A PRACTITIONERS PERSPECTIVE ON THE IMPACT OF THE NEW COMPANIES ACT 2015 IN IMPROVING THE EASE OF BUSINESS REGISTRATION IN KENYA

BY

JAMES MUSEE NDUNA

UNITED STATES INTERNATIONAL UNIVERSITY-AFRICA

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JAMES MUSEE NDUNA

A Project Report Submitted to the Chandaria School of Business in Partial Fulfilment of the Requirement for the Degree of Master in Business Administration (MBA)

UNITED STATES INTERNATIONAL UNIVERSITY-AFRICA

SPRING 2017
STUDENT’S DECLARATION

I, the undersigned, declare that this is my original work and it has not been submitted to any college, institution or University for academic credit other than United States International University – Nairobi, Kenya.

Signed: ____________________________ Date: ____________________________

James Musee Nduna (ID NO. 242116)

This Project has been presented for examination with approval of the appointed supervisor.

Signed: ____________________________ Date: ____________________________

Fred Newa

Signed: ____________________________ Date: ____________________________

Dean, Chandaria School of Business
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ABSTRACT

The purpose of this study was to investigate the impact of the Companies Act 2015 in improving the ease of business registration in Kenya. The research questions for the study were: What is the impact of the Companies Act 2015 on the Convenience of business registration in Kenya, what is the impact of the Companies Act 2015 on the business registration Time and what is the impact of the Companies Act 2015 on the Cost of business registration.

The research adopted a descriptive design with professional bodies offering business registration and advisory services in Kenya, being the target group. The total population comprised of 10 Chief Executive Officers of 10 professional bodies. The study adopted purposive sampling. Data was collected using questionnaires, edited and analysed. The methodology used for data analysis was that the answers and responses to the in-depth questionnaire were carefully summarized on the basis of their relevance to the research questions. The analysed data was presented in form of tables and figures according to the research questions.

The study’s findings on the Impact of the Companies Act 2015 in Improving the Convenience of business registration are that the New Companies Act 2015 had greatly improved the convenience of business registration. This was achieved by the introduction of a unified Registration Form that is available online. The application is then submitted through Huduma Centers that are located countrywide.

The study’s findings on the Impact of the Companies Act 2015 on business Registration Time is that the New Act had improved the business registration time from an average of 1 month under the repealed Act, to an average of 1 week.

The study’s findings on the Impact of the New Companies Act 2015 on the cost of Business is that the cost had been drastically reduced. The cost had been reduced from a minimum of 20,000shs. to a standardized 10,000shs.

The conclusion of the study is that it is now more convenient to register a business in Kenya. Business registration is now cheaper. It now takes a shorter time to complete the registration process.

Registration is therefore accessible to more businesses. The study concludes that with the improved registration process, the ranking of Kenya as an investment destination will
improve. The lower cost of business registration will also attract informal businesses to formalize their registration and become incorporated.

The study recommends that the government conducts public awareness campaigns on the new provisions of the Companies Act 2015, and that the registration process be improved further by streamlining and automating the registration procedures fully to allow online registration with minimum physical contact with the Companies Registry.
ACKNOWLEDGEMENT

I am sincerely grateful to God the almighty for bringing me this far. Special thanks to my supervisor Fred Newa, for his patience and insightful guidance. Special thanks to my family for their concern and understanding. My appreciation is extended to my employer, the office of the Attorney General and Department of Justice for allowing me time to complete my studies. To Jesse Kang’ethe my Research Assistant who judiciously typed out this manuscript.

May the Lord bless you.
DEDICATION

I would like to dedicate this work to my late father, Peter Nduna Ithea, who brought me up and educated me with minimum resources.

To my loving mother, wife Elishepa and children Tevin, Stacy, Megan and Baraka, your patience inspired me to work hard.
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<th>Full Form</th>
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<tbody>
<tr>
<td>AGM</td>
<td>Annual General Meeting</td>
</tr>
<tr>
<td>Cap</td>
<td>Chapter</td>
</tr>
<tr>
<td>CBRIS</td>
<td>Companies and Business Registration Integrated System</td>
</tr>
<tr>
<td>CEO</td>
<td>Chief Executive Officer</td>
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<tr>
<td>CMA</td>
<td>Capital Markets Authority</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<td>FIAS</td>
<td>Foreign Investments Advisory Services</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Commission of Jurists.</td>
</tr>
<tr>
<td>ICPSK</td>
<td>Institute of Certified Public Secretaries of Kenya</td>
</tr>
<tr>
<td>LSK</td>
<td>Law Society of Kenya</td>
</tr>
<tr>
<td>LTD</td>
<td>Limited</td>
</tr>
<tr>
<td>KAM</td>
<td>Kenya Institute of Manufacturers</td>
</tr>
<tr>
<td>KNCCI</td>
<td>Kenya National Chamber of Commerce and Industry</td>
</tr>
<tr>
<td>KTCI</td>
<td>Kenya Transparency and Communication Infrastructure</td>
</tr>
<tr>
<td>KRA</td>
<td>Kenya Revenue Authority</td>
</tr>
<tr>
<td>NHIF</td>
<td>National Hospital Insurance Fund</td>
</tr>
<tr>
<td>NSSF</td>
<td>National Social Security Fund</td>
</tr>
<tr>
<td>PLC</td>
<td>Public Limited Company</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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CHAPTER ONE

I.0 INTRODUCTION

1.1 Background of the Problem

According to the World Bank Group (2015), The Ease of Doing Business Initiative is aimed at having a common platform that allows the sharing of experiences and good practices among world economies in reforming the international business environment. The programme is supported by the World Bank. The programme conducts periodic assessments and publishes the rankings.

According to the World Bank Group (2015) report, the membership of the initiative is made up of 189 economies of the world who have voluntarily submitted to a predetermined ranking criterion. The ten parameters evaluated in order of priority are starting business, dealing with construction permits, cost of electricity, registration of property, access to credit, protection of minority investors, paying taxes, trading across borders, enforcing contracts and resolving insolvency.

As at 2016 189 countries were participating in the initiative and were ranked starting with the best to the worst as shown in appendix I.

According to the year 2015 report, the rankings of countries with a population of over 100 million as at 2013 that is Bangladesh, Brazil, China, India, Indonesia, Japan, Mexico, Nigeria, Pakistan, the Russian Federation and the United States are ranked based on data for two cities.

According to the report sub-Saharan African economies scored an average ranking of 143 out of the 189 economies. Mauritius posted the highest ranking at 32 .Rwanda comes second at 62 followed closely by Botswana at 72 and south Africa at 73.Other economies in the region are Kenya at 108, Uganda at 122 and Nigeria at 169.Countries in Africa with the lowest rankings are: Central African Republic at 185 South Sudan at 187 and the last in the rankings is Eritrea at 189. (World Bank Group, 2015)

Under the Government of Kenya Vision 2030 blueprint (2008), the Government of Kenya has recognised the value of ICT as a bridge to accelerate a business environment reform. The sole aim is to improve efficiency in the delivery of government services associated with ease of doing business such as the simplification of business registration and
compliance regulations. The blueprint identifies Kenya as a leader globally because of its vibrant ICT ecosystem and its championing innovations in the digital revolution. The M-pesa mobile Money transfer a premier product of Safaricom Limited is the best example on how digital payments have transformed the business environment in Kenya in the last 10 years.

According the Kenya Vision 2030 blueprint the attractiveness of Kenya as an investment destination has been compromised by the high cost of doing business. Business is global and therefore for a country to attract international investments it must be a competitive destination. One of the primary indicators of competitiveness is the cost of doing business indices. This involves international rankings based on common parameters. The basic principle of investment is that the higher the return on capital the better for the investor. Kenya has the competitive advantage of being agriculturally productive and therefore a potential destination for value addition and food processing industries. The infrastructure is advanced compared to other countries in sub-Saharan Africa. Its location is at the coast of Eastern Africa is strategic to investors. However the bureaucracy and the high cost of doing business has discouraged investments.

The Government of Kenya Vision 2030 Economic Development Pillar targets to make Kenya a middle income newly industrialised country by 2030 by improving the business environment so as to fully exploit its potential as preferred investment destination. According to World Bank 2016 report Kenya was ranked number 108 overall against a total of 189 countries. On the cost of starting business Kenya ranked poorly at number 151 against 189 countries. This confirms that the need for the country to improve on this component if it is going to be a competitive investment destination. Business start-up costs are a major component of the total cost of doing business. Investors are attracted by investment destinations where the cost of starting business is minimal.

The process of starting a business involves the registration of the business. In Kenya the Companies Act Chapter 486 has been the legislation governing registration of businesses. This law has been in force for the last 54 years since 1st January 1962. This Act was identified as a hindrance and repealed by parliament. It was replaced with the New Companies Act 2015 which was enacted into law with effect from the 11th September 2015. The Act was commenced with effect from 6th November 2015. (Legal Notice No
The New Act has improved the Company Registration process by simplifying and automating the process thereby considerably reducing on the cost and time spent on registration. Under the repealed law business registration took up to 30 days. The process involved hiring expensive professional such as lawyers and certified public secretaries to prepare and lodge the registration documents. The documentation was manual and involved extensive paperwork. This led to delays and bureaucracies which is an impediment to ease of starting business.

The New Act and provides for another regime where the registration process is digital and simplified. An investor in any part of the world can initiate the process by registering with The E-Citizen portal from where applications for registration are filed uploaded and submitted to the registrar of companies. The applications are received and processed electronically with the process targeted to take two days to complete.

According to Joram (2016) during the 6 month initial period from 6th November 2015 to 6th April 2015 a total of 2,725 businesses were incorporated into limited liability Companies under the new Act.

1.2 Statement of the Problem

According to Joram (2016) et al the New Act provides for an integrated and automated and simplified registration process by drastically reducing the process from 10 to 3 simple steps. The ten steps under the repealed Act were name reservation. Stamp duty assessment, payment of stamp duty, franking of documents, declaration of compliance, presentation to the Registrar of Companies, acquisition of the company seal, registration with NSSF, NHIF and KRA and obtaining a business licence. The three steps under the new regime involve reservation of business name from Huduma Centers countrywide, online submission of one unified application form to the registrar of companies and collection of the registration certificate within 2 days. It is important to investigate the
impact of the simplification and automation of the registration process has positively improved the convenience of business registration.

