

# Grow the retail sector with timely cash flow and fair trade

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A policy position of the Retail Trade Association of Kenya



The Retail Trade Association of Kenya (RETRAK) is the voice of the retail industry. Its main objective is to provide retailers with a central representative body to put across their agenda and retail trade concerns to government agencies, parliament and other bodies.

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## Introduction

A Draft Retail Trade Code of Practice (CoP) and Draft Retail Trade Regulations have been developed through collaborative work of government and private sector. The two documents seek to address key issues facing Kenya's retail sector, particularly those of a late payment culture and unfair trade dealings. The documents have been drafted in line with the National Trade Policy 2017's recommendation on development of an enabling legal and regulatory framework for the retail trade sector.

Proposals following research commissioned by associations of retailers, suppliers and manufacturers were that the draft regulations should be anchored in appropriate legislation, and the draft code anchored in the regulations in turn. This would accord the two draft documents legal backing rendering their implementation legal and effective in addressing the problems identified in the sector. This process is yet to be done.

RETRAK now proposes that the process of anchoring the draft regulations in law be expedited to facilitate strengthening of the retail trade sector and the supply chain in general.

## Background

Kenya's retail trade, whose expansion is ranked second in sub-Saharan Africa<sup>1</sup> contributes about 8 per cent to GDP (a figure that includes the wholesale component). Supported by a vigorous supply chain, Kenya's retail sector has grown rapidly in recent years, now identified as the fastest growing on the continent. The flourishing sector has unfortunately also experienced a growth in challenges of which the most important are the late payment culture and unfair trade dealings.

To examine and understand better the extent of these challenges, a working group comprising the Retail Trade Association of Kenya (RETRAK), Kenya Association of Manufacturers (KAM) and the Association of Kenya Suppliers (AKS) commissioned research on prompt payment, published in March 2017. The research contributed to efforts made by the State Department of Trade (SDT) and associations of retail traders, manufacturers and suppliers towards addressing the late payment culture and unfair trade dealings. The process considered international best practices on prompt payment.

The research found that as at the end of 2016, the proportions of debts outstanding for 60 days and above were 40 per cent owed to suppliers and 80 per cent owed to manufacturers. Impacts of late payments are varied, the most damaging being closure of business.

In addition, the research found that there were problems regarding unfair trade, including unjust return of goods, transfer of commercial risk and unfavourable treatment of suppliers.

<sup>1</sup> <https://oxfordbusinessgroup.com/news/kenya-s-retail-sector-ranks-second-most-formalised-africa>  
Accessed on 21.03.2019

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## **The issue**

Having been completed with government and industry input, the draft regulations are yet to be gazetted, having not been anchored on any legislation. In the meantime, the retail sector continues to be challenged by late payment for supplies made and unfair trade dealings.

Consequently, affected actors in the supply chain have incurred high interest expenses because of additional borrowing, experienced shrinkage in working capital and some have even closed business.<sup>2</sup>

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## **Addressing the issue**

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### **International best practice**

Late payment has been an issue in other countries as well. A review of international best practice indicates that various jurisdictions, specifically the UK, have retail sector specific regulations to address the problem of late payment. Aspects addressed by legislation include payment period, invoices, statutory interest for late payment and payment schedules.

The EU, UK and USA have adopted both legislation and codes of practice to address issues of late payment and to promote fair trade between retailers and suppliers.<sup>3</sup>

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### **Response so far**

Retailers have taken up joint business plans and escrow accounts as measures to alleviate problems arising from the late payment culture. These have not, however, resolved the problems sufficiently. It is prudent now to embrace regulations as a last resort.<sup>4</sup>

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## **Policy options**

Following the research on prompt payment, recommendations were made to develop a code of practice and sector regulations. The State Department of Trade, RETRAK, KAM and AKS commissioned a review of the legislative frameworks covering the retail trade sector, with the objective of establishing the presence of an appropriate statute on which to anchor the draft Retail Trade Regulations. The research reviewed seven Bills and Acts. The Competition Act, 2010 and the Trade Development Bill were identified as possible statutes.<sup>5</sup>

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### **Competition Act, 2010.**

This Act established and mandated the Competition Authority to investigate all persons including government, state corporations and local authorities in so far as they engage in trade.

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<sup>2</sup> Prompt Payment Working Group (AKS, KAM, RETRAK) and State Department of Trade Ministry of Industry, Trade and Cooperatives (2017) Study on Kenya Retail Sector Prompt Payment

<sup>3</sup> Prompt Payment Working Group (AKS, KAM, RETRAK) and State Department of Trade Ministry of Industry, Trade and Cooperatives (2017) Study on Kenya Retail Sector Prompt Payment

<sup>4</sup> Department of Business Innovation and Skills (2013) A Strategy for Future Retail

<sup>5</sup> State Department of Trade, RETRAK, KAM, AKS (2018) Legal Research on Legislative Framework for Retail Trade Sector

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## **Trade Development Bill**

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This Bill provides for a National Trade Policy implementation framework for both levels of government. Upon the Bill's enactment, the framework would be in place, facilitating improvements in the retail sector.

The Bill also makes provisions for diverse trade matters including streamlining the supply chain efficiency and trade support through advice on standards.

## **RETRAK policy proposal**

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Following the findings of the legal review, consultations between government and the industry and the pressing nature of the issues that the retail trade sector faces, RETRAK hereby proposes that the State Department of Trade expedites discussions with the Competition Authority to facilitate anchoring the draft Retail Trade Regulations on the Competition Act, 2010.

Regulation of the pertinent issues will also be effectively managed by the already established Competition Authority, whose mandate includes investigating impediments to competition in the economy as a whole or in particular sectors.<sup>6</sup>

## **Justification**

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Retail trade has been identified as a key driver of Kenya's economic growth. It is the largest employer in the private sector. Gazettement and implementation of these draft regulations will contribute towards raising the share of products sold through the formal retail channel. It will also contribute to Vision 2030's goal of promoting a vibrant retail sector as an outlet of agricultural and manufactured products.

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<sup>6</sup> Competition Act (2010 Section 9