



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE CHIEF OF STAFF AND HEAD OF PUBLIC SERVICE
ANALYSIS OF THE FACT FINDING SELF-ASSESSMENT TOOL FOR
REGULATORY AUTHORITIES

1. Background

- 1.1** Regulatory authorities and agencies essentially set norms and standards and superintend the implementing agencies and members of the public to ensure adherence to the norms, standards and behaviour expected. The words 'Regulator(y) or Authority' may not appear in the names of the Institutions even though they carry out regulatory roles and functions in nature.

- 1.2** The role of the regulatory authority is to establish and strengthen standards and ensure consistent compliance with them. They have the powers to make decisions and to make sure that laws are obeyed.

2. What is Regulation?

- 2.1** It entails **interference** in the activities of players in a particular sector. It is to be governed, altered, restricted, controlled, and guided in some way by government institutions or ministry. It is an intentional restriction of a subject's choice of activity by an entity and the interference restricts your choice of how to do a particular activity.

What is a Regulatory Agency?

- 2.2** A **regulatory agency** is an independent governmental body established by law to essentially set norms and standards in a specific field of activity, or operations and superintend the implementing agencies and members of the public to ensure adherence to the norms, standards and behavior expected.

- 2.3** Historically, regulatory agencies became a popular means of promoting fair trade and consumer protection as problems of commerce and trade became more complex, particularly in the 20th century.



Relationship between Regulation and Governance

- 2.4** In regulation, government uses tools to intervene in the economy and lives of their citizens. These tools of regulation exist in a specific legal and institutional framework governing a particular sector in society such as health, finance, energy, education, water, politics, morality, media, public ethics etc.
- 2.5** Regulation helps policymakers reach informed decisions about **why** to regulate, **what** to regulate, **whom** to regulate, and **how** to regulate because it is assumed that regulatory authorities are managed by **experts and competent** individuals in the sector.

3. The Fact Finding Self-Assessment Tool.

- 3.1** On 27 July 2023, the Executive Office of the President (EOP) whose Administrative Head is the Chief of Staff and Head of Public Service (COS & HOPS), issued a Circular requiring all regulatory authorities and agencies to undertake a self-assessment exercise on the performance of their respective core regulatory mandates. The regulatory authorities and agencies were required to fill a self-assessment tool (the tool), whose purpose was to highlight the imperatives that affect the performance of regulatory authorities and agencies in the discharge of their core regulatory mandate. An analysis of the responses from this tool has provided an evidence base for the EOP to work together with regulatory authorities and agencies to ensure optimal performance of their core mandates.
- 3.2** The expected outcome from the above stated engagement is the robust delivery on core regulatory mandates by all regulatory authorities and agencies thus leading to enhanced levels in the quality and quantity of service delivery by implementing agencies.

Why the Survey

- i. To promote understanding in an area where there has been little or no study;
- ii. To provide an evidence base for the investment in time that EOP intends to put into working together with regulatory authorities and agencies to ensure optimal performance of their core mandates.
- iii. This is in line with the Kenya Kwanza Government's prioritization of its responsiveness to the needs of the public in a transparent and accountable manner in accordance with the Bottom-up Economic Transformation Agenda (BETA).



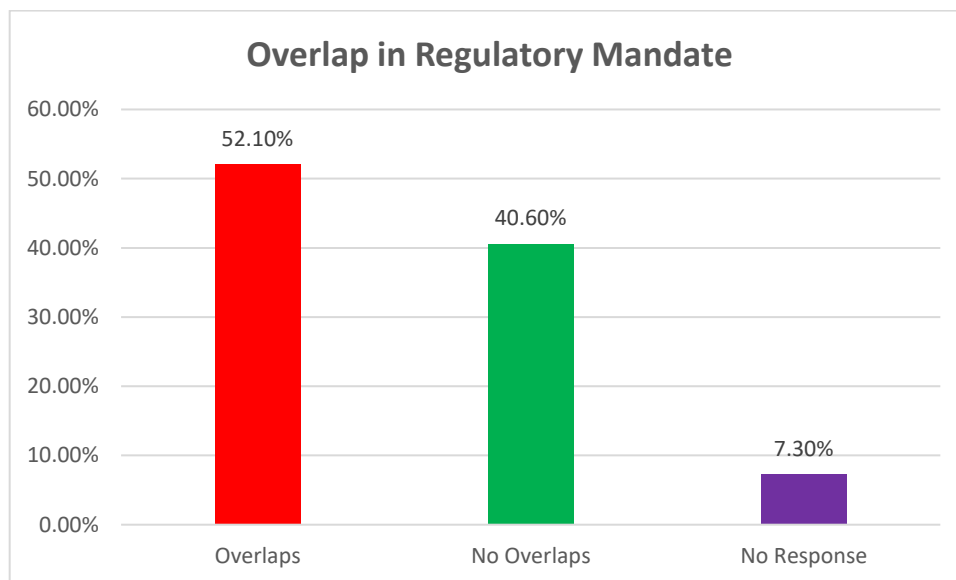
4. Analysis of the Returns from the Regulatory Authorities/Agencies

