regular service through Entebbe and low trade volumes. The export process including Customs clearance and securing the required quality certifications is a fairly facilitative process.

Depletion of stock is a major concern and the sector is both partnering with the public authorities to develop a strategy to stop the illegal trade and using vigorous self-policing policies to insure that their operations do not process fish under the legal limit of 20 inches nor use fish caught with nets under 5 inches. The self-regulating program developed by the privately operated Uganda Fish Processors and Exporters Association (UFPEA) is now being used in both Kenya and Tanzania.

Illegal trade on Lake Victoria is estimated at US\$70 million per year, with most of the fish going to the DRC and southern Sudan. To date, effective actions to deter and decrease illegal fishing have not been successful. Inadequate resources to patrol the lake are one underlying cause. But more important is the lack of stable, strong border agencies at some of the neighboring countries whose cooperation will be required to effectively address the issue.

- **Flowers.** Uganda's export trade in fresh flowers has been declining for several years, principally because of pest contamination and high energy costs. Only 19 companies, which grow on land ranging from 2 to 35 acres, are currently exporting, all to the EU. This group is represented by the Ugandan Flower Exporter's Association which was created in 1993 to address the lack of human capacity issues within the infant sector. Its role has since expanded to advocacy and lobbying, as well as to quality control and monitoring functions.

The flower sector has taken a unique approach to logistics. It has collectively created a non-profit handling company that performs cold storage, freight forwarding, and export clearance for the sector. This approach has been a major factor in cost control.

Transit. Customs procedures for goods crossing international borders, transiting through other countries from one Customs authority to another without payment of duties, taxes, or other fees normally due on imports, should be a facilitative process. International best practices require sealing of containers at origin, guarantees to ensure against leakage on transit, and an efficient, simple, harmonized system of documentation to control the movement. When these are in place, delays and costs are minimal. Transit systems are particularly important for landlocked countries like Uganda, which is designated as one of the 31 landlocked developing countries.

Transit procedures within the EAC are not harmonized or standardized. Because each country has its own system of control, Ugandan traders are required to file different forms as they exit and enter each country and acquire separate bonds and accrue cumulative fees for handling, exit, and clearance at each crossing. Uganda uses the MODTRS module within ASYCUDA ++ to control movements from border to inland destination.

COMESA is developing a comprehensive regional agreement that must include common customs documentation and procedures, cooperation between authorities or one-stop border posts, and a regional guarantee system. An encouraging sign is the current pilot between Kenya and Uganda of the COMESA Bond Guarantee which would permit one regional surety bond to cover the complete transit. This should have a significant impact on lowering both transit times and costs.

Enforcement/border control. Uganda struggles to control its illegal trade which continues to a significant degree. One of the major handicaps in dealing with smuggling effectively is the multiple and porous borders Uganda has with neighboring countries, which are themselves at dramatically different levels of development. Smugglers take advantage of the poorly manned and patrolled borders of Lake Victoria and Lake Albert as routes of illicit trade with Kenya, Tanzania, and DRC. Uganda's eastern land border with Kenya is another challenge, due to Kenya's more industrialized economy in comparison with the weaker condition of this sector in Uganda. Much of the northern border with southern Sudan is uncontrolled with no viable Customs authority in Sudan with which to join efforts to increase monitoring. On Uganda's western border, the major problem is the diversion of transit cargo, which consists mostly of petroleum products and dry goods that are traveling through Uganda for the DRC and illegally enters the domestic market.

The Uganda Bureau of Statistics conducted a survey to try to quantify informal cross-border trade. The results indicated that among Uganda's neighbors, Kenya was the principal informal trading partner, with the DRC ranked second.

This trade has continued to rise, by 15.7% in 2005, by 22.3% in 2006 to an estimated US\$776 million in 2007, a 335% increase from the previous year.

Another related issue is the lack of reliability of trade data. Undervaluation, false invoicing, and fraudulent declarations—all designed to avoid payment of lawful duties—are prevalent. The low quality of data is a challenge that impacts trade statistics, revenue, and, ultimately, trade policy. Of equal concern is the inability of the legitimate trader to effectively compete with smuggled goods as they flood the markets.

In 2005, Ugandan Customs elevated its Office of Enforcement to one of five divisions reporting directly

to the commissioner. This unit, with a staff of 120 officers, has developed a strategic plan to combat the threat in place using RM processes as its basis.

For the financial year 2006–2007, 3,115 cases were reported for a total of US\$4.35 million in additional revenue recovery. Interdiction and deterrent actions include use of random road stops, surveillance patrols of borders, and searches of premises and conveyances.

The effectiveness of enforcement can be improved through several actions. Border control authority is currently delegated to multiple agencies, including national police, immigration, military, and Customs officers. This often creates jurisdictional confusion and impedes effective enforcement actions that require close coordination and sharing of intelligence. Designating a lead agency or establishing a Memorandum of Understanding (MOU) between the bodies to delineate the role of each would avoid duplication of effort and better utilize the limited available resources. Capacity-building with the enforcement branch is needed in such areas as risk management, investigative techniques, and interviewing skills to increase professionalism. Expansion of the current automated database of violations maintained by enforcement should be expanded so that penalty actions taken throughout Customs are incorporated. The system should then be made available to all officers, particularly the risk management/audit units to assess risk levels.

Regional initiatives to include free exchange of information, a centralized intelligence unit that deals with the full range of problem areas, and joint border operations should be expanded and expedited. Many of the threats emanating from outside the EAC, such as undervaluation of Asian goods, are common to all EAC members and therefore warrant coordinated regional strategies.

Although it is recognized that some segment of the informal trade has lifted people out of poverty and deals with small quantities flowing between relatives and friends on different sides of the border, much more of it involves the smuggling of commercial quantities. Uganda's approach to this sector must be more forceful and direct, so that assessed penalties for tax evasion are sufficient to promote compliance.

The trade community bears some burden in these schemes to circumvent proper duty payment including attempts to bribe Customs officers to accept the falsity for a payment. Trade associations must initiate projects and training within their sectors to make their members

aware of the ultimate cost to the sector of improper behavior and encourage the use of more disciplined management techniques that result in higher compliance levels. A best practice private initiative is that of the control mechanism employed by the fish processors to eliminate the use of undersized fish.

Corruption. The level of integrity within Customs is directly related to trade facilitation. When integrity standards are high, the importer/exporter has a predictable environment and cost structure that directly impact on his decision to do business in that country.

With its reorganization in 2005, the URA and Customs directly confronted this issue and the results are positive. Top-level management made a strong and sustained commitment to improved integrity standards, putting in place an administrative process to achieve their goals. Top-level officers suspected of corrupt behavior were terminated, resulting in almost a new contingent of management personnel now in place. Salaries are generally competitive with the private sector. Staff only suspected of wrongdoing were rehired but closely monitored and if further evidence was developed, termination occurred. This effort resulted in the removal of about more 50 officers since 2005, almost 10% of total staff. The message of intolerance of corrupt behavior is continually reinforced at all levels.

In addition, a strict code of conduct is in place and officers thought to be in violation are first counseled and then if the behavior continues, a formal investigation and hearing before a URA Disciplinary Committee is undertaken. The employee is placed on leave during this period. Generally proceedings are completed within 30 days. The process is both predictable and timely, both essential elements to a comprehensive anti-corruption program. Other reform measures include streamlining of procedures and expanded use of IT, which reduced both personal contact between the trader and Customs and officer discretion. Customs also established the Office of Compliance and Business Analysis which employs an internal control program to monitor employee actions. Periodic financial statements are required of all URA employees.

Although improvements have been noteworthy, integrity issues still remain. There is no well-established and recognized process for reporting improper behavior where the complainant can protect his anonymity and be ensured that the information given is properly investigated.

BUREAU OF STANDARDS (BOS)

The BOS regulates and performs quality control over the import of processed food items, chemicals, construction material, electrical goods, and petroleum products. Soon to be included in this list will be oversight of the export of fish and fish products under an agreement with the Ministry of Agriculture, Livestock, and Fisheries. The unit has inspectors posted at five major border posts whose task is to sample products for laboratory testing at the unit's only facility in Kampala. Goods are allowed to be taken to an inland bonded warehouse awaiting clearance from the unit.

In Legal Notice No. 01/2007 of August 1, 2007, the governments of Kenya, Uganda, and Tanzania agreed to harmonize quality standards and testing methodology and to accept the certifications issued by each other in the case of the above-regulated products. In most cases, trade in goods where quality standards are required for public safety may take place without further intervention if accompanied by a quality certificate issued by the proper bureau in the originating country. This is a major facilitative measure. However, instances whereby Kenyan officials require additional testing are still reported.

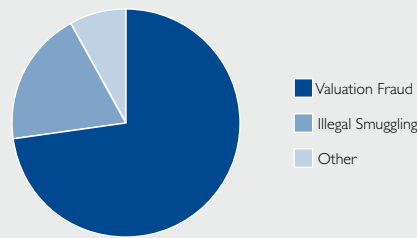
Several issues are evident. Although border coverage includes the major points of entry, 12 others have no presence. This means if importers suspect their cargo will not meet standards, they can circumvent the process by transiting through an unstaffed post. Also, Customs will often release goods prior to BOS certification because of the lack of a mechanism for BOS personnel to put a hold on the cargo into ASYCUDA. The BOS laboratory is accredited, but the fact that there is only one facility delays final release.

PHYTOSANITARY AND QUARANTINE INSPECTION SERVICES (PQIS)

Located within the Department of Crop Protection of the Ministry of Agriculture, PQIS regulates the import and export of fresh plant and agricultural products in Uganda. Harmonization of about 50% of Sanitary and Phytosanitary (SPS) standards throughout the EAC have been agreed but are awaiting final approval which was scheduled to occur in July 2008. This should be a major facilitative measure when in place.

Although the unit is allocated 75 officers, only 45 are in place, the majority of which are stationed at the 28 border crossings. To address the high turnover rate, caused mostly by low salaries, the government is redirecting district staff which by July 2009 should provide an additional 100-plus staff to the department.

ENFORCEMENT INTERVENTIONS 2006/2007



Because the agricultural sector is composed of small farms of between 0.5 to 10 acres, the PQIS has led efforts to organize farmers into "export villages" that can provide sufficient volumes for sustainable exports. Sixteen such groups are now active, each one producing about two tons of fresh fruit and vegetables weekly, principally for the European market. Further growth of the collective groups and therefore exports of these products will require the expansion of cold facilities in the entire supply chain, for packing, storage, and transport.

SPS certificates are provided by PQIS on all export products including coffee, flowers, tea, cotton, and tobacco as well as fresh vegetables and fruits. More than 1,000 certificates are issued monthly at a charge of US\$3 each. With the exception of flowers, issuance is manual and is completed when the product is inspected at exporter's premises. In the case of flowers, inspections are performed at the growing site three times per year and issuance of the required certificates, including transmission to the foreign buyer prior to export, is performed via email without additional inspections.

PQIS also performs quality control on incoming agricultural products through issuance of import permits on each shipment following a pre-arrival plant pest-risk analysis. In addition, a physical inspection of the goods is conducted at the border. Import volume is low, with only about 75–100 licenses issued per month at a cost of about US\$3. Samples of suspect shipments are sent to a central laboratory near Kampala while the shipment is held at the border. This post-entry quarantine station and laboratory is not accredited. Results are issued in about four days, a detrimental delay to perishable items. Fumigation services are available through private companies at the borders if needed. PQIS inspectors at the crossing points have no tools to conduct any testing, though such equipment is available internationally. Access to these kits would decrease delays significantly.

The agency was not notified of the expanded hours of operation at the major border posts and is trying to determine how to adjust its workforce. Revenue for all permits issued by PQIS is not dedicated to the unit but rather flow into the main treasury. This is unlike Kenya, which has dedicated funding through user fees.

MINISTRY OF INTERNAL AFFAIRS

Immigration control is controlled by the Ministry of Internal Affairs. An expedited process under the coordination of the Uganda Investment Authority is in place for issuance of work permits for foreigners seeking to invest over US\$100,000. Permits can be granted for up to three years and cost around US\$1,000. This process, including renewals, is not transparent and success often depends on personal contacts rather than following the proper procedures.

Transport drivers are subject to immigration processing at each border within the EAC, although this is accomplished with stamps in passports rather than visas. EAC passports are issued in lieu of national documents. The goal is that by 2010, there will be free movement of people, work, and residence within the COMESA region.

SUPPORTING INSTITUTIONS

In addition to the public agencies that control the border, there are other institutions, activities, and individuals that are necessary to the conduct of international trade. Importers and exporters rely on a number of trade-facilitation services to help them move their goods into markets.

CUSTOMS CLEARANCE AGENTS/ FREIGHT FORWARDERS.

There are about 400 companies certified by Customs to perform clearance functions. By law they must be used by importers and exporters to prepare Customs documentation unless they are among the handful of companies that are permitted to prepare their own paperwork.

Agents must file a yearly request for certification by Customs for a fee of US\$275. Fees for services vary by company but generally average about \$250 for imports, less for exports.

Several years ago, the customs clearance and freight forwarding sector was generally considered to perform poorly, demonstrating insufficient knowledge, corrupt practices, and low compliance levels. Estimates were that

70% of their submissions either were incorrect or contained missing or false data. There have been efforts to improve the sector, although it is still viewed as needing a higher level of professionalism.

The **Uganda Freight Forwarders Association** (UFFA) was founded in 2000 out of the need to increase both professionalism and integrity within the sector. Through its efforts and cooperation with clearance agent organizations throughout the EAC, a training curriculum was created and is now under way. Within a few years, successful completion of certain prescribed training course will be required as the EAC standard for accreditation of the sector.

