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IFC SmartLessons

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"To Permit or Not to Permit" — Tools for Reforming Permits and Licensing Systems

This SmartLesson discusses the experience in permits and licensing reforms undertaken in a number of countries of Eastern Europe and Central Asia. It seeks to contribute to IFC's knowledge bank of business enabling environment reforms, within the context of developing the global product on licensing.

The distinctions between licenses and permits are blurred, and the terms are often used interchangeably. Activities requiring a license in one country can require a permit in another, and in a third remain unregulated. European countries usually do not differentiate licenses from permits and consider the two procedures as unified. At the same time, in Eastern Europe and Central Asia, licenses are separated from permits, based on the following criteria: *Licenses are required for continued activity of a certain type (communications, transportation, use of natural resources) or activities requiring a particular expertise; permits are linked to one-off activities or activities undertaken in a specific location—a fire or building permit, for example.* In practice, firms that need to obtain licenses often still need to obtain permits, and the distinctions between the two types of regulatory instruments are not significant.

In most countries of the Commonwealth of Independent States (CIS), licensing reforms took place in the early 2000s, resulting in relatively straightforward legislation that provided an exhaustive list of licenses or licensed activities and specified issuance

procedures. At the same time, the coverage of permits in the CIS is nearly universal and presents a de facto continuation of the previous Soviet system—*everything that is not explicitly permitted is prohibited.* Many agencies responded to the new licensing regulations by increasing the number of permits issued.

Permits are usually of unlegislated validity, the cost of obtaining a permit is not specified, and issuance procedures are convoluted. And the scope of application of permits is typically wider than that of licenses (see box below). The result is a complex, time-consuming, and costly system of universal control, leading to a high level of bureaucracy accompanied by a nearly endemic level of bribery, all of which deters private sector development.

Comparison of licenses versus permits

	LICENSES	PERMITS
Belarus	400	1,290 ^a
Tajikstan	66	179 ^a
Ukraine	60	1,300 ^b
Uzbekistan	73	200 ^c

^a Preliminary calculation by IFC

^b Preliminary calculation by government agencies

^c Calculation by Ministry of Justice

Examples of permits in the CIS

Ukraine: 1) Every entrepreneur locating a business in any building needs to receive a separate permit from the Fire Authority; 2) each employee of a licensed tour operator needs to obtain a separate permit "to accompany tourists during tours."

Uzbekistan: A permit is required for placing advertisements on mail going through the post (versus other conduits).

In most European countries, the trend is to require permits or licenses for potentially hazardous activities. But in the CIS, everything is regulated in the same manner, with no clear evidence of increased safety of employees, improved environmental protection, or other social benefits of this all-encompassing

approach. Nor does this system markedly decrease risk. And, IFC's enterprise surveys in the region reveal that a large number of companies admit to paying bribes when receiving permits and licenses.

Given the prevalence of the problem, the task of IFC's advisory projects in Europe and Central Asia, starting in 2002, has been to ensure that the permits system is also systematized and brought under a reasonable regulatory framework.

Tools for reforming the permits and licensing system

Of the possible reform goals related to reducing the permits and licensing burden, the three most common are:

- Reducing the number and coverage of permits (time frame for realization: about 12 months);
- Simplifying issuance procedures (time frame for realization: about four months); and
- Increasing legal awareness of entrepreneurs and government officials (time frame for realization: about four months of active work, followed by monitoring).

These goals can be pursued in parallel or separately. Given that a reduction of the coverage or number of permits in some countries requires significant political will (to overcome vested interests), in such cases it may be necessary to focus first on simplifying issuance procedures and increasing the legal awareness of entrepreneurs and government.

Function	Purpose	Examples
Informational	Notifying state agencies that business activity has been established	Sectoral, business legislation, technical safety
Control	State control of enterprise activity	Environmental safety, industrial safety, labor law
Management	Management of scarce resources; Market regulation	Issuance of radio frequencies, licenses for use of limited environmental resources (mining, forestry, fishing)

Functions not applicable to permits:

- (1) Promotion or restriction of competition
- (2) Revenue generation
- (3) A source of information, if it is possible to get the information from other state bodies or third parties

Lessons Learned

1) Whether a project undertakes all permits-reform goals in parallel, or works step-by-step, depends on the political context.

