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An Assessment of Kenya's Regulatory Framework on Growth of Wholesale and Retail Firms

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KIPPRA in Brief

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Abstract

The growth of wholesale and retail trade is significant in the development process and was identified as a contributor to the achievement of Vision 2030 through job creation. Its growth has been declining over the years constraining its ability to contribute to job creation and gross domestic product as envisioned by Vision 2030. A key factor that influences growth of the sector is regulatory framework that has implications on firm performance. This study assesses the effect of Kenya's regulatory framework on the wholesale and retail trade sector through growth of its firms. the study objective, the existing regulatory framework for wholesale and retail trade was reviewed and policy gaps identified. A cross-sectional dataset from the World Bank enterprise survey 2018 was used for empirical analysis as it contains regulatory variables that influence the growth of wholesale and retail trade firms. The Tobit model was used for regression analysis. The study established that business registration regulations, licensing regulations, firm size, use of mobile money, business having its own website, membership to trade association and training of employees enhances firms' ability grow and create jobs. A gap exists in the implementation of the MSEA Act 2012, Section 3(e) on promoting representative associations, and the MSE regulations 2019 on trade associations as very few firms are members of formal trade associations resulting in inadequate self-regulation in the sector. The study recommends fast-tracking the implementation of the MSE Acts and regulations. To achieve the vision 2030 projects of constructing a tier-one retail market and wholesale hubs, there is a need to enhance intergovernmental relations between the ministry responsible for trade and county governments and explore the public-private partnership as a financing model to address the project financing challenges.

Abbreviations and Acronyms

BRS	Business Registration Service
CBK	Central Bank of Kenya
GDP	Gross Domestic Product
KENTRADE	Kenya Trade Network Agency
KIPPRA	Kenya Institute for Public Policy Research and Analysis
KITP	Kenya Industrial Transformation Program
KNBS	Kenya National Bureau of Statistics
KRA	Kenya Revenue Authority
MSEs	Micro and Small Enterprises
MSMEs	Micro Small and Medium Enterprises
OECD	Organization for Economic Co-Operation and Development
PPP	Public-Private Partnership
SMEs	Small and Medium Enterprises
VAT	Value-Added Tax
WBES	World Bank Enterprise Survey

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1. Introduction

The government oversights the economic activities of business enterprises (Bouazza, 2015) and the regulatory environment in which wholesale and retail trade takes place influences the growth capabilities or collapse of the businesses in the sector (Khan, 2014; Luiz, 2011). Among the Organization for Economic Cooperation and Development (OECD) countries, the intricacy of the regulatory framework continues to be a key hindrance to domestic trade activities. Despite significant improvement, the challenges including those associated with tangled licence and permit procedures still affect trade (OECD, 2018).

The World Bank Doing Business reports since 2004 examine regulations that enhance business activity and those that constrain it. Regulations should be efficient, accessible to all, and simple in their implementation (World Bank, 2020). The regulatory framework, which includes requirements in starting a business, licensing and permits, business registration, paying taxes, and accessing credit are identified by the World Bank reports as important regulatory indicators in facilitating ease of doing business and growth of firms.

Several studies such as Okeke and Eme (2014), Mashenene and Rumanyika (2014), and Nyarku and Oduro (2017) have identified regulations on firm start-ups, taxation credit regulations, the red tapes associated with business registration, licensing, and authorization as bottlenecks to the growth of firms.

A significant proportion of Kenya's domestic trade comprises wholesale and retail traders and the Kenya Vision 2030 expects the sector to provide various opportunities and contribute to Gross Domestic Product (GDP). The sectors play a key role in the growth and development of the economy due to their linkages with other sectors by providing readily available markets for products and services to consumers (National Trade Policy, 2017).

Since 2000, Kenya has seen an increase in wholesalers and retailers, and expanding regional markets. Most supermarkets and hypermarkets, both local-and foreign-owned continue to dominate domestic trade in Kenya. County governments have shown interest in wholesale and retail trade to boost revenue sources and create employment. A study by KIPPRA (2019) on the County Business Environment for MSEs (CBEM) established that a regulatory framework has the potential to drive the growth of businesses.

The growth of this sector is challenged by a multiplicity of regulatory frameworks at the County and National Government levels, and other regulatory agencies that control business registration, licensing, and trading permits. County governments also impose levies or other fees that vary across different counties. Consequently, this limits the growth and full exploitation of available wholesale and retail trade opportunities in the country.

The growth rate of the wholesale and retail sector of 11.3 per cent and 10 per cent GDP contribution in 2007 were used as the sector's bare minimum expectations for the Kenya Vision 2030. However, the potential of this sector has not been fully realized, as growth in 2019 was 6.6 per cent. Kenya's economic survey reports indicate that the wholesale and retail trade sector has been experiencing some growth shrinkage for a period of 10 years. The sector performance during the Medium-Term Plan (MTP) II of 2013-2017 also revealed that the contribution to GDP over the period was 7.5 per cent against the projected GDP target of 10 per cent.

The absence of accurate and reliable data has made it more challenging for policy makers to enhance the growth of the sector, resulting in a collapse of leading retail brands in Kenya. Other retail brands are struggling to remain afloat while foreign-owned wholesale and retail outlets are grappling with how to exit the Kenyan market.

KIPPRA (2019) established that since the devolvement of regulatory function of domestic trade to county governments, new charges have been introduced, or the existing ones have been increased, thus constraining the growth of the sector. However, despite these challenges, the Kenya Vision 2030 aspirations for the wholesale and retail trade sector should not become a pipe dream. The sector could contribute to the improvement of livelihoods through job creation and employment, especially during post-COVID-19, to reduce poverty levels.

2. Review of Wholesale and Retail Trade Regulatory Framework

2.1 Introduction

This section reviews the current regulatory framework related to wholesale and retail trade in Kenya to identify the existing gaps. The reviewed regulatory frameworks have an impact on the performance of wholesale and retail firms, which can either accelerate or slow their growth.

a) *Regulation of wholesale and retail trade*

One of the pillars of trade development, which is sustainable development, is enshrined in the Constitution as one of the country's national values and principles of governance. One of the purposes of devolution, according to Article 174 (f) of the Constitution, is for county governments to promote social and economic development and provide proximate, easily available services across the country. Articles 27, 31, 40, 41, and 46 on the Bill of Rights enhances trade by ensuring equality and freedom from discrimination, the right to privacy, property rights, employment rights, and consumer rights.