The business registration time in Kenya has been a major concern to entrepreneurs. For the last 54 years from 1st January 1982 to 6th November 2015 registration of businesses in Kenya was largely regulated by the Companies Act Chapter 486. The Act was repealed on 1st November 2015 and a new Companies Act 2015 was promulgated. The new act is a milestone legislation that to raise the Kenyan business registration and regulatory environment to international standards by improving the time taken on business registration the first parameter in the ease of doing business ranking. Under the repealed act it took an average of 30 days to complete the registration process. Under the new regime process should take not more than 3 days. There is therefore need to investigate and establish the extent to which the new process of registration has reduced the time taken in starting business in Kenya.

The cost of registration has been reduced from an average of 20,000shs to 10,000shs all inclusive registration fees under the new regime. It will not be mandatory to contract Lawyers and Certified Public Secretaries as registration agents. This further reduces intermediary costs. There is need to investigate the impact of the lower cost of registration on ease of business registration.

The New Companies Act came into effect from 1st November 2015. The Act introduced legislative measures and new business registration processes aimed at improving the ease of doing business registration in Kenya. This study covers the first year of the implementation of the new Act and no other study has been conducted thus far to assess the impact of the new legislation. There is therefore a knowledge gap which this study seeks to fill.

1.3 Purpose of the Study

The purpose of the study was to investigate the Impact of the New Companies Act 2015 in improving the ease of business registration in Kenya.
1.4 Research Questions

1.4.1 What is the Impact of the New Companies Act 2015 on the convenience of business registration in Kenya?
1.4.2 What is the Impact of the New Companies Act 2015 on the time spent on business registration in Kenya?
1.4.3 What is the Impact of the New Companies Act 2015 on cost of business registration in Kenya?

1.5 Justification of the Study

1.5.1 The Government of Kenya.
The government of Kenya is committed to improving the business environment in order to spur economic development in order to achieve increased investments and employment creation. The study will find out to what extend the Implementation of the new Act has impacted on the cost of doing Business in Kenya.

1.5.2 Investors and Businessmen
Investors are attracted to economies with a conducive business environment with minimum risks and the highest possible return on their investment. The study will inform businessmen interested in starting businesses in Kenya on the improved business environment.

1.5.3 Ministry of Industrialisation and Enterprise Development
The ease of doing business Initiative is a strategic programme of the National Ministry of Industrialisation and Enterprise development. The Cabinet secretary is the champion of the initiative and reports to the Cabinet chaired by the President. The findings and recommendations of this study will inform the ministry on the progress of the transition to a simplified and digital business registration process.

1.5.4 Vision 2030 Secretariat
Improved business environment of one of the goals set in the vision 2030 Economic pillar. Economic development, wealth maximization and employment creation are depended on a conducive investment environment. The study will inform the Vision 2030
Secretariat on the progress made in making Kenya an attractive investment destination for both local and direct foreign investments.

1.5.5 Professional Bodies for Practitioners in Business Registration
Professionals practicing business advisory and registration services who are the respondents in this study are key stakeholders in an improved business registration process. The findings of the study will inform the respondents of this study on the improved business registration regime.

1.5.6 Academia and Future Research
This research will make a great contribution to the body of knowledge available to business students and practitioners of company law. Future researchers will find the study to be a point of reference for their literature review.

1.6 Scope of the Study
The study was conducted within the Republic of Kenya. It will cover the first 6 months implementation period from the 6th November 2015 to 6th April 2016. The target population were Chief Executive Officers of 10 Business and Professional Bodies whose members offer business registration and advisory services in the Republic of Kenya as set out on Table 3.1
All respondents were cooperative by giving timely truthful answers to the questionnaires. It is assumed that the CEOs of the target population gave the views of the members of their professional bodies since they represent their members’ collective interests.

1.7 Definition of Terms
1.7.1 Cost of doing Business
Cost of doing business has been defined to mean the time and resources employed by investors in the expectation of earning a return on investment and growth of their capital. (The World Bank, 2015).

1.7.2 The Repealed Act
The Repealed Act means the Companies Act chapter 486 which was replaced by the New Act with effect from 6th November 2015 vide legal notice no 233 of 13th November 2015. (The Companies Act, 2015)
1.7.3 Huduma Center
Huduma Center is defined to mean a public service delivery point dedicated to delivery of integrated public services by the government which includes processing applications for business registration. (The Huduma Kenya Secretariat, 2016)

1.7.4 Business Registration
Business registration is defined as the process of identifying a name and applying for it to be incorporated into a business by the registrar of companies. The process is complete upon issuance of a registration certificate by the Registrar of companies. (McCormick & Others, 2007)

1.7.5 Business Registration Time
Business registration time is defined as the number of days between the date of lodging the application with the Companies registry and the day a registration certificate is issued. (McCormick & Others, 2007)

1.7.6 Cost of Company Registration
Cost of company registration is defined as the total expenses incurred to complete the process of registration in Kenya shillings. It includes registration fees payable under the New Companies act 2015 and professional fees where an agent, such as a lawyer or certified public secretary is retained. (World Bank Group, 2015)

1.8 Chapter Summary
Chapter one of the study covers the introduction. The problem statement, purpose, research questions, justification and the scope are enumerated. The definition of terms to be used in the study is given.
Chapter Two will cover literature review on business registration in Kenya. The chapter will examine literature available on the country cost and time component as critical contributors to the total cost of doing business. A Comparative study between the Kenyan business registration environment and relevant international case studies will be reviewed. Chapter three describes and explains the research design and methodology. It will justify the sampling method and the data analysis techniques adopted. Chapter four will document the results and findings of the study. Chapter five will form the discussions conclusions and recommendations for future research.
CHAPTER TWO

2.0 LITERATURE REVIEW

2.1 Introduction

In order to appreciate the Business Registration process, an overview of literature on Company Law is necessary. The theories on Incorporation will be reviewed to establish a theoretical background.

This chapter reviews literature available on Business Registration in Kenya. The focus is on the research questions set out in Chapter One. These include The Impact of the New Companies Act 2015 on the Convenience, Time and Cost of business registration. The Chapter Summary provides an outline of the areas covered in this Chapter. The summary will also give a description of what Chapter Three covers.

2.2 Impact of New Legislation on Convenience of Business Registration

In order to appreciate the business registration process an overview of literature on company law is deemed necessary. Theories on the principle of incorporation will be reviewed. The relevant provisions of the New Companies Act 2015 intended to improve the convenience of business registration will be highlighted.

2.2.1 Company Law and Capitalism

According to Mweseli (1997), company law is about capitalism. Capitalism simply put is an economic system which a country’s trade and industry are controlled by private owners for profit, rather than the state. It provides the formal legal structure necessary to the operation of a capitalist system. The capitalist invests in shares in a company setup, and managed by the entrepreneur who employs on his behalf as many workers or machines, as are necessary to the profitable operation of the business. The shareholders supply the finance; the managers provide the drive and the organization as well as the employees, do the work. The managers and other employees are paid a salary or wage out of the takings of the business. The remaining profit goes exclusively to the shareholders who own and control the business and who also bear the risk of any loss that might be incurred.
2.2.2 An international Perspective
According to Blumberg (1993), World business is dominated by the multinational corporation. Although the largest multinational corporations were initially based in America the concept, is now spread all over the world with presence in virtually all the capitals of the world. By the year 1991, multinationals were a global business strategy. According to the study conducted in 1991 covering the largest 500 multinational corporations, in terms of sales turnover, America was leading with 157, followed by Japan with 119. Britain had 43, Germany 33 and France with 32. The remainders were distributed among Australia, Canada, Latin America and Africa as outlined on Table 2.1 below.

Table 2.1 Global Distribution of 500 Multinational Corporations in 1991

<table>
<thead>
<tr>
<th>Country</th>
<th>No. of Multinationals</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>America</td>
<td>157</td>
<td>31.4%</td>
</tr>
<tr>
<td>Japan</td>
<td>119</td>
<td>23.8%</td>
</tr>
<tr>
<td>Britain</td>
<td>43</td>
<td>8.6%</td>
</tr>
<tr>
<td>Germany</td>
<td>33</td>
<td>6.6%</td>
</tr>
<tr>
<td>France</td>
<td>32</td>
<td>6.4%</td>
</tr>
<tr>
<td>Others</td>
<td>116</td>
<td>23.2%</td>
</tr>
<tr>
<td>Total</td>
<td>500</td>
<td>100%</td>
</tr>
</tbody>
</table>

Source: Blumberg (1993)

2.2.3 Theories of Incorporation
According to Schimitthoff (1987), upon issuance of a Certificate of Registration a company is legally referred to as Incorporated. Business registration is therefore synonymous to Company incorporation. At present there are two theories of company incorporation namely ‘the incorporation theory” and “The Real seat Theory”.

2.2.4 Incorporation Theory
According to EU Company Law (2016), the Incorporation theory determines the applicable company law by reference to the country in which the company was incorporated and registered. The connecting factor is therefore the country of incorporation.
The Incorporation theory is widely used in UK, Scandinavia and the Netherlands among others. The primary advantage of the incorporation state doctrine is that it is easy to determine the jurisdiction to which a company is subject. It is not necessary to make a factual evaluation of the location of any of the business activities. Where a company is incorporated can be easily and objectively established. However it might be harder for a state in which a company is incorporated but in which it has no economic activity, to have the necessary insight into the affairs of the corporation to maintain the same level of control, than for real seat countries. There is also a risk that such a state will not have any particular interest in companies that only keep their registered office in the state, and therefore, it will not allocate the resources necessary to maintain control. The use of the incorporation state doctrine does not restrict freedom of establishment in any way, because the company is free to locate its registered office in the state that seems most advantageous. It is also possible to transfer the central administration out of the state of incorporation. The decisive factor is whether the company has been formed in accordance with the legal requirements of that state, and the company will still be subject to the laws of that state after the transfer of its central administration. (EU Company Law, 2016)

2.2.5 Real seat Theory

The Real seat theory was developed in France and is used in most continental countries. The real seat theory determines the applicable company law by reference to the country in which the company has its actual real seat (head office). The connecting factor therefore is the actual corporate seat.

