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Administrative Simplification in the Granting of Operating Licenses for SMES in Peruvian Municipalities

Alberto Gomez Fuerte¹, Rosa Mejía Chumán², Cecilia Carbajal Llauce³, Jorge Cabrejos Mejía⁴, Patricia Sebastiani Chavez⁵

Abstract

This article addresses the issue of the lack of administrative simplification in the process of obtaining operating licenses for micro and small enterprises (MSEs) in the district of El Porvenir in Peru. Despite the existence of regulations aimed at improving the issuance of these licenses, citizens and businesses often encounter undue charges, unnecessary requirements, and lengthy procedures in municipalities, leading to cases of informality in the MSE sector. The article emphasizes the importance of administrative simplification and its impact on local economic development. Various laws and legal provisions supporting administrative simplification are mentioned, such as the Administrative Simplification Law, the Framework Law for the Growth of Private Investment, the Law of General Administrative Procedure, and the Organic Law of Municipalities. To address this issue, the implementation of methodologies to simplify administrative procedures is proposed. The selection of the procedure to be improved, description of the current status of the procedure, analysis of the procedure, proposal of a new simplified procedure, and design, approval, and implementation of the new procedure are highlighted. The article emphasizes the need to promote administrative simplification in municipalities and foster a favorable environment for economic development. The importance of reducing bureaucratic barriers and obstacles to facilitate business establishment and formalization is mentioned, which would contribute to job creation and wealth generation at the local level. In conclusion, this article highlights the importance of administrative simplification in the process of obtaining operating licenses for MSEs in the El Porvenir district in Peru. It proposes the implementation of methodologies to simplify administrative procedures and emphasizes the need to promote a favorable environment for local economic development.

Keywords: *Administrative simplification, Operating licenses, Micro and small enterprises (MSEs) and Business formalization*

Introduction

In Peru, administrative simplification is not a benefit that has already been achieved, but rather a challenge still pending, a process that public administration entities have not yet perfected or

¹ ORCID: 0000-0003-0908-5138.

² ORCID: 0000-0003-0718-7827.

³ ORCID: 0000-0002-1162-8755.

⁴ ORCID: 0000-0002-7777-8342.

⁵ ORCID: 0000-0003-0839-6153.

Corresponding author: Alberto Gomez Fuerte (agomezf@ucvvirtual.edu.pe, rmejia@usmp.pe, Ccarbajal1@usmp.pe)

adequately implemented in their internal regulations.

Thus, administrative simplification faces numerous obstacles that must be faced and solved in the search to provide an increasingly efficient service to citizens; among these difficulties that make administrative procedures more tedious and, therefore, less “simple” are undue charges, unnecessary requirements, non-essential documentation, and the rationality of the procedure, among others.

The latter is intensified when considering that most of the procedures that affect the citizen are relevant to the vision he/she has of the State; that is, when he/she is harmed, credibility is affected and trust is lost.

However, there is an administrative procedure regarding the granting of operating licenses to MSEs, which according to the Organic Law of Municipalities must be authorized by the District Municipalities; the problem is based on the fact that many times the rights of citizens are affected by the establishment of undue charges, unnecessary requirements and documents, and extensive procedures in these Municipalities, which is why there are many cases of informality in the area of micro and small enterprises.

This problem is intensified when considering that more than 60% of the EAP at the national level are workers in the MSEs and the informal economy. At first glance, it could be considered absurd and illogical to place unnecessary barriers and obstacles to one of the most important economic groups in a developing country such as ours, since by formalizing a greater number of MSEs, the generation of wealth and employment could be consolidated.

A case of great relevance at the local level is constituted by the thousands of MSEs existing in the El Porvenir district, the great majority of which (approximately 60%) remain in the informal sector, despite the existence of regulations that relatively improve the granting of this type of license.

Many of these companies choose to operate informally simply because it is the easiest way to do so; they do not need to pay or complete any paperwork because they consider it unnecessary and tedious, while many others are in this group due to mere ignorance, apathy, or lack of culture.