In countries with strongly reform-minded governments, both the coverage and issuance of permits can be tackled simultaneously. In the CIS, Georgia is an example of where this has occurred: Licenses and permits were reduced from 909 to 159, and coverage (the share of firms that need permits or licenses) was halved¹. But this is a rare case. In most countries, IFC has had to move step-by-step, tackling issuance, coverage, and awareness work in stages.

¹ For additional information about licensing reform in Georgia, please see "Licensing 159 activities—not 909," by Svetlana Bagaudinova, Dana Omran, and Umar Shavurov.

2) Whatever the reform approach taken, a review mechanism should be built into the system.

A mechanism for regular review of licenses and permits ensures that the reform is not a one-off activity, rather outdated and unnecessary licenses and permits are regularly vetted and new procedures are not introduced to take their place. Practice also shows that this mechanism must be fixed in law to ensure that agencies conform to its provisions once the initial reforms are over.

Reform Goal #1: Reduce the number of permits and their coverage

Reducing the number and coverage of permits and licenses is usually to ensure that only the necessary processes remain. However, defining "necessary" permits is often a problem. In the European Union, permits and licenses can be broadly arranged by purpose, as shown in the chart below.

Yet, although there are high-level principles applicable to various regulatory tools, there still is a lack of detailed best practice information on what types of activities should best be regulated with what tools.

3) Given the current dearth of practical information, IFC should invest in building up a knowledge base of regulation—what activities are subject to what types of regulatory instruments in which countries.

This can then be used to promote and inform reforms in client countries and save resources currently spent by individual project teams in gathering such information.

The key tools for reduction in the number of permits and their coverage are new legislation and the guillotine process. The guillotine implies a comprehensive review of the current stock of permits and approvals, and requires state agencies to substantiate the existence of each. Those permits that have no apparent benefits are sent to the guillotine at a date specified by the government. This

system has two significant benefits: 1) the burden of proof is placed on state agencies rather than on the private sector, and 2) clear deadlines are set at the top level of government. However, licenses and permits still need to be reviewed on a permanent basis.

During the guillotine process, the following steps are taken:

1. *Creation of a single-list inventory of all permits that exist in the country*
2. *Development of special criteria for reduction of permits, for example:*
 - Outdated, do not comply with modern requirements
 - Contradict general market principles
 - Used for revenue generation
 - Issued for nonhazardous business activity or actions
 - Duplicate other administrative procedures, such as registration, certification, and so on
 - Used as a source of information when the information can be received from third parties
3. *Elimination of licenses and permits meeting criteria, and a final list of remaining valid permits contained in a single legislative act.*

Uzbekistan Case

The government, assisted by IFC, gathered all permits in one list. Criteria were then developed for reduction: 1) outdated permits introduced during the transition period, but no longer in compliance with modern requirements; 2) permits that duplicate other administrative procedures (registration, licensing, and so on) and are not directed at reducing risks to the community; and 3) permits contradicting general market principles. Finally, the officials fixed the list of residuary permits in a draft Law on Permits. Using these criteria, the government eliminated 11 of the most commonly received permits in Uzbekistan. The process is ongoing, and will be completed with the adoption of the Law on Permits.

EU and CIS practice shows that the process of cleaning up licenses and permits should be set in law, rather than in lower legislative acts. This ensures that positive reductions to the system are difficult to reverse, and it leads to improved legislative stability and improved stability of the business environment.

Three key principles embodied in the legislation of EU countries have also proved useful for securing stability in the business environment in our region. They are:

- *Government bodies cannot issue permits that are not stipulated in laws;*
- *All activities not said to require permits can be carried out freely, and;*
- *The law includes detailed procedures for issuance and revocation of permits.*

4) Don't tie permit reform to mandatory reduction (guillotine) of unnecessary permits.

Although reduction is an important process, it depends heavily on political will at the top levels of government. If this is lacking, or if entrenched interests prove too strong, it is important to be able to simplify issuance procedures separately—resulting in a de facto reduction in key problems for entrepreneurs, such as the time and cost required to obtain permits. These improvements also help build momentum for more radical reforms.

Reform Goal #2: Simplify the issuance procedures

Another focus of IFC's work in the region was to introduce in the Law on Permits simplified issuance procedures to reduce delays. All projects working on the issue agreed that the law should include a "one-stop shop" approach (Ukraine Law on Permits; draft Uzbekistan Law on Permits), a "silence is consent" principle (draft Uzbekistan Law on Permits), and a "self-certification" principle (Ukraine Law on Permits).