According to the Real Seat Theory, a conflict of company laws must be settled in accordance with the law of the state in which the central administration is located. The doctrine is traditionally considered protective because the main philosophy behind it is that a company must be subject to the law of the state in which its corporate center of gravity is located. This is because it is assumed that the majority of the corporate stakeholders will be located there. Such stakeholders include shareholders, creditors, employees, and suppliers. It is also assumed that societal interests are best served when a company is subject to the law of the state where its central administration is located. These assumptions however seem to be somewhat outdated because information technology now makes it possible for management to be located geographically
somewhere other than where the economic activity of a company is centered and the members of the supervisory board do not have to be in the same country when meeting. Many companies do a great deal of business outside the state of incorporation, and creditors, suppliers, and investors today are spread over many countries. The real seat doctrine is criticized because the use of the central administration or “corporate seat” as the decisive factor gives rise to a number of problems. The first problem arises when the central administration is used as the connecting factor. It is of great importance to determine where it is located. The interpretation of the concept of “central administration” is the other problem. In most cases, it is defined as the management of the company and it seems to be generally recognized that the management is the board of directors of a company or management board and not the person who has control and influence, such as a controlling shareholder or a parent corporation. (EU Company Law, 2016)

It must be recognized that it is probably easier for the state in which a company has its central administration to ensure that it complies with its law. This is the whole idea behind the Incorporation Theory which Kenya has adopted. The use of this doctrine restricts forum shopping and freedom of establishment. In accordance with this theory, a national company is required to have its registered office within the state of incorporation. This means that when a state that applies the real seat doctrine, such as Germany, finds that a company must comply with German law because its central administration is located there, it will require that company to have its registered office in Germany as well. Because of this, it is not possible to separate the central administration from the registered office. Therefore, the widespread application of the real seat doctrine severely restricts the scope for forum shopping.

2.2.6 Advantages of Business Registration
According to Ferain (2008), the Limited Company is the most popular organizational form for modern business of economic significance in the UK. The company occupies this pre-eminent position because it has advantages over other types of business vehicle, such as unincorporated associations and partnerships, as an organizational form through which to limit financial risks and to raise large amounts of finance from Investors whilst keeping day to day running of the business concentrated in the hands of a relatively small group of managers. These advantages are supplied by the state through its system of
Company Law. These special features of Company Law act as incentives to trade and commerce and can play a critical role in promoting Enterprise and Investment. However, an entrepreneur has a choice of either registering a Sole Proprietorship, a Partnership or a Limited Liability Company.

According to Digman & Lowry (2009), a company limited by shares, is the normal type of commercial company formed to pursue a business venture. In the United Kingdom, an entrepreneur is required to provide the Registrar of Companies with the constitution of the company (this contains the internal rules of the company called Articles of Association and any objects clause limiting the powers the company may have), and a Memorandum of Association stating that the subscribers intend to form a company and become members. The purpose of registering these documents is to provide certain key information that could be accessed by the public or government agencies if necessary.

According to Gower & Davies (2008), the company is a highly flexible form of vehicle for carrying on business, whether for profit or non-profit. Although in relation to many types of activity, the question arises whether the activity should be carried on through a company or another legal form. None of these other legal forms is available across so many types and sizes of activities as in the corporate form. In other words, the company has many competitors in the shape of other legal vehicles for carrying on business, but it is perhaps not much of an exaggeration to say that for all these other vehicles, their primary competitor is the company. This company can be used to accommodate the smallest, one person business, to the largest, multi-national undertaking.

Schmitthoff (1987), states that the issuance of a Certificate of Incorporation by the Registrar of Companies is conclusive evidence of Registration. After the official examination of an application, for registration by the Registrar, if satisfied that the statutory requirements are complied with and that the objects of the proposed company are not illegal, will issue the Certificate of Incorporation and from the date stated therein, the company comes into existence as a Legal prism.
2.2.7 The Legal Framework of Business Registration in Kenya

Business registration service in Kenya is a function of the Registrar of Companies which is a section in the Department of the Registrar General in the Office of the Attorney General & Department of Justice headed by a Registrar of Companies. The Companies Act 2015 is the primary legislation that the Registrar Implements. Other Acts Implemented include: The Registration of Businesses Act (Cap 499) and the Limited Liability Partnerships Act (Cap 30A). The core functions of the Registrar of Companies under the New Companies Act are Registration of Companies, business names and Liability Partnerships. Other functions include the Registration of Debentures and Charges. The Registrar is the Custodian of Corporate statutory records and the supplier of corporate and business information to the public. The Office enforces and collects fees which form part of the revenue to the government. The Registrar conducts Research and investigation on issues related to companies, businesses and Limited Liability Partnerships and advises. The Attorney General on general matters pertaining to companies, businesses and Limited Liability Partnerships. It is the duty of the registrar to ensure proficient administration and effective implementation of the Companies Registry functions listed under the various Acts.

2.2.8 An Overview of the Operations of the Companies Registry

The Companies Registry is located in Sheria House from where it executes its mandate. The Registry also offers some services through the Huduma Centres countrywide. According to the Joram (2016), the Companies Registry as at 1st February 2016 held records of 381,227 private, public and foreign companies and 950,100 Businesses names, since the Companies Registry was established in 1902. The registration process was a manual one. At the time, the registry was running well despite the manual system. However, over time the number of applications increased drastically overstretching the available space and human resource. This created a crisis in the management of records in the registry.

The above situation necessitated process re-engineering. According to information obtained from records held at the Registry the following attempts have been made to enhance efficiency in the Registry. In 2003 The UNDP assisted the office in developing an electronic index and also assisted in procurement of mobile filing shelves which are currently in use to date. Five years later in 2008 the World Bank assisted in the
procurement of a Document Management System/Workflow. The system provides a workflow platform for data capture, approval and generation of certificates for business names and companies. It is also used for initiating and effecting various companies’ changes and generating official search reports. The Registry shifted from manual processing of documents and generation of certificates to a computerized one. The Registry now maintains an electronic replica of files for companies’ registered post 2008 which is secure and easy to retrieve.

In 2010 The World Bank under the KTCI Project funded the supply and installation of equipment, data capture and digitizing of files at the companies registry. All the old files (pre 2008) were scanned and data in the files captured into a database. Under the same project double screen computers were procured. The long term solution is to develop on common web based system capable of receiving applications for registration and generating automated reports. (Joram, 2016)

2.2.9 The Business Registration Service Board

In order to improve the convenience of business registration in Kenya the New Act will be implemented by The Business Registration Service Board set up under Section 4 of the Business Registration Service Act. The Board will oversee the incorporation, registration, operations and management of Companies. The Board will be headed by Registrar General who shall be the Chief Executive officer and Secretary to the Board.

2.3 Impact of New Legislation on the Cost of Business Registration

According to Jausas (2009), the cost of incorporation of companies varies from one country to another. An analysis of 7 selected countries reveals that Kenya ranks favourably, with a low registration cost of ksh. 10,000. In Colombia, it costs an equivalent of sh. 52,100 to complete the registration process. See Table 2.2 below.
Table 2.2 Cost of Company Registration

<table>
<thead>
<tr>
<th>Country</th>
<th>Local Currency</th>
<th>Ksh. Equivalent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Singapore</td>
<td>S$ 300</td>
<td>21,900</td>
</tr>
<tr>
<td>Brazil</td>
<td>R$ 190</td>
<td>6,015</td>
</tr>
<tr>
<td>Colombia</td>
<td>USD 521</td>
<td>52,100</td>
</tr>
<tr>
<td>France</td>
<td>€84</td>
<td>9,350</td>
</tr>
<tr>
<td>Panama</td>
<td>USD 250</td>
<td>25,000</td>
</tr>
<tr>
<td>UK</td>
<td>£20</td>
<td>2,460</td>
</tr>
<tr>
<td>Kenya</td>
<td>Ksh.10,000</td>
<td>10,000</td>
</tr>
</tbody>
</table>

Source: Jausas (2009)

2.3.1 Reducing the Cost of Registration under the Companies Act 2015

The New Act has drastically reduced the cost of registration by eliminating the requirement to retain a Company Secretaries who prepare and sign registration documents for small companies. A private company with a share capital of less than Ksh. 5million will not need to appoint a company secretary. This function can be carried out by an agent or by a director of the company. Private companies whose share capital is more than Ksh. 5million, and all public companies, must appoint a company secretary at the time of registration of a company, and at any time a new director (or secretary) is appointed such person must consent to the appointment in writing. (Government of Kenya Companies Act, 2015)

2.3.2 Registration Cost Reduction incentives

The New Act introduces broad cost reduction incentives for small companies. Under the small companies regime a small company is one that has a turnover of not more than fifty million shillings (Ksh.50,000,000) and or the value of its net assets as shown in its balance sheet as at the end of the year is not more than twenty million shillings; and it does not have more than fifty employees. A small company does not need to prepare group financial statements. Companies that are excluded from the small companies’ regime include a public company, a group company whose ‘group’ consists of a company which is a public company, a body corporate whose shares are admitted to trading on a securities exchange or other regulated market in Kenya or a person who carries on
business in the insurance market or a banking activity. (Government of Kenya Companies Act, 2015)

2.3.3 Decentralization of Business Registration Services
Increased accessibility to registration centers reduces the costs incurred in travelling to the Central Companies Registry in Nairobi. In order to increase accessibility of services the Registrar of Companies has presence in 5 Huduma Centers in Nairobi and 13 other centers located at Mombasa, Kisumu, Kisii, Eldoret, Nakuru, Machakos, Kajiado, Nyeri, Embu, Meru, Thika, Kakamega and Chuka. The Registrar has been offering limited services through the Huduma Centers from 6th November 2013. These services are supported by a back-end computer system which is accessible in all the Huduma Centers. The services offered include name search and reservation and assessment and payment of stamp duty and registration fees. (Joram, 2016)

2.3.4 Provisions of the Companies Act 2015 on Reduction of Business Registration Costs
The Companies Act, 2015 was enacted into law on 15th September 2015. The Company law regime existing in Kenya before this Act was based on the 1948 UK Act. Since its enactment in 1962 the Companies Act (Chapter 486) had not been updated to keep in tandem with modern ways of doing business. The purpose of enacting the new legislation therefore was to create an effective framework of company law and corporate governance that promotes enterprise and stimulates investments.

In order to reduce the cost of business registration, the New Act has reformed business processes. One important feature of the New Act is the deliberate distinction now to be made between the regulated affairs of a private company and those of publicly-owned or stock exchange quoted companies. The emphasis has been to introduce a lighter-touch regime for small companies thus reducing the time and cost of business, while ensuring that companies with public participation are subject to greater levels of scrutiny and accountability.

