VOLUNTARY COMPLIANCE WITH BUSINESS LAWS: A CASE OF BUSINESS REGISTRATION SERVICE OF KENYA

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ABSTRACT

Voluntary compliance with business laws is essential for fostering a conducive business environment, reducing enforcement costs, and promoting economic growth. This study examines voluntary compliance within the Business Registration Service (BRS) of Kenya, comparing it with practices in ACRA (Singapore), BRELA (Tanzania), URSB (Uganda), and the World Customs Organization (WCO). The study explores the theoretical underpinnings of voluntary compliance, including deterrence theory, responsive regulation, institutional theory, and regulatory compliance theory. Additionally, it assesses the role of digital transformation, awareness programs, and incentive structures in promoting compliance. The Kenya Revenue Authority (KRA) plays a pivotal role in fostering voluntary compliance through taxpayer education, online tax filing systems, and incentives such as compliance certificates. Further, the study integrates key legal provisions from Kenyan statutes—including the Companies Act, Limited Liability Partnerships Act, Registration of Business Names Act, and Hire Purchase Act—that impose compliance obligations and penalties. These provisions provide a legal framework supporting voluntary compliance and reinforce the role of regulatory deterrents. Through comparative analysis, best practices from international institutions are identified, and strategic recommendations are proposed to enhance voluntary compliance in Kenya.

INTRODUCTION

Business compliance laws establish a legal framework to regulate enterprises and ensure accountability, transparency, and economic stability. While enforcement mechanisms exist, voluntary compliance reduces regulatory burdens and enhances efficiency. The Business Registration Service of Kenya (BRS) is tasked with implementing business registration laws, but voluntary compliance remains a challenge. This research seeks to analyse voluntary compliance mechanisms, compare international best practices, and suggest improvements.

LITERATURE REVIEW

1. The Concept of Voluntary Compliance

Voluntary compliance refers to the willingness of businesses to adhere to legal requirements without coercion. It is influenced by factors such as awareness, incentives, trust in institutions, and perceived benefits of compliance (Alm & Torgler, 2011).

2. Institutional Approaches to Voluntary Compliance

a. ACRA (Singapore)

The Accounting and Corporate Regulatory Authority (ACRA) of Singapore promotes voluntary compliance through digital platforms, education programs, and streamlined business registration procedures. High compliance rates are attributed to an efficient legal framework and technological advancements (Tan, 2019).

b. BRELA (Tanzania)

The Business Registrations and Licensing Agency (BRELA) in Tanzania encourages voluntary compliance through sensitization programs, online registration systems, and periodic compliance audits (Mkenda, 2020).

c. URSB (Uganda)

The Uganda Registration Services Bureau (URSB) facilitates voluntary compliance via regulatory support services, training initiatives, and integration with tax authorities (Nabeta, 2021).

d. World Customs Organization (WCO)

The WCO emphasizes voluntary compliance through risk management strategies, Authorized Economic Operator (AEO) programs, and capacity-building initiatives for member states (WCO, 2022).

e. Kenya Revenue Authority (KRA)

The Kenya Revenue Authority (KRA) plays a crucial role in fostering voluntary compliance among businesses through various initiatives. KRA employs taxpayer education programs, online tax filing systems, and incentives such as compliance certificates to encourage businesses to adhere to tax regulations voluntarily. The implementation of the iTax system has significantly improved compliance by simplifying the tax filing process and increasing transparency (KRA, 2023). Furthermore, KRA collaborates with other regulatory bodies, including the Business Registration Service (BRS), to ensure a seamless integration of business registration and tax compliance requirements. Through a mix of enforcement measures and facilitative services, KRA enhances voluntary compliance while reducing the administrative burden on businesses (Waweru, 2022).

Theoretical Framework

This study is anchored on the following theories:

1. **Deterrence Theory** - Suggests that compliance is driven by the fear of penalties and sanctions (Becker, 1968). This theory suggests that businesses will comply voluntarily if the expected cost of non-compliance (e.g., fines, sanctions, or reputational damage) outweighs the benefits of evasion. However, the effectiveness of deterrence depends on the certainty, severity, and swiftness of enforcement actions (Grasmick & Bursik, 1990). Within the BRS context, strong enforcement mechanisms, coupled with periodic audits, can reinforce voluntary compliance.
2. **Responsive Regulation Theory** - Proposes that compliance can be encouraged through a mix of incentives and enforcement measures (Ayres & Braithwaite, 1992). Instead of a one-size-fits-all enforcement strategy, regulators should use incentives for compliant businesses and stricter enforcement for habitual violators. The BRS can use a tiered approach to compliance, rewarding voluntary registrants with streamlined services and imposing stricter monitoring on non-compliant entities.
3. **Institutional Theory** - Highlights the role of formal and informal norms in shaping compliance behaviour (DiMaggio & Powell, 1983). Businesses often comply voluntarily to gain legitimacy, enhance their reputation, and access economic opportunities such as government contracts and credit facilities. The BRS can leverage this by promoting the benefits of formal registration and compliance.

