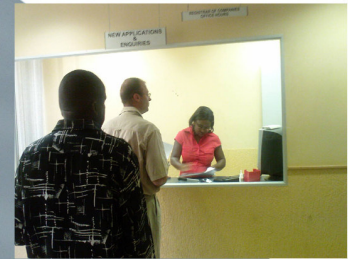




REPUBLIC OF NAMIBIA



REPORT OF THE AUDITOR-GENERAL ON PERFORMANCE AUDIT STUDY ON

DELAY OF BUSINESS REGISTRATION

IN THE MINISTRY OF TRADE AND INDUSTRY

FOR THE FINANCIAL YEARS ENDED 2005-2007

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REPUBLIC OF NAMIBIA



TO THE HONOURABLE SPEAKER OF THE NATIONAL ASSEMBLY

I have the honour to submit herewith my performance audit report on the Ministry of Trade and Industry – Delay of business registration for the financial years 2005 - 2007 in terms of Article 127(2) of the Namibian Constitution. The report is transmitted to the Honourable Minister of Finance in terms of Section 27(1) of the State Finance Act, 1991, (Act 31 of 1991) to be laid upon the Table of the National Assembly in terms of Section 27(4) of the Act.

WINDHOEK, March 2009

JUNIAS ETUNA KANDJEKE
AUDITOR-GENERAL

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EXECUTIVE SUMMARY

The Office of the Auditor-General is authorized to carry out Performance audits in terms of section 26 (1) (b) (iv) of the State Finance Act 1991, (Act 31 of 1991), which reads as follows: (The Auditor-General) “may investigate whether any moneys in question have been expended in an efficient, effective and economic manner”.

The report is based on **the delay of business registration** within the Ministry of Trade and Industry, focusing on the Division of Business Registries which is responsible for the registration of businesses in Namibia.

The public has in recent years complained of the delays in registering businesses which causes losses in revenue making opportunities and frustrating the clients when registering their businesses.

The following findings have been identified as the most crucial problems to the delays.

Findings

- The audit found that the Ministry has implemented a new computerized Integrated Companies Registration System (ICRS) in July 2007 which is more user-friendly and new companies could be registered within three days.
- There are no procedures in place at the head office regarding the forwarding of application forms from the regions. The audit found that selected regional offices were forwarding application forms based on the number of applications received from applicants. This however could be more economic but could also lead to application forms being kept for long at regional offices.
- The audit found that there is no specific person at head office who is solely employed to work at the customer counter, as a result the counter is only open for telephone enquiries from 12h00. Clients making telephone enquiries before 12h00 are not assisted.
- Information regarding business registration is still lacking among (insufficient) the public. This results in the public not knowing the importance of registering their businesses and how to register their business.
- The audit found that the business registration is not yet decentralized. This prolongs the registration process and high transport cost in forwarding application forms to head office.

Conclusions

- The ICRS will enhance the efficiency and effectiveness of the Ministry’s operations.
- The Ministry will not accomplish its mission to manage, regulate and facilitate the formulation of business entities if there are no procedures in place to regulate the forwarding of application forms from the regions.
- The Ministry will fail to fulfill one of its functions which is the provision of information on registration of commercial and intellectual property rights if there is no specific person at the head office who will be solely responsible for enquiries throughout the working hours.
- Insufficient information among the public will make it difficult for the Ministry to achieve some of its objectives such as encouraging investments in the country and to be the legal depository of the information tendered for registration.
- Centralization of business registration will not only hamper the Ministry’s effort to shorten the registration process, but also the Government’s effort to bring services to the people.

Recommendation

- The Ministry should speed up the full implementation of the ICRS system because it has largely improved the business registration process.
- The Ministry should put up procedures to regulate the forwarding of application forms from the regions.
- There should be a specific person at the counter who will only be dealing with enquiries.
- Application forms should be made available at all the Ministry of Trade and Industry offices.
- The Ministry should conduct awareness campaigns on business registration at least twice a year in all regions.
- Some of the business registration activities should be extended to the regions.

ABBREVIATIONS

CC	Close Corporation
Co	Company
SME	Small Medium Enterprise
IPR	Intellectual Property Rights
ICRS	Integrated Companies Registration System

CHAPTER 1

1. INTRODUCTION

The report focuses on the delay of business registration within the Ministry of Trade and Industry. The Division of Business Registries is responsible for the registration of businesses in Namibia.