The results of this initiative are already being felt, with increased professionalism and some reduction of the number of active companies. Further reductions are anticipated, with some observers predicting 200 companies will remain as the small part-time agents whose competency and integrity were doubtful are forced from the sector. Training and professionalism efforts have also created a higher level of trust among the sector and Customs, which is necessary to build an effective partnership in modernization efforts. Nonetheless, integrity issues are still an issue within the sector.

The other organization representing this sector is the **Ugandan Clearance and Forwarding Agents Association** (UCIFA) with over 300 members. This group is principally focused on immediate problem resolution for its members rather than capacity-building.

TRANSPORT INFRASTRUCTURE

General. In a landlocked country, transport issues are especially complex, because free and ready access to the sea is dependent on neighboring countries. Policy objectives should be directed at reducing transport costs to improve competitiveness of Uganda's exports and to reduce delivered costs of imports. Ugandan traders need clear and speedy access to a seaport, transport corridors free from delays and uncertainties, and secure and adequate infrastructure to limit damage and deterioration losses en route.

Weak infrastructure is the most significant contributor to high transaction costs in Uganda. Estimates are that as much as 35–40% of the final cost of manufactured goods is attributable to overland transport, much more than the established international norm of around 15%. Costs continue to escalate, with a nearly 50% increase already recorded in 2008. Since early summer 2008,

KEY SUPPORTING INSTITUTIONS

- Customs clearance agents/freight forwarders
- Transport-related institutions
- Warehouses
- Trade associations
- Export processing zones/free trade areas
- Media
- Legislative branch

export shipping costs have gone from US\$68/ton to \$97/ton. Continual fluctuations make it difficult to predict final sale costs although the price must be agreed upon in advance of shipment.

The high costs of transport are attributable to the following factors:

- Multiple bonding requirements to secure transit in both Uganda and neighboring countries, which add an estimated 4% to costs
- Poor roads
- An almost non-functioning rail system
- Congestion and poor management at the principal port of Mombasa, Kenya
- Inadequate cold storage facilities throughout the supply chain for the movement of perishables
- Insufficient booking space on international vessels
- Insufficient transport vessels on Lake Victoria for traffic with Tanzania
- Non-tariff barriers within the EAC.

In light of these factors, delivery deadlines are often exceeded, resulting in monetary penalties assessed against the supplier.

Ninety % of international trade is carried overland, mostly through Kenya to and from the port of Mombasa, a state-owned and -operated facility. Congestion at the port causes delays of a week or more for loading export cargo or taking delivery of offloaded cargo. Kenya requires clearance functions be performed by one of its registered clearance agents. Reports are that some of these agents are unscrupulous and demand excessive fees for service, often holding back part of the shipment until further fees are paid.

Improvements in management and port efficiency have been promised, although the impact of these changes has not yet yielded lower costs. The port now operates "24/7"; destruction has been ordered on 7,000 containers that have been stored at the port for over

two decades; vessel waiting times have been significantly reduced; productivity figures are up; and the container storage figures show a decline.

Many observers believe the port problems originate from poor management, rather than inadequate space. Nonetheless, Japan has recently offered to provide US\$250 million for expansion of the current facilities. The question remains whether progress to resolve port congestion will continue and the recent trade facilitation improvements sustained.

Regional coordination and reform. The EAC Trade and Transport Facilitation Project, which includes Kenya, Tanzania, Uganda, and Rwanda, is trying to address the major infrastructure problems in a comprehensive manner. Its goals include the following:

- Construction of the one-stop border posts
- Rehabilitation of rail service
- Upgrade of the marine vessels on Lake Victoria which would link with rail service in Tanzania
- Building human capacity within the rail oversight authority
- Installation of a high-tech cargo tracking system to speed border processing
- Development of a central transport corridor to link Dar Es Salaam with Kampala.

The construction of one-stop border posts must be approached with the goals of the EAC Customs Union in mind. By 2012, internal border functions should be eliminated, as control of external trade will be conducted at point of entry into the region and all regional trade will flow freely across national borders.

Reports are that funding sources and project coordinators are now in place for implementation of the project. The trade community seems unaware of this initiative and, when told, is not confident about the project's ability to realize its objectives, the principal one of which is to reduce current transport times to and from Mombasa by 20%. The private sector should be given some role in accountability and oversight of the project to make sure objectives are met timely.

Non-tariff barriers. Use of unnecessary and multiple weigh stations and road stops in Kenya on the overland route to Mombasa are still in place, despite the recent Kenyan commitment to reduce these interventions, which usually involve payment of unofficial fees. Both the Ugandan National NTB Committee and the EAC Business Council, made up of private sector

representatives to address these issues, need to be strengthened in increase their effectiveness in resolving these issues.

Security. Traders indicate that they generally include a 2% loss figure in calculating prices of cargo transiting Kenya. The international standard is about 0.1–0.2%. Available insurance to cover loss is limited and, when secured, costly. The trade community indicated that in 2007, 32 containers never reached their destinations. Seals are generally still intact which means the theft of the cargo was done through manipulation of the container walls.

Rail service. Cargo that travels on antiquated rails in old cars is highly vulnerable to damage. By agreement, the Kenya and Uganda operations of the railroad linking the countries was turned over to a concessionaire, the Rift Valley Railways, in April 2006 under a 25-year contract. This initiative has resulted in less service to Uganda. At the same time, improvements in Kenya have been ongoing, due to the higher volume of trade in that country. Rail transport for Uganda has now dropped from 16% of cargo volume to less than 10% even though when run efficiently rail offers a much less expensive transport option. No inland service is available to feed into the main rail line. Strong doubt exists if the proposed recapitalization of the Rift Valley Railways will result in improvements.

Marine shipping. Lake Victoria transport is also inadequate, although it could offer another means of inexpensive transport to Tanzania and Rwanda. Two commercial ferries are currently in service but both are unreliable and in poor condition. Uganda's government has committed to the purchase of an additional ferry that could carry eight tons, but when and where this will take place is uncertain.

Air. Air transport is used for the export of perishable products, principally fish, fish products, and fresh flowers. The volume of such cargo is decreasing in 2008 after a 9% increase in 2007.

Four major carriers, three to Europe and one to the Middle East, offer regular service of between 8 and 20 tons per plane depending on the passenger load. Most export cargo, however, is carried by charter companies which offer somewhat lower rates.

Rates for export cargo from Uganda are higher than neighboring countries such as Kenya by about US\$0.20 to 0.80 per kilo. They currently range from \$3.20 per

kilo to \$2.20 depending on commodity and volume. High transport costs are due to several factors—less competition, low volumes, and the highest airport handling rates in the region. Sufficient capacity is not an issue except occasionally during peak harvest times.

WAREHOUSES

Uganda has a well-used system of bonded warehouses with oversight and control exercised by the Customs Department of the URA. Licenses to operate a bonded warehouse, of which there are currently about 40, cost about US\$2,000 per year. High standards for security must be met and little leakage is reported to occur:

These warehouses are privately owned and operated and are used to store imported cargo prior to Customs clearance and duty payment. Taxes are only assessed on withdrawal. Although current requirements state that such merchandise can be stored for a period of six months, Customs mandates a written request to extend the period beyond 90 days.

Rates for storage are competitive. Principal users of bonded facilities are used vehicle importers that employ these facilities as their sale lots. Only when a purchaser is found is the vehicle withdrawn and duty paid. This is an attractive option for the sector since duty rates are high, ranging from 53.05% for vehicles newer than 2001 and 73% for those older.

TRADE ASSOCIATIONS

There are some strong and effective private trade associations that are generally sector-related. These include the **Ugandan Manufacturers Association (UMA)** and the **Kampala City Traders Association (KACITA)**. The 750 members of UMA represent about 50% of the total sector. KACITA was formed in 2001 as an advocacy group to address the major problems impeding the growth of the private sector. Importing firms represent the vast majority of its current membership of 130,000. Both of these have provided a formidable voice in working with the government on both regional integration issues and internal cross-border trade concerns.

EXPORT PROCESSING ZONES AND FREE PORTS

National legislation for the establishment and operation of these facilities is now in draft and the government has already begun building the facilities for a multi-tenant site. But there is not yet a decision as to whether the export processing zone is to be operated

by the public or private sector. Even with a legislative framework in place, which settles certain administrative questions and grants significant tax incentives to the users, certain major issues remain, including energy and high transport costs. Thus, it is difficult to envision current efforts contributing to attracting new investors to the export sector.

MEDIA

Uganda's newspapers, radio, and TV stations are relatively free, although Reporters Without Borders observes "noticeable problems" in its most recent report.⁸¹ The press is increasingly effective in uncovering and investigation of instances of corruption, raising public awareness of the current environment, and urging appropriate remedial action.

LEGISLATIVE BRANCH

Uganda's 319-member Parliament appears to lack appreciation of the link between expanded international trade and economic prosperity. As a result, it seems hesitant to move on legislation that would offer incentives to business to grow and attractive investment. One example is the tax holiday for exporters of finished products that the government verbally approved in 2006 but has never been enacted.

SOCIAL DYNAMICS

Uganda's government signaled its commitment to encourage the growth of international trade through the implementation of a comprehensive reform program of trade facilitation with the reorganization of the URA in 2005. This initiative also addressed the perception of corrupt behavior within revenue collection activities. This initiative coupled with the agreement to become a full partner in the EAC Customs Union are clear indications of high-level government support for the elimination of restrictions on intra-regional trade and adoption of a standardized and harmonized regional approach to external trade.

These efforts have yielded significant improvements in both integrity standards within the URA's Customs Department and a simplified trade process that has decreased border delays. The government also continues to press its neighbors for the removals of many non-tariff barriers. The pursuit of this policy is strong and usually consistent as Uganda, because of its landlocked position and size, recognizes the benefits of regional partnership.

81 See Reporters Without Borders, *Press Freedom Map for Africa*, available at http://www.rsf.org/rubrique.php?id_rubrique=36.

RELATIONSHIP WITH TRADE

Since the trade community is the primary beneficiary of improved trade facilitation, soliciting their input into the redesign and developing an environment of mutual trust with the stakeholders are considered fundamental principles of a quality reform program. Customs has started this effort and is available for immediate problem resolution which is considered effective on the part of both parties. However, real partnership in policy development and implementation is yet to be achieved. The lack of inclusion of the private sector, in particular the clearance agents, results in that sector continuing to struggle to absorb the changes and to realize the full benefits now available to their clients due to automated processes.

Regional cooperation. Increased cooperation and coordination between the border agencies are required as steps to facilitate trade through implementation of a full Customs Union proceed. All must be informed to prepare for the substantial transformation in processing that will occur at the border posts where their staffs are located. Such contact at the higher levels of management will also be necessary as steps are undertaken to incorporate actions of other border agencies into the Customs IT management system. One concept that has worked well in countries undergoing reform is the establishment of an inter-agency steering committee to guide the process.

RECOMMENDATIONS

- Advance the current rudimentary level of risk management within Customs to improve targeting of high-risk cargo and facilitation of compliant shipments. Actions would include training in advanced risk analysis; activation of the examination findings module in ASYCUDA, including mandatory participation by examining officers; and incorporation of improved intelligence-gathering.
- Increase communication between the private sector trade community and the public border agencies to improve speed, accountability, and effectiveness of trade-facilitation reforms.
- Establish a private-sector steering committee to work with public agencies on customs reform strategy. Delegate to this group the authority to assist in the development of the program, to provide oversight of implementation, to prepare feedback, and to provide accountability.
- Improve cooperation between public border agencies for better harmonization of processes



and advancement of the EAC Customs Union. Establish an intra-agency forum of trade agencies so that planning and execution of initiatives impacting border operations are well coordinated. This will also provide the vehicle for incorporation of other agencies actions into the Customs ASYCUDA system, so that holds and releases are issued from a single source.

- Institute a one-stop shop for importers and exporters at major business centers. Such a facility should include representatives of all public agencies whose authorizations are required to move imports and exports across borders.
- Prioritize the development of a regional transit system, including the COMESA bond initiative, so that cargo moves freely and controls are applied only at the starting and final termination points. Extended use of the GPS tracking devices would accelerate this program.
- Establish a Customs program for simplified and expeditious processing of importers/exporters identified as reliable shippers, using regional standards. Even in the absence of a regional approach, a national program that includes paperless pre-arrival release should be implemented.
- Employ modern business processes, including use of available software packages that incorporate best practices, to effectively manage those Customs processes that are not included in the ASYCUDA system. This would include systems to compile data on penalties, audits, enforcement, and valuation actions.

- Develop a comprehensive enforcement strategy to combat illegal trade. Such a plan would include a thorough risk assessment to identify high-volume, high-impact threats. It must also involve increased intelligence-gathering and analysis on a regional basis, prioritization of focus areas, and specific measurable activities to address the issues. The strategy should be developed in concert with all the agencies responsible for border control, with a lead agency appointed for more effective management. In addition, the plan must include close cooperation with regional partners.
- Improve the current Customs integrity program, including through the development of a well-publicized system for public reporting of officer misconduct.
- Strengthen both the National Committees on Non-tariff barriers and the EAC Business Council so that they have more capacity to resolve important regional issues.
- Establish networking channels for EAC Customs managers to promote harmonization, transfer of information, improved expertise, and standardized practices within their program areas. Opening of communication channels for regional officers directly involved in implementation of facilitation measures would reduce start-up problems and ensure uniform processes.
- Develop regional penalty guidelines so that traders within the region are treated equally when charged with the same or similar offenses. Currently penalty assessments vary widely throughout the EAC because of the lack of clarity within the law. Detailed guidelines along with review to ensure conformity need to be adopted.
- Implement a formal appeals process of Customs decisions. The process should clearly state where to lodge an appeal, the sequence of appellate review, and the time frames for notification of results.