4. **Regulatory Compliance Theory** - Integrates legal, economic, and behavioural perspectives to explain how businesses respond to regulations (Parker & Nielsen, 2011). This theory highlights that compliance is not only about avoiding punishment, but also about businesses recognizing the legitimacy of regulatory authorities. When businesses perceive the BRS as a fair and transparent institution, they are more likely to comply voluntarily with registration laws.

These theories collectively provide a robust foundation for understanding and enhancing voluntary compliance within the BRS. While deterrence mechanisms play a role in preventing non-compliance, fostering legitimacy, transparency, institutional trust, and behavioural nudges are equally critical in ensuring that businesses voluntarily adhere to registration laws. By adopting a multifaceted approach combining these theories, the BRS can enhance compliance rates and improve overall regulatory effectiveness.

PROVISIONS OF BUSINESS ACTS / LAWS ON COMPLIANCE AND THEIR PENALTIES

1. Limited Liability Partnership Act (CAP. 30)

Section 27 of the Limited Liability Partnerships Act (Cap. 30, Laws of Kenya) states that LLPs are required to have **at least one manager** who is a natural person and a resident in Kenya whose responsibility shall be to ensure the LLP complies with the LLP Act and shall be personally liable for any penalties imposed on the partnership.

Penalty: Failure to adhere to this section shall attract a fine not exceeding one hundred thousand Kenya shillings.

Section 29 of the Limited Liability Partnerships Act (Cap. 30, Laws of Kenya) states that LLPs shall **file their annual returns** within 30 days after the anniversary of their registration. The requirement to file annual returns shall also apply to Foreign LLPs as provided in **section 34E** within thirty days of the anniversary of its registration.

Penalty: Failure for LLPs to comply shall attract an administrative fine of two thousand Kenya shillings.

Section 31B of the Limited Liability Partnerships Act (Cap. 30, Laws of Kenya) states that LLPs are required to keep a **register of beneficial owners** and lodge with the registrar a copy of the register of BO.

Penalty: Failure to which the LLP shall be liable to pay an administrative penalty of two thousand Kenya shillings. If the LLP continues to be non-compliant, the LLP shall be liable to pay a further administrative penalty of one hundred shillings for each day of default.

Additionally, other than issuing penalties, **the Registrar of LLPs has the power to strike off the register an LLP** that is not carrying out business. Where an LLP has failed to file annual returns for a period of five years or more and has failed to update the register of beneficial owners after being issued with a directive to do so, the Registrar shall issue a communication to the LLP inquiring whether the LLP is operational. If the Registrar so establishes that the LLP is not carrying out business, they shall proceed to strike off the LLP.

2. Companies Act (CAP. 486)

In order to curb money laundering, as stipulated in Section 93A of the Companies Act (Cap. 486, Laws of Kenya), companies must maintain a register of **beneficial owners** and lodge the same register with the registrar of companies.

Penalty: Section 93A (10) imposes a penalty of five hundred thousand Kenya shillings where a company fails to comply.

Section 275A of the Companies Act (Cap. 486, Laws of Kenya) provides that every company other than a single member company shall **convene a general meeting** once a year.

Penalty: Where a company fails to comply with the above provision, it shall be liable to a fine not exceeding one hundred thousand shillings.

Section 705 of the Companies Act (Cap. 486, Laws of Kenya) provides that companies shall lodge with the Registrar of Companies **annual returns** yearly based on the company's return date. The return date is determined by either the anniversary of the company's incorporation or any other date that the company lodged its last annual returns. This provision shall apply to Foreign companies as well.

Penalty: Section 708 provides that where a company fails to comply with the above provision, the officers of the company in default and the company itself shall be liable to a fine not exceeding two hundred thousand shillings.

Section 628 of the Companies Act (Cap. 486, Laws of Kenya) requires each company to **keep proper accounting records** that clearly shows and explains the transactions of the company.

