



LAW REFORM DEPARTMENT

REVIEW OF THE INDUSTRIAL LICENSING ACT, CAP 91

(CONCEPT PAPER)

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1. Introduction

The Uganda Law Reform Commission (“the Commission”) is undertaking a study to review the Industrial Licensing Act, Cap 91, with the view to making the law responsive¹ to the prevailing and dynamic needs of Uganda characterised by rapid economic growth fuelled by industrialization, social and cultural developments. The Commission has the mandate to review the laws of Uganda through the adoption of new or more effective methods to support economic development, transformation, and dispensation of justice.²

Having regard to the mandate of the Commission, the Industrial Licensing Act, Cap. 91 presents particularly a suitable subject for review by the Commission. The present legal framework on industrial licensing is seen as outdated and not in conformity with Uganda’s National Industrial Policy (NIP) 2020 and other relevant regional and international commitments of Uganda. For example, the law does not embrace advancements in technology where an application for a license can be made online. According to the NIP of Uganda, the present legal framework for licensing industries does not support the spatial distribution of the equitable regional economic transformation of Uganda.

It is therefore important to conduct a study to review the Industrial Licensing Act to address the above questions and to ensure that the law supports the inclusive establishment of all industries in Uganda considering that some of the industries established were not properly established for equitable and inclusive development in Uganda.

The purpose of the review of the Industrial Licensing Act is to enable a robust socio-economic investment climate that boosts Uganda’s market competitiveness by reducing the costs of doing business nationally, regionally, and internationally. An efficient industrial licensing regime will ensure economic transformation in Uganda.

¹ Section 10(c) of the Uganda Law Reform Commission Act, Cap. 25.

² Section 10(d) of the Uganda Law Reform Commission Act, Cap. 25.

2. Background

The East African Community (EAC) partner states, like many other developing countries, aspire to transform their economies to a modern and industrialised status that can sustainably generate sufficient outputs to satisfy both domestic and export markets and rapidly increase per capita incomes to improve the living standards of its people. Industrialization is a fundamental process through which many of today's wealthy countries have successfully accelerated their income growth and lifted their populations out of poverty.³

Industrialization in the context of the EAC region will depend on how the region strategically leverages the market created by the Common Market Protocol as a source or stimulus for demand while simultaneously capitalising on opportunities created by the fast-growing global and emerging markets for manufacturers.⁴

To achieve economic transformation through industrialisation, the industrial laws and policies of all partner states need to have a comprehensive set of measures to boost investment and exports and anchor industrial development within the larger national development visions.⁵ The laws and policy need to have similarities in their themes, such as transformation, competitiveness, and sustainability, and their sectoral priorities such as resource-based industrialization.⁶

In ensuring conformity, Uganda has made some very positive steps in the implementation of the industrial policies of East Africa. For instance, Uganda reviewed its National Industrial Policy of 2008 in 2017 to provide a framework for strategic direction for industrialisation and came up with the National Industrial Policy 2020.

³ East African Community Industrialisation Policy 2012 – 2032 at 9 para 1, <http://repository.eac.int/bitstream/handle/11671/539/Final%20%20EAC%20Industrialization%20Policy.pdf?sequence=1&isAllowed=y>, accessed 22 August 2022.

⁴ Ibid.

⁵ East African Community Industrialisation Policy 2012 – 2032 at 12 para 1, <http://repository.eac.int/bitstream/handle/11671/539/Final%20%20EAC%20Industrialization%20Policy.pdf?sequence=1&isAllowed=y>, accessed 22 August 2022.

⁶ Ibid, para 2.

The NIP of 2020 consolidates on the NIP of 2008. This Policy has been aligned with the National Development Plan III, Vision 2040, EAC Vision 2050, Africa Agenda 2063, the Sustainable Development Goals (SDGs), and the current trends in Industrialisation within the region and globally. The NIP will serve as a blueprint for Uganda's industrial transformation over the decade 2020-2030 and has identified priority commodity and mineral product value chains for development throughout implementation.⁷

Despite the positive steps Uganda has taken so far in ensuring a robust legal framework for industrial policy, the Industrial Licensing Act remains in the same state as when it was commenced in August of 1969. In its present form, the Industrial Licensing Act is not in conformity with Uganda's National Industrial Policy 2020, East African Community Industrialisation Policy 2012 – 2032, and other regional and international commitments to Uganda should adhere to.

In particular, the Industrial Licensing Act is not modern enough to support the online licensing of businesses despite global advancements in technology. According to NIP, the present Act does not aid the spatial distribution of industries in Uganda to support and aid inclusive regional economic transformation, among others.

It is therefore important that the Industrial Licensing Act be reviewed to make it modern and able to support business competitiveness to attract foreign investments, capital for economic transformation, and inclusive regional industrialisation.