Tools for Simplification of Issuance

One-stop shop is a mechanism whereby the applicant does not need to pass through all agencies and departments, but only has to apply and receive documents in one department or cabinet. The department is responsible for collecting all necessary approvals and issuing the permit for the applicant. Following are steps for introducing an effective *one-stop shop*:

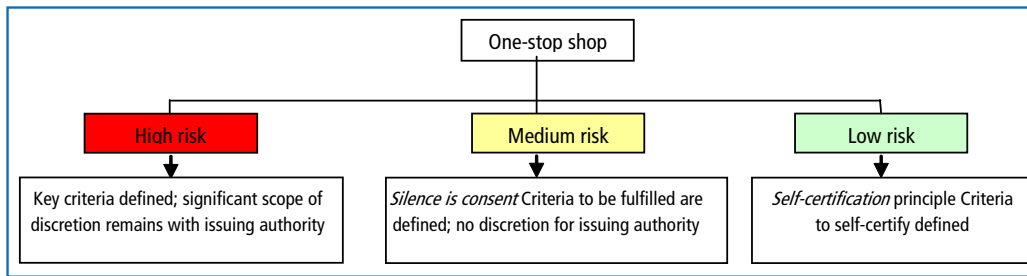
- *Establish authority responsible for clear functioning of the one-stop shop;*
- *Create an effective mechanism of cooperation between state bodies engaged in the process of issuance;*
- *Identify the rights and responsibilities of each state body engaged in the issuance process; and*
- *Set a clear deadline for document review.*

Silence is consent requires government officials to respond to the application of a citizen or entrepreneur within an allotted time frame. Otherwise, the citizen or entrepreneur may undertake the requested action without additional delay (tacit authorization). *The "silence is consent" principle does not extend to all administrative procedures.* Time limitations: Italy—30 days; Mexico—19 days for several types of documents.

Self-certification requires the applicant to ensure full compliance with the legislation, acknowledging full responsibility in case of noncompliance. *The procedure can be used for less risky business activity or actions, implying a de facto reduction in coverage.*

5) Use issuance good practices such as silence is consent and self-certification based on risk assessment.

Divide all permits into high-, medium-, and low-risk groups, and define which permit should conform to which issuance procedure. Risks can be categorized in accordance with the principles of health and safety, environment, and public security. For instance, the principle of *silence is consent*,



with clearly limited review periods, can be applicable to permits that are issued for medium-risk activities. *Self-certification*, which implies “automatic” issuance, can be used for permits and licenses issued for low-risk activities (permits whose function is essentially informational rather than one of control). Thus, in Ukraine, approximately 90 percent of fire permits should be issued through *self-certification*, while the remaining 10 percent, which involve high-risk actions or activities, can be issued through a regular procedure.

It is important that the *silence is consent* principle define a realistic term of issuance. For example, in Georgia, any permit should be issued in under 20 days; after that period, the applicant may proceed with the activity without actually receiving the permit.

Reform Goal # 3: Increase the legal awareness of entrepreneurs and government officials

6) Reforms are not finished once legislation is enacted: Assistance with implementation is vital to ensure that changes reach entrepreneurs.

Reform champions and donor agencies often stop focusing on a particular reform once legislation has been adopted, but training sessions for government officials and awareness campaigns for entrepreneurs are important means of translating legislation into real, practical impact for the private sector in the field.

Key to implementation is a program to ensure that government officials are trained to use new procedures, and that entrepreneurs are informed about key changes, understand the improvements made, and can use this legal knowledge to defend basic rights. This is a key aspect of reforms in developing countries.

The following tools can be used to increase legal awareness for entrepreneurs and government officials:

- *Easy-to-read brochures distributed to entrepreneurs*
- *Clear procedural maps, available in issuance offices*
- *Seminars, training, and informational roundtables aimed at increasing dialogue between the private sector and government; and*
- *Public service announcements on television focused on presenting information on procedural changes.*

For a map of permits and licenses in the CIS, please download Annex on the SmartLessons site: “The State of Licensing/Permit Reforms in Selected Countries of Eastern Europe and Central Asia.”



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