One of the drastic reforms that have improved the cost of business registration is the introduction of One Director Companies. It is now possible for a single person to form a
private and a public company. This reduces the costs associated with more than one director being required to initiate company incorporation. Formerly it was necessary to have at least two members for a private company and seven for a public company. A company's articles of association will become its main constitutional document and the company's memorandum will be treated as part of its articles. While it will still be important to file a memorandum of association to incorporate a new company, it will no longer form part of the company’s constitution. (Joram, 2016)

The cost registration has been improved by the introduction of Model Articles of Association. This means there will be no need to hire Lawyers to prepare article of association. Historically, a company's Memorandum of Association contained an objects clause, which limited its capacity to act, or run the risk of an act, or power, being unlawful the objects or powers contained in the constitution. Under the New Act a company's capacity is unlimited unless its articles specifically provide otherwise. This has removed the need for an excessively long objects clause in the memorandum. The memorandum no longer restricts the activities of a company. New model articles for private companies to be made under the New Act are intended to better the way that small companies operate. Existing companies will be permitted to adopt the new model articles in whole or in part. (Government of Kenya Companies Act, 2015)

2.4 Impact of New Legislation on Business Registration Time

The New Companies Act 2015 was enacted with the intention of standardising the registration cost. This will enable small scale entrepreneurs to afford registration and attract investments. The lower cost of registration would also serve as an incentive for entrepreneurs to formalize their registration and transit from the informal to formal sector.

2.4.1 Business Entry Procedures

According to McCormick & Others (2007), the process of business registration is important because it determines how long potential entrepreneurs take in incorporating businesses in many developing countries, Kenya included. When it takes a long time, then this acts as a disincentive for investment. In some cases, entrepreneurs who find the registration process cumbersome prefer to establish businesses in the informal sector.
Cumbersome processes are not only expensive in terms of time and cost, but they are also punitive.

A recent survey by FIAS (2004) estimates that it takes about 61 days and about 195 US$ (kshs.15,210) to start a business in Kenya. In 2004 the process involved 11 steps as outlined in the Table 2.3 below.

Table 2.3 Entry Procedures in Kenya for an Average Small and Medium Size Entrepreneur

<table>
<thead>
<tr>
<th>Nature of Procedure (2003)</th>
<th>Duration (Days)</th>
<th>Cost (US$)</th>
<th>Cost (Kshs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pay Stamp Duty</td>
<td>10</td>
<td>61.46</td>
<td>4,793.88</td>
</tr>
<tr>
<td>Reserve Company Name</td>
<td>3</td>
<td>0.63</td>
<td>49.14</td>
</tr>
<tr>
<td>File with Registrar</td>
<td>30</td>
<td>37.40</td>
<td>2,917.2</td>
</tr>
<tr>
<td>File for Taxes</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>File for V.A.T</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Register as Employer</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Apply for Operational Licences</td>
<td>8</td>
<td>63.49</td>
<td>4,952.22</td>
</tr>
<tr>
<td>Register with NSSF</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Register with NHIF</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Make a Seal</td>
<td>2</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>61</strong></td>
<td><strong>163.07</strong></td>
<td><strong>12,712.44</strong></td>
</tr>
</tbody>
</table>


According to the above study, Kenya compared unfavourably with other countries in the Region such as Uganda where it takes 36 days, Tanzania 35 and South Africa 38.

The principal legislation governing the operations of companies, including registration and liquidation of firms in Kenya, is the Companies Act Cap 486 of 1962. This Act restricts members of Private Companies to between 2 and 50 shareholders, while limiting the minimum of shareholders in a Public Limited Company to 7. Registration under the Companies Act means that the business is incorporated, with its own legal status, separated from the rights and duties of its members. Most companies in Kenya are incorporated with Limited Liability status, limiting the liabilities of the owners to their contributions in the business. Registration as a Limited Liability Company encourages
entrepreneurs to take risks with the knowledge that their personal assets are protected. It also facilitates the pushing of resources brought in by different owners. (McCormick & Others, 2007)

According to the study, the repealed Companies Act chapter 486 was a bottleneck to development of enterprise. The Act was based on the 1948 UK Companies Act designed to regulate big Public Companies. In Kenya, the vast majority of Companies are small, owner-managed enterprises. Currently, firms are bound by strict rules relating to capital structures and capital maintenance. The Companies Act, for instance, has requirements for a company seal, for two shareholders and a formal procedure for the company meetings. All these requirements may not be necessary for small owner-managed enterprises in Kenya, therefore, the rules embedded in the Companies Act are complex, technical and inappropriate (FIAS 2004)

2.4.2 Improvement of Registration Time Components in Business Registration under Companies Act 2015

In order to save on time, the formalities for execution of company documents and contracts as a deed are introduced so that a single director can execute a document as a deed on behalf of the company by a simple signature in the presence of a witness. A document will be deemed to be validly executed as a deed if the document is duly executed by the company and delivered as a deed. It is no longer mandatory for a company to have a common seal. The modes of execution of documents will still need to be followed as required under other statutory requirements such as the Law of Contract Act and the Land Act. A private company must have at least one director. A public company must have at least two directors. The New Act requires at least one director on the board of the company to be a natural person, although corporate directors are still permitted. (Government of Kenya Companies Act, 2015)

To save on time, the New Act provides that private companies can convene meetings at short notice where consent is given by holders of 90% by nominal value of shares carrying the right to vote. The notice of a general meeting for a public company may be given in hard copy or electronic form, or by means of a website. The current practice of issuing notices of meetings by newspaper advertisement is not catered for and is therefore
unlawful, unless the Regulations change this. A public company is required to hold its AGM within six months of the end of its financial year. On Shareholder communications the New Act makes it easier for companies to communicate electronically (e.g. by email or by website) with their shareholders by express agreement. The agreement can be obtained under the articles or by the shareholder failing to indicate that they do not wish to communicate via the website, as well as by more conventional methods. The New Act provides a statutory and procedural framework, together with the law of contract, which forms the legal basis for the purchase and sale of public companies in Kenya.

2.4.3 Reduction in Time for Filing Financial Statements after Registration
Other changes were made to reduce on the time spent filing financial statements after registration. The New Act has introduced a new regime allowing for preparation and circulation of summary financial statements while dormant companies are no longer to be required to produce accounts. The 42 day period allowed for filing annual returns with the Registrar has been reduced to 28 days (Section 704). Protection of members of a company has been enhanced. Members now have the legal capacity to go to court and challenge a conduct that they think is oppressive or unfair (Section 780). The deadline for registration of a charge is now 30 days from the day on which the charge is created, down from the current period of 42 days. (Joram, 2016)

2.4.4 Comparative Analysis with Mauritius
According to The World Bank (2016) business reforms successfully introduced in Mauritius could be used as a Benchmark. By going fully electronic, business registration time was reduced drastically from a month and a half (46 days) to just seven days. For example in October 2006, all businesses in Mauritius began being registered through an integrated computerized system called CBRIS where the application for incorporation and registration is completed online. Mauritius’ Commercial Registry grants access to information on new company registrations to the relevant authorities in charge of tax, social security and local issues through its Central Business Registration Database.
2.4.5 Reducing Business Registration Time to Improve Ease of Doing Business

Ease of doing business is defined as an index published annually by the World Bank Group covering 189 countries both in the developed and the developing world. The Index is an aggregate figure including the 10 parameters as shown in Table 2.3.

Table 2.4: 10 Components Considered in Ease of Doing Business

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Starting business</td>
</tr>
<tr>
<td>2.</td>
<td>Dealing with construction permits</td>
</tr>
<tr>
<td>3.</td>
<td>Cost of electricity</td>
</tr>
<tr>
<td>4.</td>
<td>Registration of property</td>
</tr>
<tr>
<td>5.</td>
<td>Getting Credit</td>
</tr>
<tr>
<td>6.</td>
<td>Protecting minority investors</td>
</tr>
<tr>
<td>7.</td>
<td>Paying taxes</td>
</tr>
<tr>
<td>8.</td>
<td>Trading across borders</td>
</tr>
<tr>
<td>9.</td>
<td>Enforcing contracts</td>
</tr>
<tr>
<td>10.</td>
<td>Resolving insolvency</td>
</tr>
</tbody>
</table>


Kenya was rated 108 overall as compared to 129 in 2015. This was remarkable positive change in rank by 21. An analysis of the 10 parameters revealed that the rank on starting business deteriorated by 3 points from 148 to 151. In dealing with construction permits the rank improved by 3 points from 152 to 149 whiles the cost of electricity rank improved by 14 points from 141 to 127. The registration of property ranking improved by 6 points from 121 to 115. Accessing credit positively improved by 90 points from 118 to 28 indicating the most remarkable positive change reported. Protecting minority investors worsened slightly from 114 to 115 while paying taxes worsened by 2points from99 to 102. There was no change in trading across borders and enforcing contracts index with both remaining at 131 and 102 respectively. Resolving insolvency rank improved by1 point from 145 to 144. (The World Bank, 2016)
This report agrees with the findings of the FIAS 2004 et al, that business start-up process in Kenya involves 11 procedures. It starts with the registration of the business with the Registrar of companies and ends with obtaining business permits.

The total time taken to complete the registration process was computed as the total number days taken to complete the registration processes. It takes a day to reserve company name for registration at a cost of kshs 100. Another one day is spent to receive stamp duty assessment on the memorandum and article of association and statement of nominal capital at the cost of 1% of the nominal share capital plus Kshs. 2000 on the memorandum and articles of association. Paying stamp duty at Huduma Center takes a day at the cost of kshs. 110. Franking of the memorandum and articles of association and statement of nominal capital takes a day at no charge. Signing the declaration of compliance before a commissioner of oaths or a notary public takes a day at a cost of Kshs. 200. Registration with the Registrar of Companies at the Attorney Generals Chambers in Nairobi took an average of 12 days at a cost of Kshs. 9,280. Registration of taxes with the Kenya Revenue Authority takes a day with no charge while application for business permits takes 5 days at Kshs. 15000. Registration with NSSF and NHIF takes a day with no charge. The final stage involves making a company seal takes a day. The total number of days taken to complete the process is therefore 26 days which translates to one calendar month. (The World Bank, 2016)

2.4.6 International Comparative Analysis on Registration Time

In Haiti the business start-up process is made up of 12 complex procedures making it absolutely necessary to involve expensive Attorneys to succeed in starting business.