Penalty: Where a company fails to comply, it shall be liable on conviction to a fine not exceeding two million shillings and in case of a natural person to a fine not exceeding one million Kenya shillings of imprisonment for a term not exceeding two years.

3. Registration of Business Names Act – (CAP. 499)

Under Sections 6 and 9 of the Registration of Business Names Act (Cap. 499, Laws of Kenya), business entities must furnish detailed particulars and notify the Registrar of any changes in writing in the prescribed form within 28 days.

Penalties: Section 10 of the Registration of Business Names Act (Cap. 499, Laws of Kenya), provides that a firm that fails to furnish the statement of particulars or the notice of change in the prescribed form to the Registrar shall be guilty of an offence and the court may order that the respective documents be furnished to the Registrar within a specified period of time.

Section 11 of the Registration of Business Names Act (Cap. 499, Laws of Kenya), stipulates that where the provisions of section 6 and 9 as seen above continue to be violated, the rights of the defaulter under or arising out of any contract made or entered into by or on behalf of such defaulter in relation to the business in respect of the carrying on of which the statement of particulars or any change in particulars as aforesaid was required to be furnished shall not be enforceable by action or other legal proceedings whether in the business name or otherwise while such default continues, provided that court is satisfied that the default was accidental or inadvertent.

Where a firm which lodges false statements, notices or application to the Registrar, they shall be guilty of an offence and liable to imprisonment for a term not exceeding twelve months of a fine not exceeding two thousand or both as seen in **section 12** of the Act.

Section 25 of the Registration of Business Names Act (Cap. 499, Laws of Kenya), further provides that where a firm violates any provisions of the Act which no penalty has been specifically provided, the firm shall be liable to a fine not exceeding one thousand shillings and where there is default in payment, imprisonment for a term not exceeding three months.

4. Hire Purchase Act

According to **Section 5** of the Hire Purchase Act (Cap. 507, Laws of Kenya), all hire-purchase agreements must be registered by the Registrar on payment of the prescribed fee.

Penalty: Failure to which the agreement owner shall not be entitled to enforce any right to recover the good from the hirer or no security given by the hirer in respect of money payable under the agreement shall be enforceable against the hirer.

Section 18 of the Hire Purchase Act (Cap. 507, Laws of Kenya), provides that all hire purchase businesses need to acquire licenses and carry out operation in accordance with the terms of the license. The license shall be valid for two years.

Penalty: Failure to comply with **section 18** shall attract a fine not exceeding two hundred thousand Kenya shillings or imprisonment for a term not exceeding one year or both.

RESEARCH METHODOLOGY

This study adopts a qualitative approach, utilizing secondary data from journal articles, legal documents, and reports from regulatory institutions. Comparative analysis is employed to evaluate voluntary compliance practices across different jurisdictions.

FINDINGS AND DISCUSSION

1. Challenges in Kenya's Voluntary Compliance

- Low awareness and understanding of compliance requirements.
- Limited incentives for voluntary adherence.
- Bureaucratic hurdles in the compliance process.

2. Best Practices from International Comparisons

- Singapore's digital compliance systems enhance efficiency.
- Tanzania's awareness campaigns increase compliance rates.
- Uganda's integrated services simplify business registration.
- WCO's AEO programs encourage voluntary compliance in customs.

3. Proposed Strategies for Enhancing Voluntary Compliance in Kenya

- Digital transformation of BRS services.
- Awareness campaigns and compliance education.
- Incentive programs for compliant businesses.

Advantages of Voluntary Compliance for Businesses

- **Reduced Legal Risks** – Businesses that voluntarily comply with legal requirements avoid penalties, fines, and legal disputes that could arise from non-compliance (Alm & Torgler, 2011).
- **Enhanced Business Reputation** – Compliance enhances credibility, fostering trust among investors, customers, and regulatory bodies (Parker & Nielsen, 2011).

- **Access to Government Contracts and Incentives** – Many governments offer preferential treatment, such as tax incentives and eligibility for public contracts, to businesses that maintain compliance (Mkenda, 2020).
- **Operational Efficiency** – Compliance with legal requirements ensures smooth business operations by preventing disruptions due to legal actions or regulatory audits (Nabeta, 2021).
- **Easier Access to Credit and Financial Services** – Financial institutions are more likely to provide loans and other financial services to businesses that comply with regulatory requirements (Tan, 2019).

CONCLUSION

Voluntary compliance with business laws is critical for regulatory efficiency and economic development. Kenya can improve compliance rates by adopting best practices from international institutions and leveraging technology and awareness initiatives.

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