1.1 Audit motivation

A nationwide complaint in the general media regarding the efficiency and effectiveness of the business registration process motivated the audit.

However, there is a risk that the core objectives of the division which are the effective implementation and management of appropriate national policies, laws and programs in business regulation as well as the strengthening, modernization and revamping the business environment will not be met.

The Office of the Auditor-General, therefore conducted a performance audit on the Ministry of Trade and Industry, focusing on the delay of business registration.

1.2 The mission of the division of business registries

The division of Business Registries in the Ministry of Trade and Industry is to manage, regulate and facilitate the formation of business entities and to encourage investment through an appropriate legal framework and conducive environment that ensures the flourishing of businesses.

1.3 Organizational structure

The Ministry of Trade and Industry is organized into six main divisions namely; Office of the Minister, Administration, International Trade, Industrial Development, Investment Centre and Internal Trade. The Ministry is headed by the Minister and below him is the Deputy Minister followed by the Permanent Secretary who is the Accounting Officer. The Directorate of Internal Trade is headed by the Director, who is deputized by three Deputy Directors, of which one is the registrar of Companies, Close Corporations and Industrial Property.

1.4 Background on business registration

The Division of Business Registries operates under the Directorate Internal Trade within the Ministry of Trade and Industry. The Division is responsible for various kinds of registrations as detailed in paragraph 1.6.

The Division of Business Registries is not yet decentralized and thus the Ministry of Trade and Industry offices in the regions facilitate the registration process.

Furthermore the business registration system has been automated and data is being captured live on the system since July 2007.

1.5 Main goal of the business registries

The main goal of the Division of Business Registries is the registration of companies, close corporations, patents, trade marks and designs as well as provision of information and advisory services to the public and investors in matters pertaining to its line functions and mandate.

1.6 Core objectives and functions of business registries

- Effective implementation and management of appropriate national policies, laws and programs in business regulation as well as the strengthening, modernization and revamping the business environment.
- Initiation, development and administration of legislation relating to business registration and industrial property protection.
- Registration of companies, close corporation, patents, trade marks and design.
- Liaison with international and regional industrial property bodies;
- Provision of information and advisory services to the public and investors in matters pertaining to its line functions and mandate, including administration and liquidation of business and the Protection of Intellectual Property Rights (IPRs).

1.7 Financing

Below are the estimated expenditure and the actual expenditure of the directorate of Internal Trade for the three financial years for the time period covered.

Financial years	Estimate	Actual	Difference: (More)/Less
	N\$	N\$	N\$
2005/2006	17 016 000	15 874 879.00	(9 243 879.00)
2006/2007	12 451 000	9 868 051.19	(2 919 051.00)
2007/2008*	19 845 000	18 337 673.09	1 507 326.91

* **Figures have not been audited yet.**

1.8 Staffing

The approved staff establishment for the Division of Business Registries reflects a total number of 14 posts of which 12 are filled and 2 are vacant at the head office. The staff members that facilitate the registration of business in the regions are from the Division of Industrial Development.

CHAPTER 2

2. AUDIT DESIGN

2.1 Audit Scope

2.1.1 Audit object

The audit was limited to business registration under the directorate of Internal Trade within the Ministry of Trade and Industry. The audit focused on the delay of business registration.

2.1.2 Geographical limit

The Ministry of Trade and Industry has offices in all 13 regions which facilitate business registrations and three (3) of those regional offices were visited during the main study. The selection of the regions was based on the number of businesses as well as the population size in those regions.

2.1.3 Time period covered

Three financial years were covered, 2005-2006, 2006-2007 and 2007-2008.

2.2 Audit methodology

2.2.1 The following documents were analyzed:

- Actual application forms to determine the duration and check for incomplete application forms.
- Record books from the regional offices visited to check how they have assisted the applicants in registering their businesses.
- Decentralization policy to determine why the registration of business is not yet decentralized.
- Waybill tax invoices from the courier services to determine when the regional offices forward applications to head office and the person who receives them at head office.
- Annual reports of the directorate to determine the numbers of businesses registered for the financial years covered.

2.2.2 Interviews conducted:

Interviews were conducted with the following people:

- Director (Internal Trade)
- Deputy Director (Division of Business Registries)
- Economists
- Chief Clerk
- Assistant Clerk/Clerks (Division Industrial Development)

See Appendix 3 for interview details.