The Constitution of Kenya 2010 Fourth Schedule, Section (7) part (2) mandates the county governments to carry out the function of trade development and regulation, including trade licensing (excluding regulation of professions), markets, fair trade practices, local tourism, and cooperative societies. Other functions that have an impact on wholesale and retail trade, agriculture, particularly marketing and licensing of food undertakings, public entertainment, and county road transportation, are also delegated.

A review of the County Government Act 2012 reveals that here was no legislation enacted to standardize the regulation of the sector across all the counties. Each county develops its trade regulations, which could differ across counties. County governments have developed the County Trade Licensing Act, which guides the regulation of licensing of businesses in counties. Before making the trade regulation statutory instruments, county governments are expected to prepare a regulatory impact statement about the instrument (Statutory Instruments Act, 2013).

The county government's trade regulatory framework requires every firm to obtain a trading licence or permit before commencing its business activities. Most County Trade Licensing Acts are silent on the number of days that a firm will have to wait to receive the licence.

It is evident that the sector is regulated by both the County governments and the National government through its various agencies depending on the type of business activity the firm is engaged in. Table 2.1 shows the classification of regulations on the wholesale and retail trade by the County Governments, National Government, and other trade sector regulators.

Table 2.1: Regulators in the wholesale and retail trade sector

County governments Regulatory framework	
Trade licence /permits	County Governments
Cess (infrastructure maintenance fees)	County Governments
Outdoor advertising (motor vehicle branding)	County Governments
Distribution licences	County Governments
Fair-trade practices in the county include inspection, investigation, and prosecution of offenses arising from the infringement of the weights and measures	County Weights and Measures Office
National government regulatory framework	
Registration of business/companies	BRS - National Government
Taxation	KRA- National Government
Trade finance/credit access	National Treasury, Central Bank of Kenya - National Government
Promotion of trade/business associations to enhance self-regulation	Micro and Small Enterprise Authority - National Government
Other agencies that regulate the activities of the wholesale and retail trade	
Carrying out inspection and enforcement of counterfeiting and counterfeit products	Anti-Counterfeit Agency
Quality of products and processes	Kenya Bureau of Standards (KEBS)
During mergers and acquisitions and also during pricing as they have the buyer power which they control	Competition Authority of Kenya
Where retailers operate delis and bakeries	Tourism Fund
Where the retailers dispense milk. Retailers have to acquire licences from them	Kenya Dairy Board
Regulate distribution and sale of pest control products	Pest Control Products Board
Where retailers deal with seeds	Kenya Plant Health Inspectorate Service (KEPHIS)

Source: Review from various regulatory framework for wholesale and retail trade *b) Tier-one retail markets and development wholesale hubs*

To improve supply chain efficiency in the retail sector, the Kenya Vision 2030 aspires to build 10 tier-one retail markets with pilot projects in Athi River, in Machakos County. Other counties earmarked for similar projects are Mombasa, Nairobi, Taita Taveta, Murang'a, Uasin Gishu, and Kisumu. Further, the government also committed to construct 10 wholesale hubs with pilot projects in Maragua, in Murang'a County.

The sector plan for trade (2013-2017) shows that the Kenya Vision 2030 aims to bring at least three new distributors to the Kenyan market with more than 10 stores each. In addition, to support the wholesalers in the rural areas, the trade sector projects aim at building producer companies that will in turn feed the hubs of large wholesalers. As such, construction of tier-one markets, wholesale hubs and 1,000-1,500 producer business groups are flagship project for wholesale and retail trade in the Vision 2030.

As of 2021, the status of building a tier-one retail markets to improve supply chain efficiency in the retail sector has not progressed much, although detailed designs for the proposed tier-one retail market were completed, including geotechnical and topological surveys. Market designs were disseminated in six counties: Mombasa, Nairobi, Taita Taveta, Murang'a, Uasin Gishu, and Kisumu.

Twenty (20) acres of land were identified and secured for the construction of the wholesale hubs; designs for the proposed wholesale hub completed, and geotechnical and topological surveys were also conducted. The wholesale hubs project has not received adequate budgetary allocation, and little progress has been made in terms of completing architectural drawings and actual construction. This has delayed the benefits that were anticipated to enhance the growth of the sector, making the future of the projects unpredictable (Kenya Vison 2030, Economic Pillar).

To fast-track the full implementation, construction, and development of these markets' pilot projects, there is need to enhance intergovernmental relations between the ministry responsible for trade, with Murang'a and Machakos county governments.

c) Registration of business regulations

Business registration of wholesale and retail firms is regulated under the Companies Act, No. 17 of 2015, Partnership Act, 2012, and Business Registration Service Act, 2015. This is very fundamental as it forms the basis for conducting formal business in the country. The business registration service administers several registration regimes under various statutes. Firms can register as private companies limited by shares, private companies limited by guarantee, or public companies under the Companies Act, 2015. Further, under the Business Names Act 2015, firms can register their business names and acquire the status of a formal business. The Partnerships Act, 2012 governs the formation and operation of partnership businesses.

On the contrary, from the review of the Registration of Business Names Act 2015, it was found that it is not a requirement for businesses under this Act to be registered before they begin operations.

Business registration service has adopted a one easy step registration process where name reservation and business registration processes have been merged into one easy step, with benefits such as National Industrial Training Authority (NITA) registration for companies with up to 100 employees having been waived for the first 12 months. Single business permit fees have been waived for the first 24 months of all new businesses registered. In addition, the Department of Health and Safety registration requirement was waived for 12 months for new businesses. With the integration of systems, firms can generate company PIN, VAT, PAYE from KRA, and NSSF and NHIF at the time of registration.