ENFORCING CONTRACTS

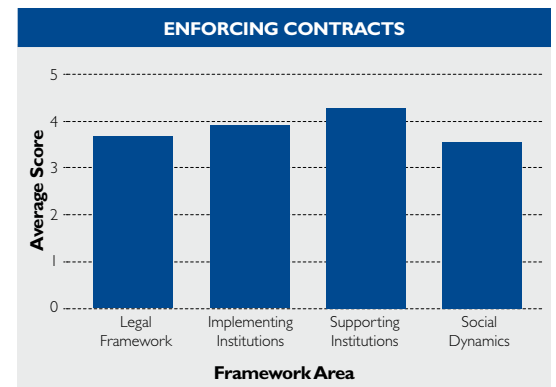
While there has been much progress in Uganda in the establishment of a legal environment in which contracts can be reliably and efficiently enforced, much is yet to be done in this area. As stated by one stakeholder, “People in business are frustrated.” Indeed, contracts, whether they are loan agreements or other contracts entered into by parties engaged in commercial transactions, are only as good as the ability of the parties to enforce them. The ability to enforce a contract is dependent on the certainty of legal rights of borrowers and creditors and the predictability and speed of their fair and impartial enforcement. Simply put, the contractual institutional framework—that is, the laws governing contracts and the institutions enforcing these laws—has an important impact on the efficiency of private sector lending and entrepreneurial investment in Uganda.

ENFORCING CONTRACTS	
<i>Doing Business</i> Ranking 2009	117
<i>Doing Business</i> Ranking 2008	118
Procedures	38
Duration (days)	535
Cost (% of claim)	44.9

Fortunately, it appears to be recognized in Uganda that overhauling the commercial framework laws and increasing the capacity of the institutions that implement those laws can strengthen creditor rights, reduce the risks that form a barrier to investment, expand the entrepreneurial willingness to invest in the Ugandan economy, reduce the cost of credit, and expand the borrower population. To achieve this, however, continued reform is needed in several aspects of the commercial law system.

First, there are the substantive, or framework, laws of contracts. The laws must fit the current economic environment. They must be understandable to the legal community. They must be accessible. And they must reflect international and regional best practices. The current law on contracts, based on the English common law, does not accomplish these objectives.

Next, there are the courts. They are the primary institutions in all countries for implementing and enforcing the rights given to parties under contract laws. No more important link exists in the chain of contract



enforcement than the courts. They determine the predictability and consistency of outcomes in contractual disputes. Without predictability and consistency, the business community cannot rely on their contracts being enforced as the parties had agreed.

The courts also determine the speed and cost of enforcing loans and contracts. Interminable court delays can deny justice and contribute greatly to its financial cost. More important, even the perception of inappropriate external influence could emerge in the process of adjudicating disputes can have a profound effect on the willingness of the business community to risk capital investment and loans. On the other hand, the perception that a dependable process exists for resolving commercial disputes within a working legal system reduces dependence on that system as parties are more likely to resolve matters without court involvement. Much

progress has been made in this area through the implementation of a commercial court. This progress needs to be extended to the magistrate court system which adjudicates most of the cases in the country.

Finally, another important link in enforcing loans and contracts is the process following the entry of a judgment. Once a judgment is entered, it is worth only the paper it is printed on if efficient and predictable methods of enforcing payment of the judgment do not exist. Bailiffs who are responsible for enforcement of judgments must not be subject to external influences. They should be beyond reproach in the exercise of the powers they have in their important role in the enforcement of judgments. There is currently a perception of problems in these areas among bailiffs. Work is, therefore, needed to improve the administration of the bailiff system.

While continued reform is needed, the BizCLIR scores for Enforcing Contracts suggest a more promising environment than Uganda's most recent Doing Business ranking would suggest: all four facets of the review tend toward finding more positive attributes within the courts than negative. The supporting institutions for Enforcing Contracts receive the highest cumulative score in this diagnostic.

LEGAL FRAMEWORK

ACCESS TO LAW

As mentioned elsewhere in this report, access to Uganda's commercial laws is a continuing challenge. Although law reports began to be developed in 1997 and are current up to 2002, it is difficult to obtain copies of these law reports, and they are far from comprehensive. There is no single online repository for Ugandan law that is maintained by either private or public actors in Uganda. Access to hard copy of laws and court opinions is particularly difficult in Uganda's rural areas and lower courts, although there are a number of law libraries attached to courts and law faculties throughout the country.

An important area in which there has not been coordinated support is the publication of court opinions as well as digests and indices of those opinions. While there have been efforts in the past resulting in the publication of some court opinions, these have all been discontinued at one time or another with the result that there are no current programs in place

KEY LAWS

- Constitution (1995)
- Contracts Act (1963)
- Draft Contract Law
- Arbitration and Conciliation Act (2000)
- Rules on Court-Annexed Mediation (2008)
- The Civil Procedures Act (including Part III, Enforcement) and accompanying rules
- Uganda Law Reform Commission Act (1990)

within Uganda for the regular publication of opinions. Fortunately, many opinions are available online due to the efforts of the Southern African Legal Information Institute (SAFLII), which collects and publishes legal materials from Southern and Eastern Africa for free online access.⁸² Unfortunately, the online materials available through SAFLII are of little use to most judges who sit in magistrate courts in areas that do not have Internet access.

THE CONSTITUTION AND THE COURTS

Chapter 8 of Uganda's **Constitution of 1995** establishes the general framework for Uganda's system of courts, including the Supreme Court, the Court of Appeal, the Constitutional Court, and all subordinate courts, as well as the Judicial Services Commission. The Constitution underscores the country's commitment to the value of judicial independence.

Uganda's subordinate courts include magistrates courts; local council courts; *Qadhis'* courts for marriage, divorce, inheritance of property, and guardianship; and tribunals such as those established under the Land Act, Communications Act, Electricity Act, and Tax Appeals Tribunal Act.

REFORM EFFORTS IN CONTRACT LAW

Uganda's law reform efforts have been ongoing for many years. The process of law reform has been unduly protracted and has not always been the priority it should have been. While these efforts have produced progress in the area of commercial law reform over the last decade, there is a perception that at times these efforts lacked a coherent strategy and the institutional will for successful implementation. This perception is due to the failure to complete the process by the actual passage of new legislation. Recently, however, there have been heightened efforts to conclude the passage and implementation of new commercial laws.

82 SAFLII's website is located at <http://www.saflii.org/>. SAFLII has been supported since its inception in late 2006 by the Ford Foundation, the Carnegie Corporation, and the Open Society Foundation for South Africa.

Modern law reform began as a component of the Uganda Institutional Capacity Building Project, an effort supported by the Austrian government that provided financial support to the Uganda Law Reform Commission (ULRC) and engaged the U.S. law firm of Reid & Priest for technical support in the mid-1990s. Over the course of approximately one year, the firm drafted a number of proposed commercial laws. This project is now cited as not being successful: the resources allocated may have been insufficient and critics contend that the results of the effort lacked a clear understanding of Uganda's problems. Ultimately, these initial efforts never gained support of the local stakeholders. One account of this project stated the following:

These consultants did some work and came up with reports and recommendations, having reviewed 44 pieces of legislation. The Uganda Law Reform Commission was not, however, happy with the findings and recommendations. This was mainly because not enough consultations were made with key stakeholders and the reviewers do not appear to have taken Uganda's WTO obligations into account.⁸³

Despite these setbacks, the ULRC continued the process of reviewing the codification of the law on contracts and the drafting of a comprehensive law on contracts. Established in 1990 by the Uganda Law Reform Commission Act,⁸⁴ the main function of the ULRC is to study and keep under constant review the laws of Uganda with the view of making recommendations for their systematic improvement and reform.⁸⁵

CURRENT LAW ON CONTRACTS

"...the common law of England relating to contracts as modified by...doctrines of equity...shall extend and apply to Uganda."

Following the unsuccessful initial effort at reform, the ULRC embarked on the implementation of the Commercial Justice Reform Program (CJRP).⁸⁶ The strategy of the CJRP reforms is to focus on four essential areas: the commercial courts, the commercial registries, the legal profession, and the commercial regulatory environment and commercial laws.⁸⁷ With the support of the Justice, Law and Order Sector (JLOS) of the Ministry of Justice and Constitutional Affairs (MOJ), the ULRC has been working on key selected commercial laws that affect the basic legal environment of business, in order to promote private sector business operations.⁸⁸

JLOS is an independent governmental secretariat that coordinates legal reform among the various governmental ministries and institutions that deal with the legal system. The Minister of Justice leads the policy formulation efforts at JLOS. Member agencies include the judiciary, prosecutor, police, prisons, and the ULRC. JLOS started in concept in November 1999 and was formally established in 2000. It is housed in the MOJ.

The first step in the process of enacting new commercial laws is the conduct of a study of the substantive area involved by the ULRC. With respect to a law on contracts, from 2000–2004 the ULRC conducted a comprehensive review of whether the law of contracts should be codified and, if so, the coverage and contents of a new contracts law. The ULRC's Study Report on Codification of the Law of Contract (Contract Law Study Report) was completed in 2004 and contained a proposed contract law.⁸⁹

Little progress was made in implementing the recommendations of the Contract Law Study Report in the two years following its issuance. This may be due in part to the need for circulation of the report among the relevant stakeholders, the highly technical nature of its subject matter, and an intervening Parliamentary election.

Nonetheless, during this period, the First Parliamentary Council of the MOJ completed its review of the Contract Law Study Report and prepared a memorandum for the Cabinet (Cabinet Memorandum) that extracted and summarized the underlying principles of the proposed law found in the Contract Law Study Report. The Cabinet Memorandum was then forwarded by the Minister of Justice to the entire Cabinet. The Cabinet, thereafter, approved the bill in concept. The First Parliamentary Council then undertook the work of putting the proposed legislation into bill form for formal consideration and approval by the Cabinet. On August 8, 2007, the Cabinet formally approved the proposed bill on the law of contracts (Contracts Bill).

The Contracts Bill was thereafter published in the Official Gazette on January 18, 2008, and soon thereafter introduced in Parliament where it had its first reading on June 17, 2008. It was then committed to the Legal and Parliamentary Affairs Committee of the Parliament. As of September 2008, it was still before the Legal and Parliamentary Affairs Committee. Once approved by that committee, it will be ready for a second reading and passage. Upon being signed by the president, it will become law.

83 Samuel Wangwe et al., *Country Case Study for Study 9: Institutional Issues for Developing Countries in IP Policy-Making, Administration and Enforcement—Uganda* (Commission on Intellectual Property Rights, Tanzania), at 18.

84 Uganda Law Reform Commission Act, Uganda Laws, Ch. 25 (1990).

85 Uganda Law Reform Commission, *A Study Report on the Codification of the Law of Contract*, Pub. No. 7 (2004) (hereinafter *Contract Study Report*).

86 *Id.* at 5.

87 *Id.* at iii.

88 *Id.*

89 *Id.*

The Contracts Bill is among 18 commercial law bills in the process of enactment. These have all followed the same process as that of the Contracts Bill and are at varying stages of enactment. It appears that the recent activity toward passage of these new commercial laws is the result of renewed interest by the president's office. In this regard, there is a committee called the Presidential Investor Roundtable (PIR) that was established to represent the private sector and interface with the president on establishing priorities in the enactment of much-needed commercial laws. This has resulted in the president prioritizing commercial bills and establishing deadlines for the process of their enactment. As part of this process, monthly status reports are prepared by JLOS as to the legislative status of each of these bills.

EXISTING LEGAL FRAMEWORK FOR CONTRACTS

The current law on contracts in Uganda provides that:

Subject to any written law for the time being in force...the common law of England relating to contracts as modified by: (a) The doctrines of equity; (b) The public general Acts in force in England on 11 August 1902; (c) The Acts of Parliament of the United Kingdom mentioned in the schedule to the Act shall extend and apply to Uganda.⁹⁰

As a result of this provision, contracts in Uganda are created and enforced under English common law rules, which are based on the interpretation of a "myriad" of precedents and statutory provisions.⁹¹ This makes it hard to access the law and has made it difficult for some of the principles to be easily adapted to the local environment.⁹² Furthermore, the English common law has changed, but Uganda is still using the old common law imposed on the country during the colonial days regardless of the changing circumstances both in Uganda and in England.⁹³ As a result, the essential components to the creation and enforcement of contractual relations, such as offer, acceptance, consideration, certainty, legality, and capacity, are all embodied in textbooks and in old English cases not readily available to Ugandan practitioners and judges.⁹⁴

UGANDA COURT SYSTEM
Supreme Court
Court of Appeals
High Courts (Divisions: Civil, Family, Commercial, Criminal, and Land)
Magistrate Courts and other subordinate courts

PROPOSED CONTRACT BILL

The Contracts Bill is relatively simple and well suited for the purpose of delineating the essentials needed for the creation, performance, and enforcement of contractual relations. It is divided into 10 parts. The first 7 parts deal with the essential provisions for the creation and enforcement of contracts. Part I of the Contracts Bill sets forth the definitions of key terms used in the Contracts Bill.⁹⁵ Part II deals with the communication, acceptance, and revocation of an offer to enter into a contract.⁹⁶ Part III describes the types of agreements that amount to a contract,⁹⁷ the level of capacity, consent, and disclosure needed for a party to be bound by a contract,⁹⁸ and the types of agreements that will be considered void or voidable.⁹⁹ Part IV deals with contingent contracts, that is, contracts that are only enforceable on the occurrence of an event or conduct of a person.¹⁰⁰ Part V addresses the obligation of a party to perform under a contract and the circumstances under which performance may be excused,¹⁰¹ the joint liability of multiple promisors to a contract,¹⁰² the time and place for performance,¹⁰³ performance of reciprocal promises,¹⁰⁴ and certain contracts that need not be performed.¹⁰⁵ Part VI, entitled, "Relations Similar to Those Created by Contract," deals with the concepts of *quantum meruit* and unjust enrichment.¹⁰⁶ Finally, Part VII deals with the consequences of breaching a contract.¹⁰⁷

The last three parts of the Contracts Bill deal with the special character of certain types of contracts governing indemnity and guaranty, bailment, and agency. Specifically, Part VIII deals with the rights of parties to contracts of guaranty and indemnity and encompasses what would be considered the law of suretyship.¹⁰⁸ Part IX covers the law on bailments, that is, the rights and obligations of parties when one party delivers goods to another for a period of time or specified purpose, e.g., a rental relationship.¹⁰⁹

This part also covers the delivery of goods as a pledge to secure an obligation.¹¹⁰ Finally, Part X deals comprehensively with the law of agency, covering generally the creation of a principal-agent relationship, the rights and obligations of agents and principals, the termination of the principal-agent relationship, and the liabilities that may arise from such a relationship.¹¹¹

One of the objectives of the ULRC was to create a new contracts law that is not only comprehensive in its coverage of the fundamentals of contract creation but also deals with the exceptions and nuances previously

90 Contract Act of 1963, Uganda Laws, Ch. 73, §3.

91 Contract Study Report, *supra* note 85, at 6.

92 *Id.* at xiii.