2.2.3 Observations

During the audit observations were done at:

- Head office
- A local stationery supplier

The purpose for the observations was to determine different processes at head office and see how the clients are being assisted during registration. The local stationery supplier was visited to see if the stationer keeps enough application forms in stock for the clients who want to register their businesses.

CHAPTER 3

3. PROCESS DESCRIPTION

3.1 Systems Description

There are four categories of businesses that are registered by the Division of Business Registries, but the audit only focused on two of them which are:

- Close corporations
 - Companies

3.2 Business registration process

Business registration involves the following process which is the same for close corporations (Cc) and companies (Co).

3.2.1 Submitting the application for name reservation and approval of the proposed name for CC and Co

The applicant has to propose six names in order of preference and submit that application with the list of names to the Ministry. The application form that is used for this purpose is CC8. The Ministry is supposed to take five to ten (5-10) working days to approve/disapprove one of the proposed names. After the approval /disapproval of the name the Ministry should provide feedback to the applicant via post mail.

The Ministry has to verify if the proposed names already exist on the system as an indication that it has already been used. If the first proposed name is not taken by any business the Ministry has to approve that name, but if it is taken, the Ministry has to consider the second proposed name.

3.2.2 Submitting applications for registration

After the proposed name (Name reservation) has been approved, the applicant has to submit the second application for registration with all its requirements. See appendix 2 for the requirements.

3.2.3 Issuing of certificate of incorporation

After the Ministry has gone through the applications and all the required attachments to the application form are included, the business may be registered. The Ministry has to issue the certificate of incorporation to the applicant as proof that the business has been legally registered with the registrar of companies at the Ministry of Trade and Industry.

3.3 Stakeholders in business registration

Stakeholders	Activities
Stationers	Sell application forms to the applicants.
NAMPOST LTD	Sell revenue stamps to applicants for applications and delivering of application forms to head office for processing.
Accounting officers/ Lawyers	Prepare memorandum of articles and sign applications when applicable. Applying on behalf of their clients.
Ministry of Finance	Issuing of tax numbers to the companies before they are registered.

See appendix 1 for the systems flow charts

CHAPTER 4

4. FINDINGS

4.1 Time frame of business registration

The audit found that the Ministry has implemented a new computerized Integrated Companies Registration System (ICRS) in July 2007 which is more user-friendly and new companies could be registered within three days.

4.1.1 Name reservation

As per 809 valid cases analyzed, it takes on average 13 days to reserve a business name. The longest it took to reserve a business name is 94 days and the shortest period is 1 day. Out of 809 valid cases, 233 (68%) cases (28.8%) took more than the standard period of 10-14 working days for the years under review. However 576 cases (71.2%) took less than 10-14 working days, as indicated in figure 1 (Name reservation).

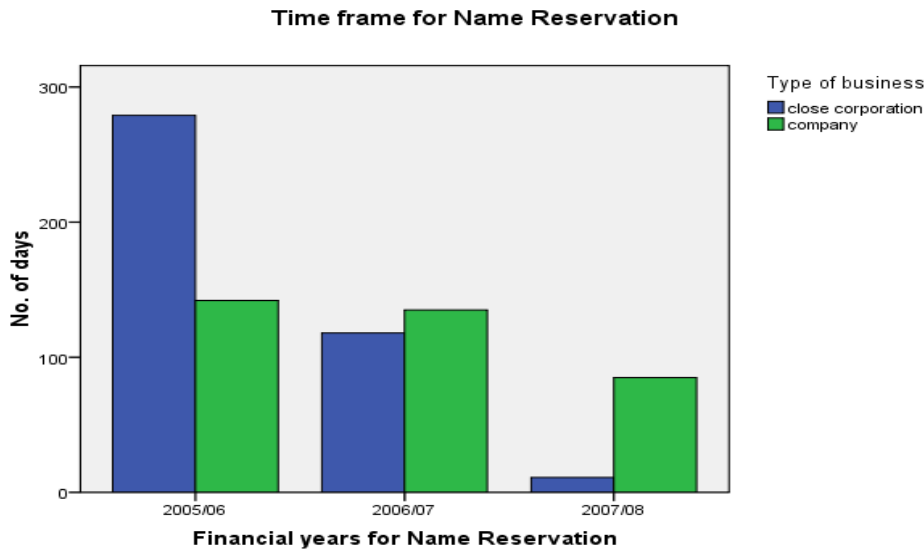


Figure 1; Name Reservation

The bar chart above indicates that there has been an improvement in the time it takes to reserve business names for the two types of businesses. In the financial year 2005/2006 it used to take long to reserve a business compared to the two financial years 2006/2007 and 2007/2008.