SCOPE OF THE LEGAL BACKGROUND

ADMINISTRATIVE SIMPLIFICATION LAW - LAW NO. 25035 (REPEALED)

It states that the functions performed by the Public Administration are subject to the following general principles (Art. 2):

- a) The presumption of truthfulness governs its relations with its officials and servants and with the public, which consists of assuming that persons are telling the truth. This presumption admits proof to the contrary. The presentation of certain documents is not required, but declarations made by the interested party or a representative are (Art. 3). It replaces prior audit with post-audit (Art 4).

- b) The elimination of requirements and formalities when the economic costs they impose on society exceed the benefits they bring. It eliminates the presentation of documents containing information that the requesting entity itself possesses or should possess and the payment of fees that exceed the cost of production in the issuance of passports and other identity documents (Art. 8).
- c) Deconcentration of decision-making processes through a clear distinction between management and execution levels. The management bodies are freed from all types of execution routines and formal tasks of administrative acts so that they can concentrate on planning, supervision, coordination, and control activities (Art 9).
- d) The participation of citizens in the control of the provision of services by the Public Administration and in the provision of the services themselves. Individually or in association, they may submit their complaints or suggestions (Art 10).

FRAMEWORK LAW FOR THE GROWTH OF PRIVATE INVESTMENT - D.LEY N°757

Its purpose is to guarantee free initiative and private investments, made or to be made, in all sectors of economic activity and in any of the business or contractual forms permitted by the Constitution and the laws (Art. 1). The subject of interest can be focused on Title IV of the aforementioned provision, which refers to the legal stability of investments in administrative matters.

- a) **Art. 18.-** Assumes that to reduce bureaucracy, administrative procedures or requirements may only be established by Supreme Decree, Regional Executive Decree, or Municipal Ordinance, depending on whether the Central Government, Regional Governments, or Local Governments are involved.
- b) **Art. 20.-** All public agencies are obliged to “adopt legal norms aimed at unifying, reducing and drastically simplifying all administrative procedures and formalities”, according to what is established.

LAW OF GENERAL ADMINISTRATIVE PROCEDURE - LAW N°27444

This rule applies to Local Governments (Art. I, inc.5, of the Preliminary Title).

- a) **Art. IV.-** Privileges the principles of administrative procedure: legality, informality, presumption of truthfulness, speed, simplicity, and privilege of subsequent controls.
- b) **Art. 32.-** For the subsequent audit, the entity is obliged to verify ex officio (by sampling), the authenticity of the declarations, documents, information, and translations provided by the administered party. In case of fraud or falsity in the declaration, information, or documentation presented, the entity will consider the respective requirement not satisfied and will proceed to communicate to the superior authority, so that it may declare the nullity of the administrative act, impose a fine of between 2 and 5 UIT's in force at the date of payment, and, if applicable,

will communicate to the Public Ministry so that it may file the corresponding criminal action (Crime against the Public Faith).

ORGANIC LAW OF MUNICIPALITIES - LAW N°27972

- a) **Art. II.-** Local governments enjoy political, economic, and administrative autonomy in matters within their jurisdiction.
- b) **Art. VI.-** Local governments promote local economic development, with emphasis on micro and small enterprises, in harmony with national and regional development policies and plans.
- c) **Art. VIII.-** Relations between local, regional, and national governments should be cooperative and coordinated.
- d) **Art. Numeral 3.6.4.-** The district municipalities, concerning the organization of physical space and land use, exercise the following functions: regulate and grant authorizations, rights, and licenses, and supervise the opening of commercial, industrial, and professional establishments in accordance with the zoning.
- e) **Art. 86.-** In the area of Promotion of Local Economic Development, the functions of the provincial municipalities were aimed at:
 - Simplify licensing procedures in its jurisdiction, without disregarding technical safety standards.
 - Maintain a register of companies that have an operating license (definitive or provisional) indicating whether or not they comply with technical safety standards.