93 *Id.* at 8.

94 *Id.* at 32.

95 Proposed Contracts Bill, §2 (2008) (Uganda).

96 *Id.* §§3–9.

97 *Id.* §10.

98 *Id.* §§11–15.

99 *Id.* §§16–24.

100 *Id.* §§25–29.

101 *Id.* §§30–34.

102 *Id.* §§35–38.

103 *Id.* §39.

104 *Id.* §§40–47.

105 *Id.* §§51–56.

106 *Id.* §§57–60.

107 *Id.* §§61–67.

108 *Id.* §§68–87.

109 *Id.* §§88–110.

110 *Id.* §§111–118.

111 *Id.* §§119–71.

left to court decisions.¹¹² The Contracts Bill achieves this objective. Most important, the effect of the law will be to ensure that, for the first time, all contracts are subject to a single written law, rather than to a “myriad of precedents and statutory provisions.”¹¹³ Codification collects and streamlines the major principles of contract law in such a way that they can be easily found, referred to, and applied.¹¹⁴ This will result in certainty in the application of the law by fixing the manner of making contracts, describing the manner of performance, delineating the obligations of the parties to a contract, dealing with principles of quasi-contracts, setting forth remedies for breach of contract and its consequences, and, finally, dealing with certain specialized types of contracts such as indemnity, bailment, and agency.¹¹⁵

courts. The Supreme Court is the highest court and its decisions form precedents that all lower courts are required to follow.¹¹⁷ There are seven Supreme Court justices. The Court of Appeals is an intermediary court between the Supreme Court and the High Court and has appellate jurisdiction over the High Court.¹¹⁸ There are eight judges in the Court of Appeals.

The High Court of Uganda is the third court of record in order of hierarchy and has unlimited original trial jurisdiction to include unlimited monetary jurisdiction over civil cases.¹¹⁹ The High Court has five divisions: the Civil Division, the Commercial Division, the Family Division, the Land Division, and the Criminal Division.¹²⁰ There are 40 judges in the High Court. The most common courts, however, are the magistrate courts. There are over 200 judges in the magistrate court system, which handles most of the country’s cases. These are located in 38 civil districts presided over by chief magistrates. The jurisdictional limit for magistrate courts has just been increased from 5 million shillings (approximately US\$3,000) to 50 million shillings (approximately US\$30,000), greatly increasing the number of commercial cases that will be decided by magistrate courts. Appeals from all magistrates courts go to the High Court.¹²¹

There has been significant improvement in the enforcement of contracts by the creation of the Commercial Division of the High Court (Commercial Court). However, there are still significant backlogs generally in the administration of cases in the courts. Although the Commercial Court has helped alleviate this problem in the area of large commercial cases, other areas have fared poorly, particularly the family and general civil areas. The delay, characterized by protracted litigation, has discouraged businesspeople from taking recourse to the courts.

In particular, the magistrate courts do not enjoy a good reputation among commercial law practitioners. Problems include both corruption and the capacity of magistrate judges in their inability to deal with commercial cases. In addition, low pay of magistrate judges was cited as part of the problem. Views expressed included an overall lack of confidence in the ability of magistrates to deal with commercial matters, perception of a lack of

THE HIGH COURT OF UGANDA COMMERCIAL COURT DIVISION SUMMARY OF PERFORMANCE		
YEAR	CASES FILED	CASES DETERMINED
2003	1606	1484
2004	1973	1994
2005	1703	2193
2006	1817	1772
2007	1747	2077
TOTAL	8846	9520

IMPLEMENTING INSTITUTIONS

COURTS

In addition to effective framework laws, success in the enforcement of contracts depends on the institutions that make up a country’s legal sector; that is, the institutions that implement the laws and support the administration of justice and the enforcement of legal instruments or orders.¹¹⁶ In Uganda, the enforcement of contracts is implemented by two institutions—the courts, before which parties appear and seek relief in the form of judgments, and the bailiffs, who are responsible for the actual enforcement of those judgments.

The primary implementing institution in the area of contract enforcement 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 case involving contract disputes or defaults. The formal court system has four levels of hierarchy: the Supreme Court, the Court of Appeals, the High Court, and magistrate

KEY IMPLEMENTING INSTITUTIONS
<ul style="list-style-type: none"> • Courts • Bailiffs

¹¹² Contract Study Report, *supra* note 85, at 41.

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Brenda Mahoro, Uganda’s Legal System and Legal Sector 1 (2006), available at <http://www.nyulawglobal.org/globalex/uganda.htm>.

¹¹⁷ Judicial Studies Institute, About Our Judiciary, available at <http://www.judicature.go.ug/Uganda/index.html>.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

work ethic, and the perception that matters take twice as long to resolve in the magistrate courts. More than one person interviewed related anecdotes about driving to a remote magistrate court only to have the hearing not take place because of the magistrate judge's failure to appear without any advance warning.

There is significant difference in the perception among business lawyers of the magistrate courts as compared to the Commercial Court. The Commercial Court is well regarded and perceived as being effective in the resolution of commercial cases. The judges are considered to have a good work ethic and be knowledgeable in the enforcement of the parties' rights in commercial cases. In addition, the delays that have plagued Uganda's legal system in the past appear to have been substantially reduced in the Commercial Court. Just as important, the perception of improper external influence that has been associated with some of the courts in the country does not extend to the Commercial Court.

Mediation was started in the Commercial Division as a pilot project in 2003. In February 2008, new rules on court-annexed mediation were implemented. Every case is now mediated during the early stages of the case. Most mediations are conducted by the registrars of the Commercial Court. This practice may change over time as mediation practice develops among attorneys.

BAILIFFS

After the courts, the bailiffs are the most important key implementing institutions in the process of the enforcement of judgments. Following the entry of a judgment, application is made to the registrar for an execution. An arrest or attachment warrant is then issued. There is a panel of court-approved bailiffs who perform the process of executing an arrest or attachment warrant. An arrest warrant is used to arrest the judgment debtor who may then be held in civil jail for six months pending payment of the judgment. More common, an attachment warrant is issued identifying specific property of the debtor to be seized and sold by the bailiff in satisfaction of the judgment.

Although this process is generally considered effective, there is widespread sentiment in the legal sector that there needs to be improvement in the training and oversight of bailiffs. An often-made observation was that bailiffs are subject to external influence in the discharge of their duties. Also observed was the occasional abuse of their powers. Need was expressed for an update to

the law governing bailiffs or enactment of regulations to make bailiffs more accountable and to provide oversight of their activities.

In their defense, bailiffs at times face inappropriate outside influence when they are attempting to discharge their duties in enforcing judgments. Some of this inappropriate influence is exerted by the Resident District Commissioners, who may be called on to repay political favors by judgment debtors seeking to avoid enforcement of a judgment against them.

The ULRC is considering proposals for a law regulating bailiffs. This would include licensing and regulating bailiffs under the control of the Chief Registrar. Also under consideration is a proposal to require bailiffs to attend instructional programs conducted by the Law Development Center.

SUPPORTING INSTITUTIONS

The commercial legal environment for enforcing contracts cannot be fully developed without the participation of various key institutions that implement or support the development of commercial law. Such key institutions include the legal profession, professional associations, continuing legal education providers, and groups involved with legal reform. Uganda has a number of institutions that are active in supporting the improvement of commercial law. These institutions and organizations include the Uganda Law Society, the International Law Institute, the Law Development Center, the Center for Arbitration and Dispute Resolution, and the Uganda Law Reform Commission.

UGANDA LAW SOCIETY

The primary institution supporting the practice of law generally, including commercial law, is the Uganda Law Society (ULS). The ULS was established by Parliament in 1956. Membership is mandatory for practicing lawyers in Uganda. It has 1,350 members and is increasing at

KEY SUPPORTING INSTITUTIONS

- Uganda Law Society
- International Law Institute
- Law Development Center
- Commercial Court Users Committee
- Center for Arbitration and Dispute Resolution
- Uganda Law Reform Commission

the rate of 350 lawyers per year. The ULS has a full-time executive director and a staff of over 70 employees. Among the active committees of the ULS is the Commercial Bar Committee, which is the primary group from within the ULS that consults on new commercial laws. In addition to serving as a supporting organization generally, the ULS has a continuing legal education (CLE) department that regularly puts on educational programs for lawyers, some of which are devoted to commercial law practice.

INTERNATIONAL LAW INSTITUTE

Another supporting institution active in the area of providing continuing legal education for lawyers and judges is the International Law Institute (ILI). In 1997, the ILI, through its African Centre for Legal Excellence, established a training center to train lawyers and other professionals. The programs have been successful and are regularly attended by members of the ULS. In addition to providing attorney CLE programs, the ILI has done work in judicial training, implemented a commercial court ADR project, worked in the area of effective adjudication of commercial disputes, and worked on improving the efficiency of registrars and information technology.

LAW DEVELOPMENT CENTER

The Law Development Center (LDC) is the institution principally responsible for the training of law school graduates. The LDC program was created by law in 1970 and is fashioned on the English Inns of Court. The program is a prerequisite to admission to the Uganda bar. It consists of a nine-month course of classroom work followed by a three-month internship. At the end of the program, students must pass an exam to graduate and become lawyers. There are currently 600 students enrolled. The curriculum emphasizes practical legal training. There are five core areas of training for students at the LDC: commercial transactions, land transactions, civil procedure, criminal law, and domestic relations. Non-core areas include ethics and professionalism, the judiciary, advocacy, accounting for lawyers, revenue, and legislative drafting.

In addition to providing legal training to law school graduates, the LDC has several other functions: special programs (e.g., a program for the training of Sudanese judges), research, law reform (including legislative drafting), and legal publications. The LDC plans to develop several additional programs, including a Department of Continuing Legal Education to provide another legal education option for Ugandan attorneys and a

mediation program to provide ADR services. The LDC is also developing a legal aid program with grants from the Ford Foundation and USAID.

COMMERCIAL COURT USERS COMMITTEE

Another supporting institution is the Commercial Court Users Committee. Key stakeholders, who are either regular users of the Commercial Court or are involved in commercial law reform generally, are invited to participate. These include the other supporting institutions such as the Uganda Law Society, bankers associations, the Central Bank, the Uganda Revenue Authority, the Chamber of Commerce, ULRC, and JLOS. The commercial judges attend these meetings and receive valuable feedback on the operation of the court. Unfortunately, there appears to be a reduction in the number of these meetings caused in part by funding problems. The last meeting took place over five months prior to this diagnostic. It appears that the meeting expenses were at one time funded by a donor whose commitment has since expired.

CENTER FOR ARBITRATION AND DISPUTE RESOLUTION

The Center for Arbitration and Dispute Resolution (CADER) is a statutory corporation that was set up under the Arbitration and Conciliation Act¹²² to facilitate arbitration and conciliation proceedings and to promote the use of alternative dispute resolution. Its offices are in the same building and immediately below the Commercial Court.

When court-annexed mediation was first introduced through CADER as a pilot project in the Commercial Court in 2003, there was initial resistance with an early acceptance rate of less than 40% of litigants participating in the court-ordered process. This resistance took place for several reasons: First, the advocates were in "shock mode" when first ordered to mediation. There was no institutional familiarity with the process of mediation as an alternative to litigation for the resolution of commercial disputes. Although efforts had been made to educate mediators about the process, there was no corresponding training of attorneys on representing clients in mediations. Second, the mediators who were initially trained were young lawyers with little, if any, commercial law experience. Seasoned trial lawyers and sophisticated clients did not react well to being assisted by such inexperienced lawyers trying to mediate a settlement of complex substantial commercial matters.

122. Arbitration and Conciliation Act of 2000, Uganda Laws, Ch. 4.

Third, there was internal resistance in the Commercial Court. There was some turnover in judges in the Commercial Court. Some of the new judges had not been through the mediation training done when the program was started with the result that they did not embrace the mediation process.

This pilot project ended in 2005, and since then, CADER has not been used to conduct mediations. Rather, mediations are principally conducted by the Commercial Court registrars with some involvement by the Commercial Court judges who now fully support the mediation process. It appears that a substantial portion of the workday of the Commercial Court registrars is now taken up by mediations. As a result, the development of a mediation practice with mediators taken from the private sector has not occurred.

