

The Development of Regulatory Management Systems in East Asia

Country Studies

Derek Gill and Ponciano Intal, Jr.



© Economic Research Institute for ASEAN and East Asia, 2016

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form by any means electronic or mechanical without prior written notice to and permission from ERIA.

The findings, interpretations, conclusions, and views expressed in their respective chapters are entirely those of the author/s and do not reflect the views and policies of the Economic Research Institute for ASEAN and East Asia, its Governing Board, Academic Advisory Council, or the institutions and governments they represent. Any error in content or citation in the respective chapters is the sole responsibility of the author/s.

Material in this publication may be freely quoted or reprinted with proper acknowledgement.

Cover Art by Artmosphere Design.

National Library of Indonesia Cataloguing in Publication Data

ERIA Research Project FY2015 No. 04

ISBN: 9-786-028-660-938

Contents

| | | |
|-------------------|---|-----|
| | List of Abbreviations and Acronyms | iv |
| | Introduction | vii |
| PART ONE | | |
| Chapter I | Defining Regulatory Management Systems <i>Derek Gill</i> | 3 |
| PART TWO | | |
| Chapter II | Regulatory Coherence: The Case of Australia <i>Peter Carrol, Gregory Bounds, and Rex Deighton-Smith</i> | 23 |
| Chapter III | Regulatory Coherence: The Case of Japan <i>Naohiro Yashiro</i> | 77 |
| Chapter IV | Regulatory Coherence: The Case of the Republic of Korea <i>Song June-Kim and Dae Yong Choi</i> | 115 |
| Chapter V | Regulatory Coherence: The Case of New Zealand <i>Derek Gill</i> | 175 |
| PART THREE | | |
| Chapter VI | Regulatory Coherence: The Case of the Philippines <i>Gilberto M. Llanto</i> | 231 |
| Chapter VII | Regulatory Coherence: The Case of Thailand <i>Sumet Ongkittikul and Nichamon Thongphat</i> | 295 |
| Chapter VIII | Regulatory Coherence: The Case of Viet Nam <i>Vo Tri Thanh and Cuong Van Nguyen</i> | 359 |
| Chapter IX | Regulatory Coherence: The Contrasting Cases of Malaysia and Singapore <i>Dato' Abdul Latif Bin Haji Abu Seman, Hank Lim, and Shahriza Bahari</i> | 393 |

List of Abbreviations and Acronyms

| | |
|------|--|
| EODB | ease of doing business |
| OECD | Organisation for Economic Co-operation and Development |
| RIA | regulatory impact analysis/assessment |
| RIS | regulatory impact statement |
| RMS | regulatory management system |

Australia

| | |
|------|------------------------------------|
| AIG | Australian Industries Group |
| BCA | Business Council of Australia |
| BRRU | Business Regulation Reform Unit |
| CoAG | Council of Australian Governments |
| CRC | CoAG Reform Council |
| NCC | National Competition Council |
| NCP | National Competitive Policy |
| NSW | New South Wales |
| OBPR | Office of Best Practice Regulation |
| ORR | Office of Regulatory Review |
| OSB | Office of Small Business |
| PIR | post implementation review |
| SNEA | Seamless National Economic Agenda |

Japan

| | |
|-------|---|
| CRR | Council of Regulatory Reform |
| DPJ | Democratic Party of Japan |
| LDP | Liberal Democratic Party |
| MHLW | Ministry of Health, Labor and Welfare |
| MLITT | Ministry of Land, Infrastructure, Transport and Tourism |

Korea

| | |
|------|--|
| CBA | cost–benefit analysis |
| FAAR | Framework Act on Administrative Regulation |
| MOE | Ministry of Environment |
| PCNC | Presidential Council on National Competitiveness |
| PMO | Prime Minister’s Office |
| RIS | regulatory information system |
| RRC | Regulatory Reform Committee |
| SMEs | small and medium-sized enterprises |

Malaysia and Singapore

| | |
|---------|--|
| DCP | Dealing with Construction Permits |
| FGDCP | Focus Group on Dealing with Construction Permits |
| GRP | good regulatory practice |
| MPC | Malaysia Productivity Corporation |
| NEM | New Economic Model |
| NDPC | National Development Planning Committee |
| NPDIR | National Policy on the Development and Implementation of Regulations |
| PEMUDAH | Special Task Force to Facilitate Business |
| PEP | Pro-Enterprise Panel |
| SPRING | Standards, Productivity and Innovation Board |
| SRC | Smart Regulation Committee |

New Zealand

| | |
|------|------------------------------|
| CBA | cost–benefit analysis |
| MoT | Ministry of Transport |
| NPV | net present value |
| NZTA | New Zealand Transport Agency |
| VLR | Vehicle Licensing Reform |

Philippines

| | |
|------|--------------------------------------|
| ADB | Asian Development Bank |
| AO | administrative order |
| BOSS | Business One-Stop Shop |
| BPLS | Business Permit and Licensing System |
| DTI | Department of Trade and Industry |
| EO | executive order |
| IFC | International Finance Corporation |
| JMC | joint memorandum circular |
| LGU | local government unit |
| NCC | National Competitiveness Council |

Thailand

| | |
|------|---|
| DLT | Department of Land Transportation |
| LRC | Law Reform Commission |
| LRDC | Legal Reform Committee for the Development of the Country |
| OCS | Office of the Council of State |
| OIC | Office of Insurance Commission |
| SOEs | state-owned enterprises |
| TDRI | Thailand Development Research Institute |

Viet Nam

| | |
|-------|--|
| ASEAN | Association of Southeast Asian Nations |
| WTO | World Trade Organization |

Introduction

Context for the project. All countries have their own unique systems for developing and reviewing laws, regulations, and rules. Within the diversity of country experiences, however, there are some common patterns. Increasingly, countries are introducing regulatory management policies and strengthening their institutions to make their regulatory systems more effective with the aim of improving the quality of the stock and flow of regulation.