Shared functions of provincial municipalities:

- Conduct joint campaigns to facilitate the formalization of MSEs in its jurisdiction with homogeneous criteria and administrative simplification.
- Provincial and district municipalities, within the scope of their jurisdiction, are empowered to revoke operating licenses (Art. 93, sub. 7).

LAW OF THE MINISTRY OF LABOR AND EMPLOYMENT PROMOTION - LAW N°27711

- a) **Art. 4.-** The purpose of the MTPE is to promote employment within the framework of equal opportunities, especially encouraging MSEs as the basis for economic development with equality.
- b) **Art. 5.-** It is the governing body of the general policy and rules for the promotion of MSEs, including the promotion of formalization.
- c) **Art. 23.-** Studies, proposes, and supervises the national policy for the development of MSEs, establishing the norms that favor their development and promotion. It issues technical

opinions on regulatory proposals regarding MSEs.

LAW FOR THE PROMOTION AND FORMALIZATION OF THE SME - LAW N°28015

- a) **Art. 5.h.-** The State promotes the participation of local stakeholders in the implementation of policies and instruments at the regional and local levels.
- b) **Art. 36.-** The State promotes the formalization of MSEs through various registration, supervision, inspection, and subsequent verification procedures.
- c) **Art. 38.-** A provisional operating license is granted, subject to zoning and compatibility of use (positive administrative silence), within a period of no more than 7 days.
- d) **Art. 39.-** The validity of the provisional license is for 12 months, if during this period no irregularity is detected or if it is corrected, a definitive license is issued.

FRAMEWORK LAW FOR OPERATING LICENSE - LAW N°28976

The purpose of this Law is to establish the legal framework of the provisions applicable to the procedure for the granting of the operating license issued by the municipalities.

- a) **Art. 5.-** The district municipalities, as well as the provincial municipalities, when required by law, are in charge of evaluating the applications and granting the operating licenses, as well as supervising the same and applying the corresponding sanctions, in accordance with the competencies outlined in Law No. 27972, Organic Law of Municipalities.
- b) **Art. 7.-** Establishes the maximum requirements for the granting of an operating license.
- c) **Art. 8.-** The operating license will be granted within the framework of a single administrative procedure, which will be of prior evaluation with positive administrative silence. The maximum term for the granting of the license is fifteen (15) working days.
- d) **Art. 15.-** The operating license fee shall reflect the actual cost of the procedure related to its granting, which includes the following items to be paid by the municipality: Zoning Evaluation, Compatibility of Use, and Basic Civil Defense Safety Technical Inspection. For purposes of the above, the municipality must prove the existence of the respective cost structure and observe the provisions of the Municipal Taxation Law, Legislative Decree No. 776, and the General Administrative Procedure Law, Law N° 27444.

LAW TO PROMOTE COMPETITIVENESS, FORMALIZATION AND DEVELOPMENT OF MICRO AND SMALL ENTERPRISES AND ACCESS TO DECENT EMPLOYMENT - LEGISLATIVE D. N°1086

- a) **Art. 30.- Incorporation of companies online**

State entities and, in particular, the Presidency of the Council of Ministers - PCM, the Ministry of

Labor and Employment Promotion - MTPE, the National Superintendence of Tax Administration - SUNAT, the National Superintendence of Public Registries - SUNARP, and the National Registry of Identification and Civil Status - RENIEC, will implement an online company incorporation system that will allow the process to be completed in no more than 72 hours. The implementation will be progressive, as technical conditions in each locality allow.

b) *FOURTH - Reduction of fees*

MSEs are exempted from seventy percent (70%) of the payment fees outlined in the Single Text of Administrative Procedures of the MTPE, for the formalities and procedures they carry out before the Administrative Labor Authority.

MUNICIPAL TAXATION LAW - LEGISLATIVE DECREE N° 776

- a) **Art. 60.-** The creation and modification of fees and contributions are approved by Ordinance, within the limits outlined in this Title, as well as by the provisions of the Organic Law of Municipalities.
- b) **Art. 67.-** Among the fees that the Municipalities may impose are the fees for establishment opening licenses: these are the one-time fees that every taxpayer must pay to operate an industrial, commercial, or service establishment.
- c) **Art. 72.-** Municipalities may not charge the applicant for an operating license for appraisals or similar.
- d) **Art. 73.-** The fee for the license to open an establishment is paid only once, and may not exceed 1 (one) UIT, in force at the time of payment. Municipalities must set the amount of the fee based on the administrative cost of the service in accordance with Article 70 of this Legislative Decree.