It appears that funding may soon become available to CADER as a result of recent legislation. This may enable the shift from court-conducted mediation to private-sector conducted mediation to take place. This shift will supplement judicial resources by freeing up judicial officers to perform their primary function as commercial judges and registrars—the adjudication and timely disposition of commercial disputes.

Once CADER resumes its statutory role in the mediation process, rather than provide direct mediation services, it may play a key role as a coordinator of mediations with the responsibility of monitoring the mediation process to ensure that mediations are concluded within the time frames dictated by the court. CADER can serve in the capacity of training mediators and coordinating and maintaining lists of approved mediation providers. These providers could be grouped according to the experience levels of the attorneys providing the mediation services. In fact, interest has already been expressed by some senior members of the legal community in the development of a mediation practice among some of the more experienced and highly respected attorneys, who could then mediate substantial commercial disputes.

UGANDA LAW REFORM COMMISSION

The ULRC was established in 1990 by the Uganda Law Reform Commission Act.¹²³ In 1995, with the adoption of the Constitution, the ULRC became a constitutional commission.¹²⁴ It is the most important institution involved in the process of commercial law reform in Uganda. The main function of the ULRC is to study and keep under constant review the various laws of Uganda

with the goal of systematically improving and modernizing those laws. As part of this process, the ULRC has undertaken thorough studies of various commercial laws to include the Contract Law Study Report of 2004. These studies are available on the ULRC's comprehensive website.¹²⁵ The ULRC is also the primary source of draft commercial legislation. As discussed in a previous section of this report, this legislation is put into final form by the First Parliamentary Council. Revisions to such laws are then coordinated between the ULRC and the relevant Parliamentary committees.

SOCIAL DYNAMICS

Much progress has been made in Uganda over the last decade in the area commercial law reform. Indeed, there appears to be recognition at the highest levels of government that the business environment will suffer and not improve unless the process of commercial legal reform continues to progress. However, there is still much work to be accomplished before the country can be considered to have an attractive legal climate for business investment.

From the positive perspective, substantial work has been done to develop institutions such as the Commercial Court and the ULRC. These institutions have greatly enhanced enforcement mechanisms and the environment for developing strong commercial laws. The creation of the Commercial Court has done much to improve the process of adjudicating commercial disputes in the country. Commercial judges are perceived to be knowledgeable and hard working. Although parties sometimes complain about the length of time it takes to adjudicate some cases, there does appear to be the perception that, whatever delays occur, at the end of the day a judgment will be entered. This knowledge goes a long way to creating an environment for early settlement in order to avoid the needless expenditure of litigation costs.

Unfortunately, this positive perception does not extend to the magistrate courts in which most court cases are resolved. Moreover, recently the jurisdiction of the magistrate courts was increased tenfold over the prior jurisdictional limits. This places a tremendous responsibility on chief magistrate judges who will now be dealing with substantially larger commercial disputes. The past perceptions of a poor work ethic, lack of capacity in the commercial area, and susceptibility to improper influence must be overcome.

¹²³ Uganda Law Reform Commission Act, Uganda Laws, Ch. 25 (1990).

¹²⁴ Uganda Const. art. 248.

¹²⁵ Website of the ULRC, available at <http://www.ulrc.go.ug/>.

Bailiffs play the second most important role in the process of enforcing judgments in Uganda. Generally, this process is perceived to be working in that, after judgments are entered, there are efficient procedures for enforcing the judgments by arrest of the person or attachment of the person's property with the result that in many cases judgments can be efficiently satisfied. The system is not, however, without its problems. First, there are times that the work of bailiffs is subject to interference by inappropriate outside influence. Second, there is also the perception expressed at all levels of the legal community that bailiffs need more accountability and supervision if they are going to be perceived as beyond reproach in the conduct of their functions.

Commercial laws have been the subject of study since the mid-1990s. To date, however, none of the major commercial laws that have been identified as needing improvement have been revised or replaced through the enactment of pending bills. It does appear, however, that in the past year, significant steps have been taken toward enactment of approximately 18 new bills that deal with commercial subjects. This must continue to be a priority until these laws are passed and implemented.

RECOMMENDATIONS

- Continue the ongoing efforts to pass the Contracts Bill.
- Once the Contracts Bill is passed, create programs for the legal community in conjunction with the ULS and ILI for lawyers to familiarize them with the new Contract Law.
- Develop programs for the judiciary, including both

the Commercial Court and magistrate courts, on commercial subjects, including courses on contracts and secured transactions.

- Specific courses for the chief magistrate judges should be conducted with respect to their expanded jurisdiction over commercial cases to include courses on case management practices and mediation practice as those areas have been pioneered and instituted in the Commercial Court.
- Develop private-sector conducted mediation under the supervision of CADER and phase out court-conducted mediation.
- Develop a comprehensive system for the licensing, training, and oversight of bailiffs.
- Support the development of case law reporting and digesting to supplement the online availability of decisions.
- Begin work on a system of monitoring and overseeing judicial performance in the efficient disposition of cases by establishing objective benchmarks and methods of tracking case disposition at all levels of the court system.
- In connection with the education provided by the Law Development Center to new attorneys, design and implement practice courses to be included within the standard curriculum that deal with the representation of both borrowers and lenders in contract situations.
- Develop an outreach program to the universities to assist in the training of professors in contract concepts and laws with a view towards developing a curriculum designed to educate law students on commercial concepts.



CLOSING A BUSINESS

With the expansion of Uganda’s economy, the need for a comprehensive legal structure dealing with insolvency¹²⁶ has become a priority of the country’s legal reform efforts. This is in recognition that efficient insolvency laws are perceived by the investment community as an essential part of a country’s commercial law system.

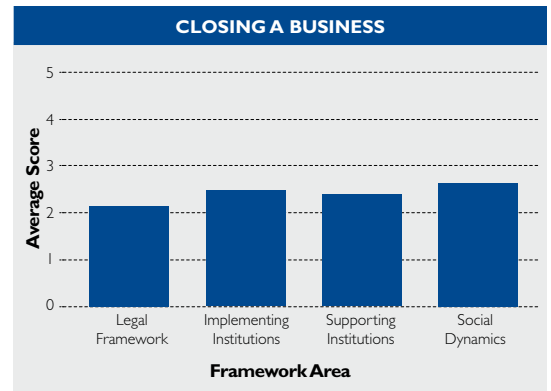
CLOSING A BUSINESS	
<i>Doing Business</i> Ranking 2009	51
<i>Doing Business</i> Ranking 2008	51
Time (years)	2.2
Cost (% of estate)	30
Recovery rate (cents on the dollar)	41.1

Where the process of dealing with insolvency is inefficient, non-viable businesses linger for years. This results in productive assets such as buildings and manufacturing equipment sitting dormant and unproductive. The capital invested or loaned to finance those activities remains tied up in these dormant assets to the detriment of the lending and investing community. Moreover, human capital is also not efficiently reallocated from non-viable businesses to productive ones.¹²⁷

There is a general consensus among the country’s business and legal communities that Uganda’s current legal framework laws in the area of bankruptcy are out-of-date and in need of revision. The laws are found in various provisions of existing statutes rather than one comprehensive law. As a result, existing bankruptcy laws are generally not used in the country. If companies have financial problems, they do not file for bankruptcy—they simply close the doors.

A general perception among attorneys practicing in the area of insolvency law is that a new insolvency statute is long overdue. As a result of this perceived need for updating the laws in the area of insolvency, there has been an extensive amount of work on a new insolvency law that will combine the various forms of relief available into one statute.

Cases under this new law will be dealt with by the country’s relatively new Commercial Division of the High Court (the Commercial Court). While substantial work remains to complete passage of the new laws and implement its structures through the institutions responsible for its



function, those efforts appear to be moving forward positively. These efforts are well directed and should continue to be supported by the development community.

Notwithstanding the healthy ranking afforded Closing a Business in Uganda, this category similarly falls at the bottom of the BizCLIR indicator scores. 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.

LEGAL FRAMEWORK

EXISTING LAWS

The current laws dealing with insolvency have been in the country’s statute books since colonial times. However, the laws have been largely disused because most business people do not know about them.¹²⁸ Compounding this problem, the law is scattered among various acts. Principal among these are the Bankruptcy Act of 1931,¹²⁹ the Deeds of Arrangements Act of 1931,¹³⁰ and the Companies Act of 1961.¹³¹ Other legislation relating to the law of insolvency includes the Mortgage Act,¹³² the Debts (Summary Recovery) Act,¹³³ the Registration of Titles Act,¹³⁴ the Chattels Transfer Act,¹³⁵ the Civil Procedure Act,¹³⁶ the Income Tax Act,¹³⁷ and the Limitation Act.¹³⁸

126 The terms “bankruptcy” and “insolvency” are used interchangeably in this report, depending on the context, to refer to both an individual’s and company’s inability to pay debts or the process and the laws under which the legal system deals with this inability.

127 World Bank, *Doing Business 2008—Uganda* (2007), at 47.

128 Christopher Bwanika, “Enforcement of Contracts,” *Doing Business in Uganda: Need for Reform?* (Uganda Law Reform Commission, Dec. 7–8, 2004), at 6.

129 Bankruptcy Act of 1931, Uganda Laws, Ch. 67.

130 Deeds of Arrangement Act of 1931, Uganda Laws, Ch. 75.

131 Companies Act of 1961, Uganda Laws, Ch. 110.

132 Mortgage Act of 1974, Uganda Laws, Ch. 229.

133 Debts (Summary Recovery) Act of 1937, Uganda Laws, Ch. 74.

134 Registration of Titles Act of 1924, Uganda Laws, Ch. 230.

135 Chattels Transfer Act of 1978, Uganda Laws, Ch. 70.

136 Civil Procedure Act of 1929, Uganda Laws, Ch. 71.

137 Income Tax Act of 1997, Uganda Laws, Ch. 340.

138 Limitation Act of 1959, Uganda Laws, Ch. 80.

As a result, the law on insolvency is not user-friendly and little used by the commercial and legal communities. While contractually based receiverships are commonly used by lenders foreclosing on the collateral for their loans, formal insolvency proceedings are not common. And to the extent that a winding up of a company does occur under the Companies Act, a sale as a going concern rarely occurs. It is also rare for a company to propose a compromise to pay off its creditors as an alternative to liquidation.

In addition, cases involving bankruptcies of individuals are rare in Uganda. It appears that the few cases involving individuals have not been concluded with a discharge of the individual's debts. In fact, it appears that most of the cases are filed for reasons other than the efficient liquidation of the debtor's assets or discharge of the debt.

KEY LAWS

- Bankruptcy Act (1931)
- Arrangements Act (1931)
- Companies Act (1961)
- Mortgage Act
- Debts (Summary Recovery) Act,
- Registration of Titles Act
- Chattels Transfer Act
- Civil Procedure Act
- Income Tax Act
- Limitation Act

UGANDA'S REFORM EFFORTS IN THE INSOLVENCY ARENA

As discussed in some detail in the portion of this report dealing with Enforcement of Contracts, the government of Uganda has committed itself to reviewing the country's commercial laws in order to support private sector development and encourage private investment. This process has been under way since 1996 when it was commenced under the Uganda Institutional Capacity Building Project. Initially consultants were engaged to look at a number of commercial laws, including those dealing with insolvency. While draft laws were originally produced, these do not appear to have obtained local stakeholder support and were discarded.

However, the process of reviewing the objectives of a new insolvency law and the drafting of a comprehensive law on insolvency continued under the Uganda Law Reform Commission (ULRC). The ULRC was established in 1990 by the Uganda Law Reform Commission Act.¹³⁹ The main function of the ULRC is to study and

keep under constant review the laws of Uganda with the view of making recommendations for their systematic improvement and reform. This process resulted in a comprehensive study being undertaken from 2001 to 2004 resulting in the publication of the ULRC's Study Report on Insolvency Law.¹⁴⁰

Annex I of the Insolvency Study Report is a proposed insolvency law that was drafted by local practitioners in the 2000–2001 time frame and was intended to incorporate many of the current practices of Uganda, harmonize those practices with the practices in other East African countries, and address the various areas in which the law of insolvency needed reform. Despite these initial efforts, little progress was made in enacting any insolvency legislation until 2008 when a bill, substantially the same as the one attached to the Insolvency Study Report, was approved by the Cabinet on June 4 (Insolvency Bill). It was subsequently forwarded for publication in the Gazette and introduction in Parliament. Accompanying the Insolvency Bill are proposed regulations to be promulgated by the MOJ once the Insolvency Bill becomes the law. These regulations were also originally drafted by the ULRC.

The Insolvency Bill is on the fast track for enactment. There is a sense of urgency among stakeholders derived from a view that it is an important law that needs to be in place as part of a commercial legal framework conducive to business investment. As stated by one person familiar with the process, "We know the president is very keen on these new laws."

Before discussing the contents of the Insolvency Bill, it will be helpful to review the objectives of the ULRC in proposing the new law as well as international best practices that are generally applicable to insolvency laws. The Insolvency Bill can then be reviewed to determine whether the ULRC objectives have been achieved and whether they are consistent with international best practices.

OBJECTIVES OF NEW INSOLVENCY LAW

The Insolvency Study Report contains an extensive analysis of the issues and principles that needed to be addressed by any new legislation in the area. In addressing the key guiding issues and principles, the ULRC makes the following recommendations:¹⁴¹

- The law on insolvency should be consolidated in a single Insolvency Code while maintaining within such a law a distinction between corporate and personal insolvency cases.

