

SNAPSHOTS OF THE BEST PROGRAMME

Rationale for the BEST Programme

Faster economic growth is an essential precondition for a sustainable reduction in poverty. A more enabling environment for business is central to achieving faster economic growth. These two propositions provide the rationale for the Programme on Business Environment Strengthening for Tanzania, henceforth referred to by the acronym, BEST. The Programme is designed to provide businesses with the enabling environment they need, thereby enhancing economic growth and achieving rapid and sustainable poverty reduction. The Programme is fully consistent with, and takes forward, current private and public sector priorities and Government policy initiatives, as identified in the Integrated Framework (IF) for Trade Development¹ which prioritised legal and regulatory environment reforms. Further, the recently adopted National Trade Policy, the Small and Medium Enterprises Development Policy and the proposed Strategy for Private Sector Development highlight the importance of prioritising deregulatory reforms as a major step towards stimulating poverty reducing economic growth.²

The BEST Programme

The BEST Programme is designed to provide businesses with the enabling environment they need, thereby enhancing economic growth and achieving rapid and sustainable poverty reduction.

The **goal** of the BEST Programme is to reduce poverty through enhancing the growth and development of businesses in Tanzania, particularly micro and small firms in sectors that affect the majority of the poor. The **purpose** of the Programme is twofold:

- To **reduce the burden** on businesses by eradicating as many procedural and administrative barriers as possible; and,
- To **improve the quality of services** provided by Government to the private sector, including commercial dispute resolution.

The Programme will achieve this purpose by implementing five inter-linked components, over a five-year period. Each component addresses the need for constructive change in specific, priority areas:

¹ The Integrated Framework for Trade Development, Government of Tanzania, May 2000.

² The logical framework for the Government's PRSP identifies "Developed Private Sector Strategy by 2003" as an intermediate indicator for progress towards the objective of "Reduced Income Poverty". The Private Sector Strategy is still in the development stage, but it is expected that it will include interventions which go beyond the "enabling environment" work of the BEST Programme. BEST Programme will eventually form one of the components of the Government's broader private sector strategy.

Component		Main Outputs
1	Achieving Better Regulation	<ul style="list-style-type: none"> • Unnecessary regulations removed • Sustainable process established for ensuring business-friendly laws, regulations and administrative procedures • Improved efficiency and transparency of GoT institutions dealing with business
2	Improving Commercial Dispute Resolution	<ul style="list-style-type: none"> • Improved accessibility to the court system for formal and informal businesses • Speed and quality of service provided by court system to businesses improved
3	Strengthening the Tanzania Investment Centre	<ul style="list-style-type: none"> • Increased number and value of local and foreign investment in Tanzania • Enhanced promotion of Tanzania as an investment destination
4	Changing the Culture of Government	<ul style="list-style-type: none"> • Improved “customer service” ethos for services provided to the private sector by the Public and Judicial Service
5	Empowering Private Sector Advocacy	<ul style="list-style-type: none"> • Improved capacity of private sector stakeholders to identify regulatory problems and solutions and advocate for an improved business environment

The Beneficiaries of the BEST Programme

Ultimately, all Tanzanians will benefit from the faster economic growth flowing from a more enabling environment for businesses in Tanzania. The immediate beneficiaries of the BEST Programme will be private sector businesses, who will be able to exploit commercial opportunities more effectively and profitably. It is important to stress that from the perspective of the BEST Programme, the private sector includes businesses of all sizes and stages of development: from small traders in the informal sector, to large established manufacturing companies, to potential new foreign and indigenous investors. All these businesses contribute to the growth of the national economy and all will benefit from a more enabling environment. Even more important, the programme should create an environment conducive to the inclusion of women and youth in mainstream economic activity. This is important bearing in mind that women provide about 70% of the active economic labour force in the agricultural sector, the mainstay of the economy.