In the case of taxpayers who are subject to the RUS regime, the fee for the license to open an establishment may not exceed 10% (ten percent) of the UIT.

ADMINISTRATIVE SIMPLIFICATION AS A USEFUL LEGAL INSTITUTION

Administrative simplification is understood as the principles and actions derived from these, which have as their final objective the elimination of unnecessary obstacles or costs for society, generated by the inadequate functioning of the public administration⁶.

Administrative Simplification is a process of permanent change in the public service that contributes to improving the quality of service provided by government entities.⁷

Administrative simplification is an initiative and a policy decision that requires an ad-hoc

⁶ QUISPE. *Op. Cit.* p. 19.

⁷ PAUTAS TÉCNICAS PARA LA SIMPLIFICACIÓN ADMINISTRATIVA. Ministerio de Educación. Viceministerio de Gestión Institucional. p.4

institutional follow-up in its design, to reduce the barriers and costs that prevent greater social efficiency in the interaction of citizens and economic agents.⁸

This simplification as an administrative act is justified by legality, the same that guarantees its validity; therefore, it cannot be sanctioned with nullity because it means that its promulgation as an administrative act is perfect. In addition, it must be possible, lawful, and feasible and its purpose must be framed by the laws, as it is in fact.

It is based on a democratic conception of life in society, according to which the state is only the means for the welfare of citizens.

Consequently, the function of the bureaucracy is justified only to the extent that it is indispensable to achieve that welfare.

Simplification is only one of the instruments sought by the reform of the state, aimed at promoting its relations with the citizenry.

Administrative simplification aims to reduce bureaucracy in the administration.

- Enables the basic objectives and purpose of the institution to be fulfilled.
- Improves the Institution's image.
- Reduces the amount of effort required to accomplish an operation.
- Saves time and material and economic resources.

METHODOLOGIES TO SIMPLIFY PROCEDURES ⁹

In order to provide a better service at the lowest cost and in the most convenient time frame, the costly and unnecessary formalities and formalities of the process or procedure, regardless of its nature, should be simplified or streamlined.

To this end, the following phases should be developed:

- 1) Select the procedure to be improved.
- 2) Describe the current status of the procedure.
- 3) Analyze the procedure.
- 4) Propose the new procedure, "simplified procedure".
- 5) Design of the new procedure, approval, and execution.

A) MAIN ADMINISTRATIVE SIMPLIFICATION GUIDELINES ¹⁰

⁸ Report prepared by Fernando Paredes Núñez, economist, CIP researcher. (Centro de Investigación Parlamentaria) p.2

⁹ *Ibid.* pp. 4 and 5

¹⁰ Res. 274-2007-CAM/INDECOPI, El Peruano: 06.02.08

SUMMARY	REFERENCIA
Principles of Administrative Simplification	<ul style="list-style-type: none"> - Informalism: Formal requirements must not hinder procedures. - Truthfulness: Declarations and documents must be presumed to be true. - Clarity: Formalities and cumbersome procedures should be avoided. - Simplicity: Procedures should be simple with rational requirements. - Control: Rather than prior control, preference should be given to subsequent control.
Positive Administrative Silence	If there is no pronouncement from the entity within 30 days, the citizen's request is considered approved.
Documents that may not be required by the entities	<ul style="list-style-type: none"> - Those owned or to be owned by the entity. - Those issued by the entity itself. - More than 2 copies of the same document, except for the parties. - Proof of having paid the processing fees before the entity.
Documents that entities are obliged to receive	<ul style="list-style-type: none"> - Simple or authenticated copy in replacement of the originals. - Simple translations, with an indication of the translator. - Simple affidavits on police records, certificates of good conduct, of domicile, of survival, orphanhood, widowhood, etc.
Basic rules about the entity's TUPA	<ul style="list-style-type: none"> - The TUPA must contain all procedures, requirements and costs. - The TUPA must be published on the entity's website and on the Citizen Services Portal (www.serviciosciudadano.gob.pe). - Entities that do not have a web page publish their TUPA in El Peruano or in their regional newspaper. - The full TUPA is published every 2 years.
What happens if the entity does not have a TUPA or has not published it officially?	<ul style="list-style-type: none"> - Automatic approval procedure: citizens are released from initiating procedures, not subject to sanction. - Pre-assessment procedure: Citizens must initiate the procedure without payment.