¹³⁹ Uganda Law Reform Commission Act, Uganda Laws, Ch. 25 (1990).

¹⁴⁰ Uganda Law Reform Commission, A Study Report on Insolvency Law, Pub. No. 13 (2004) (hereinafter Insolvency Study Report).

¹⁴¹ Id. at xvii–xix.

- Matters of corporate insolvency are considered too complicated to be handled by magisterial courts and should be placed within the Commercial Court's exclusive jurisdiction.
- The law on receivers should be codified and unified under any insolvency law.
- The official receiver's role in the insolvency process should be strengthened and enhanced to promote appropriate behavior in the insolvency process and specialization among practitioners in insolvency matters.
- The liquidator or trustee must have the power to avoid preferential, fraudulent, and voidable insider transactions.
- A form of discharge should be available to individual debtors but should be granted only on a case-by-case basis.
- The law should provide an individual with sufficient exempt assets to maintain some means of livelihood.

INTERNATIONAL BEST PRACTICES

Although country approaches vary, as set forth in Legislative Guide on Insolvency Law promulgated by the United Nations Commission on International Trade Law (UNCITRAL Guide), there is broad agreement that effective and efficient insolvency regimes should aim to achieve certain key objectives in a balanced manner.¹⁴² These objectives have as their overall goal the promotion of restructuring of viable business and efficient closure and transfer of assets of failed businesses. Key among the substantive issues that need to be addressed by an effective insolvency law in order to achieve these objectives are the following:¹⁴³

- The law should delineate the circumstances under which insolvency proceedings may be commenced and the party that may request commencement.
- The law should set forth the extent to which the debtor should be allowed to retain control of the business once insolvency proceedings commence or be displaced and an independent party appointed to supervise and manage the debtor.
- The assets of the debtor that will be subject to the insolvency proceedings and constitute the insolvency estate must be identified.
- Consideration must be given to protection of the insolvency estate against the actions of creditors during the pendency of the case.
- The extent to which the insolvency representative can avoid certain types of transactions such

as preferences and fraudulent conveyances must be delineated.

- Rights and obligations must be delineated of the principal parties in an insolvency proceeding—the debtor; the insolvency representative, creditors, and creditors' committees.
- The law must make clear the treatment of claims and their ranking for the purposes of distributing the proceeds of liquidation.
- The extent to which the debtor will receive a discharge of creditors claims must be dealt with by the insolvency proceeding.

PROPOSED INSOLVENCY LEGISLATION

As set forth below, the proposed insolvency law adequately addresses the recommendations of the ULRC as set forth in the Insolvency Study Report. In addition, the Insolvency Bill is consistent with international best practices.

INDIVIDUAL BANKRUPTCY

Individual bankruptcy is dealt with in Part III of the Insolvency Bill. An individual bankruptcy case may be commenced by either a creditor or the debtor.¹⁴⁴ The principal ground for a creditor petition is that the debt owing to the creditor has not been satisfied after the making of a "statutory demand" on the debtor by the creditor.¹⁴⁵ A statutory demand is a document issued by a creditor to a debtor requiring the debtor to satisfy an outstanding debt within 20 working days from the date of the demand.¹⁴⁶ After the filing of the petition, the court will schedule a hearing at which the debtor must appear and submit to public examination by creditors, the official receiver, and the court.¹⁴⁷

At the conclusion of the hearing on the petition, the court may enter a "bankruptcy order" based on the failure of the debtor to pay the debt on which the petition is based.¹⁴⁸ In that event, the bankruptcy order is entered declaring the debtor bankrupt and appointing the official receiver as the interim receiver.¹⁴⁹ The bankruptcy order begins the case.¹⁵⁰ All property of the "bankrupt estate" automatically vests in the official receiver upon entry of the bankruptcy order.¹⁵¹

The bankrupt's estate includes all property belonging to the bankrupt at the date of commencement of the bankruptcy, any property recovered by the trustee through avoidance actions such as preference recoveries, certain property acquired by the bankrupt after commencement of the case, and a "portion of the

¹⁴² See UNCITRAL, *Legislative Guide on Insolvency Law* (2004), at 10, available at http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf.

¹⁴³ See *id.*

¹⁴⁴ Proposed Insolvency Bill §20(1) (2008) (Uganda).

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* §4; Proposed Insolvency Regulations, reg. 4 (2008) (Uganda).

¹⁴⁷ Proposed Insolvency Bill §22.

¹⁴⁸ Proposed Insolvency Regulations, reg. 24.

¹⁴⁹ *Id.* reg. 26.

¹⁵⁰ Proposed Insolvency Bill §20(4).

¹⁵¹ *Id.* §§20(4), 27.

debtor's salary as shall be determined by the court."¹⁵² Presumably, it would be within the court's discretion to allow the debtor to retain sufficient income after filing to support the debtor and the debtor's dependents.

The Insolvency Bill also contains a comprehensive list of property that will be allowed as exempt. This exempt property includes the following personal property: tools of trade, clothing and other necessities for satisfying the basic domestic needs of the bankrupt and his or her family, and property held by the bankrupt in trust for any other person.¹⁵³ In addition to personal property, the matrimonial home of the bankrupt is exempt from administration by the trustee.¹⁵⁴

Within 14 days following commencement of the case by the entry of the bankruptcy order, the receiver gives public notice of the bankruptcy and calls the creditors' first meeting.¹⁵⁵ The trustee is appointed at the first meeting of creditors.¹⁵⁶ Upon entry of the bankruptcy order, no legal proceedings may be commenced or may continue against the bankrupt or the bankrupt's estate without leave of the court.¹⁵⁷ This "stay" of creditor action does not apply to a secured creditor's efforts to enforce a security interest against its collateral.¹⁵⁸

The fundamental duty of the trustee is to collect, realize as advantageously as is reasonably possible, and distribute the bankrupt's estate in accordance with the provisions of the Insolvency Bill.¹⁵⁹ This presumably includes a power to sell the property of the bankrupt estate. Although the Insolvency Bill contains no specific statutory grant to the trustee of an individual's estate the power to sell, the power can be implied from the duty to "realize as advantageously as is reasonably possible" and from other provisions that appear to assume a power to sell.¹⁶⁰

Of significance, the Insolvency Bill gives the trustee the flexibility of enlisting the assistance of the bankrupt, in appropriate circumstances, to oversee the management of the bankrupt's estate and to assist in administering the estate in a manner and on terms as the trustee may direct.¹⁶¹ In addition, the trustee has the power to abandon cumbersome property such as unprofitable contracts or other property that may give rise to a liability.¹⁶²

Included within the bankrupt's estate is any property that is recoverable as a "voidable transaction" by the trustee.¹⁶³ Voidable transactions that are subject to being set aside fall into two general categories. In the first category are

preferential payments or charges made within one year of commencement of the case.¹⁶⁴ In the second are transfers that are either constructively fraudulent in that they are made for consideration that is substantially less than the value of the property transferred, or actually fraudulent in that they are made with the intent of putting the debtor's assets beyond the reach of creditors.¹⁶⁵ Transactions involving insiders are presumed to be voidable, and the burden is on the insider recipient to prove that the transaction is not voidable.¹⁶⁶

In addition to collecting and liquidating the bankrupt's estate, the trustee's major duty is to thereafter distribute the proceeds from the liquidation to creditors in accordance with the priorities set forth in the Insolvency Bill.¹⁶⁷ Distribution is based on claims that are made by creditors and allowed by the trustee.¹⁶⁸ In this regard, whenever the trustee has sufficient funds in hand for distribution, the trustee is required to make interim distributions to creditors.¹⁶⁹ Upon completion of the liquidation and collection of all property of the bankrupt estate, a final dividend is declared.¹⁷⁰

The trustee must distribute the proceeds from the estate first to priority unsecured claims.¹⁷¹ Priority claims are ranked as follows: first, payment of the administrative expenses of the trustee; second, after payment of the first priority claims, payment of wage-related claims incurred within 4 months prior to commencement of the case; third, after payment of the first and second priority claims, payment of taxes withheld and not paid to the Uganda Revenue Authority incurred during the 12 months prior to commencement of the case.¹⁷² After payment in full of all priority claims, the balance of the proceeds is paid pro rata to unsecured creditors.¹⁷³ Secured creditors may liquidate the collateral for their loans and then participate in the distribution to unsecured creditors to the extent of any deficiency still owing after applying the proceeds from liquidation of the collateral.¹⁷⁴ Any surplus assets remaining after payment of all claims are to be paid to the bankrupt.¹⁷⁵

There are several obligations imposed on the debtor both before and after adjudication of bankruptcy. Upon filing of the petition, the court will require the debtor to file a statement of financial affairs.¹⁷⁶ The debtor is also required to attend and submit to examination at a hearing to determine whether the bankruptcy order is entered.¹⁷⁷ Overall, the debtor has a general duty to provide information to the trustee who is appointed after the bankruptcy order is entered and the case is

152 *Id.* §§31, 32.

153 *Id.* §31.

154 *Id.*

155 *Id.* §24.

156 *Id.* §25.

157 *Id.* §27(1)(b).

158 *Id.* §27(2).

159 *Id.* §29(1).

160 See, e.g., *id.* §20 (giving the official receiver the power to sell perishable goods); *id.* §35(1) (giving the trustee the power to disclaim onerous property "even if the trustee has... tried to sell it..."); *id.* §35(3) (including within property to be disclaimed, property "which is not capable of being sold").

161 *Id.* §34.

162 *Id.* §35.

163 *Id.* §31(1)(b).

164 *Id.* §§15, 17.

165 *Id.* §16.

166 *Id.* §18(1)(2).

167 *Id.* §29(1).

168 *Id.* §§10, 49(4) & (5).

169 *Id.* §48(1).

170 *Id.* §49(1).

171 *Id.* §12.

172 *Id.* §12(4), (5), (6).

173 *Id.* §13.

174 *Id.* §11(3)(a).

175 *Id.* §14.

176 *Id.* §21.

177 *Id.* §22.

technically commenced.¹⁷⁸ A bankrupt is also prohibited from leaving Uganda without the permission of court, concealing property or documents with the intention of preventing the assumption of custody by the trustee, or obstructing the trustee in his or her duties.¹⁷⁹ A debtor who fails to comply with these duties may be subject to criminal penalties.¹⁸⁰

A discharge is available to individual bankrupts on application to the court. In considering whether to enter the discharge, the court is to consider the official receiver's report on the bankruptcy and the conduct of the bankrupt during the bankruptcy case. Similar to the requirements of a Chapter 13 action in the United States, the court may, as a condition of entering a discharge, require a bankrupt to consent to a decree requiring any unpaid balance of the debts filed in the case to be paid out of the future earnings of the bankrupt.¹⁸¹ The effect of the discharge order is to release a bankrupt from all debts filed in the case.¹⁸² The discharge does not prohibit a secured creditor from enforcing its claim against any collateral.¹⁸³ It also does not release the bankrupt from debts arising from fraudulent conduct, liability for a criminal fine, or "any other bankruptcy debts as court may in its absolute discretion prescribe at the making of an order of discharge."¹⁸⁴

CORPORATE LIQUIDATION

Part IV of the Insolvency Bill sets forth the methods by which a company may be liquidated. There are several methods of liquidation depending on the degree of cooperation between the debtor company and its creditors. The simplest procedure is a voluntary liquidation by the company in which the company resolves by special resolution that it cannot by reason of its liabilities continue its business and that it is advisable to liquidate.¹⁸⁵ The voluntarily liquidation is considered to have commenced at the time of passing the resolution for voluntary liquidation.¹⁸⁶ Upon the commencement of the voluntary liquidation the company must cease its business except to the extent necessary for an efficient liquidation of the company.¹⁸⁷ Within 14 days of passing the resolution, notice is given by publication in the Official Gazette and a newspaper with a national circulation.¹⁸⁸ The resolution is also registered with the official registrar of companies and a copy sent to the official receiver within 7 days from the date of passing the resolution.¹⁸⁹

In a voluntary members' liquidation, the company members appoint a liquidator for the purposes of liquidating

the affairs and distributing the assets of the company.¹⁹⁰ On the appointment of a liquidator, all powers of the directors cease.¹⁹¹ Part IV contemplates that solvent companies will generally be liquidated without court involvement, subject to the duty of the liquidator to call yearly general meetings of the company shareholders to account for the conduct of the liquidation during the preceding year.¹⁹² In addition, upon completion of the liquidation, the liquidator is required to call a final meeting to present an account of how the liquidation was conducted and how the property of the company was disposed of.¹⁹³ Within 14 days after the meeting, the liquidator must file the accounting and minutes of the meeting with the registrar.¹⁹⁴ The company will be considered dissolved by operation of law 3 months after the registration of the liquidation.¹⁹⁵

If it appears to the liquidator that the company's assets will not be sufficient to pay its debts in full, then the liquidator is required to immediately notify the registrar and the official receiver and call a meeting of creditors.¹⁹⁶ Assuming the company is cooperative, the liquidation may then proceed as a creditors' voluntary liquidation.¹⁹⁷ In a creditors' voluntary liquidation, the same procedures are followed as a voluntary liquidation of a solvent company with the exception that in addition to shareholder meetings, meetings of creditors are called. In addition, the creditors' preference as to who will be the liquidator is generally honored.¹⁹⁸ The creditors may also appoint not more than five persons to serve as a creditors' committee of inspection to oversee the administration of the case.¹⁹⁹

Upon application of a party, a voluntary liquidation may be conducted subject to the supervision of the court.²⁰⁰ An involuntary liquidation of a company may also be conducted by the court where the court finds that the company is unable to pay its debts.²⁰¹ Upon making such a finding, a liquidator will be appointed to preserve the value of the assets of the company, to collect and to realize as advantageously as reasonably possible, and to distribute the assets or the proceeds of the assets of the company.²⁰²

INDIVIDUAL ARRANGEMENTS AND COMPANY DEEDS OF ADMINISTRATION

As an alternative to liquidation, an individual debtor may propose an arrangement to creditors under which the debts of the debtor are compromised and paid in such amounts as are agreed to by a majority of the creditors at a creditors' meeting.²⁰³ The implementation of the

178 *Id.* §§38, 20(4).