However, it is particularly important that small businesses should benefit, as they have the most direct impact on employment and poverty reduction. The growth of small businesses is currently inhibited by excessive and conflicting regulation, which makes transition from the informal to the formal sector very difficult. This creates the phenomenon of the “missing middle” in which the economy includes a large number of very small businesses and a few large well-established businesses, but a dearth of the fast growing entrepreneurial businesses which are the life-blood of economic growth in many successful economies.

Government will also be a key beneficiary of the BEST Programme. The programme will enable Government to establish more constructive and effective interaction with the private sector, and to become a more effective player in the national economy. The BEST Programme does not seek to make the State less important: rather, it seeks to develop a new, exciting and challenging role for Government in a liberalised market economy.

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The design of BEST reflects the range of businesses in Tanzania and the different priorities that they have for the development of the business environment. However, it has been recognised that reforming the business environment for SME development can get lost among efforts to reform the environment for private sector development, that SMEs have their own reform priorities, and that in some case, the reform process itself can result in an anti-SME bias³. Therefore, special emphasis has been given to the needs of smaller businesses to enable them to make the transition to the formal sector, and to grow into Tanzania’s missing middle. This concern is particularly addressed in the following three core components of the BEST Programme:

³ See for example: International Report on Enabling Small Enterprises Development through a Better Business Environment, prepared by Simon White and Juan Chacultana for the Committee of Donor Agencies of the Small Enterprise Development Working Group on the Enabling Environment, August 2002; and Indigenous Private Sector Development and Regulation in Africa and Central Europe: A 10 Country Study; August 2002, by Graham Bannock, Matt Gamser, Mariell Juhlin and Andrew McCann, August 2002.

- **Achieving Better Regulation Component** focuses on cutting down on the bureaucracy and opportunities for rent seeking. For large businesses these constraints (for example, complex labour laws and unnecessary regulatory licensing requirements) are often merely an irritation. But for businesses in the informal sector, licences, levies and other requirements of central and local Government are real barriers to growth and progression to the formal sector and for growth of SMEs. Elimination of existing cumbersome regulation will not be enough. New regulations should be prepared with consideration of the compliance costs they might bring on to SMEs. Regulators also have to consider how small businesses can deal with each piece of proposed regulation. Interventions benefiting SMEs and informal enterprises, especially in the districts (this is where most regulation is administered) and in agriculture have been prioritised.
- **Improving Commercial Dispute Resolution Component** focuses on improving public services to the private sector. Most SMEs and informal businesses are outside the scope of the formal justice system, and the largest businesses are largely able to deal with its inadequacies. However, if small enterprises in Tanzania are to progress to medium-sized ones, a well-functioning commercial justice system can encourage lenders to provide capital necessary for business growth, and will allow businesses to deal outside restricted networks based on kinship or established practice.
- **Empowering Private Sector Advocacy Component** focuses on strengthening the bargaining power of SMEs and informal enterprises in the districts to address barriers that affect them.

As well as the private sector, Government will also be a key beneficiary of the BEST Programme. The programme will enable Government to establish more constructive and effective interaction with the private sector, and to become a more effective player in the national economy. The BEST Programme does not seek to make the State less important: rather, it seeks to develop a new, exciting and challenging role for Government in a liberalised market economy.

Achieving Real and Constructive Change

The policy framework for creating an enabling environment for business in Tanzania is firmly in place. Government, its advisors, the private sector and the donor community have already undertaken much work to develop specific recommendations for reform. Moreover, many of these recommendations have already been accepted by Government. The real challenge for BEST is to take forward these recommendations, act on them and achieve real and constructive reform of the way in which Government interacts with the private sector in Tanzania.

The main focus of BEST will be on the implementation of reforms. Effective reform of Government requires strong political support, coupled with an effective institutional implementation structure.

Programme Prioritisation

BEST is time-bound and has a limited budget. It therefore focuses on priorities identified by stakeholders, particularly the Tanzanian private sector, for legal and regulatory reform.