In New Zealand it’s a total contrast where an entrepreneur can complete the entire process of company formation in a few hours through a single line procedure without the assistance of Attorneys.

The World Bank Group report (2016) ranks New Zealand at no 1 while Haiti is ranked last at 189 due to complexity of business start-up procedure. In the year 2012 Haiti had far fewer registered unlimited liability companies relative to population size of 6 per 100,000 working age people compared to New Zealand with 1,507 per 100,000 working age. Registration of business as limited liability companies has many benefits. Registered
companies tend to have greater profits, investments and productivity. Employees of registered companies benefit from other legal protection by the labour laws.

Zoltan & and others (2012) found that as more businesses enter the sector the government tax base broadens yielding additional revenue to the government. An increase in the number of registered businesses has been linked with greater Economic growth and job creation. Even where the use of third parties is not explicitly required, unnecessary bureaucracy and long delays in government agencies can create ample opportunities for corruption and bribery and provide additional incentives for involving third parties early in the starting process. Whereas administrative delays at some government agencies may reflect meticulous due diligence, entry regulation can serve as a mechanism for rent extraction, with heavier regulation correlated with greater corruption and a larger informal sector.

Elgin & Oyvat (2013) agreed with Bruhn and Mackenzie (2014) that entrepreneurs incur higher costs to often hire lawyers or notaries simply because business registration formalities are so complex that complying with all requirements is almost impossible without the enlisting the service of a professional. Such complex entry regulations encourage business to remain informal. Studies have shown that informal businesses are more common in economies where institution foster complex rules and regulations.

According to Soler & others (2015), most of the cost of starting a business comes from the fee of third party professionals while Entrepreneurs use third party services in business start-up mostly because the process is too complex. Economies with greater third party involvement in business incorporation tend to have more business operating in the informal sector. They also tend to have less accessible laws and regulations and less efficient system of justice. The study by Soler and others et al found that Notary services are used in business start up in 76 of the 189 countries listed by World Bank doing business. Latin America and the Caribbean were found to have the largest share of economics where legal services are used in the start-up process.

Bertolini (2006) proposes that economies where start-up process necessitates third party involvement also tend to do worse in indicators measuring regulatory transparency and
the performance of the civil justice system. The characteristics of good regulatory governance include clarity, predictability, autonomy, accountability, participation and easy access to information. These characteristics make a regulatory system transparent in the eyes of stakeholders and helping to attract investment.

According to Bertolini et al introducing online solutions for compliance can help make the processes less costly, encouraging entrepreneurship, economic development and growth. In order to reduce the start up cost countries have enacted laws that make the hiring of lawyers optional.

According to article 33 of the Law in Public and Private Companies (2011) Burundi eliminated the need to have the articles of association witnesses by a lawyer. That alone reduced the cost of registering a business by 21% and the time spent reduced by 4 days. In sub-Saharan Africa legal services are rarely used in company incorporation processes. The practice is most prevalent in South Sudan, Swaziland and Uganda. Several other countries in the region have implemented reforms in the recent years, eliminating the need to use legal services while forming a company. Kenya has enacted the New Companies Act 2015 which makes the use of lawyers and other agents optional. In 2009 Liberia introduced a standard forms for articles of incorporation, making them available at government offices in its capital Monrovia to enable entrepreneurs to register the business without an Attorney. In the same year South Africa eliminated the need to submit documents through legal professionals.

2.4.7 Elimination of Hidden Costs

According to Soler and others et al, online registration eliminates the opportunities for bribery and rent seeking thereby reducing the hidden costs of registration. The best example of an online system which does not require the involvement of lawyers is the Republic of South Korea which eliminated the requirement in April 2008. Portugal also launched online registration in 2007. Germany followed suit in 2008 by making electronic registration compulsory and allowed online publication of incorporation notices reducing start up time by 6 days.
2.5 Chapter Summary

This chapter reviewed literature on the theoretical and legal framework for business registration in Kenya. The chapter examined the provisions of the New Companies Act 2015 relevant to the convenience cost and time components of business registration as critical components of the country ease of doing business index. The chapter compares the local situation with relevant international case studies. The next chapter deals with Research methodology where the sampling method and the data analysis techniques adopted will be explained.
CHAPTER THREE

3.0 RESEARCH METHODOLOGY

3.1 Introduction

According to Mugenda & Mugenda (2003) the Method section of a research study describes the procedures that have been followed in conducting a study. At this stage the techniques of obtaining data are developed and data is actually collected to test the hypothesis if any. This chapter covers Research Design, Population and Sampling Design, Data Collection Method, Research Procedures and Data Analysis Methods.

3.2 Research Design

The study adopted a descriptive survey design. According to Orodho (2005), descriptive survey design is used in preliminary and exploratory studies to allow researchers to gather information summarise present and Interpret for the purpose of clarification. The study adopted a Qualitative Research design with the interview being the primary data collection method. The primary objective of the study was to investigate the impact of the New Companies Act in the Convenience, Time and Cost of business registration. According to Mugenda & Mugenda (2003), “By using qualitative method researchers are able to collect data and explain phenomena more deeply and exhaustively.” pg 197.

The nature of the study was designed to collect and offer in-depth perspectives of practitioners to the New Companies Act 2015. The study gave equal opportunity to the respondents to express their view by responding to a questionnaire with open ended questions.

3.3 Population and Sampling Design

3.3.1 Population

The study targeted a population of 10 chief Executive officers of professional bodies and institutes directly involved in business registration. They offer business advisory services on business start up. They are shown in Table 3.1.
Table 3.1 10 Professional Bodies and Institutes Directly Involved in Business Registration

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Law society of Kenya</td>
</tr>
<tr>
<td>2.</td>
<td>The Institute of Certified Public secretaries</td>
</tr>
<tr>
<td>3.</td>
<td>The Institute of Certified Public accountants</td>
</tr>
<tr>
<td>4.</td>
<td>The Kenya Institute of management</td>
</tr>
<tr>
<td>5.</td>
<td>Kenya Institute of Manufactures</td>
</tr>
<tr>
<td>6.</td>
<td>International commission of jurists</td>
</tr>
<tr>
<td>7.</td>
<td>Kenya National Chamber of Commerce and industry</td>
</tr>
<tr>
<td>8.</td>
<td>The Kenya Institute of Bankers</td>
</tr>
<tr>
<td>9.</td>
<td>The Association of Professionals in East Africa</td>
</tr>
<tr>
<td>10.</td>
<td>Kenya Institute of Insurers</td>
</tr>
</tbody>
</table>

The entire population was covered and therefore there was no need to take samples. This eliminated sampling errors which made the findings of this study accurate and reliable.

3.3.2 Sampling Design and Sample Size
The study adopted a non-probability technique by purposive sampling. 10 professional bodies were identified as having the membership of practitioners in business registration and advisory services in the republic of Kenya. Their organizations had the statutory mandate to practice business registration. Members of The law society of Kenya chapter 16 laws of Kenya and the Institute of certified public secretaries’ chapter 543 laws of Kenya have the legal mandate to practice Business registration. The identified respondents who are the CEOs possessed the required characteristics for the study. They were custodians of information on the perceptions of their members.

According to Cooper & Schindler (2006) a sample size is a smaller set of the larger population. However in this study the entire purposefully identified population was covered. The sample size was 100% of the population.
3.4 Data Collection Methods
The research adopted an intensive and interactive face to face interview. The Questionnaire was composed of open ended question. The questions were given identifying numbers and the possible answers were analysed. This approach yielded in-depth information on practitioners understanding of the relevant provisions of the New Companies 2015 and their impact on improving ease of doing business by simplifying the process of business registration.

The Questionnaire was the primary tool composed of 27 questions. The questions were designed to cover all areas to answer the specific research questions.

3.5 Research Procedure
The standard questionnaire of 27 questions was designed. A pilot of 2 questionnaires was administered to 2 respondents randomly selected from the 10 to guide the entire process by identifying and correcting any inadequacies or discrepancies in the interview tool.

After the pilot, interviews were secured with the respondents. Each interview took between 30 minutes and 2 hours. The interviews were conducted at the respondents’ premises. The interviewer conducted the interview and the interviewees responded to the questions in their own handwritings. Then respondents signed the questionnaires to confirm their answers. The responses of the 27 questions were analysed separately. The findings and conclusions were drawn from the trends emerging from the answers.

3.6 Data Analysis Methods
The study adopted a qualitative data analysis technique. The answers and responses were analysed and compared with the Research questions. The usefulness of the answers was evaluated for adequacy reliability and consistency. A report was prepared simultaneously with the analysis to give a clear description of the situation under study. Graphs and charts were generated using the Microsoft Word and Microsoft Excel programmes to give a visual impression of the trends. Conclusions were then drawn and recommendations made.
3.7 Chapter Summary
This was a descriptive survey. The Research was qualitative targeting 10 chief executive officers professional bodies practising business registration and advisory sectors in the Republic of Kenya. The entire population was covered and therefore there was no need for sampling. A Questionnaire composed of 27 questions relevant to the research questions was administered on a face to face basis. The responses were analysed by generating graphs and charts using the Ms Word and Ms Excel programmes.
Chapter Four presents the results and findings of the study. The chapter will be presented under the business registration convenience time and cost thematic areas specified in the research questions.
CHAPTER FOUR

4.0 RESULTS AND FINDINGS

4.1 Introduction

This chapter presents the findings on the study entitled a practitioner’s perspective on the impact of the new companies Act 2015 in improving ease of doing business registration in Kenya. The study targeted professional bodies that offer business registration and advisory services to their members and their clients. The demographic information of the respondents who participated is presented first. The findings are presented in respect of the research questions. Each research question is dealt with separately considering the relevant questions in the questionnaire.

4.1.1 Response Rate

Out of the targeted 10 respondents only 5 respondents returned the questionnaires. However it is noted that the 5 respondents represented the bodies with the highest number of members. The 5 who did not respond represent professional bodies with minimal memberships who are not directly involved in business registration and advisory services.

4.2 Demographic Information of the Respondents

The demographic information of interest was the position of the respondent in the organization and the membership of the target organization. The study was focussed on the awareness of the membership of the New Regime in Company Registration where the Companies Act Chapter 486 was repealed and a New Companies Act 2015 enacted unveiling another Business Registration Regime. The role of the members of the target professional bodies in Business Registration is therefore of interest to the study. The length of service of the respondent was also analysed to confirm that they are conversant with the changes in Business Registration processes.