179 *Id.* §53.

180 *Id.* §§21(3), 38(2), 53(2).

181 *Id.* §42.

182 *Id.* §43(1).

183 *Id.* §43(2)(d).

184 *Id.* §43(3).

185 *Id.* §58(1).

186 *Id.* §58(2).

187 *Id.* §60(1).

188 *Id.* §59(1).

189 *Id.* §59(2).

190 *Id.* §62(1).

191 *Id.* §62(2).

192 *Id.* §66(1).

193 *Id.* §67(1).

194 *Id.* §67(3).

195 *Id.* §67(6).

196 *Id.* §65.

197 *Id.* §68.

198 *Id.* §70(1).

199 *Id.* §71.

200 *Id.* §88.

201 *Id.* §92(2).

202 *Id.* §§94, 99.

203 *Id.* §§122, 124(4).

arrangement is subject to the control of a supervisor.²⁰⁴ While the proposed arrangement is under consideration, the debtor may seek and obtain an “interim protective order” which operates as a stay of any creditor action to collect on debts.²⁰⁵ Once approved by the creditors, the court will enter an “arrangement order” affirming the arrangement as approved by the creditors and binding the debtor and creditors to its terms.²⁰⁶ Secured creditors are bound by arrangements to the extent that they have agreed to the treatment of their claims. If they do not agree, they are not prevented from pursuing the collateral for their loans.²⁰⁷

Similarly, a company that is unable to pay its debts may propose to make a settlement with its creditors as an alternative to bankruptcy liquidation.²⁰⁸ The procedure commences with a special resolution of the board appointing a “provisional administrator” to implement the terms of an “administration deed.”²⁰⁹ Similar to an individual arrangement, while the proposed administration deed is under consideration, the debtor may seek and obtain an “interim protective order” which operates as a stay of any creditor action to collect on debts.²¹⁰ The administration deed specifies the property available to pay creditors’ claim, the duration of any moratorium period, and the extent to which the company will be released from its debts.²¹¹ The principles underlying the process of implementing an administration deed is that the survival of the company as a going concern under the terms of an administration deed will result in a better realization of the company’s assets than would be effected in liquidation.²¹² The terms of the administration deed must be approved by a majority of creditors.²¹³ In addition, secured creditors must consent to the treatment of their secured claims.²¹⁴

RECEIVERSHIPS

The law governing the enforcement of the contractual right to appoint a receiver has now been codified in Part VII of the Insolvency Bill. While the court may appoint a receiver, the statute contemplates that in the typical case, the receivership commences and the appointment takes effect when the receiver accepts the appointment in writing.²¹⁵ Immediately after his or her appointment, a receiver shall give written notice of the appointment to the grantor.²¹⁶ In addition, where the grantor is a corporation, the receiver must, not later than 14 working days after the commencement of the receivership, deliver to the registrar and the official receiver a copy of the notice of the receiver’s appointment.²¹⁷

The fundamental duty of a receiver is to exercise his or her powers in a manner consistent with the best interests of all persons in whose interests the receiver is appointed.²¹⁸ Typically this will be the bank under a secured loan agreement that provides for the appointment of a receiver upon the debtor’s default for the purposes of preserving the collateral and selling it to pay the debt. In this regard, the receiver has all the powers conferred by the appointing document. Presumably, this would include the power to sell the collateral as well as certain statutory powers granted under Part VII such as the right to receive all income of the property and manage the property during the receivership.²¹⁹

Typically, the receivership takes effect without court involvement pursuant to the loan agreement provisions. However, the debtor may bring an action against the receiver for wrongful appointment or other improper acts.²²⁰ As is the practice under current law, a temporary restraining order may be issued by the court against the receiver or the secured creditor enjoining the receiver from taking control of the property. The Insolvency Bill provides that this injunctive relief will lapse after 14 days unless extended by the court. As under current practice, a hearing on notice will need to be scheduled promptly after the entering of the temporary restraining order to determine if the receivership should continue.²²¹

In summary, the new receivership provisions in the Insolvency Bill codify existing practice while improving on the law in this area by making clear the respective rights and obligations of parties to the receivership. They also continue the practice of not requiring extensive court proceedings to initiate or conclude the secured creditor’s exercise of its rights to liquidate its collateral upon default by the debtor.

REGULATION OF INSOLVENCY PRACTITIONERS

The Insolvency Bill also provides for the appointment of an official receiver by the Minister of Justice to perform the functions of official receiver under the new law.²²² This is consistent with current law. In that capacity, the official receiver is charged with certain investigatory functions concerning the insiders of insolvent companies and prosecuting any offenses committed under the Insolvency Bill. In addition, the official receiver will also play an important role in investigating the conduct of insolvency practitioners.²²³

204 Id. §120(2)(b).
205 Id. §119.
206 Id. §127(1).
207 Id. §127(3).
208 Id. §139.
209 Id. §§139, 140.
210 Id. §§139(4), 143.
211 Id. §149.
212 Id. §140(1)(b).
213 Id. §148.
214 Id. §164(3).
215 Id. §176.
216 Id. §178(1).
217 Id. §178(2).
218 Id. §179.
219 Id. §181(1).
220 Id. §184(1).
221 Id. §184(3).
222 Id. §198.
223 Id. §199.

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 above, the proposed Insolvency Bill places the jurisdiction of all cases in which a company is a debtor in the High Court. As a result, the traditionally more complex business cases will be heard by the Commercial Court.

KEY IMPLEMENTING INSTITUTIONS

- Courts
- Official Receiver

As discussed in more detail in the portion of this report dealing with Enforcing Contracts, the Commercial Court is well regarded and perceived as being effective in the resolution of commercial cases. The judges are considered to have a good work ethic and be knowledgeable in the enforcement of the parties' rights in commercial cases. In addition, the delays that have plagued Uganda's legal system in the past appear to have been substantially reduced in the Commercial Court. Just as important, the perception of improper external influence that has been associated with some of the courts in the country does not extend to the Commercial Court.

On the other hand, jurisdiction for insolvency cases involving individuals is dependent upon the "value of the subject matter."²²⁴ Although the new law is unclear as to how this jurisdictional provision will be applied in the context of insolvency cases, presumably the value of the assets that may be considered to make up the subject matter of a bankruptcy case will be determinative for jurisdictional purposes. Accordingly, cases with assets of less than 50 million shillings (about US\$30,000) will be presided over by the chief magistrates. Unfortunately, magistrate courts do not enjoy a good reputation among commercial law practitioners. The problems cited by practitioners include both corruption and the lack of capacity of the magistrate judges to deal with commercial cases.

OFFICIAL RECEIVER

Under current law, the Office of the Registrar General operates as the Official Receiver. The Official Receiver is responsible for overseeing voluntary winding-up

proceedings.²²⁵ This important role will continue under the new Insolvency Law, which also expands on the Official Receiver's role in insolvency cases and in oversight of the insolvency system.

Specifically, under the law, the Official Receiver will be appointed as interim receiver in individual insolvency cases.²²⁶ The Official Receiver also plays an important oversight role in cases of company insolvency under Part IV of the Insolvency Bill.²²⁷ In addition, the Official Receiver may serve as liquidator if appointed by the court in a liquidation of a company conducted under court direction.²²⁸ In cases involving an arrangement of the debts of individuals or companies, the Official Receiver also has an oversight role²²⁹ and may be involved in a supervisory capacity.²³⁰ Similarly, the Official Receiver has an oversight role in the conduct of creditor-initiated receiverships²³¹ and may even serve as a provisional receiver if the office of the creditor-appointed receiver is vacated.²³²

The new Insolvency Bill also expands the role of the Official Receiver in regulating the practice of insolvency practitioners and overseeing the administration of insolvency cases. Specifically, the Insolvency Bill directs that the Official Receiver shall investigate the conduct of insolvency practitioners.²³³ Insolvency practitioners will be required to be qualified under new provisions setting forth certain requirements for a person to perform certain services in insolvency cases.²³⁴

SUPPORTING INSTITUTIONS

In fully developed economies, the process of closing businesses and otherwise dealing with insolvency has developed into a specialty dependent not only on the framework laws and implementing institutions, but also on other institutions that support the insolvency practice in general. Such institutions in other countries may include associations of lawyers, accountants, and workout specialists devoted to the restructuring and liquidation of businesses that are insolvent. Other supporting institutions may include associations of auctioneers, appraisers, and individuals qualified to serve as insolvency professionals such as receivers, administrators, and trustees.

KEY SUPPORTING INSTITUTIONS

- Uganda Law Society
- International Law Institute

224 *Id.* §254(3).

225 Companies Act of 1961, Uganda Laws, Ch. 110 §224.

226 Proposed Insolvency Bill §20(2).

227 *Id.* §§59(2), 65(1), 67(7), 77(8), 82(1), 84(3).

228 *Id.* §94(1).

229 *Id.* §§ 128, 135(c), 137(4), 146(4)(b), 151(c), 161.

230 *Id.* §131(4).

231 *Id.* §191(2)(d).

232 *Id.* §193(3).

233 *Id.* §199(4).

234 *Id.* §204.

Because of the infrequent usage of insolvency laws in Uganda, these specialized institutions have not yet developed. Thus, there are no associations specifically devoted to supporting the practice of insolvency law. However, there are active institutions that, while not specifically devoted to insolvency, do support the practice of commercial law generally, which includes insolvency practice.

UGANDA LAW SOCIETY

The primary institution supporting the practice of law generally, including commercial law, is the Uganda Law Society (ULS). The ULS was established by Parliament in 1956.²³⁵ Membership is mandatory for practicing lawyers in Uganda. It has 1,350 members and is increasing at the rate of 350 lawyers per year. The ULS has a full-time executive director and a staff of over 70 employees. Among the active committees of the ULS is the Commercial Bar Committee, which is the primary group from within the ULS that consults on new commercial laws. This committee has been asked to provide feedback on the Insolvency Bill. In addition to serving as a supporting organization generally, the ULS has a continuing legal education department that regularly puts on programs for lawyers, some of which are devoted to commercial law practice.

INTERNATIONAL LAW INSTITUTE

The International Law Institute (ILI) began its work in Africa in 1997 as a training centre for the government of Uganda that was a component of the World Bank's Institutional Capacity Building project. It has established itself as one of the major providers of continuing legal education for lawyers and regularly conducts programs that are accredited for CLE requirements by the ULS. In addition to attorney CLE programs, the ILI has done work in judicial training. Notable examples are its work in 1998 on a commercial court ADR project, work in the area of effective adjudication of commercial disputes, and work on improving the efficiency of registrars and information technology.

SOCIAL DYNAMICS

From the perspective of the social dynamics that affect the resolve of a country's institutions to achieve legal reform in the insolvency area, the outlook is good from several perspectives. First, there appears to be awareness that to create an environment for investment, progress in commercial

legal reform is essential. In this respect, the business community has made it clear that without reform in the commercial law area, including insolvency law, investment in and the development of the economy will suffer.

Second, the government has recognized this need and made commercial law reform a priority. This has been manifested by the executive branch's recent directives that monthly reports be provided to the Cabinet regarding progress on the various commercial laws in the process of enactment. In addition, the judicial branch has made significant improvements in the adjudication of commercial disputes by establishing a commercial division. This division will be responsible for the resolution of insolvency cases of companies under the new Insolvency Bill.

Third, the legal reform community, led by the Uganda Law Reform Commission, has done an enormous amount of groundwork to produce a package of commercial laws that reflect input from the country's major stakeholders and address the weaknesses in existing law. In the insolvency area, this work has resulted in the drafting and introduction of the new Insolvency Bill.

RECOMMENDATIONS

- Continue the ongoing efforts to pass the Insolvency Bill. This should be followed by a prompt promulgation by the Ministry of Justice of the accompanying regulations.
- Once the Insolvency Bill is enacted, conduct a comprehensive workshop with the Commercial Court, the Official Receiver, and representatives of the ULS devoted to discussing case management issues and how to most efficiently process insolvency cases under the new law.
- Provide training for attorneys in the various aspects of the new laws in conjunction with the ULS and ILI.
- Create a program for the business and banking community to familiarize them with the new law and insolvency concepts generally.
- In connection with the education provided by the Law Development Center to new attorneys, design and implement practice courses to be included within the standard curriculum that deal with the representation of both borrowers and lenders in insolvency situations.

²³⁵ Uganda Law Society Act of 1956, Uganda Laws, Ch. 276.

- Develop an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view towards developing curriculum designed to educate law students on bankruptcy and other commercial concepts.
- Develop programs for the judiciary, including both the High Court and magistrate courts, on commercial subjects common to bankruptcy cases. This should include courses on insolvency, secured transactions, and contracts.



APPENDIX:

COMPILATION OF RECOMMENDATIONS

STARTING A BUSINESS

No. Recommendation

1. Make registration process more accessible to businesses outside of Kampala. In addition to office locations outside Kampala, the registration process and all of its forms should be available online.
2. Streamline and harmonize registration and licensing processes at the local level.
3. Develop a comprehensive SME policy and provide incentives and assistance for small businesses to start up.
4. Focus more donor resources in business development services for SMEs. Enterprise Uganda's fee-based services are a step in the right direction, but there is room for much more work in this area.
5. Promote the benefits of business formalization and increase enforcement efforts targeting informal businesses.
6. Target corruption in government procurement to ensure that procurement processes are fair, open, and transparent.
7. Develop, within colleges and universities, vocational and entrepreneurial skills programs to produce a workforce that can support businesses effectively.