Reforms in the business registration service Act 2015 enable entrepreneurs to register business names, companies, and partnerships and make changes online. E-Citizen online platform process takes 3-5 days for the government to issue a business registration certificate.

d) Taxation regulations

The taxation of wholesale and retail firms is governed by the Tax Procedures Act 2015, which is enforced by the National Government. The National Government through various Finance Acts introduces a number of taxes to regulate the sector. Some of these taxes include the Turnover Tax (ToT) payable by all small traders with an annual turnover of more than Ksh 1,000,000 but less than Ksh 50 million in any given year as per section 12(c) of the Income Tax Act and Finance Act 2019. This tax is payable at one per cent of monthly gross turnover and remitted to the National Government tax collection agency, the Kenya Revenue Authority. Firms in the sector, which are in the category of limited companies, are subject to corporation tax of 30 per cent. Further, firms are required remit value added tax (VAT) if their annual revenue exceeds Ksh 5 million.

The National Government amended the income tax regulations through the Finance Act 2020 and introduced the digital tax at 1.5 per cent of the gross transaction value and the minimum tax, payable at one per cent of gross turnover effective January 2021. The objective of minimum tax was to ensure that all businesses pay at least one per cent of their gross turnover as tax from their business each year, whether or not they make a profit. The minimum tax targets all business enterprises regardless of their annual gross turnover with exemption only to businesses whose income is subject to Turnover Tax (ToT), and those whose retail price is controlled by the government and persons engaged in the insurance business.

Every business has to obtain a trading licence or permit before commencing operations. These taxes in form of licensing fees, or permits are paid annually and are renewable and others are daily market permits. Cess is also levied on all agricultural and fishing products produced or supplied for trade purposes. Flowers, and forestry products such as timber and charcoal must pay a cess.

Advertising and motor vehicle branding fees are levied on all commercial vehicles that are externally branded in the county, including any branded vehicle driving in or through the counties.

The sector suffers from inter-county taxation as there is no legal framework on how to treat the charges between counties, which hurts the economy by creating trade barriers. This is against Article 209(5) of the constitution that emphasis that revenue-raising powers and taxation by County Governments should not prejudice economic activities across county boundaries, or national mobility of goods or services.

f) Self-regulation for the wholesale and retail sector

The concept of self-regulation has been adopted in the wholesale and retail trade sector and supported by the Ministry of Industrialization, Trade, and Enterprise Development (MoITED, 2017). The rules are self-specified, self-enforced and self-regulation in whole sale and retail trade becomes a collaborative effort of the players in the sector. Currently, the sector business membership and association is regulated under the Micro and Small Enterprise Act of 2012.

To strengthen the self-regulation in the sector, Competition Authority of Kenya (CAK) guided by the Competition Act 2010 gazetted the Retail Trade Code of Practice with intention to address buyer power abuse in the retail sector and enhance the sector's self-regulation (CAK, 2021).

To enhance dispute settlement mechanisms within the sector, the retail code establishes a dispute settlement committee whose membership is drawn from retailers, manufacturers, suppliers' associations, county government and ministry responsible for trade.

The sector business associations need to be strengthened to enable them participate in lobbying issues of importance that can influence the policy making and eventually spur the growth of the wholesale and retail trade in the country.

g) Other regulatory frameworks related to the wholesale and retail trade

The Bribery Act of 2016 was enacted to ensure that businesses receive vital services such as electricity, water, and other essential services without the use of bureaucracy that could encourage corruption. The Act forbids and criminalizes all activities of this sort, and non-compliance practices that may have an impact on Kenya's wholesale and retail trade.

The government facilitates wholesale and retail enterprises' participation in the development of industries through the National Industrialization Policy No. 9 of 2012. This policy prioritizes agro-processing, textiles and garments, leather and leather goods, iron and steel, machine tools and spare parts, and pharmaceuticals, which are traded in wholesale and retail trade.

To ensure access to credit, the Movable and Property Security Rights Act, No. 13 of 2017 allows wholesale and retail businesses to utilize movable products as collateral for loans. The Act permits the registration of movable property.

Fair trade practices in the space of wholesale and retail trade are regulated under the weights and measures Act, Cap 513. This regulates measures for packaged commodities for sale.

The development of skills and building capacity of entrepreneurs is done through apprenticeship and industrial training, regulated and managed under the Industrial Training Act, Cap 237.

The government supports locally traded goods, which form a huge chunk of goods traded by wholesale and retail firms through the Public Procurement and Disposal (Preference and Reservations) (Amendment) Regulations 2013.

Table 2.2: Reforms in wholesale and retail trade regulatory framework

Policy Variable	Regulatory Framework	Year of Reform	Reforms	Expected outcome
Registration of Business/Companies	Business Registration Service Act, 2015	2015	• An online platform for stakeholders to seek and receive services • Online registering and making changes of business names, companies, and partnerships • Company status reports can also be accessed via the online platform (infamously referred to as CR12)	• To encourage formalization • To increase the formalization of businesses • Reduce the time it takes to register a business to an average of 3-5 days
	Companies Act, 2015	2015	• The e-citizen platform replaced the manual registration and filing of paperwork with an online registration system • The online registration process is expected to make business registration more convenient • To register a business or file a document, one does not need to travel to Nairobi, the capital city • A one-person company is introduced • There is no requirement for private companies to have a company secretary • The age limit for the Board of Directors has been reduced from 21 to 18 years; and • General meetings are not required for private companies	• To encourage the incorporation of businesses • To increase the number of businesses registered
	The Start-up Bill (Senate Bills No.1 of 2021)	2021	• The bill aims to create a legislative framework that: (a) supports a culture of innovative thinking and entrepreneurship, and; (b) allows start-ups to be registered and linked to key partners and institutions at the National and County Government levels	• Not yet passed

	Business Laws (Amendment) (No 2), 2020	2020	• The Law of Contract Act, Cap 23 eliminates the need for a business seal in document execution for firms registered under the Companies Act, No. 17 of 2015 • The Industrial Training Act, Cap 237, requires that the training levy be paid after a business's financial year, but no later than the ninth day of the month after the end of the financial year • To reduce the cost of doing business, the Stamp Tax Act, Cap480, exempts payment of fixed stamp duty of one hundred shillings on contracts • The National Hospital Insurance Fund Act of 1998 provides that payments be collected on the ninth day of each month to harmonize payroll deductions through the Unified Payroll Return • The National Construction Authority Act of 2011 gives the Board the authority to investigate building faults to determine the causes of structural and latent defects, and the liability of a registered person • The Land Registration Act of 2012 eliminates the obligation to submit a Land Rent and Rate Clearance Certificate and Consent in other land transactions, and the use of company seals in the execution of papers by firms registered under the Companies Act of 2015 • National Social Security Fund Act of 2013 mandates those contributions be collected on the ninth day of each month.	• To improve the ease of doing business in Kenya