4.2.1 The Name and Membership of the Target Professional Bodies

The study sought information on the membership of the respondents’ bodies. The data was obtained and analysed and presented in Table 4.1.
Table 4.1 Membership of the Respondents

<table>
<thead>
<tr>
<th>NAME</th>
<th>MEMBERSHIP</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kenya National Chamber of Commerce and Industry</td>
<td>20,000</td>
<td>58%</td>
</tr>
<tr>
<td>Law Society of Kenya</td>
<td>10,000</td>
<td>29%</td>
</tr>
<tr>
<td>Institute of Certified Public Secretaries</td>
<td>3,200</td>
<td>9%</td>
</tr>
<tr>
<td>International Commission of Jurists</td>
<td>900</td>
<td>3%</td>
</tr>
<tr>
<td>Kenya Association of Manufacturers</td>
<td>540</td>
<td>1%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>34,640</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 4.1 shows that the Kenya National Chamber of Commerce and Industry had the highest number of members at 58 per cent, followed by the Law Society of Kenya with 29 per cent. The Institute of Certified Public Secretaries had 9 per cent, while the International Commission of Jurists had 3 per cent, with Kenya Association of Manufacturers having 1 per cent.

4.2.2 Services Offered by the Respondents

The study sought to find out the core business of the target organizations in order to establish relevance to the study. The data obtained was analysed as shown in Figure 4.1.

![Figure 4.1 Services Offered by the Respondents](image)

Figure 4.1 shows that 60 per cent of the respondents offered Business Registration as their core function. They are the members of the Law Society of Kenya, who are practicing commercial lawyers and the Institute of Certified Public Secretaries, who
hold Secretarial practising certificates. Forty per cent of the respondents offer business advisory services to their members by training them in Business Laws and advocating for their rights. From the study, Business Advisory Services is the core function of the KNCCI and KAM.

4.2.3 Position held by the Respondents

Data was collected to confirm the position of the respondents in the organization. The target respondents were the Chief Executive Officers who are in possession of information on the perspectives of their memberships on the New Business Registration Regime. During the process of administering the questions it was found that the offices of the Chief Executive Officers are manned by Deputies who are equally conversant with the subject of study. The analysis of the findings is represented in Figure 4.2

![Figure 4.2 Positions held by the Respondents](image)

Figure 4.2 Positions held by the Respondents

Figure 4.2 clearly shows that most of the respondents, 60 per cent, were Deputy C.E.O’s while 40 per cent were C.E.O’s. The view of the respondents fully represented the true perspectives of their membership.

4.2.4 Period of Service

The Study was further interested in the length of service of the respondents. The results of the study revealed that all respondents had worked for periods ranging between 1 year and 4 years. See Figure 4.3
Figure 4.3 Period of Service

Figure 4.3 shows that 40 per cent of the respondents had worked with the organization at the position of C.E.O or Deputy C.E.O for 4 years, 20 per cent had worked for 3 years, and 40 per cent for 1 year. Majority of the respondents, at 60 per cent, had served for at least 3 years.

4.3 Findings on the Impact of the New Companies Act 2015 on the Convenience of Business Registration

The study was focussed on the Convenience, Time and Cost of Business Registration in Kenya. The study sought to compare the three parameters under the repealed Companies Act Cap 486 and the New Companies Act 2015.

The study sought to investigate the impact of the New Companies Act 2015 on the convenience of business registration in Kenya since its enactment in 15th November 2015.

4.3.1 Awareness

The researcher first posed the question to the respondents on whether their members were aware of the provisions of the New Companies Act 2015. All the respondents (100 per cent) confirmed that they were aware of the New Companies Act 2015.

A follow up question was posed to the respondents on the level of awareness on the new registration process. The detailed findings showed that members of the law society of Kenya, Institute of the Certified Public Secretaries of Kenya and the Kenya National
Chamber of Commerce were fully aware of the new provisions while members of the ICJ and KAM expressed the opinion that although they were aware there is need for further sensitization on details of the provision.

In response to the question on awareness, the Deputy C.E.O of the Law Society of Kenya stated that, “Remarkable to our members is the development which does not make lodging of documents by legal practitioners mandatory.”

The KNCCI felt that there was need for sensitization on the new provisions of the Act in the following response, “Most of our members are aware that business registration can be initiated online. However there is need for the sensitization on the new provisions.”

4.3.2 Online Application for Registration

The New Companies Act 2015 has introduced online application for Registration by downloading, filing and submitting an online registration form.

The researcher sought to know how the online application process has improved the process. One hundred per cent of the respondents stated that online application has improved the convenience of the Registration process by making it easy to fill and submit from any of the country without having to visit the Central Company Registry at Nairobi.

The researcher sought to further find out how the initiation of the Registration process at the Huduma Centers located across the country had improved the process. All the respondents, 100 per cent, stated that the Initiation of the Registration at Huduma Centers had made the Registration process more convenient and accessible all over the country.

The KNCCI expressed themselves in the following words, “Kenya being a digital economy, this has come at an opportune time to reduce the time spent on registering a company. The Huduma Center has been the pride of Kenya and we hope that automated services will be added to the system.”
4.4 Findings on the Impact of the New Companies Act 2015 on Business Registration Time

The study sought to establish the actual time spent in registering a company under the New Act as compared to the repealed Act.

4.4.1 Registration Time under the Repealed Act

The researcher posed the question on how long it took to register a company under the repealed Act. The responses were analysed and the findings presented as shown in Table 4.2

**Table 4.2 Registration Time under the Repealed Act**

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Time (In Months)</th>
</tr>
</thead>
<tbody>
<tr>
<td>LSK</td>
<td>1</td>
</tr>
<tr>
<td>ICJ</td>
<td>2</td>
</tr>
<tr>
<td>ICPSK</td>
<td>1</td>
</tr>
<tr>
<td>KNCCI</td>
<td>4</td>
</tr>
<tr>
<td>KAM</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 4.2 reveals that majority of the respondents, 60 per cent, cited 1 month as the total time taken to register a company under the repealed Act. One respondent cited 2 months while the other respondent cited 4 months as the longest time taken. According to the respondent from the KNCCI, it took 3 to 4 months to complete registration, a process which included hiring a lawyer, preparing and presenting of documents for signature and presenting to the Registrar for processing.

4.4.2 Registration Time under the New Act

The Research sought to establish the registration time under the New Act. The data was analysed and summarized in the Table 4.3 below.
Table 4.3 Registration Time under the New Act

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Time (In Weeks)</th>
</tr>
</thead>
<tbody>
<tr>
<td>LSK</td>
<td>1</td>
</tr>
<tr>
<td>ICJ</td>
<td>1</td>
</tr>
<tr>
<td>ICPSK</td>
<td>2</td>
</tr>
<tr>
<td>KNCCI</td>
<td>2</td>
</tr>
<tr>
<td>KAM</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 4.3 reveals that the registration time was now measured in weeks as opposed to months under the Repealed Act. 3 respondents cited 1 week with 2 respondents citing 2 weeks. The average registration time under the New Act was 1 week.

According to the respondent from KAM, “If all documents are in order it can take less than one week to complete the registration process”.

### 4.4.3 Cause of Delays

The research sought to find out the causes of delays under the repealed Act. The data was analysed and is summarized under Figure 4.4

![Figure 4.4 Causes of Delays in Registration under the Repealed Act](image)

Figure 4.4 reveals that the main cause of delays was the manual process and the centralization of the Registration at Nairobi Central Registry, both reasons given by 60
per cent of the respondents. Forty per cent of the respondents cited bureaucracy at the Company Registry, while 20 per cent of the respondents cited misplacement of documents, corruption at the Registry and delay by advocates.

The respondent from the Law Society of Kenya cited the cause of delays in the following words:-

“Before Stamp duty was paid at lands after assessment and it took two weeks to remit the receipt to the Companies Registry. These were unnecessary bottlenecks.”

The respondent from KAM stated that:-

“The manual process was the main cause of delays in the registration process”.

### 4.4.4 Ways of Addressing the Delays

The research sought to know how the Companies Act 2015 has addressed the above delays. The data was analysed and presented as Figure 4.5

**Figure 4.5 Ways of Addressing the Delays**

From Figure 4.5 the findings are that 40% of the respondents reported, the provisions of Company Registration, KRA, NSSF and NHIF registration under one roof by using a unified application form had made the process short and reduced the delays associated with the repealed Act. A further 60 per cent of the respondents cited automation at
Huduma Centers as a way in which delays have been addressed. Forty per cent of the respondents reported that information sharing between the various organizations involved in the Registration process as a positive move. Twenty per cent of the respondents pointed out that the online application process had eliminated delays while 20 per cent felt that the removal of the necessity to employ legal agents had simplified the process.

The respondent from KAM explained that the causes of delays should be addressed by, “having the application forms online, removal of advocates from the registration process with the registration being done at Huduma Centers.”

The respondent from KNCCI stated that:

“The Companies Act 2015 had addressed the delays by utilising the E-platform, linking registration to Huduma Centers at County levels and removing some of the requirements like lawyers’ fees for start-up companies to get registered”.

4.4.5 Shortening the Registration Process

The opinion of the respondents on how the registration process can be shortened further was sought. The responses were analysed and are summarized in Figure 4.6

![Figure 4.6 Shortening the Registration Process](image)

Figure 4.6 shows that the majority of the respondents (80 per cent) held the opinion that the whole registration process should be completed online from application to receiving the Certificate of Registration. The inclusion of Electronic signatures and online payments would fully digitize the process. Some respondents (20 per cent) were of the opinion that the Companies Registry should the number of staff and enhance their
capacity be training. Forty per cent of the respondents were of the view that an online tracking system should be introduced to identify and eliminate delays in the Registration process.

The respondent from the Law Society of Kenya suggested that to shorten the registration process further, “Applications should all be done online, with allowance for electronic signature. An M-pesa payment number that activates the process promptly and should instantly be interfaced with automatic digital certificate production.”

The respondent from KAM suggested that the process could further be shortened. “By having the whole process done online, at the comfort of your home or office, and an online tracking system would ensure that the process is fast-tracked."