REGISTERING PROPERTY

No. Recommendation

1. Educate public sector representatives, particularly those charged with enforcing IP protections (such as the police force), on the importance of IP and best practices for enforcement.
2. Support the automation of the IP Registry as well as capacity-building and staff-training efforts, and enhance the registry's ability to be an analytic body that actively considers the validity of trademark applications beyond the review of objections alone.
3. Review the pending IP legislation for compliance with international best practices and obligations under international agreements, and push forward passage of these laws in order to bring the legal framework governing IP in Uganda up to international standards.
4. Assist with development of a resource center within the IP Registry to allow for greater access to knowledge and information regarding IP, the registration process, defense of IP rights, and benefits thereof.
5. Provide education on the provisions and implications of the new Copyright Act, including generally on the concept and benefits of copyright protection.
6. Create a framework that allows for coordination between Customs and the IP Registry to empower Customs agents to stop counterfeit goods at the border.
7. Engage in partnerships with other countries in the region to enable regional efforts to target counterfeit goods.
8. Ease the procedures for destruction of counterfeit goods.
9. Promote innovation through public awareness campaigns and education, and activities such as competitions offering awards and support for innovative ideas. This could be done in partnership with the Private Sector Foundation of Uganda or specific private sector businesses.

GETTING CREDIT

No. Recommendation

1. Through a variety of mechanisms, increase financial institutions' access to longer-term capital, thereby allowing them to make longer-term loans. Encourage bond offerings by banks by creating a transparent capital market with management listing requirements, and providing tax advantages for bondholders. Guarantee the long side of loans or bonds. Supervise loan securitization with an interest in providing more long-term capital for banks. Engage insurance and pension funds as a source of longer-term capital for lending.
2. Amend the Mortgage Law to require guidance on the rights and obligations to be included in a mortgage instrument; the disclosure of the annual percentage rate and fees; the rights of the borrower to other information; and borrowers' rights to prepay and discharge the loan.
3. Consolidate and harmonize into a single law the current legal framework pertaining to loans secured by movable property and provide for a single registry of moveable property (debentures). A new secured transactions law needs to be broader and more flexible in terms of creation of a security interest and the types of property that can be pledged as collateral. Factoring should be provided for in the law and the drafters should consider including leasing in the law (or it could be the subject of a separate new law).
4. Enact regulatory legislation for MFIs and SACCOs. The legislation should provide that MFIs be registered as MFIs, be subject to corporate governance and transparency laws, and be required to fully disclose all fees, interest charges, penalties, etc., to all borrowers in advance of giving a loan. The legislation should also increase the ceiling on exposure to a single borrower, and relax the fairly strict provisioning rules. A self-regulating mechanism may not be effective, particularly since funding would be questionable and it would take time and effort for such a body to develop the necessary expertise. Thus a proper regulatory authority for MFIs and SACCOs should be established through the Bank of Uganda.
5. Enact a new law on leasing, which provides for neutral tax treatment for leasing compared with lending. Donors, the government, vendors, commercial banks, and other lessors should collaborate to expand leasing the industry, including through a public education campaign and consumer protection of lessees.
6. Support simple and standardized reporting of portfolio management performance by MFIs and SACCOs to facilitate supervision by members and the public. Link this reporting to awareness training on repayment responsibilities.
7. Learning from previous attempts, coordinate efforts to focus on increasing lending to small businesses outside of Kampala. These efforts could include coordination of business development services in cooperation with banks, outreach campaigns about using finance to grow a business, and education for bankers on how to help small businesses to apply for loans.
8. Improve coordination among donors to increase access to finance and develop indicators for those projects. These indicators could include number of loans, number of new borrowers, loans by region, and employment created by loans.
9. Enact a regulation that requires banks to disclose in writing to borrowers their interest rates and fees, including the actual annual percentage rate of the offered loan, before the borrowers sign loan documents. The regulation should also require that the actual annual percentage rate be published in any communication to the public about loan products.
10. Move quickly to enable computerized online filing of business registration and registration of debentures (movable collateral), and establish a land registry office in every district.
11. Improve rural infrastructure in roads, power, and telecommunications to improve businesses' ability to trade and grow, lower banks' lending costs in site visits, and strengthen support for mobile banking.
12. Through the recommendations set forth in this report's chapter on Starting a Business, encourage greater formalization of micro-enterprises and SMEs, so that they may take advantage of credit opportunities available only to enterprises in the formal sector.
13. Encourage more sophisticated management by borrowers and potential borrowers, particularly in financial management. This could include training events by each bank branch on what is necessary to obtain a loan in terms of application documentation, financial statements, and business planning. These events could help increase the banks' lending and profitability in the branches by exposing potential borrowers to the banks and helping to ingrain good business practices. Banks could also provide training to their loan officers on ways to improve their borrowers' management.

14. Encourage the use of ICT in all aspects of the economy, including financing. This includes online banking accessible through bank branches and at local government institutions, online business registration, and online searches of credit histories and liens on moveable and immovable property. Better ICT would improve access by borrowers, particularly those in remote parts of the country, and reduce corruption as face-to-face interaction among businesspeople, government employees, and bank employees is lessened and there is an electronic record of communications.
15. Target sectors with growth potential and create financial products tailored to their needs. For example, industries like agriculture and tourism that have seasonal production or uneven cash flows need products that fit their cash flow needs. Provide loan guarantees for lending to those sectors or technical assistance for development of financial products for the target sectors.
16. License more new banks, which can deepen and broaden the financial market. Increased competition may provide incentives for banks to create products suiting micro and agricultural customers' payment schedules and investment needs.
17. Collect and publish disaggregated life expectancy data to facilitate offering and reinsurance of life insurance, which can be one form of non-land collateral.

PROTECTING INVESTORS

No. Recommendation

1. Promote government ownership of reforms and better benchmarking and auditing of reform projects and donor funds to determine their utility and effectiveness in improving the business environment.
2. Push through the new commercial law legislation that is in line with international best practices and regional standards.
3. Conduct trainings for Parliament on the draft commercial laws under consideration and their importance to economic growth.
4. Increase the capacity of Enterprise Uganda, or another organization, to provide business development services and guidance to SMEs.
5. Improve coordination of government agencies and donors and follow-through on initiatives.
6. Support the ICG and the UIA in efforts to socialize corporate governance principles. Assist with development of relevant local case studies revealing the importance of corporate governance principles in instilling sound business practices and reducing opportunities for corruption.
7. Encourage partnership efforts with local companies that have strong corporate governance practices to help socialize the concept.
8. Support training and education on the role of an effective board member and effective management. This could be done in partnership with the ICG or the PSFU.
9. Support UBS and UIA efforts to better coordinate and package economic environment information for delivery to potential investors.
10. Provide a tax amnesty provision for businesses that list on the stock exchange to encourage businesses that have a history of unclean books to improve their practices with the possibility of listing.
11. Promote better coordination between the Company Registry, the URA, and banks to enhance enforcement of sound business practices and good corporate governance. Implement a national identification card system to assist with this coordination.
12. Widely distribute the code of corporate governance utilized by the CMA throughout the business community as a reference tool on good corporate governance practices.
13. Carefully consider and review the experiences of other countries in using tax incentives to boost investment before revamping the current incentives structure.

TRADING ACROSS BORDERS

No. Recommendation

1. Reduce the EAC CET, particularly on food items.
2. Remove export taxes on raw hides, coffee, and cotton, which have hurt local producers.
3. Increase the number of bound tariff lines, and increase emphasis on non-tariff barriers.
4. Strengthen the capacity of the MTTI by improving training, minimizing excessive overseas travel, and investing in better equipment.
5. Expand modern business practices to compile, track, and analyze trade data to improve risk management practices and accountability.
6. Promote full utilization of IT capacity (findings report and examination officer designation).
7. Establish legal framework for BTVET and address infrastructure problems.
8. Advance the current rudimentary level of risk management within Customs to improve targeting of high-risk cargo and facilitation of compliant shipments. Actions would include training in advanced risk analysis; activation of the examination findings module in ASYCUDA, including mandatory participation by examining officers; and incorporation of improved intelligence-gathering.
9. Increase communication between the private sector trade community and the public border agencies to improve speed, accountability, and effectiveness of trade-facilitation reforms.
10. Establish a private-sector steering committee to work with public agencies on customs reform strategy. Delegate to this group the authority to assist in the development of the program, to provide oversight of implementation, to prepare feedback, and to provide accountability.
11. Improve cooperation between public border agencies for better harmonization of processes and advancement of the EAC Customs Union. Establish an intra-agency forum of trade agencies so that planning and execution of initiatives impacting border operations are well coordinated. This will also provide the vehicle for incorporation of other agencies actions into the Customs ASYCUDA system, so that holds and releases are issued from a single source.
12. Institute a one-stop shop for importers and exporters at major business centers. Such a facility should include representatives of all public agencies whose authorizations are required to move imports and exports across borders.
13. Prioritize the development of a regional transit system, including the COMESA bond initiative, so that cargo moves freely and controls are applied only at the starting and final termination points. Extended use of the GPS tracking devices would accelerate this program.
14. Establish a Customs program for simplified and expeditious processing of importers/exporters identified as reliable shippers, using regional standards. Even in the absence of a regional approach, a national program that includes paperless pre-arrival release should be implemented.
15. Employ modern business processes, including use of available software packages that incorporate best practices, to effectively manage those Customs processes that are not included in the ASYCUDA system. This would include systems to compile data on penalties, audits, enforcement, and valuation actions.
16. Develop a comprehensive enforcement strategy to combat illegal trade. Such a plan would include a thorough risk assessment to identify high-volume, high-impact threats. It must also involve increased intelligence-gathering and analysis on a regional basis, prioritization of focus areas, and specific measurable activities to address the issues. The strategy should be developed in concert with all the agencies responsible for border control, with a lead agency appointed for more effective management. In addition, the plan must include close cooperation with regional partners.
17. Improve the current Customs integrity program, including through the development of a well-publicized system for public reporting of officer misconduct.
18. Establish networking channels for EAC Customs managers to promote harmonization, transfer of information, improved expertise, and standardized practices within their program areas. Opening of communication channels for regional officers directly involved in implementation of facilitation measures would reduce start-up problems and ensure uniform processes.

19. Develop regional penalty guidelines so that traders within the region are treated equally when charged with the same or similar offenses. Currently penalty assessments vary widely throughout the EAC because of the lack of clarity within the law. Detailed guidelines along with review to ensure conformity need to be adopted.
20. Implement a formal appeals process of Customs decisions. The process should clearly state where to lodge an appeal, the sequence of appellate review, and the time frames for notification of results.

ENFORCING CONTRACTS

No. Recommendation

1. Continue the ongoing efforts to pass the Contracts Bill.
2. Once the Contracts Bill is passed, create programs for the legal community in conjunction with the ULS and ILI for lawyers to familiarize them with the new Contract Law.
3. Develop programs for the judiciary, including both the Commercial Court and magistrate courts, on commercial subjects, including courses on contracts and secured transactions.
4. Specific courses for the chief magistrate judges should be conducted with respect to their expanded jurisdiction over commercial cases to include courses on case management practices and mediation practice as those areas have been pioneered and instituted in the Commercial Court.
5. Develop private-sector conducted mediation under the supervision of CADER and phase out court-conducted mediation.
6. Develop a comprehensive system for the licensing, training, and oversight of bailiffs.
7. Support the development of case law reporting and digesting to supplement the online availability of decisions.
8. Begin work on a system of monitoring and overseeing judicial performance in the efficient disposition of cases by establishing objective benchmarks and methods of tracking case disposition at all levels of the court system.
9. In connection with the education provided by the Law Development Center to new attorneys, design and implement practice courses to be included within the standard curriculum that deal with the representation of both borrowers and lenders in contract situations.
10. Develop an outreach program to the universities to assist in the training of professors in contract concepts and laws with a view towards developing a curriculum designed to educate law students on commercial concepts.

CLOSING A BUSINESS

No. Recommendation

1. Continue the ongoing efforts to pass the Insolvency Bill. This should be followed by a prompt promulgation by the Ministry of Justice of the accompanying regulations.
2. Once the Insolvency Bill is enacted, conduct a comprehensive workshop with the Commercial Court, the Official Receiver; and representatives of the ULS devoted to discussing case management issues and how to most efficiently process insolvency cases under the new law.
3. Provide training for attorneys in the various aspects of the new laws in conjunction with the ULS and ILI.
4. In connection with the education provided by the Law Development Center to new attorneys, design and implement practice courses to be included within the standard curriculum that deal with the representation of both borrowers and lenders in insolvency situations.
5. Develop an outreach program to the universities to assist in the training of professors in bankruptcy and insolvency concepts and laws with a view towards developing curriculum designed to educate law students on bankruptcy and other commercial concepts.
6. Develop programs for the judiciary, including both the High Court and magistrate courts, on commercial subjects common to bankruptcy cases. This should include courses on insolvency, secured transactions, and contracts.
7. Create a program for the business and banking community to familiarize them with the new law and insolvency concepts generally.

Anastasia Liu
USAID/EGAT
202.712.5837
aliu@usaid.gov

Wade Channell
USAID/EGAT
202.712.1909
wchannell@usaid.gov

Elizabeth Shackelford
Booz Allen Hamilton
703.902.4931
shackelford_elizabeth@bah.com

UGANDA'S AGENDA FOR ACTION