Source: Prepared by Centro de Estudios Jurídicos y Legales - CCL

PROBLEMATIC REALITY

The simplification of procedures and the promotion of a business environment favorable to economic development should be priorities for municipal management, regional governments, and related entities of the National Government since these reforms constitute a vital step towards the consolidation of economic growth and a guarantee that this growth will translate into benefits for citizens and companies at the local level.

The importance of the simplification of operating license procedures is reflected in the initiatives that have been presented in recent years, to the extent that cooperating agencies and international organizations have been interested in developing different tools to provide technical support in the

simplification of procedures.

Thus, such an economically active District as El Porvenir is, cannot ignore the proper implementation of standards that tend to simplify the procedures for operating licenses, in order to facilitate economic movement and the growth of wealth and employment at the local level.

In this regard, it should be noted that according to the World Bank study “Doing Business 2006,”¹¹ the countries that make it easiest to open new businesses and companies are those that have currently reached the highest levels of development. Conversely, the countries that place the most barriers and obstacles in the way of their citizens and companies are those that generate the least investment and local employment. According to the aforementioned source, Peru is in the latter group of countries where, for example, the time to start a business is estimated at 102 days due to bureaucratic procedures and obstacles, while the average in Latin America is 63 days, with countries such as Argentina, Chile, Colombia, Guatemala, Nicaragua, and Mexico standing out, all of which are below the aforementioned average. It also states that 65% of the time required for the formalization process of registering a company is concentrated at the municipal level.

The operating license authorizes establishments to carry out economic activities and is an important instrument for local development; however, in practice, the procedures established for the granting of this municipal authorization have become one of the main barriers to investment and the formalization of companies.

To the above situation, it should be added that, in most cases, each municipality sets requirements, sometimes excessive, and establishes fees that are generally not about the real cost of the service, which not only lacks any rationality but also violates the provisions of Law 27444 - Law of General Administrative Procedure, all to the detriment of the rights of citizens and companies. And as a consequence, in most of the municipalities nationwide, the process to obtain an operating license is costly, complex, and unpredictable, thus violating the principles established in Law 27444, causing an express violation of the legal system.

If we consider that micro-enterprises at the national level account for 94.41% of the market share¹², and that 60% of the EAP is made up of workers in MSEs, it can be affirmed that in our country there is a high rate of people who, developing economic activity in an MSE, are interested in

¹¹ Source. Banco Mundial Estudio Doing Bussines 2006 “Haciendo Negocios 2005”.

¹² According to the publication entitled Situación de la micro y pequeña empresa en el Perú, a document prepared by PROMPYME (July 2005), the following data on the informality of micro and small businesses were available as of December 2004:

Type of company	market share	Percentage of formality	Percentage of informality
Micro Enterprise	94.41%	25.1%	74.9%
small business	3.94%	62.8%	37.2%
Large and medium-sized companies	1.65%	No data available	No data available

becoming formalized and gaining access to the benefits and advantages that formalization grants. However, despite the capacity and importance to sustain true national development, these natural and/or legal persons encounter a series of impediments to taking advantage of their diverse potentialities.

It is therefore considered necessary to stop the advance of informality in El Porvenir District and pave the way for a new economic context in which its agents can count on the benefits of formality, as well as achieve due legal and economic security for the sake of development and increased employment at the local level.



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