4.5 Findings on the Impact of the New Companies Act on the Cost of Business Registration

The study sought to establish the actual cost of Business Registration under the New Act compared to the repealed Act.

4.5.1 Optional Engagement of Registration Agents

The research sought to know the impact of the provisions in the New Companies Act on the total cost of registration where the use of professional agents such as Certified Public Secretaries and Lawyers was now optional. The responses were analysed and summarized under Figure 4.7

![Figure 4.7 Impact of Optional Engagement of Agents on the Cost of Registration](image-url)
Figure 4.7 shows that although the majority, of 60 per cent, reported that this was a positive move which drastically reduced the cost of business registration, the Lawyers and Certified Public Secretaries, who formed 40 per cent of the respondents, feel that this provision would have a negative impact on their businesses as they rely on Business Registrations as their core business.

The respondent from KNCCI stated that, “The optional engagement of agents in the Registration process reduces cost of establishing and operation for the small companies and businesses. It is a very positive reception due to the reduction in transaction costs.”

However, the LSK was of the view that this was not a positive move as, “It opens up the public to greater risks.” According to the LSK, “Professional fees do not hinder business registration but instead ensure indemnity cover and reduces the risks associated with non-compliance.”

4.5.2 Standardization of the Registration Fees

The New Act has now standardized Registration fees at 10,000shs. for all companies regardless of their nominal capital. The repealed Act’s registration fees ranged from 4,000shs. to 62,000shs. and was calculated depending on the nominal capital. The researcher posed a question on how this standardization helped improve the ease of business registration.

The responses were analysed and summarized under Figure 4.8

![Figure 4.8 Opinions on Impact of the Standardization of the Registration Fees](image-url)
Figure 4.8 shows that all respondents were unanimous that standardizing registration fees has substantially lowered the cost of business registration.

The ICPSK members feel that standardized costs makes it easier to advice clients on the total costs of registration. The ICJ, KNCCI and KAM expressed confidence that the standardized costs will encourage Small and Medium Enterprises (SME’s) to seek Incorporation thereby moving from informal to formal enterprises. The ICJ expressed the view that, “The reduction of costs shall further encourage the Small and Medium Enterprises (SME’s) that operate on Business Names to seek Incorporation. This new regime shall further encourage other informal businesses including Jua-kali based businesses to formalise their legal status by being registered.”

4.6 Summary

The purpose of this study was to investigate the impact of the New Companies Act 2015 in improving the business registration process in Kenya. The findings confirm that all respondents are aware of the New Business Registration Regime under the New Companies Act 2015. All respondents fully appreciated that the online registration process drastically reduced the delays associated with Business Registration under the repealed Act. The initiation of the registration process at the Huduma Centers had greatly improved the convenience of business registration. The standardization of Registration fees had lowered the cost of registration. The exclusion of professional agents from the registration process had improved the cost of registration while the online application system had shortened the registration time to 1 week from the initial 1 month under the repealed Act. Chapter 5 will present the discussions conclusions and recommendations on the convenience time and cost of business registration in Kenya.
CHAPTER FIVE

5.0 DISCUSSIONS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Introduction

This chapter presents the discussions from the research findings and the conclusions drawn from the responses. The chapter is divided into a summary of the findings, discussions, conclusions and recommendations.

5.2 Summary

The main objective of the study was to investigate the impact of the New Companies Act 2015 in improving the ease of Business Registration in Kenya. The study is a qualitative study that sought the views and opinions of the Chief Executive Officers of the main professional bodies involved in business registration and advisory services in Kenya. The study adopted a questionnaire as a tool of data collection. The answers to the questionnaire were analysed and presented in tables, graphs and chart figures from where conclusions were drawn.

The purpose of the study was to investigate the impact of the New Companies Act 2015 in improving the ease of business registration in Kenya. Research questions were designed with the aim of determining improvements in the registration cost and time components of business registration. The study considered improvements in the convenience of the business registration process under the new Act.

The study adopted a qualitative research design where an open-ended questionnaire with 27 questions was administered on the population and the responses analysed according to the research questions. The results were presented in tables, graphs and charts. Conclusions were hereby drawn from the data obtained.

The research found out that the New Companies Act 2015 had greatly improved the convenience of business registration by adopting a unified application form that can be filled and submitted online. The initiation of registration at Huduma Centers located across the country had made business registration services accessible and convenient.

In regard to the registration time, the study found that the New Act had greatly reduced the time spent on registration from an average of 1 month to an average of 1 week.
The cost of business registration has now been drastically reduced from an average of 20,000shs. to a standard 10,000shs. in registration fees. The removal of the mandatory use of agents from the registration process under the repealed Act has reduced the total cost of registration by eliminating the professional fees components and therefore reducing the total cost of business registration to 10,000shs.

5.3 Discussions

5.3.1 Convenience of Business Registration

The first research question sought to investigate the impact of the New Act on the convenience of business registration.

The findings of the study are that the practitioners confirmed the convenience of business registration in Kenya had improved under the New Companies Act 2015. The New Act provides for an integrated and automated simplified registration process from a previous total of 10 steps to 3 simple steps. The ten steps under the repealed Act included names reservation, stamp duty assessment, stamp duty payment, franking, declaration of compliance, presentation to the Registrar, acquisition of company seal, registration with NSSF, NHIF and KRA and obtaining a business licence. This process can now be completed in three simple steps which include Business name reservation at Huduma Centers, online submission of application for registration and collection of the Registration certificate together with KRA, NSSF and NHIF certificates at the Companies Registry.

Compared to other sub-Saharan African economies, starting a business is more convenient, faster and cheaper, courtesy of the implementation of the Companies Act 2015. While the registration process remains controlled in the Nairobi Central Companies Registry, the establishment of one stop shops for public service delivery in the name of Huduma Centers across the country makes the registration process convenient, by allowing certain requirements such as reservation of company names to be completed at the Huduma Centers.

To register a company under the Companies Act 2015, it no longer requires that the registration documents be witnessed and presented for registration by a lawyer. The applicant can now process the registration without any assistance from an agent.
Formal registration of businesses allows companies to receive better credit from the banks and other financial institutions. Entrepreneurs are legally protected from personal liability as they take business risks. The convenience of business registration is a major component to the total cost of business registration. The process should be accessible to businessmen locally and internationally. The digitization of the process makes the process accessible to all and is attractive to foreign investors who intend to do business in Kenya.

These findings compare favourably with the World Bank Report 2016 et al where Kenya was rated 108 out of a total of 189 countries. The findings of this study showed that the registration process had been simplified by reduction of the registration process from 10 steps to 3 simple steps. This compares well with New Zealand, rated the best country in the report, where their entire process of company formation takes a few hours through a single line procedure.

5.3.2 Business Registration Time

The study sought to establish the actual time spent on registration. The findings of the study were that business registration time had dropped from 1 month under the repealed Act to 1 week under the New Companies Act 2015.

According to the World Bank (2016) Ease of Doing Business report cited et al, Kenya was ranked 108 against a total of 189 countries. The time spent on business registration took up to 30 days under the repealed Act. The findings of this study are that it now takes 7 days to register a business in Kenya. This is a remarkable improvement that should translate to a better ranking for the country in the Ease of Doing Business ranking.

The findings of this study are that the registration period can be shortened further by adopting an end to end online registration process. This would reduce the time from 7 days to 2 days.

The challenge is to reduce registration time to the International benchmark of one day. This study has strongly proposed that this can be achieved by full digitization of the process, from the application stage to the receipt of the certificate of registration. This means that the Companies Registry will be a virtual registry.

One of the ways to reduce the registration time further is by improving the efficiency and effectiveness of the Huduma Centers concept. While Business name searches and
reservations are done at Huduma Centers across the country, the actual registration process is conducted in Nairobi at the Central Registry. This gives advantage to applicants from Nairobi region. Entrepreneurs in other counties may elect to submit their registration documents at their local Huduma Center and wait for the documents to be mailed to Nairobi for processing. The processed documents are mailed back after completion of the registration process. This process takes time while adding no value. If the entire registration process can be completed at the Huduma Centers this could reduce the registration time to a day or two.

The effectiveness of the Huduma Centers outside the Capital, in business registration, remains limited. The Companies Registry should decentralize its registration process by receiving, processing and issuing Certificates of Registration at the Huduma Centers.

These findings compares favourably with findings of the survey conducted by FIAS (2004) et al which concluded that it took about 61 days to start a business in Kenya in 2004. These findings demonstrate that there has been a drastic improvement from the 61 days to 1 week under the New Companies Act 2015.

5.3.3 Cost of Business Registration

The study sought to establish the actual cost of business registration in Kenya. The findings were that the cost of business registration has been reduced as low as 10,000shs. where professional agents are not involved in the registration process. The involvement of third parties in the registration process increases costs associated with the registration process. In order to reduce the cost of business start-up, countries have enacted legislations that make the hiring of agents optional. The best example is THE republic of Burundi which enacted a law in 2011 eliminating the need to have articles of association witnessed by lawyers. This reduced the cost of registration by 21%.

The elimination of Stamp duty on the registration documents and the nominal capital significantly reduced the cost of registration. Under the repealed Act, entrepreneurs were required to pay 1% Stamp duty on their nominal capital and Kshs. 2000 for the articles and memorandums of association. The elimination of the Stamp duty translates to savings for the entrepreneurs.

The cost of agents such as lawyers and Certified Public Secretaries is a burden on the entrepreneurs. On average it would cost at least Kshs. 50,000 upwards to retain a
professional agent to register a business. The removal of agents from the registration process has contributed to the reduction of the cost of registration. However, it should be noted that it is optional and not mandatory. Any entrepreneur who can afford agency services is at liberty to retain such services.

Most important improvement is that the New Registration Regime accepts M-pesa electronic payments. Payments by this platform are convenient to the entrepreneurs as they save on the time and cost of making payments through the banks which also charge commissions. Further costs are saved in that the entrepreneurs do not need to travel to Nairobi to make payments but can make them through their mobile phones.

These findings compares favourably with the FIAS survey (2004) et al, which found that it costed Kshs 15,210 to start a business in Kenya. This hereby demonstrates a remarkable reduction in the cost of business registration that according to this study is now estimated at Kshs 10,000.

5.4 Conclusions

Based on the findings of the research, the following conclusions were made.

5.4.1 Convenience of Business Registration

The main finding of the first research question is that the New Companies Act has greatly improved the convenience of business registration by making business registration digital and adopting the Huduma Centers as registration centers, thereby making registration accessible to all both locally and internationally.