Policy Variable	Regulatory Framework	Year of Reform	Reforms	Expected outcome
Licensing and Permits	Constitution of Kenya 2010: Fourth schedule	2010	• Trade development and regulations, including trade licences, have been devolved to county governments	• To provide more efficient and effective licensing services
	The County Licensing (Uniform Procedures) Bill, 2019; Senate bill 32	2020	• The Senate has not yet enacted the bill, and each county now sets its licence fees under the County Finance Bill	• If passed, business licensing across counties will be standardized
Taxation	Filing and paying of taxes (KRA)	2013	• Implementing i-Tax, an online platform for filing and paying taxes and standard levies, as well as simplifying the VAT schedule to reduce tax filing time	• To encourage tax compliance • To reduced tax compliance burden due
	Amendment to Income Tax Act Cap 470 Finance Act 2020	2020	• Introduction of a 1% gross sales tax as a minimum tax	• To ensure every business pays tax regardless of its profit position
	Finance Act 2020	2020	• A digital tax of 1.5% of gross transaction value was introduced	• To tax all business services rendered through a digital marketplace
Credit access	Credit Reference Bureau (CRB) Regulations 2020	2020	• Borrowers' information about the non-performance of loans under Ksh 1,000 will not be shared with CRBs for negative credit reporting	• Enhance consumer protection for borrowers
	Finance Act 2019	2019	• The interest rate cap was abolished	• To improve access to credit for SMEs and other small borrowers who were deemed risky by banks and were unable to fit within the 4.0 percent margin imposed by law

2.2 Reforms in Regulatory Framework Related to Wholesale and Retail Trade

The government has undertaken reforms that support the wholesale and retail trade, including the adoption of i-Tax, an online platform for filing and paying taxes and standard levies, and the simplification of the VAT schedule to reduce the time spent submitting taxes. In 2015, the e-citizen platform was established. It is an online company registration platform. Further, the Business Law (Amendment) (No. 2), 2020 was enacted. Table 2.2 presents the reforms related to the regulatory framework of the wholesale and retail trade that were undertaken and some that are in progress.

3. Literature Review

3.1 Theoretical Review

The study examines the growth of the firm theory of Penrose (1959) and the theory of public interest regulation by Pigou (1938). The theories examine the factors that drive the growth of a firm, and explain why it is necessary for the government to regulate business activities.

3.1.1 Theory of growth of the firm

According to Penrose's (1959) growth theory of the firm, firms are a collection of both internal and external resources that help the firm achieve its competitive advantage and ensure its survival. The theory suggests that, in the long-run, as the firm continues to operate, both internal and external resources can limit growth even if its size continues to expand. According to the firm growth theory, growth is a natural and regular process that occurs any time the conditions are favourable. These conditions include internal and external, where the regulatory framework comes in.

3.1.2 Public interest theory of regulation

Pigou proposed the theory of public interest regulation in 1938. According to the theory, when markets are unregulated, they exhibit a variety of failures, including monopolistic and other externalities. This theory justifies why the National Government and County Governments regulate the wholesale and retail trade sector. National Government agencies such as the Kenya Bureau of Standards have been established to regulate the quality of goods traded in the sector.

3.2 Empirical Review

3.2.1 Business registration on firm’s growth

Most emerging countries have a large number of informal firms. This is a major source of concern for policy makers, especially as the informality of business grows. According to Levenson and Maloney (1988), the majority of enterprises in developing countries choose to begin their operations as informal until they perform well and flourish, at which point they join the formal sector. Decreased tax collection, related to the informal business sector, limits the government's ability to meet its financial responsibilities and provide public services. The participation of informal and formal enterprises in the same sector suggests that their marginal production costs are different, resulting in inefficient resource allocation in the economy (Hsieh and Klenow, 2009; Levy, 2008).

Using panel data, Klapper and Love (2011) found that implementation of business registration reforms with fewer procedures resulted in an increase in the number of new firms that are registered, and that when several business regulatory indicators are improved, the likelihood of new business registration increases. This suggests that economies with weaker regulatory frameworks may require more extensive reforms to increase the rate of business registration.

The International Labour Organization (2014) found that business formalization benefits the government substantially by expanding the tax base and unlocking the potential for business growth due to greater access to government and financial institution services. The findings of Chari (2011) on the relationship between business registration and productivity in India established that significant business registration reforms resulted in 22 per cent productivity growth, of which 75 per cent could be attributed to the relaxation of business entry restraints.

Entry barriers, such as high costs can dissuade more productive businesses from entering the market, as it increases entry costs that reduce business productivity (De Giorgi and Rahman, 2013). To address these regulatory challenges, OECD (2019) enumerates the endeavours aimed primarily at reducing red tape for businesses and improving the transparency and cost-efficiency of administrative procedures that support business growth and ease of doing business.

3.2.2 Licensing and permits on firm's growth

According to the OECD (2016), government licensing of firms is prevalent in both emerging and developed countries, with two conflicting goals: regulating the industry or generating revenue for the government. Licensing gives data about business activity that can be used for regulatory purposes.

Others studies such as Olawale and Garwe (2010) revealed that licensing impedes SMEs' growth. The study by Mullainathan and Scnabl (2010) on the effects of licensing reforms on procedures in Lima, Peru found that reform implementation enhanced business licensing of informal enterprises In addition, to help SMEs function better, the merging of various licences into broader categories and the simplification of administrative procedures are essential.

3.2.3 Taxation and firm's growth

The study by Atawodi and Ojeka (2012) established that the tax policy used in an economy is determined by the government's objectives. The use of a special tax preference is an incentive that encourages small business entry and growth. Furthermore, it was established that the rate of tax compliance among small businesses is a challenge to the implementation of tax policy as a result of the excessive tax burden placed on small businesses due to their limited resources (Marti 2010; Pope and AbdulJabbar, 2008).