4.1.2 Registration

The registration of close corporations and companies takes on average 14 days. A total number of 990 valid cases analyzed indicated that, 672 cases took less than the standard period of 10-14 working days, while 318 (32%) cases took more than 14 working days. The registration of close corporations and companies can take up to 163 days.

It takes longer to register a company than to register a close corporation as shown in figure 2 (Business registration).

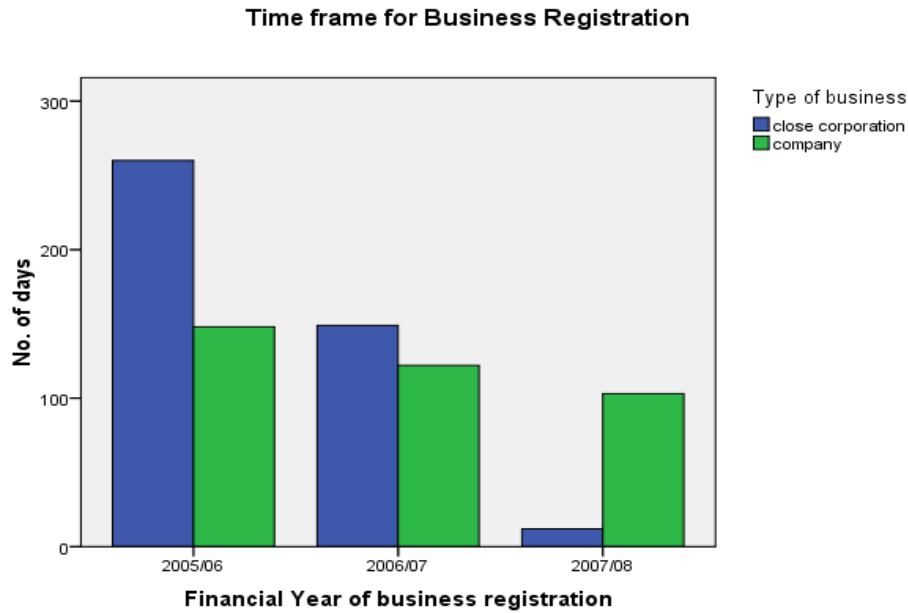


Figure 2; Business Registration

There was a huge improvement in terms of dates taken to register a close corporation from the financial years 2005/2006 to 2007/2008. However, there was only a slight improvement in terms of the dates taken to register a company.

Since the introduction of the computer system during July 2007 the average days it took to approve names were 2 days that shows great improvement in the process.

4.1.3 Conversions

The sample revealed that conversion of a business takes an average of 22 days to be approved instead of the standard of 10-14 days. The conversion can take a minimum of 1 day and a maximum of 89 days to register as indicated in Figure 3 (Conversion).