4.1 Of the 122 Regulatory Authorities annexed to the above referenced Circular, 110 agencies filled the tool as required, 14 agencies indicated they were not regulators; and returns from 12 agencies remain outstanding. The analysis below therefore takes into account the returns from the 110 agencies.

4.2 Agencies that encounter overlaps in the execution of their regulatory mandate with that of other Ministries, Departments and Agencies.

52.1% regulators and agencies indicated that they encounter overlaps; 40.6% do not encounter any overlaps; whilst 7.3% did not respond. See Chart 1 below:

Chart 1: Overlap in Regulatory Mandate

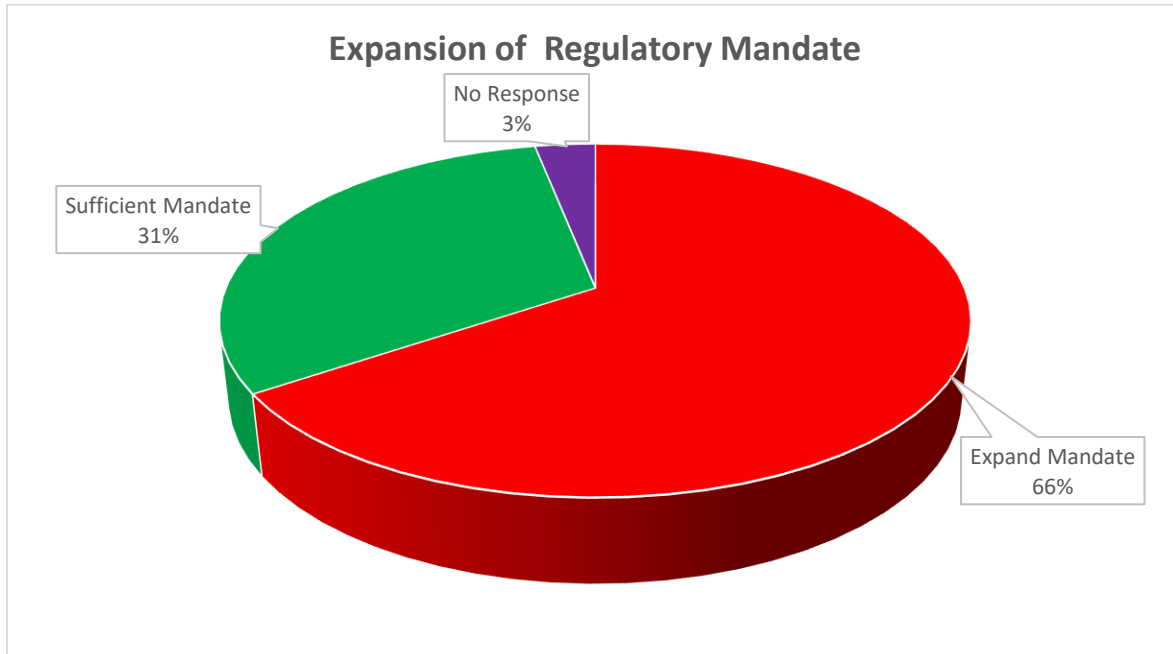


4.3 Agencies that indicated that their mandate should be expanded to cover other areas that are currently not ascribed to them but are very important.

66% of the regulators and agencies indicated that their mandate should be expanded to cover other areas that are currently not ascribed to them by are very important; 31% indicated that their mandate was sufficient as provided in the enabling legal instrument; whilst 3% did not respond. See Chart 2 below.