3.2.4 Access to credit and firm's growth

The consistent financial market and institutional failures constrain the ease of access of credit by SMEs and impede their growth, which justifies government intervention. A study conducted by the World Bank (2015) established that over 50 per cent of SMEs globally do not have adequate capital, which is considered as the main hindrance to their growth. This position is even worse in many developing economies because of high collateral obligations (Beck, Demirguc-Kunt, 2006). Enhancing regulations for access to bank credit could be crucial to overcoming these barriers. From this study, its evident that the government needs to implement several targeted policies to support small and medium enterprises, for instance, subsidized credit and providing start-up grants.

3.2.5 Growth of the firm

To offer employment and contribute to economic development, a business enterprise must focus on growth and survival. Aversion to business expansion is the primary cause of stagnation and shrinkage in the majority of businesses (Wanjohi and Mugure, 2008; Nteere, 2012; Umar, 2008; Okpara and Wynn, 2007). Studies reveal that a business's growth is multifaceted, with various aspects contributing to its success (Delmar et al., 2003). Business growth can be measured using employment growth, sales growth, profit, and how the entrepreneur perceives growth relative to their competitors in terms of value addition (Kangasharju, 2000; Namusonge, 2011).

According to a study published in the global entrepreneurship monitor (2010) by Donna et al. (2010), 50 per cent of entrepreneurs in emerging economies find it difficult to establish a firm due to the regulatory framework. To address the challenges that impede trade, the Kenya Industrial Transformation Programme (KITP, 2015) aims to develop sector-specific interventions that could result in significant job creation.

3.3 Summary of the Literature Review

The wholesale and retail sectors face a myriad of regulatory challenges, both at the County and National Government level. The regulatory framework examined revealed a plethora of regulations imposed by several regulators. The literature also shows that regulatory frameworks stifle MSE growth, particularly in developing economies, which make up a larger portion of the wholesale and retail sector in this study. However, a gap exists on how the regulatory framework affects the growth of the wholesale and retail sector in Kenya and in particular in job creation. The literature highlights that the motivation for business informality is to avoid regulatory burdens, such as red tape in business registration, licensing, taxation, and credit access.

4. Methodology

4.1 Theoretical Framework

This study is underpinned on the theory of a firm's growth, which posits that the growth of a firm depends on the ability of a firm to interact and cope with its internal and external environment.

The ability of wholesale and retail firms to comply with the set out regulatory framework determines their capability to function and achieve their growth objectives. This theory postulates that growth becomes a natural and normal process whenever business environment conditions are favourable. In addition, in the theory of firm growth, it is evident that even with the effective internal administration of a firm, there is need for businesses to have a conducive external environment such as a regulation to harness trading activities and prevent market failures. As a result, the quality of policies, laws and regulations is a major determinant of trade performance in wholesale and retail trade in Kenya.

An effective regulatory framework would attend to trade risks, costs uncertainty in the trade relationship between wholesalers, retailers, and suppliers. An efficient regulatory framework seeks to achieve regulatory coherence and convergence to address trade-restrictive practices, including those that arise due to regulatory divergence.

Based on this theoretical framework, we come up with an analytical model as in (4.1) in which the growth of the wholesale and retail trade sector is a function of regulatory framework and control variables.

(Growth of Wholesale and Retail firm)= f(Regulatory Control framework variables) (4.1)

4.2 Empirical Equation

We estimate equation (4.2) using the left-censored Tobit model. Positive values indicate that a firm is more likely to create new jobs, negative values indicate that a firm is less likely to create jobs, while zero values indicate that a firm had no change in employment creation over the three years. The Tobit model was also used by Mulwa and Gichana (2018) when estimating the firm-specific effects on technical efficiency levels in manufacturing firms in Kenya.

$$\text{Growth of wholesale and retail firm} = \beta_o + \beta_i \text{Regulatory framework} + \beta_j \text{ Control variables} + \varepsilon \quad (4.2)$$

Where β_o is the constant, β_i is vector of variables on the regulatory framework, and β_j is a vector of control variables as discussed in section 4.3 on measurement and definition of variables, and μ is a stochastic error term measuring the effect of other variables that influence growth of the wholesale and retail sector but are unobservable in the 2018 World Bank Enterprise Survey - WBES dataset. The specific variables comprising of the regulatory framework include *registration of firms, informal competition, operating licences/ permits, obstacles in obtaining* *licences/permits, tax inspections, tax rates, tax administration, and access to credit lines. The control variables include use of mobile money, gender of firm owner, size of the firm, availability of website, trade association (self-regulation) and training of employees.*

4.3 Data and Data sources

The study uses data from the World Bank Enterprise Survey - WBES 2018, which was conducted in Kenya between May 2018 and January 2019. Data was selected through stratified sampling technique. The sampling frame was obtained from the census of business enterprises done by the Kenya National Bureau of Statistics (KNBS, 2012). The data is cross-sectional and the latest enterprise survey dataset in Kenya was collected from a sample of 1,001 enterprises of which 248 are wholesale and retail firms.

The World Bank Enterprise Survey 2018 captured Kenya's regulatory framework indicators, which were identified by the World Bank Ease of Doing business, and includes requirements for a start-up, such as business registration, licensing and permits, taxes, and access to credit.

4.4 Measurement and Definition of Variables

4.4.1 Dependent variable

The dependent variable in this study is the growth of the firm. There is no universal approach to measuring the growth of a firm. Several empirical studies have used financial and non-financial indicators to measure a firm's growth and are also guided by the available data.

In this study, we estimate the growth of the wholesale and retail trade firm in terms of the number of employees absorbed in the sector in three years as per the available data. The dependent variable is thus obtained by subtracting the number of permanent full-time employees at the end of last fiscal year during the period *(t)* and the number of permanent full-time employees at the end of the three (*t-3*) fiscal year before. The dependent variable is continuous, and the positive values indicate that firms in the wholesale and retail trade sector had expanded in growth while the zero (0) value indicates that the firms did not report any change in growth within the three years, and the negative values indicated that firms shrunk in size over the three years. Davis and Haltiwanger (1992) used this measure of employment in the gross creation, destruction, and relocation of jobs. The study does not include other forms of employment, such as temporary or contract, because the growth of full-time permanent employment is likely to indicate firms' long-term performance in the wholesale and retail sectors. As such, as an indicator of growth in the sector, we focus on the change in the employment of permanent workers as our variable outcome of interest.