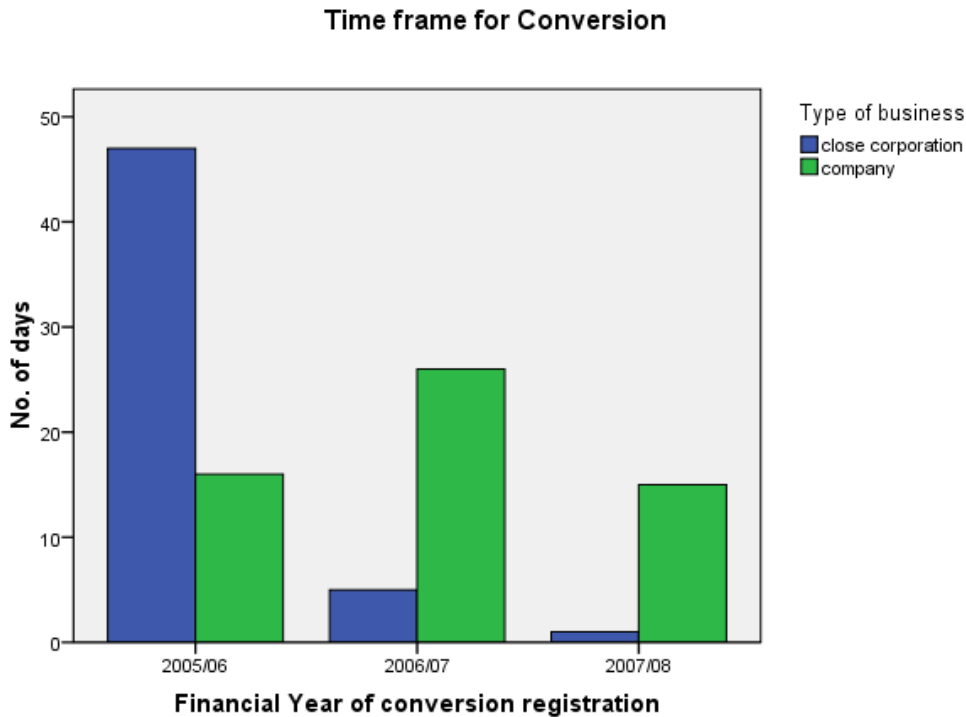


Figure 3; Conversion

For close corporations, there was a big improvement in terms of the days taken to convert a business from the financial year 2005/06, 2006/07 and 2007/08. There was an increase in the number of days taken to convert a company, especially from the financial years 2005/06 to 2006/07 and an improvement from 2006/07 to 2007/08.

The delays are mostly caused by the fact that incomplete application forms are sent by the applicants to head office. The incompleteness of application forms is caused by applicants.

4.2 Procedures that guide the sending of applications from regional offices to head office for processing

Interviews conducted with staff at head office as well as regional offices in Erongo, Omaheke and Hardap regions indicated that the Ministry does not have formal procedures in place that state when the applications that are submitted at the regional offices should be sent to head office for processing, approving and registration. Lack of such formal procedures contribute to delays in the process.

The regional offices that were visited (Erongo, Hardap) sent application forms to head office on different days of the week with a courier service. The regional offices forward application forms to head office based on the number of application forms they have received from applicants.

Not all regional offices send application forms to head office on behalf of the applicants (Omaheke being one of them).

4.3 Enquiries

The Ministry has rotational procedures in place whereby staffs that are not involved with the approval of names have to rotate on a weekly basis to attend to enquiries at the customer counter. While at the customer counter, they have to deal with all the enquiries (telephonically and for people standing in the queue). Two staff members are always at the customer counter to attend to public queries, yet there is no specific person who deals only with enquiries. The reason given by the Ministry for this rotation is to enhance the knowledge of staff in order for them to handle their work effectively. According to the interviews conducted with the public, the rotational system makes it hard for the public to make their enquiries properly because every week there is a new person attending to queries.

The customer counter is still finding it hard to handle queries that come through the phone and for people that come physically to the office. The division has now introduced a system whereby telephone enquiries are dealt with from 12h00 when the customer counter is closed (the counter closes at 12h00 for the sorting and distribution of applications received in the morning) but urgent enquiries can be attended to. This means that people who can not reach the head office around that time and would want to make enquiries will find it hard to do so.

The staff at the counter did not have information readily available with them at the counter. If a client calls or comes to the office for enquiries the person at the counter has to inform the client to hold or to wait while they are looking for the requested information and sometimes it can take long to retrieve the file and the client is still waiting on the line. The introduction of the computer system (Integrated Business Registration System) enables the person who is standing at the counter to give feedback quicker by checking up the requested information on the computer system. The head office has assigned specific people who deal with enquiries from the selected regions.

4.4 Public educational campaigns

According to the interviews conducted with public in Erongo, Omaheke, Hardap and Khomas region, there is little effort made by the Ministry regarding the dissemination of information when it comes to business registration, even though they try to do the campaigns. The applicants who have registered their businesses obtained information on business registration from friends who did register already or them going physically to the offices to ask for the information that they specifically want regarding the registration.

The only forums the Ministry uses to conduct information disseminations is at Trade Fairs and Youth Expo's on all activities of the Ministry which are held in most of the regions on an annual basis but not everybody attends these shows.