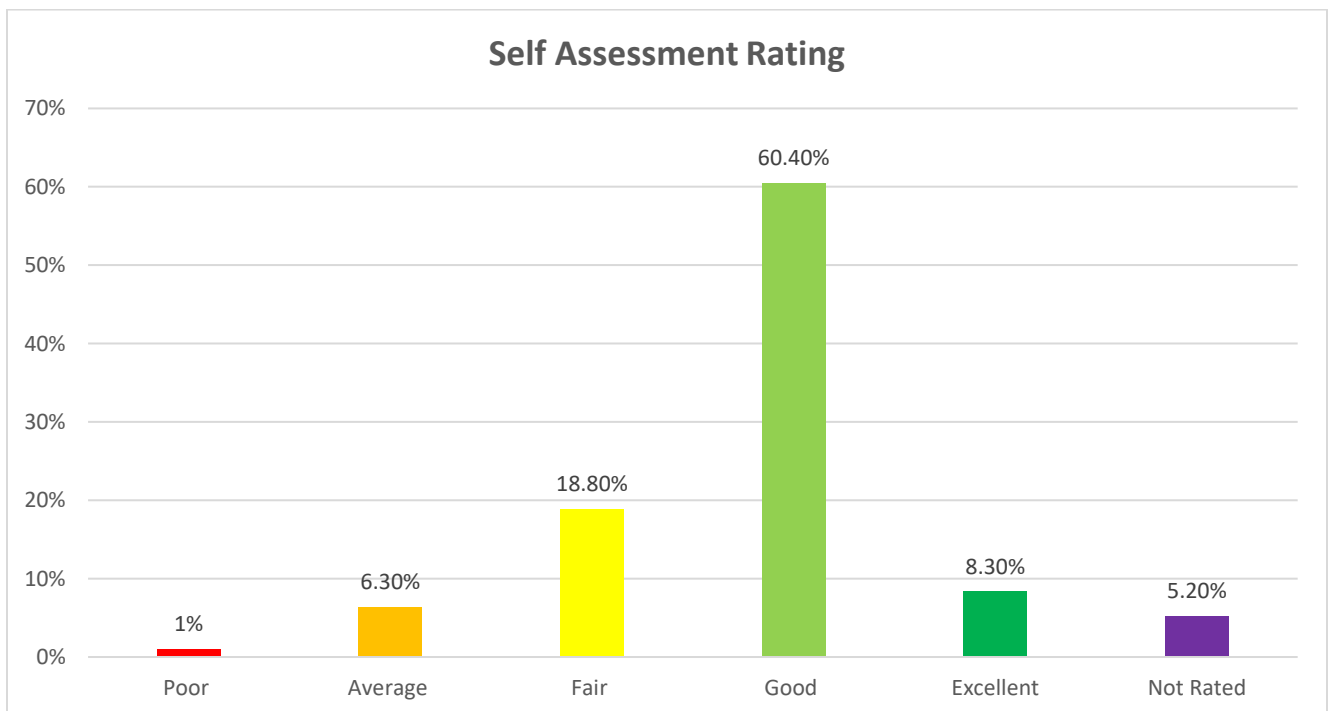
Chart 2: Expansion of Regulatory Mandate



4.4 Self-Assessment Ratings

The Regulatory Authorities and Agencies rated themselves as outlined in Chart 3 below:

Chart 3: Self-assessment Rating

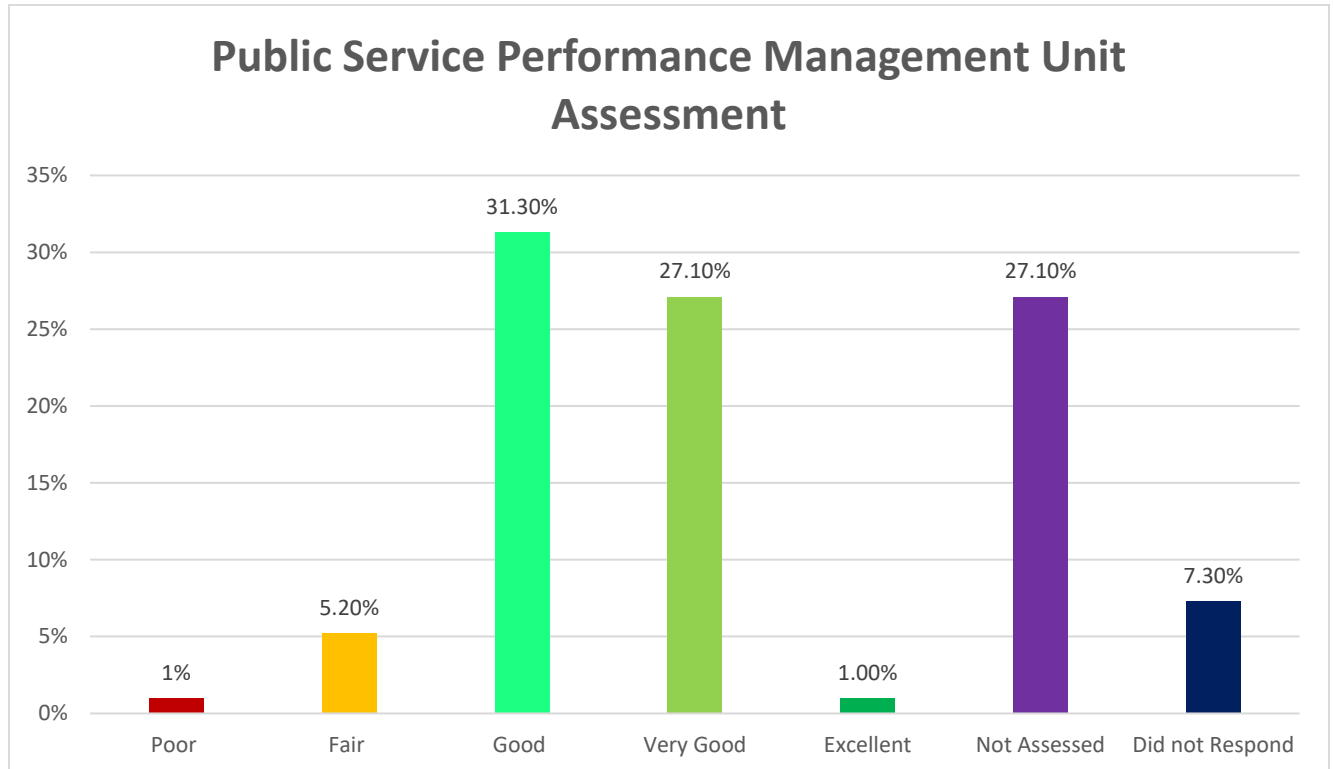




4.5 2020/2021 and 2021/2022 Scores as assessed by the Public Service Performance Management Unit

The Public Service Performance Management Unit Assessment of the Regulatory Authorities and Agencies is as outlined in Chart 4 below:

Chart 4: Public Service Performance Management Unit Assessment



4.6 Key challenges encountered during the execution of agencies core regulatory mandate

The survey revealed the following recurrent key challenges affecting the regulatory authorities and agencies.

- i. Inadequate exchequer/Limited Resources. – 67%
- ii. Inadequate human capital/competent workforce. – 27%
- iii. Inadequate legal and regulatory instruments/ enabling laws – 27%
- iv. Conflict/Overlapping Regulatory Mandate/Conflict of existing laws – 24%



- v. Lack of information by the public/ Low compliance occasioned by low levels of awareness of the law – 13%
- vi. Litigation – 13%
- vii. Delayed exchequer disbursement/ Delays in approval of project concept notes and budget rationalization – 13%
- viii. Fast changing technology/Rapid development of complex technology/ Low Technological Uptake. – 10%
- ix. Delays in appointment of Board Members – 7%
- x. Lack of adequate space and working tools/Sparse regional presence – 6%
- xi. Political Interference – 3%
- xii. Lack of fines and sanctions to support enforcement/enhance the levies – 2%
- xiii. Slow uptake of Services/Negative attitude by the public – 2%

4.7 Proposed solutions on enhancing performance

The following are the recurrent proposed solutions to the challenges affecting the performance of regulatory authorities.

- i. Resource mobilization to compliment GoK funding/establishing more collaborative programmes with development/strategic partners.
- ii. Change/Amendment of enabling laws
- iii. Continuous/Enhanced engagement with relevant Stakeholders
- iv. Recruitment of staff
- v. Leverage more on Technology to enhance Operational Efficiency/Embrace Digitization
- vi. Capacity Building for Staff
- vii. Continuous improvement strategies within the organizations
- viii. Conduct more frequent Situational Analysis
- ix. Use of Alternative Dispute Resolution (ADR) mechanisms to resolve disputes

4.8 Presence of a tool/ mechanism/ framework/ system for superintending/ supervising/ regulating the entities under the agencies area of jurisdiction.