3. Statement of the problem

Industries established without proper licensing

Due to the weak industrial licensing legal framework, industries are not effectively regulated. There are some industries established without proper licensing and are not spatially distributed across the country. This is attributed to obsolete legislation for registration and regulation of operations of industries.

⁷ The National Industrial Policy 2020.

The law needs to address the inclusive development around the country by facilitating the issuance of licenses that support the process of the spatial distribution of industrial establishments. This process will enhance the quality of life and standard of living in these areas.⁸

The objective of the Act is unclear

The objective of the Industrial Licensing Act cannot be ascertained from the law and the Act does not set out any prerequisites or criteria for obtaining a licence. The Act, therefore, serves no regulatory purpose and recommended that the Act be reviewed to provide clarity to facilitate the acquisition of licenses. Further, section 5(1) provides that no person shall; manufacture for sale any scheduled article or erect, establish, or operate any factory for the manufacture for sale of any such scheduled article, unless he or she has a licence granted for that purpose by the board under this Act, there is no clear procedure to facilitate the acquisition of the license envisage under this section.

Alignment of the law to Uganda's National Industrial Policy 2020 and other commitments

Except for the 2020 NIP, there is a manifest lack of coherent laws and regulations to guide the industrialization efforts. Uganda's legal framework on industrial licensing is not aligned with its regional and international commitments. The 2020 NIP requires that a strong legal framework need to be in place to support the establishment and regulation of industries.⁹ Implementation of this Policy requires a review of the Industrial Licensing Act or the enactment of a new law that will ensure the alignment of the law to national, regional, and global commitments and dispensations to which Uganda is a signatory.

Penalties are not deterrent enough

According to section 14 of the Industrial Licensing Act, any person who contravenes section 5 of the Act is liable to a penalty of **one thousand shillings or a term of imprisonment not exceeding two years**. There are two problems with this section,

⁸ National Industrial Policy December 2020 para 4.2.3 on page 27.

⁹ National Industrial Policy December 2020 para 3.1 on page 21.

firstly, the penalty of one thousand shillings is too low and hence obsolete, and secondly, it is not expressed in currency points as required by the law.¹⁰

Therefore, there is a need to review the Act to make it commensurate with the current trends in society. If left in their current state, the fines in the current form are of no consequence because of their weak punitive effect and as such are not deterrent anymore. This study will review the penalties in the Act to ensure that they discourage contravention of the law.

Multiplicity and duplicity of licensing

To create a competitive business environment and improve Uganda's ranking on key investment climate indicators, Uganda must address the constraints to doing business including rationalising and simplifying central government and local authority business licences to eliminate multiplicity and overlap making sure that business licences are efficient, transparent and focused on legitimate regulatory purposes such as the protection of public health, safety, and environment. The reforms will not only reduce the regulatory burden on businesses but encourage industrialisation by eliminating the unnecessary cost of doing business.

Time and costs of procuring a license

There is a need to ease the processes associated with business formalisation by integrating business incorporation with other business registration processes such as tax and social security registration. Eventually, the law should permit the establishment of a One Stop Shop to further integrate business registration and licensing since the documents required by the various regulatory agencies are similar and primarily filed with the Uganda Registration Services Bureau. This will reduce the time and costs associated with starting and running a business.

Environmental concerns

As a result of a weak legal framework for the establishment of industries in Uganda, many industrial processes inherently pose serious environmental concerns such as waste generated from raw materials, chemical inputs, and packaging materials. These

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environmental concerns can only be dealt with by the increased adoption of environmentally sustainable technologies by the manufacturing sub-sector. An effective legal framework will ensure sustainable industrial processes and will impose tough penalties for violations.

Emerging Issues

Due to its obsolescence, Industrial Licensing Act does not support business competitiveness, leading to high costs of doing business in Uganda. The current trend of doing business all over the world would require that the costs of doing business be reduced to attract foreign investments in the country. In some countries, licenses may be acquired online. The advancements in technology enable business efficiency hence reducing the prices of commodities. The online license application can result in an estimated 15% compliance cost reduction, for the share of the regulatory target group who has online access.¹¹

The absence of regulations

The Industrial Licensing Act provides that the Minister may, in consultation with the board, by statutory instrument, make regulations for all or any of the following:

- a) prescribing the form and procedure of application for a license;
- b) prescribing the fees to be charged for a license;
- c) prescribing any other matter to be prescribed under this Act; and
- d) for the better carrying into effect the objects and purposes of this Act.

The Minister has not yet issued regulations for a better carrying into effect the objects of the Act. Section 14 of the Act gives the Minister powers to operationalise the application of the Act by way of regulations to do among others prescribing the fees to be charged for a given license, to prescribe the procedure for applying for a license among others. As a result, there are gaps in the law that prevent its effective and efficient implementation.