Among the wholesale and retail firms, 18 per cent reported shrinkage in employment creation, 29 per cent of the firms had no change in employment while 53 per cent had positive growth in employment.

4.4.2 Regulatory variables

From the regulatory indicators examined by the World Bank Ease of Doing Business report 2020, this study was limited to regulatory variables, which included business registration, licensing/permits, taxation, and access to credit to establish their effect on growth of wholesale and retail firms.

a) Business registration

We measure the business registration by finding out whether the business was formally registered when it began the operations coded as (1), and (0) if not. The summary statistics shows that majority of firms (93%) were formally registered when they began operations, while 7 per cent were not. This is consistent with the Business Names Registration Act of 2015, Companies Act of 2105, and Partnership Act 2012. Competition between those firms that are registered and those unregistered is also examined, (1) if the firm competes against unregistered and informal establishments, (0) if not. Among the firms, 83 per cent competed against unregistered or informal establishments, as opposed to 17 per cent firms that did not compete against unregistered or informal establishments. Such competition in the sector is regulated by the Competition Act 2010 part III on restrictive trade practices.

b) Licensing and permits

We measure licensing and permits by establishing whether the firm had applied for an operating licence over a period of two years during the year of study or not, coded as (1) if the firm had applied for an operating licence over the last two years, (0) if not. Among the firms, 67 per cent had applied for an operating licence in the previous two years, compared to 33 per cent of firms that had not applied for an operating licence. County governments issues the trading licenses/permits as devolved by per Constitution 2010, guided by the County Government Act of 2012, and the various County's Trade Licensing Act.

In addition, we measure how much obtaining a business licence and permit is an obstacle to the operations of the firm, coded as (1) if obtaining business licence and permit is an obstacle to firms, and (0) if not. 65 per cent indicated that obtaining licence and permit was an obstacle to business operations. The County Governments Act 2012 and Constitution of Kenya 2010 (Fourth Schedule) mandates County governments to licence trading activities in their counties.

c) Taxation

We measure taxation of firms by examining whether the firm was inspected by tax officials in the last 12 months or not, coded as (1) if a firm was inspected by tax officials in the last 12 months, and (0) if not. It was established that most firms (62%) were inspected by tax officials. We examined whether tax rates and tax administration are an obstacle to the growth of firms, coded as (1) if tax rates are an obstacle to operations of the firm, and (0) if not, and for tax administration coded as (1) if tax administration is an obstacle, and (0) if not. 75 per cent of the firms indicated that tax rates were an obstacle to the firm’s operation, while 68 per cent of the firms indicated that tax administration was an obstacle to the firm's operations. Taxation of firms is done in compliance with Income Tax Act, Cap 470 and various Finance Acts. For example, the Finance Act of 2020 amended the Income Tax Act and introduced minimum tax and digital serve tax. This finding is supported by the World Bank's Ease of Doing Business report (2020), which established that tax administration activities such as collecting tax information, computing tax payable, preparing tax returns, tax filing, preparing tax accounting books, VAT refund, and tax audit processes take a firm 185.5 hours per year.

d) Access to credit

Access to credit is measured by examining whether firms have loans with financial institutions or not, coded as (1) if firms have a loan with financial institution and (0) if not. The summary statistics shows that, on average, 35 per cent of firms have a loan with financial institutions compared to 65 per cent of firms that did not have financial institution loan. This indicates a very low uptake of available credit lines from financial institutions. Regulations for lending are developed by the Central Bank of Kenya through monetary policies as stipulated by the Central Bank Cap 491 Laws of Kenya.

4.4.3 Control Variables

We control for non-regulatory factors that affect the growth of the sector by examining if the firm uses mobile money for financial transactions, coded as (1) and (0) if does not use mobile money for financial transactions. Firms that were using mobile money for financial transactions were 77 per cent compared to 23 per cent of firms that were not using mobile money. The use of mobile money for financial transactions is supported by the National Payment System Act 2011 and the National Payment System Regulations 2014 by the Central Bank of Kenya. We also examined ownership of firms by gender to ascertain whether there were firms owned by a female, coded as (1) if a firm is owned by a female and (0) if otherwise. 43 per cent of the firms were owned by women while 57 per cent of the firms were owned by men.

The study also examined the size of the firm, considering a firm to be small enterprises if it had between 10-49 employees coded as (1), and medium enterprise if it had 50-99 employees coded as (2) and those with 100 employees and above are considered as large firms and coded as (3). Guided by the MSE Act 2012 on classification of firm size, small enterprises that employ 10-49 employees were the majority with 57 per cent participating in the study while medium firms that employs 50-99 employees were 35 per cent. In addition, 0.09 per cent of large firms that employ 100 employees and above participated in the study. The study further examined if a firm is a member of a trade association, and coded as (1) and (0) if not. 32.0 per cent wholesale and retail firms are members of a formal trade association whereas 68.0 per cent are not members of a formal trade association. This is guided by the MSE Act 2012, section 3 (e) on promoting representative associations of the firms in micro and small enterprises.

Also, the availability of a firm's owned website was ascertained and coded as (1) if the firm had its website and (0) if not. 40 per cent of the firms indicated that they owned a website while 60 per cent did not own a website. This is important especially in the 21st century where firms are leveraging on digitization to enhance market access and product penetration. Finally, we examined the training of employees in the sector coded as (1) if the firm was able to train employees and (0) if the firm did not train employees. 34 per cent of the firms were able to train their employees compared to 66 per cent that were not able to train their employees. The development of skills and building capacity of entrepreneurs in the wholesale and retail sector is done through apprenticeship and industrial training, which is regulated under the Industrial Training Act, Cap 237.