Table 1 below highlights the percentage of the presence of supervision tools in regulatory authorities and agencies



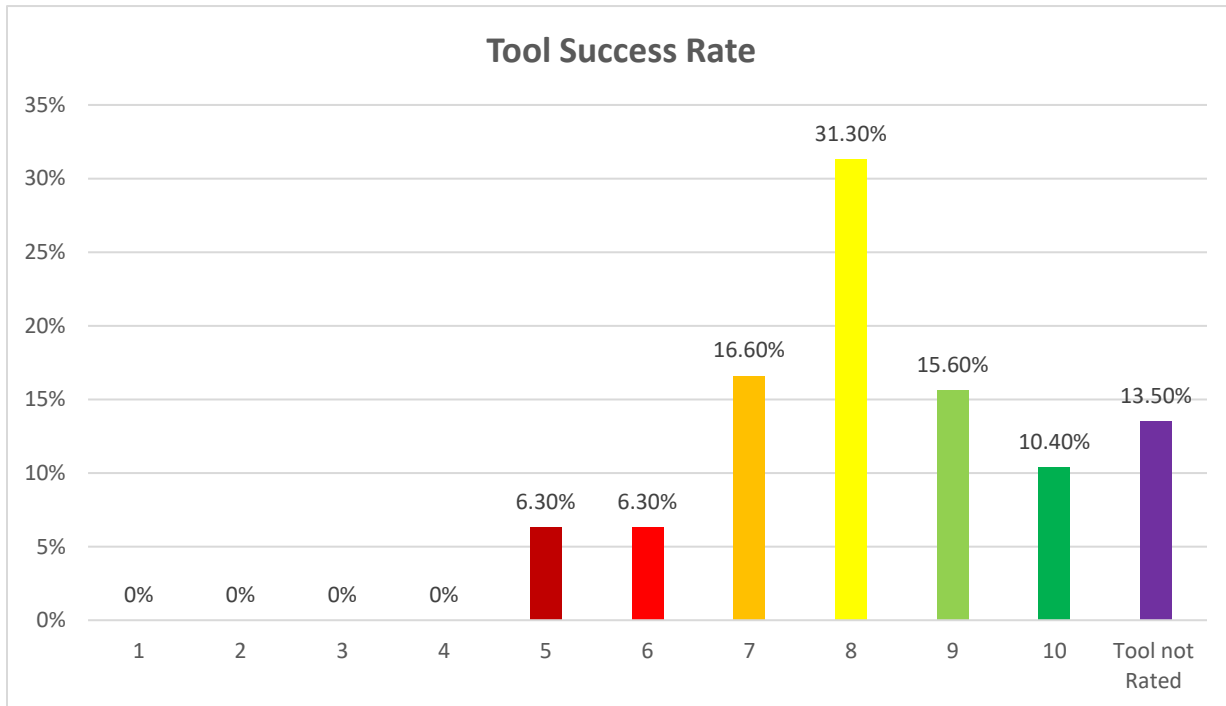
Table 1: Presence of Supervision Tool

Presence of Supervision Tool	Percentage
Yes	87.50%
No/Not indicated	12.50%

4.9 On a scale of 1 – 10 (1 being poor and 10 being excellent) to what extent has the tool/mechanism/ framework been successful in achieving the agencies regulatory mandate

Chart 5 below highlights the percentage of success rate of the regulatory authorities and agencies supervision tools referred in Table 1 above.

Chart 5: Success Rate of Regulation Tool



4.10 On a scale of 1 – 10 (1 being poor and 10 being excellent) to what extent do Agencies use ICT to deliver on their core regulatory mandate?