¹¹ Kees R. Jonkheer, Cost Analysis of the Business Licensing Reforms Final Report 2012 – 2017 at 22, <https://www.businesslicences.go.ug/kcfinder/upload/files/Cost%20Analysis%20of%20the%20Business%20Licensing%20Reforms%202012%20e2%80%93%202017.pdf>, accessed 20th August 2022.

4. Objectives of the review

The main objective of the study is to review the Industrial Licensing Act and make proposals to harmonize, modernize and improve the Industrial Licensing regime. Specifically, this review shall: -

- i) examine the regulatory framework governing industries as pertains to licensing by identifying any gaps and challenges that hinder the regulation and management of industrialisation as a business;
- ii) to reform the Industrial Licensing Act to ensure clarity, certainty, and predictability in the law to ease the acquisition of industrial licenses;
- iii) to examine the law on industrial licensing to ensure its conformity to Uganda's National Industrial Policy 2020 to promote business competitiveness;
- iv) to align the Industrial Licensing Act with Uganda's regional and international commitments; and
- v) to address new and emerging issues due to the advancements in technology.

5. Justification for the review

The Industrial Licensing Act that was enacted in 1969 is not aligned with the present policy for business competitiveness geared towards the promotion of foreign investments. The purpose of the review is to strengthen Uganda's legislative framework to support Uganda's industrial transformation by putting in place an industrial licensing regime that attracts industrialisation.

The Industrial Licensing Act Cap 91 is not in conformity with the National Industrial Policy, the National Development Plan III, Vision 2040, East African Community Industrialisation Policy 2012 - 2032, and the current trends in Industrialisation within the region and globally. The purpose of the review is to align the Industrial Licensing Act to the NIP, and regional and international best practices to promote industrialisation and economic transformation.

There is thus a need to undertake a review of the Industrial Licensing Act to ensure that the law is well aligned to Uganda's regional and international commitments and that law

meets the current trend resulting from technological advancement for economic transformation.

6. Scope of the review

The review will examine the Industrial Licensing Act Cap, 91 Act and make recommendations for its amendment. The review will further examine the National Industrial Policy, East African Community Industrialisation Policy 2012 – 2032, and other relevant international commitments that Uganda must adhere to. The purpose of the examination of these regional and international obligations is to adopt best practices relevant to Uganda.

7. Methodology

7.1 Study design

The study will be both qualitative and quantitative. The qualitative method of research will be used to collect views, opinions, and perceptions on industrial licensing matters to enable a deeper understanding of current and emerging issues around it in Uganda, the region, and the rest of the world. The quantitative methods, on the other hand, will be used to generate statistical facts and figures, to illustrate issues of magnitude, frequency, and occurrence among others.

7.2 Preliminary consultations

The team will carry out preliminary field consultations in the five regions of Uganda to ascertain the major issues and challenges affecting the implementation of the Industrial Licensing Act in their regions. The findings will be used to come up with an issues paper which is presented to the technical working group meetings.

7.3 Technical working group meetings

The Commission will hold technical working group meetings (TWG). The TWG will be composed of experts from different but relevant fields, including from the Ministry of Trade, Industry and Cooperatives, First Parliamentary Counsel, Private Sector Foundation, Legal Practitioners, Uganda Manufacturers Associations, Local Government

Associations, and a representative from the business community (KACITA) to review the issues paper. There will be four TWG meetings to review the issues paper. The purpose of these meetings is to solicit views and relevant opinions to enrich the issues paper.

7.4 Stakeholder consultations

The Commission will carry out field consultations on the proposals/issues contained/raised in the issues paper. These consultations will target implementing agencies such as the Ministry of Trade, Industry, and Cooperatives, Uganda Manufacturers Association (UMA), Local Government officials, Local Government Associations (LGA), Legal Practitioners, and selected members of the business community, and other relevant stakeholders.

7.5 Report writing

The report will be prepared by the Commission team containing field findings and recommendations and a proposed draft bill.

7.6 Validation of the report

The Commission will hold a one-day national validation workshop with participants from the Ministry of Justice and Constitutional Affairs, Parliamentary Commission, Ministry of Trade, Industry and Cooperatives, KACITA, Uganda Manufacturers Association, Private Sector Foundation, and Civil Society organisation.

7.7 Dissemination of findings

On finalisation of the report, the Commission will disseminate the report and the findings to the relevant stakeholders who can make use of them to maximise the benefit of the research. The purpose of dissemination is to draw the attention of implementers and other stakeholders to the research results and conclusions, enhancing their visibility, comprehension, and implementation.