

NG'ANG'A MBUGUA

How use of moveable property as collateral is driving business growth

Seeking services such as company registration and registration of chattels at the State Law's Sheria House offices was for many years a tedious and protracted process.

A great deal has changed over time, especially after the Business Registration Services (BRS) department adopted digital technology and embarked on legal reforms.

BRS Director-General **Kenneth Gathuma** sheds light on the ease of doing business reforms in Kenya and how ICT has become even more necessary during this era of Covid-19.



Business Registration Services Director-General Kenneth Gathuma.
—SALATON NJAU

MANY KENYANS DO NOT KNOW WHAT THE BUSINESS REGISTRATION SERVICE (BRS) DOES. LET US START THERE.

The BRS is a State corporation established by an Act of Parliament under the Office of the Attorney-General and the Department of Justice. It oversees the operations of the companies, insolvency (official receiver), security rights and hire purchase registries.

WHAT ARE SOME OF THE SERVICES OFFERED BY BRS?

The department is mandated to oversee the operations of four key services. The first, of course, is the Companies Registry. This provides registry services for business name registration, company registration and limited liability partnership.

Since 2016, key reforms done by the BRS have tremendously eased doing business whereby all new registrations of companies, business names and limited liability partnerships are done online through the e-Citizen platform. We have reduced the steps and days taken to register a company in one single step.

The Office of the Official Receiver in Insolvency is implementing reforms aimed at the consolidation of insolvency laws, including provision for corporate rescue, and alternatives to bankruptcy. This has shifted the focus from debt recovery to restructuring mechanisms which enable a business to recover while creating better

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safeguards for investors as the business tends to grow.

The Security Rights Registry and Hire Purchase Registry or e-Collateral Registry seeks to improve access to credit in Kenya. It is a fully electronic registry established under the Movable Property Security Rights Act of 2017.

Refreshingly, the registry allows borrowers to use collateral such as household furniture, tools of trade, motor vehicles, motorcycles, livestock, crops and intellectual property to access credit, which is an important factor in resourcing businesses especially in the small and micro-enterprise sector of our economy.

HOW HAS DIGITISATION IMPACTED THE UPTAKE OF THE SERVICES OFFERED BY BRS?

Digitisation is in line with the

government policy of expanding the outreach of service to the public and improving efficiencies for ease of doing business. The effect of this has been notable reduction in the amount of time taken to undertake services such as company registrations, official searches, registrations in the collateral registry and licensing of insolvency practitioners, among others.

More people have taken up these services given the simplified and convenient way of accessing and undertaking them.

The operationalisation of the electronic security rights registry has seen a steady rise in the number of lenders registering their security rights in movable collateral. The scope of lenders putting up notices of their security rights has also widened considerably to include informal lenders, besides banks, microfinance banks, saccos, leasing and hire-purchase companies, and credit traders.

WHO CAN ACCESS AND INPUT INFORMATION IN THE E-SECURITY RIGHTS REGISTRY, AND HOW CAN THEY GO ABOUT IT?

The registry is accessible by both lenders (secured creditors) and the public. However, wananchi can only access the search function of the registry.

Lenders, on the other hand, can conduct searches, register initial notices and amend or cancel security rights notices on the registry. The registry is hosted on the

e-citizen platform and can be accessed by every individual and entity with an e-citizen account.

THE KENYA MOVEABLE PROPERTY SECURITY RIGHTS ACT, 2017, ALSO KNOWN AS MPSR, IS AT THE VERY HEART OF YOUR WORK. WHAT DO YOU CONSIDER AS THE BIG WINS FOR CITIZENS AND BUSINESSES THAT USE THE MPSR REGIME?

Lenders are able to secure their interests in the collateral used, obtain priority and explore the various enforcement options available under the law. They can also benefit from the search function to establish whether the collateral offered is free of encumbrance.

Further, they can grow their business and widen customer base by developing new products based on this new regime. Additionally, remote, instant and time-stamped access of the registry has eased and lowered the cost of doing business for lenders.

For us, it is also important that borrowers are now able to access credit using an array of movable assets that were not traditionally used. They can also borrow from a variety of lenders, including from private individuals, thereby affording them competitive credit terms.

WHY, IN YOUR VIEW, IS THE WORK THAT THE MPSR ACT IS DOING IMPORTANT FOR THE WAY BUSINESS IS DONE IN KENYA?

The MPSR Act has revolutionised and eased how business is done in Kenya. It has contributed to the improvement of Kenya's ranking in the Access to Credit indicator in the Ease of Doing Business, depicting the strength of credit reporting systems and the effectiveness of collateral and bankruptcy laws in facilitating lending in Kenya.

The regime has also been key in promoting financial inclusion. This has been achieved through widening the scope of assets that can be used as collateral. It has also widened the range of possible lenders. This has allowed traditionally excluded MSMEs and low-income earners to access credit.