Table 2 below outlines the extent agencies user ICT to deliver on their core regulatory mandate:



Table 2: Use of ICT in delivery of Core Regulatory Mandate

Scale	Response (%)
1	0%
2	1%
3	4.20%
4	6.30%
5	11.50%
6	12.50%
7	14.50%
8	30.20%
9	9.40%
10	10.40%

4.11 Reasons for a score below 8 in Table 2 above:

- a) Inadequate budgetary provisions for automation/ICT infrastructure
- b) Lack of an automated system/inadequate infrastructure
- c) Lack of digitization of functions/records
- d) Lack of internal capacity/ICT function
- e) Lack of sensitization/New ICT System
- f) Regulation involves in-person processes
- g) Board yet to commence execution of Core Regulatory Mandate
- h) Change in Government Policies
- i) Agencies yet to fully operationalize

4.12 Last Customer satisfaction survey conducted.

Graph 1 below outlines the time when a last customer satisfaction surveys were conducted by the regulatory authorities and agencies.

Graph 1: Customer Satisfaction Survey

- Currently Underway 4.2%
- Between 2021 and 2023 50.1 %



- Between 2016 and 2020 **12.4%**
- Between 2012 and 2015 **4.1%**
- Never Conducted **29.2%**

4.13 Institutions that require policy, legal, regulatory and administrative changes/ interventions to enhance performance against those that do not require any interventions.

Table 3 below presents a comparison of regulatory institutions that require policy, legal, regulatory and administrative interventions to enhance performance, against those that do not require any such intervention.

Table 3: Policy, legal, regulatory and administrative interventions

Institution	Percentage
Require policy, legal, regulatory, and administrative changes/interventions to enhance performance	87.50%
Do NOT require policy, legal, regulatory, and administrative changes/interventions to enhance performance	12.50%

4.14 Institutions that generate revenue from the execution of their core regulatory mandate against those that do not generate income.

Table 4 below presents a comparison of regulatory institutions that generate revenue from the execution of their core regulatory mandate, against those that do not generate any revenue.

Table 4: Revenue Generation

Institutions that:	Percentage
Generate revenue from the execution of their core regulatory mandate	77%
Do not generate revenue from the execution of their core regulatory mandate	23%



5. Summary of Findings from the Survey

The survey revealed pertinent issues hampering the optimal performance of regulatory agencies and which require urgent attention. These include:

Non-Operationalisation of Regulatory Agencies

The survey revealed that some institutions have not been operationalised and have therefore not commenced their regulatory role.

Lack of Understanding of the Regulatory Role by some Agencies

The survey revealed that certain institutions do not fully appreciate their regulatory role in the execution of their statutory mandate.

Overlapping Roles among Regulators

The survey reviewed that more than half of the regulators encounter overlapping roles.

Policy, Legal, Regulatory and Administrative Interventions to enhance Performance

The survey revealed that 87% of the regulatory authorities and agencies require policy, legal and regulatory interventions in order to enhance performance.

Revenue Generation

The survey revealed that 23% of the regulatory authorities and agencies do not generate revenue in the execution of their mandate.

6. Conclusion and Way forward

The above analysis draws the following conclusions and ways forward.

Trend in Performance:

An entity's performance in one parameter in the assessment tool was commensurate with the overall performance in the other areas.

Deeper Analysis

The self-assessment tool did not provide an in-depth analysis of all the issues outlined therein. Further analysis is required to address peculiar issued faced by specific agencies.



❑ Optimum Performance and Prevention of Corruption

The work of all regulatory authorities and agencies has a direct relation to the prevention and management of the incidence of corruption in their areas of influence.

❑ Leveraging on ICT:

Regulatory authorities and agencies should leverage more on technology to enhance operational efficiency in line with the Presidential Directive on Digitization .

❑ Monitoring and Tracking of Operations

There is an urgent need for regulatory authorities and agencies to continuously monitor and track their performance as enablers and result multipliers of the Zero Fault Audit Campaign.

❑ Continuous Assessment and Improvement of Regulation Tools

The work of all regulatory authorities and agencies can only be as successful as is their regulation/supervisory tool. Continuous assessment/testing of the rigor of these tools is therefore critical.

❑ Need for Enhanced Performance

Optimal Performance is necessary to achieve the wider Vision of the Office of COS&HOPS to engender a Public Service that is highly responsive to the need by Kenyans for Quality Service Delivery.

❑ Need for Enhanced Visibility

The Regulatory Agencies must step up and take their rightful place as Agents of the change that is envisaged under the Kenya Kwanza's Bottom-Up Economic Transformation Agenda (BETA).

❑ Second Phase of Survey – Implementing Agencies

In the second phase of this Survey, the implementing agencies over which agencies superintend will complete a similar survey outlining their perspectives with respect to the interaction with their respective regulators.