Table 4.1: Summary of descriptive statistics

Variable	**Obs**	**Mean**	**Std. Dev.**	**Min**	**Max**
Dependent Variable					
Firms with negative employment growth (shrinkage)	44 negative	-10.73	17.12	-87	-1
Firms with no employment growth	72				
No growth	0	0	0	0	
Firms with positive employment growth	132 positive	17.05	50.49	1	500
Regulatory Variables					
Registration of business	245	0.93	0.26	0	1
Registered businesses compete with unregistered	244	0.83	0.38	0	1
Licence applications	247	0.67	0.47	0	1

Licence obstacle to firm operations	243	0.65	0.48	0	1
Tax inspection	247	0.62	0.49	0	1
Tax rates	244	0.75	0.42	0	1
Tax administration	245	0.68	0.47	0	1
Credit_1	244	0.35	0.48	0	1
Control Variables					
Mobile_money	248	0.77	0.42	0	1
Firm size					
1-Small	248	0.57	0.50	0	1
2-Medium	248	0.35	0.48	0	1
3-Large	248	0.09	0.28	0	1
Ownership	245	0.43	0.50	0	1
Trade association	242	0.32	0.49	0	1
Website	247	0.40	0.49	0	1
Training of employees	246	0.34	0.47	0	1

Source: Authors' computation based on World Bank Enterprise Survey (2018)

4.5 Diagnostic Tests

To ensure the variables used in the empirical estimations meet the requirements of the neoclassical regression requirements, we tested for normality of the continuous variables, multicollinearity, and heteroscedasticity. The Shapiro-Wilk normality test was used to determine whether the continuous variables have a normal distribution at 5 per cent level of significance. The findings revealed that continuous variables had a p-value (p=0.00), implying that the variables were normally distributed. The Variance Inflation Factor (VIF) was used to determine whether multicollinearity is a major problem affecting the analysis. If the obtained mean VIF value is less than 10, then it would be concluded that multicollinearity is not a major problem affecting the regression analysis. The obtained mean VIF was 3.88, and it was concluded that multicollinearity is not a major problem. Heteroscedasticity occurs when the variance of the error terms is non-constant across observations. The coefficients obtained in presence of heteroscedasticity are unbiased, but inference which entails hypothesis testing is inefficient. The study controlled for heteroscedasticity at a 5 per cent level of significance by testing whether the residuals from the Tobit estimator were normally distributed. The p-value obtained was p=0.05, and a conclusion was made that heteroscedasticity was not a major problem for the analysis.

5. Results and Discussions

5.1 Introduction

The study used a left-censored Tobit model to estimate the effect of Kenya's regulatory framework on growth of the wholesale and retail sector. For robustness, the Multinomial logit estimator was also employed and the results from the two models compared. The Tobit model was a good fit as shown by the p-value ($p=0.00$, $\chi^2=52.09$) while the Multinomial logit model was a good fit as shown by p-value ($p=0.00$, $\chi^2=55.52$.

5.2 Empirical Results

The results show that business registration, mobile money, firm size, availability of firm's website, and employees training were statistically significant both in the left censored Tobit model and the multinomial logit. Licensing obstacles were statistically significant only in the Tobit model, while trade association (self-regulation) was statistically significant only in Multinomial logit. However, variables such as gender of firm owner, firms' competition, tax inspection, tax rates, tax administration and access to credit were not statistically significant in both Tobit model and multinomial logit.

5.2.1 Regulatory variables

a) Business registration

Business registration regulations was statistically significant at 5 per cent with a negative coefficient (-31.45) in Tobit model. Every business that undergoes formal registration when beginning operations is less likely to create jobs than if it had begun operations informally. Using the Multinomial logit, firms that were formally registered when they started operations were 0.23 times less likely to create employment compared to if they started operations as informal entities. This finding could be linked to the cost of business formalization, and additional costs that the firm incurs once it becomes a formal organization.

b) Licensing and permits

Obstacles to obtain operating licences/permits were significant at 5 per cent level of significance in Tobit model, with a corresponding negative coefficient of (-21.24). The obstacles are likely to reduce a firm's ability to create jobs.

5.2.2 Control variables

a) Mobile money

The use of mobile money in financial transactions was statistically significant at

5 per cent with a positive coefficient of (26.55) from Tobit model. This finding indicates that use of mobile money by firms in financial transactions is likely to create jobs. From the multinomial logit estimator, firms that had reported shrinkage in employment creation were 2.79 times more likely to create employment if they used mobile money platforms for financial transactions compared to those that did not. Further, firms which had reported growth in employment creation were 3.63 times more likely to create employment if they used mobile money platforms for financial transactions compared to if they did not.

b) Firm size

Using the Tobit estimator, large firms were found to be likely to create new jobs (65.07) compared to small firms. However, from the Multinomial logit estimator, firms were 3.25 times more likely to create new jobs if they were medium-sized compared to what would happen if they were small enterprises.

c) Trade association/self-regulation

Firms that had reported a growth in employment creation were 0.41 times less likely to create new jobs if they were members of a trade association, compared to what would happen if they were not. This agrees with KEPSA (2021) that there is need to strengthen self-regulation in the sector. Currently, the sector business membership association is regulated under the Micro and Small Enterprise Act of 2012, which is relevant in this finding as majority of firms in wholesale and retail trade are MSMEs.

d) Website

From the Tobit estimator, firms were more likely to create new jobs (19.89) if they had a website compared to those without a website. Using the multinomial logit estimator, firms that had reported growth in employment were 2.37 times more likely to create new jobs if they had a website compared to what would happen if they did not.

e) Employee training

Using the Tobit estimator, firms were more likely to create new jobs (14.41) if they were undertaking on-the-job training for permanent employees compared to what would happen if they were not. However, using the multinomial logit estimator, firms which had reported a shrinkage in employment creation were 0.37 times less likely to shed jobs if they undertook on-the-job training for permanent employees compared to what would happen if they did not.