There appears to be a remarkable consensus (articulated by firms ranging from multi-nationals to street traders) about the key issue. It is that the GoT now needs to ensure that reform is delivered in practice. The most common complaint is that, while the message of the importance of business and market economics is heard at the highest levels of Government, the reality on the ground is very different. The Public Service is considered to be steeped in a control culture and, rather than facilitating the private sector, is perceived as creating barriers to its development.

One result of prioritisation is that some desirable activities are not included within the timeframe of the programme. Two areas, which have not been prioritised, merit particular comment: commercial legislation reform and competition regulation.

Commercial legislation

In developing the BEST Programme the team conducted a review of Tanzania's basic commercial legislation, and concluded that across-the-board commercial law reform is not a priority at this stage.

In extensive consultations with lenders and the legal profession in Tanzania (particularly with overseas investors and their lawyers), universal contentment was expressed with the current broad commercial legislative framework. This is not surprising as Tanzania's commercial legislative framework – the Companies, Bankruptcy, Partnership and Chattels Transfer Acts – also form the basis of commercial law in England and Wales (and in other jurisdictions) today. Although certainly not in line with best practice in common law jurisdictions world-wide, they are fundamentally sound. Indeed these laws still form the basis of commercial law in England and Wales (and of many other jurisdictions) today.

It would be desirable to modernise these commercial laws at some stage, and bring them into line with international best practice. However, in view of the more fundamental legal and regulatory problems currently facing Tanzania, it is difficult to see how an across-the-board programme of commercial legislative reform could be regarded as a priority within the next five years. This is particularly the case in view of the extremely high cost involved in such an activity, not only in terms of technical assistance for drafting new laws and associated regulations, but also the high costs associated with implementation and managing the change.

That is why the Commercial Dispute Resolution Component of the BEST Programme concentrates instead on the area that was consistently identified by the private sector as the key legal problem with commercial lending in Tanzania – the lack of an effective

Court system to enforce commercial contracts. In addition, elements of the Better Regulation Component of the programme will involve reform of specific legislative provisions, where clear problems have been identified (e.g. conflicts between the Tanzania Investment Act and the Income Tax Act).

Competition regulation

The urgent issue as far as competition is concerned in Tanzania is to create a fully liberalised, competitive market economy with free access to new entrants whilst also creating awareness about consumer rights and their protection as provided for under the Fair Competition Act. During 2003, the Fair Competition Act of 2000 has been amended further to accommodate rationalisation with the implementation of the Energy Water and Utilities Regulation Act (EWURA) and the Surface and Marine Transport Act (SUMATRA) of 2000.

The issue of concern is the effective operationalisation of the Fair Competition Commission (FCC) and the Fair Competition Tribunal as the key institutions in implementing competition policy and law. A capacity building programme being implemented with support from Sida and the World Bank addresses this concern.⁴

BEST Programme Costing and Budget

The initial costing and budget for the programme has been estimated at USD25.4 million, as summarised in Appendix C-1. The Priority Work Plans and Phase 2 and 3 indicative work plans for all five components confirms that this budget is realistic. However, the available committed initial funding is USD19 million based on equal pro rata contributions from the four BEST donors (DANIDA, DFID, RNE and Sida). In view of the current level of funding commitment, the initial budget resources available for the Better Regulation Unit (BRU) for the implementation of Components 1, 2, 3 and 4 is a maximum of US\$13.3 million. The initial budget for the Component 5 on Private Sector Advocacy is allocated a maximum of US\$5.7 million.

There is an indicative financing shortfall of USD6.4 million (difference between estimated costing of USD25.4 million and financing commitment of USD19 million). In the course of programme implementation, additional government or donor resources will be sought as the need arises. In principle, additional funding can be raised from government or donor resources.

⁴ The Fair Competition Act is based on the Fair Trade Practices Act No. 4 of 1994. Support for the implementation of the Act is being provided by Sida and the World Bank.