5.4.2 Business Registration Time

The study made a finding that the registration time had been reduced from 1 month to 1 week. Based on this finding, it is concluded that the Ease of Doing Business ranking for Kenya will improve thereby making Kenya an attractive destination for investment.

5.4.3 Business Registration Cost

The study also made a finding that the cost of business registration had been drastically reduced from an average of 20,000shs. to a standardized 10,000shs. It can therefore be concluded that it is now easier and cheaper to register a business in Kenya. It is
anticipated that this will translate to more informal businesses seeking to be incorporated under the New Companies Act 2015.

5.5 Recommendations
5.5.1 Recommendations for Improvements

5.5.1.1 Convenience

According to the World Bank Group report (2015) et al, Kenya was ranked no. 108 out of 189 economies. The main reason for the prior performance was cited as a result of the inconvenience in the process which involved 11 procedures. The findings of the study are that having reduced the processes from 11 to 3 should drastically improve the ranking of Kenya in the year 2016 report and for consequent years.

The findings of the study are that the improved convenience in business registration creates an incentive for businesses to join the formal sector. These support the findings by Ferain (2008) that the limited company is the most popular organization for modern society.

The study recommends that pre-registration processes should merge to improve on the Convenience of business registration. In many countries, a company’s name reservation in carried out along with its registration application. This is already theoretically possible in Kenya, because staff at Huduma Centers can check a centralized electronic database when conducting a name search. Similarly, the name reservation fee could be charged along with registration fees. Merging these two procedures into one would save entrepreneurs from having to make a second visit to the Huduma Center. In July 2008 Ghana made its business start-up process easier by merging the procedure to reserve the company name with the submission of company documents. A customer service office was created for this purpose. Similarly, in May 2009, Rwanda attached its name search to the single registration procedure available at the main desk of the Commercial Registration Department. Company registrar books are available in this service area, allowing the Commercial Registration Department representative to check the availability of a name while also reviewing and accepting the company’s application form and payment.
This study concurs with the World Bank Doing Business in Kenya 2016 report which found that entrepreneurs across Kenya must travel to Nairobi to apply for incorporation. To save them time and money, this study adopts the recommendations by the World bank Doing Business in Kenya 2016 report that Huduma Centers in counties outside of Nairobi be authorized to complete the registration process as well. The Companies Registry could consider hiring representatives for each of the county Huduma Centers to receive company registration applications, process the information through the electronic database and issue a certificate of registration. This way, both the registration process and the quality control would be carried out locally, at the county Huduma Center. The certificate would then be scanned into the central database, the same one currently accessed by staff in Nairobi. Since Huduma Centers already have full access to the name-reservation electronic database, granting access to the company-registration database would not require a new system.

5.5.1.2 Registration Time

The findings of this study concurs with the study conducted by McCormick & others (2007) that the longer registration processes act as disincentive to entrepreneurs who are likely to opt to engage in informal business by avoiding incorporation.

The findings of this study confirm the previous survey done by FIAS in 2004 which found that in 2004 it took about 61 days to register a business in Kenya. However this study found the average time to have been 30 days under the Repealed Act. The findings of this study confirm that the bottlenecks that were identified by McCormick and others (2007) have been addressed by the New Act leading to shortening of the registration time to 7 days.

The study concurs with the World Bank Doing business in Kenya 2016 report and recommends that automation of post-registration procedures should be adopted to save on the time spent on processes that do not add value. In the long term, the government should link the databases of the NSSF, the NHIF and the Kenya Revenue Authority so that post-registration procedures are automated once company registration is completed. This would allow Kenya to finally have a centralized, complete, reliable repository of data on businesses. Such an initiative would require the exchange of data between the stakeholders involved in the process and hence an interoperable digital-technology-based
platform. This initiative would help address another current deficiency in the system: the lack of a unique business identifier. Currently, there are several numbers issued during the process of registration—including the Companies Registry registration number, the PIN, the NSSF number and the NHIF number. In the current set-up, using a single business identification number would facilitate information exchanges. For the future, it could be pivotal in creating a seamless, online, real-time information system.

5.5.1.3 Cost

The findings support the position taken by Soler & others (2015) et al, that the highest component of the total cost of registration is the agency fees. The study confirms that by eliminating agency fees, the total registration cost was reduced by over 50 per cent.

The study adopts the recommendations by the World Bank Doing Budsiness in Kenya 2016 report that in order to reduce on the cost of travelling to Nairobi, where the Central Companies Registry is based, all registration and post-registration procedures could be merged into a single streamlined step to be completed at the Huduma Centers countrywide. As of May 2016, Kenya’s government had taken a positive step in this direction: It adopted a unified registration form allowing entrepreneurs to use one form to apply for company registration, tax registration (assuming the directors already obtained their PINs online) and registration with the NSSF and the NHIF. There is currently a representative from the Kenya Revenue Authority, the NSSF and the NHIF at the Companies Registry; they each process their respective registrations. However, the practical impact of this change still remains to be seen. Looking ahead, the government needs to ensure that this same form is adopted at the county Huduma Centers, once the registration process is decentralized. In the future, the government may also consider streamlining the business permit process with registration.

The study recommends that the payment of Registration fees be made online to allow for full online registration. Over the past four years, Kenya has put technology to use to ease some of its business processes. Kenya’s e-citizen portal was launched in 2014 and is managed by its national Information and Communication Technology (ICT) Authority. Currently, 15 different services are available through the portal, including applying for name reservation and obtaining a PIN. However, many users complain about connectivity issues and occasional glitches in the system. As a result, they prefer to apply in person. In
the short-term, efforts should focus on optimizing the existing ICT platforms. Kenya’s government is also in the process of introducing an online registration system. However, an amendment to its Companies Act of 2015 will be required for the new system to take effect. This amendment would have to allow an electronic signature and stamping system to carry the same weight, and legal effect, as handwritten signatures and stamps. Once online registration is in place, the government could consider expanding its e-citizen portal to allow online applications for permits, social security and hospital insurance.

The findings of the study confirm the proposition by Bertolini (2006) et al that introducing online solutions for compliance makes the registration process less costly thereby encouraging entrepreneurship, development and growth.

5.5.2 Recommendation for Further Studies

The study recommends that further research be conducted to ascertain public awareness on the provisions of the New Companies Act 2015. From the study it was evident that awareness of the New Companies Act was low. Further research is necessary to establish the extent to which public are aware of the improved business registration process under the Companies Act 2015.
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APPENDICES

APPENDIX I: EASE OF DOING BUSINESS RANKING

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<th>Rank</th>
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<th>Rank</th>
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Dear Sir/Madam,

**RE: RESEARCH STUDY**

I am pleased to inform you that I am a student at United States International University pursuing a degree of Masters in Business Administration (MBA). As partial fulfillment for my degree, I am conducting research titled a practitioners perspective on the New Companies Act 2015 in improving the ease of doing business in Kenya.

Please note that any information you give will be treated with confidentiality and at no instance will it be used for any other purpose other than for this project.

Your assistance will be highly appreciated. I look forward to your prompt response.

Yours faithfully,

James Musee Nduna
APPENDIX III: QUESTIONNAIRE

Instructions
This study is a requirement for the partial fulfillment of the degree of Masters in Business Administration (MBA). The purpose of this research is to investigate the Impact of the New Companies Act 2015 in Improving the Ease of Business Registration in Kenya in the last 6 Months.

Please note that any information you give will be treated with confidentiality and at no instance will it be used for any other purpose other than for this project. Your assistance will be highly appreciated. I look forward to your prompt response.

Part one: Bio Data

1. Age of Respondent:
   - 20-29 years
   - 30-39 years
   - 40-49 years
   - 50 years +

2. Gender:
   - Male
   - Female

3. What is the name and current membership of your professional body?

4. What is your position in the organization?

5. How long have you worked with the organization?
6. For how long have you been the Chief Executive Officer?

7. Please indicate the role your members play in offering Business Registration and advisory services.

**Part two: Research Questions**

i. **Convenience of Business Registration**

8. Are your members aware of the provisions of the New companies Act 2015 in respect of registration of companies?

9. Please indicate the awareness of your members in the new registration process.

10. How has initiation of registration of companies by downloading application forms online improved the process of registration?

11. How has the initiation process of the registration at the Huduma Centers improved the process of Business Registration?

12. The New Companies Act 2015 makes it optional to engage the lawyers and Certified Public Secretaries as registration agents. What is the impact of this provision to your members?
ii. Cost of Registration

13. The cost of company registration has been standardized at 10,000 ksh. from the previous regime which ranged from 4000ksh to 62,200ksh, where the registration fee was calculated based on the nominal capital. Please explain how the reduction in cost has improved ease of registration in Kenya.

14. Other than the registration fees please explain what other professional handling charges were payable before the new Act?

15. Please explain how exorbitant professional fees can hinder the ease of business registration?

16. Please indicate your opinion on the cost of Registration of businesses during the regime of the repealed Companies Act Cap 486 and under the New Companies Act 2015.

iii. Time Taken To Complete The Registration Process

17. How much time did it take to register a company under the Companies Act Cap 486? Please indicate by days or hours how the time was spent on various activities making up the process.
18. What were the main causes of the delays in the registration process?

19. How has the Companies Act 2015 addressed the above delays?

20. What is the average time in days taken to register a company under the New Companies Act 2015 if all the registration documents are in order?

21. Please explain how the New Companies Act has addressed the cause of such delays.

22. Kindly give suggestions on how the time taken to register businesses can be shortened.

iv. **Ease of doing business**

23. Kenya was ranked 108 out of 189 countries in 2016 World Bank ease of doing business. Please suggest ways in which this ranking can be improved.
24. The Registration of business companies in Ease of doing business ranking deteriorated from 148 in 2015 to 151 in 2016. Please explain how an improvement in the registration process can contribute to an improved ranking.

25. Please suggest any other measures that your membership will propose to improve the business registration in Kenya.

26. Are the members of your professional body satisfied with the improvements, if any, in the business registration process?

27. If not, what would you consider as the main issue on business registration that has not been addressed to satisfaction?

This interview was conducted on _____________day of__________________2016
Time taken to complete the interview in minutes____________________________
Respondent’s name_________________________ Signature_______________
Interviewer’s name ______________________Signature___________________

Thank you for your cooperation.