



Legislation and Regulation for e-Commerce in Kenya

KIF Advocacy Project 2008

Briefing Note # 3

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Electronic commerce (e-commerce) will add at least one percent point growth to Kenya's overall economic growth within five years. This is contingent upon the adoption of legislation that supports electronic transactions.

Kenya, as an emerging economy and regional leader, lags behind in having a legal framework for e-commerce in place. The current situation is an anachronism hampering national development, placing provincial centres at a disadvantage, and harming global competitiveness. Both external and internal trade require the new framework.

The Kenyan private sector strongly supports e-commerce legislation, as well as legislation of the Information and Communication Technology sector that guarantees an open market and promotes innovation.

Why e-commerce law

Today, legislation supporting electronic transactions represents the single most powerful innovation opportunity in the legal framework of the ICT sector. Legislation is needed to:

- Legalize e-commerce transactions by recognizing an electronic signature
- Manage and control e-commerce risks
- Remove e-commerce barriers

The Kenya ICT Federation (KIF) has studied drafts currently circulating in the public domain, the Information and Communications Bill, 2008, and the Electronic Transactions Bill, 2007, respectively, both of which are of the highest technical standards. Public panels and hearings with sectors of the economy (including tourism, agriculture, ICT) have been held on 6th and 27th May, 4th June and 19th June. The Kenyan private sector has expressed overwhelming support for urgent legislation of e-commerce.

Suggested improvements in Bills

The public panels and hearings to date have yielded the following important issues for improvement in the current Bills:

1. Provisions on who can prosecute are missing
2. Liability of Internet Service Providers must be demarcated
3. Clarification on which commercial documents are excluded from proposed legislation
4. Eliminate any ambiguity on admissibility of electronic evidence
5. Need for data protection and privacy provisions
6. The Bills are more lenient on e-commerce fraud than on traditional fraud

7. Remove inconsistencies in determining crimes and punishments
8. Provisions for the inclusion of cyber-crime within the scope of the Extradition Act
9. Creation of an Administrator for e-commerce laws whose functions will be policy implementation and advisory, as a multi-sectoral body with industry associations including KIF, lead regulator Communications Commission of Kenya and co-regulator Central Bank of Kenya

Gains in tourism, agriculture, healthcare

Industry sectors, notably the tourism industry, are expressing their desire to see e-commerce covered by law. In tourism, on-line travel bookings have exceeded 80% in the USA and 50% in Europe. Decline in off-line bookings is in ample evidence. Those destinations that cannot legally support abundant on-line booking, such as Kenya, will lose market share. E-commerce in agriculture will improve small-holder's living standards. Great impact is expected notably in the coffee sector that provides livelihood to at least 5 million Kenyans, as well as in the dairy industry. Healthcare efficiency and affordability will improve by on-line health data management systems. Business operators in rural towns and rural centres have also expressed keen interest, as they see scope to address issues of trade efficiency and security in rural Kenya.

What is e-commerce

E-commerce is a method of trading that replaces paper-based documentation by a mutually binding electronic protocol between buyers and sellers. E-commerce is gaining ground globally and has become an irreversible trend. Many trading partners are already practicing e-commerce, by mutual agreement, also in Kenya. However, e-commerce will reach its full potential when parties that do not know each other are able to trade with full mutual protection under the law. This will benefit large numbers of consumers and businesses, including small-holder farmers, tourism operators, small-scale industry and services providers in almost any business sector.

The Kenya ICT Board supports the KIF e-commerce project, through the KICTB Public Panels Programme launched in Nairobi on 29th April 2008. Further support is provided by the Business Advocacy Fund, as well as KIF's very active membership.

About KIF

The Kenya Information and Communication Technology Federation (KIF) represents the ICT industry with Government and with private sector bodies e.g. Kenya Association of Manufacturers and Kenya Private Sector Alliance KEPSA. KIF is a legally registered membership based Association, made up of trade associations and professional bodies within the national ICT industry, as well as commercial corporations. KIF has been accepted as the private sector voice of ICT by Government. KIF contributes ideas to key sectors like healthcare, education, agriculture, construction industry, and last but not least supports e-government development.

KIF is a membership-driven organisation. Members bring issues on public policy and industry development forward for KIF to take action. Issues include: innovation promotion, education improvement, duties, taxes and levies, rural ICT investment. KIF has a strong and active network, with excellent relationships with all government agencies.

KIF membership is open for market segment associations and individual companies. Membership charges are annual and based on company size.

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