The Division of Business Registries has availed booklets on how to register trade marks, patents and companies at all Ministry of Trade and Industry regional offices for more information on business registrations. Staff members at the regional offices did not attend specific training on business registration, which sometimes gives them a tough time when helping clients.

4.5 Decentralization

According to the decentralization policy no. 1 of September 1997, no. 2 of March 1998 and no.3 of April 1998 business registration was one of the activities that were supposed to be decentralized immediately. The Ministry did not state which functions of business registration are to be decentralized. The interview conducted with the director of Internal Trade and his deputy indicated that it is only some activities of business registration that are supposed to be decentralized but the approval of names and registration of businesses will always be handled at head office to avoid duplication of names.

The Ministry of Trade and Industry has regional offices in all the regions that help clients that want to register their businesses. They assist clients with completing of their applications and forwarding of the applications to head office. When the auditors visited the Oshana, Omaheke, Hardap and Erongo regional offices it was evident that the whole registration process is still handled at head office.

According to the interviews conducted with the visited regional offices and applicants, they stated that business registrations should be decentralized for the following reasons:

- It will be easier for the regional office to have their own statistics on business registrations.
- It will shorten the registration process, because the approval and registration will now be done in the regions.
- It will reduce costs from the applicants' sides, especially those who have to travel to Windhoek to submit the application forms.
- It will also take some work load off the head office.

CHAPTER 5

5. CONCLUSIONS

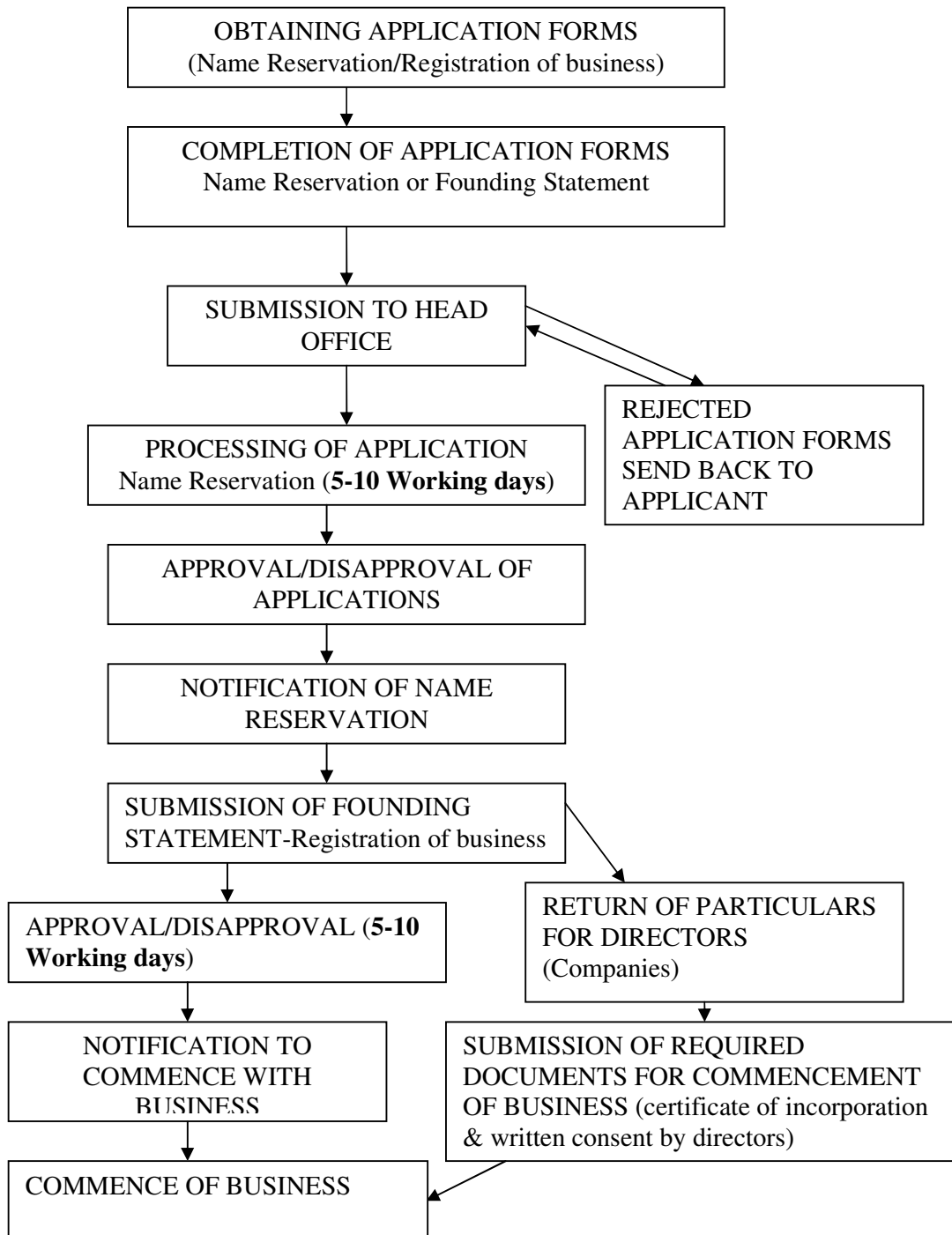
- The ICRS will enhance the efficiency and effectiveness of the Ministry's operations.
- Many clients will lose business opportunities if the Ministry is prolonging the business registration process as well as investment opportunities from investors who will be frustrated by delays in the process and they might opt to invest elsewhere.
- Because the Ministry does not have formal procedures in place that regulate the forwarding of application forms to the head office, applicants will experience certain delays in the forwarding of their applications that have been submitted at regional offices. A proper regulation of business registration process will not be accomplished if the directorate does not have formal procedures in place that regulates the handling of applications.
- The fact that the directorate does not have a specific person who only deals with queries of the whole directorate of what ever kind makes enquiries for the clients difficult because they do not really know whom they should contact. On the other hand, because telephonic enquiries are normally allowed only at a certain time (from 12h00) it means that clients who want to make telephone enquiries are not allowed to do so at any time they like compared with those who physically go to the office. This means that the Ministry is unable to satisfy its entire clients and the efficiency of the directorate and the Ministry at large will not be achieved.
- The point that the Ministry does not really put more emphasis on the public education on registration will leave the public with little or no information on how to register their businesses and the directorate's objective of informing and educating the public will not be achieved.
- Because business registration is not decentralized yet, head office will continue to be over loaded with work of which some can be done at regional level. E.g. data capturing of applications on the computer system. The Government's effort of bringing services closer to its people will not be achieved since all the activities are still centralized.