Table 5.1: Tobit regression estimation

Growth of wholesale and retail sector	Coefficient	SE βi	P-value
Registration of business	-31.45	14.41 (-2.17)	0.03**
Registered businesses compete with unregistered	4.89	10.77 (0.42)	0.68
Licence applications	-1.13	9.94 (-0.14)	0. 89
Licence obstacle to firm operations	-21.24	3.10 (-2.14)	0.03**
Tax inspection	6.01	8.33 (0.72)	0.47
Tax rates	-.77	11.08 (-0.07)	0.95
Tax administration	9.92	10.57 (0.94)	0.35
Credit_1	2.09	8.23 (0.25)	0.80
Mobile money	26.55	10.03 (2.65)	0.00**
2-Medium	-7.2	8.79 (-0.82)	0.41
3-Large	65.07	15.27 (4.26)	0.00**
Ownership	-8.29	7.89 (-1.05)	0.30
Trade Association	-3.93	8.81 (-0.45)	0.66
Website	19.89	8.37 (2.38)	0.01**
Training employees	14.41	8.71 (1.66)	0.09***
Constant	-14.80	20.24 (-0.73)	0.47
var (e. growth)	2471.69	335.78	
No. of observations	220		
Uncensored	115		
Left censored	105		

Right censored	0		
LR chi²(23)	52.09		
Prob > chi²	0.00		
Pseudo R²	0.04		
The ** and *** mean statistically significant at the 5% and 10% levels of significance respectively.			

Source: Authors' computation based on World Bank Enterprise Survey (2018)

Table 5.2: Multinomial logistic regression

Growth of Wholesale & retail sector	RRR	Std. Err.	z	P-value
No_Change	(Base outcome)			
Shrinkage				
Registration of business	0.94	1.21	-0.04	0.96
Registered businesses compete with unregistered	2.22	1.45	1.22	0.22
Licence applications	0.48	0.23	-1.52	0.13
Licence obstacle to firm operations	1.25	0.72	0.39	0.70
Tax inspection	0.53	0.24	-1.40	0.16
Tax rates	0.64	0.42	-0.67	0.50
Tax administration	1.71	1.02	0.90	0.37
Credit_1	1.59	0.74	1.02	0.31
Mobile money	2.79	1.44	1.99	0.05 **
Size				
2-Medium	3.25	1.57	2.45	0.01**
3-Large	1.75	1.75	0.56	0.57
Ownership	2.03	0.93	1.55	0.12
Trade association	0.72	0.34	-0.69	0.49
Website	1.20	0.58	0.37	0.71
Training employees	0.37	0.20	-1.88	0.06**
Constant	0.15	0.23	-1.23	0.22
Growth				
Registration of business	0.23	0.19	-1.80	0.07***

Registered businesses compete with unregistered	1.41	0.66	0.75	0.45
Licence applications	0.75	0.29	-0.76	0.45
Licence obstacle to firm operations	0.85	0.37	-0.37	0.71
Tax inspection	1.17	0.43	0.44	0.66
Tax rates	0.52	0.25	-1.39	0.16
Tax administration	1.62	0.71	1.09	0.28
Credit_1	1.24	0.45	0.59	0.56
Mobile money	3.63	1.44	3.25	0.00**
Size				
2-Medium	1.03	0.40	0.07	0.94
3-Large	1.19	0.83	0.25	0.80
Ownership	1.02	0.36	0.06	0.95
Trade association	0.41	0.15	-2.40	0.02**
Website	2.37	0.89	2.30	0.02**
Training employees	0.82	0.31	-0.51	0.61
Constant	2.91	2.93	1.06	0.29
Number of obs	220			
LR $chi^2(30)$	55.52			
Prob > chi^2	0.00			
Pseudo R^2	0.13			

The ** and *** mean statistically significant at the 5% and 10% levels of significance, respectively

Source: Authors' computation based on World Bank Enterprise Survey (2018)

6. Conclusions and Policy Recommendations

6.1 Conclusions

The objective of the study was to assess the effect of regulatory variables, which include business registration, licensing and permits, taxation, and access to credit on the growth of firms in wholesale and retail trade, which is measured by the number of employees absorbed in the sector. The regulatory framework regulating wholesale and retail trade has been found to have a significant influence on the sector's growth. The sector is challenged by a multiplicity of regulators from County Government, National Government, and other regulatory agencies. Thus, the sector is over-regulated and there is inadequacy of a structured way of engagement between County Governments and the National Government.

The inter-county fees and cess when transporting goods and services across the counties hurts the economy by creating trade barriers and movement of goods across the country. Further, multiple taxation is evident from both the County Governments and National Government regulatory agencies, and it is a huge burden to the sector. The Kenya Vision 2030 projects of building tier-one markets to improve supply chain efficiency in the retail sector and construction of wholesale hubs were found to have stalled as market construction and management is a devolved function. Finally, the county trade committees recommended by the National Trade Policy have not been established due to inadequate intergovernmental trade coordination framework from the ministry responsible for trade and county governments.

We conclude that registration of business regulation reduces firms' ability to create jobs. It is evident that obstacles related to obtaining operating licences and permits are likely to reduce a firm's ability to create jobs. Further, the use of mobile money in financial transactions and having websites, which are both forms of technology, has potential to enhance growth of wholesale and retail firms and create more jobs especially in the 21st century. In addition, the size of firm determines the growth of a firm, where medium and large firms were seen to have the capacity to create more jobs than small firms.

Notably, few firms in the wholesale and retail sector are members of a formal business association. The low membership is against the spirit of the MSE Act 2012 section 3(e) on promoting representative associations and registration of business associations.

6.2 Policy Recommendations

1. There is need to reduce business licensing obstacles across the counties by simplifying licence application procedures, conditions, and requirements.
2. There is a need for a policy that will enhance mutual recognition framework by all county governments on cess and fees paid on goods in the county of origin to be used as an exempt to pay cess or fees when transporting goods across other counties.

3. There is need to fast-track the implementation of the MSE Act 2012 and the MSE Regulations (2019) on trade associations and to assess their contribution to the wholesale and retail trade sectors.
4. To ensure that the Kenya Vision 2030 objective of building tier-one markets for retail and the construction of wholesale hubs is achieved, there is need for enhanced intergovernmental relations. There is also need to explore the PPPs as a financing model to address the project's financing challenges.
5. There is need for the ministry responsible for trade in collaboration with county governments and the private sector to develop a coordination framework to effectively regulate the sector.

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