CHAPTER 6

6. RECOMENDATIONS

- The Ministry should speed up the full implementation of the ICRS system because it has improved the business registration process.
- A new standard for the approval of application forms needs to be set for the computerized system.
- The directorate should implement formal procedures that will regulate the regional offices on how they should deal with the forwarding of application forms to head office for processing.
- The customer counter should be open for telephonic enquiries throughout working hours and the directorate should have a separate person at the counter who deals with the enquiries of the directorate to make things easier for clients.
- The Ministry should conduct awareness campaigns on business registration at least twice a year in every region.
- The Ministry should decentralize the business registration so that the service can reach the people.

System Description



Documents required for the Incorporation of a Company and Close Corporation

Companies	Close Corporation
1. Reservation of name	1. Reservation of name
2. Memorandum of Association	2. Founding statements
3. Articles of Association	3. Letter by accounting officer as a consent to act as accounting officer
4. Certificate of incorporation	
5. Power of Attorney	
6. Particulars of directors and statement by the director regarding adequacy of share capital	
7. Consent to act as auditor	

Interviews Conducted

	Reasons
Director of internal trade x1	<ul style="list-style-type: none"> • He oversees the overall activities of the directorate of internal trade
Deputy Director of internal trade x1	<ul style="list-style-type: none"> • He is the registrar of Companies, Close Corporations & Industrial Property.
Chief Economist x2	<ul style="list-style-type: none"> • She approves the application forms.
Heads of Industrial Development x4 of selected regions	<ul style="list-style-type: none"> • They facilitate (assist people in their respective regions in registering their businesses)
Data clerk x3 Erongo, Omaheke and Hardap	<ul style="list-style-type: none"> • Assist in completion of application forms
Consultants x2 at Khomas and Hardap	<ul style="list-style-type: none"> • They register businesses on behalf of their client and forward application forms to head office.
Economist at regional offices x4 for Khomas, Erongo, Omaheke and Hardap	<ul style="list-style-type: none"> • They help people in the region to complete the form and forward them to the head office. They give general information on the registration process.