The Economic Research Institute for ASEAN and East Asia (ERIA) and the governments of Malaysia and New Zealand agreed to undertake a comparative study of regulatory management systems (RMSs) of countries in the East Asia and Pacific region. The New Zealand Institute of Economic Research (NZIER) joined with ERIA to undertake the study. The Study Team was headed by Ponciano Intal, Jr., Senior Economist at ERIA, and Derek Gill, Principal Economist at NZIER.

The study team for the project tapped the expertise of both researchers and practitioners from the countries involved. The collaboration among the researchers and practitioners has proven to be very fruitful. It also has the potential to guide further capacity building in the public sector by sharing understanding across countries and creating a process for learning together.

The countries in the study included Australia, Indonesia, Japan, Malaysia, New Zealand, Philippines, Singapore, the Republic of Korea, Thailand, and Viet Nam. This meant that there was a mixture of ASEAN and Organisation for Economic Co-operation and Development (OECD) member countries from the Asia-Pacific region. Cambodia, Lao PDR, and Myanmar participated in the workshops as observers.

Research approach. To better understand the evolution of regulatory management in 10 countries in the East Asia and Pacific region, the Project focused on 'what works' to make regulatory management regimes successful. As part of the project, we explored three questions:

1. What are the elements that make up an RMS?
2. Which elements add most value?

3. How does the use of elements change with levels of economic development?

The Project relied primarily on studies of the 10 countries' formal RMSs and case studies for each country that generally focused on a successful regulatory change and contrasted that with previous or other regulatory change that did not achieve the stated goal. To address the difficulties of making inter-country comparisons, the project design provided for extensive dialogue among the country researchers. The project included two workshops in which draft material was presented and then commented on by reviewers from other jurisdictions; and the provision of feedback, on an iterative basis, from the lead researchers on each of the draft country chapters.

We eschewed the simplistic notion of 'best practice' – in the regulatory management space there are good practices but no one 'best' way. We wanted to explore what was different and what was common among the countries.

Deliverables from the Project. The study has produced two volumes. The first volume 'The Development of Regulatory Management Systems in East Asia: Deconstruction, Insights, and Fostering ASEAN's Quiet Revolution' highlights the key research findings and policy recommendations of the Project. It includes:

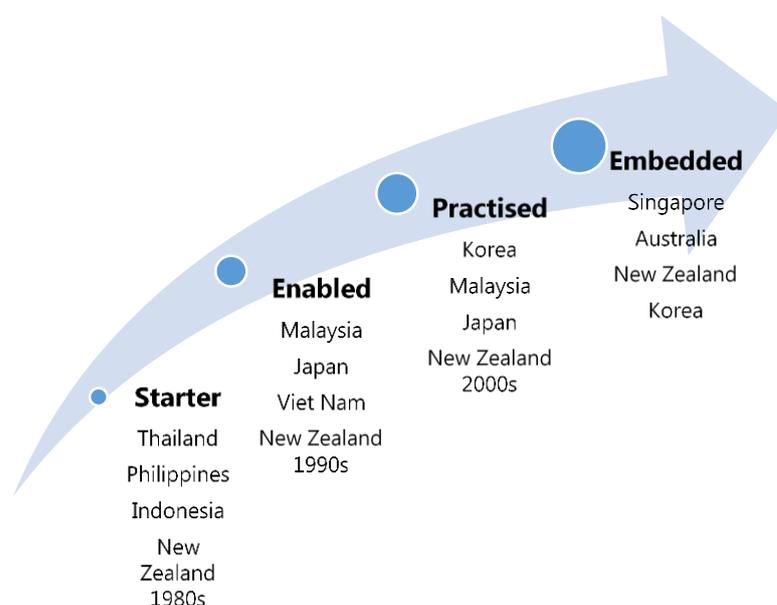
- Chapter I which discusses the importance of good regulatory practices (GRP) including those aimed at improving RMSs
- Chapter II which discusses GRP principles and develops a typology of stages of RMS development
- Chapter III which discusses the evolution of RMS in selected East Asian and Pacific countries
- Chapter IV which presents the results of the analysis of the role of the individual elements of the RMSs as well as the key lessons from the country experiences
- Chapter V which presents key recommendations on engendering GRP, developing a high-performing RMS, and improving regional regulatory cooperation.

One of the key insights from the Project was the classification of the selected countries by the level of development of their RMSs (shown in Figure 1).

Figure 1 (drawn from Chapter II of Volume 1) uses a typology of the stages or levels of the RMS:

- Starter or Informal – ad hoc practices that are specific to the context, sector, organisation, and person undertaking the regulatory quality management function
- Enabled – regulatory quality management processes have been put in place but, while the intention is there, regulatory quality management does not happen consistently
- Practised – enacted in some sectors and often reliant on a few key people in selected institutions
- Embedded – practices are part of the public sector culture and not reliant on key institutions

Figure 1. Classification of Countries According to RMS Stages



RMS = Regulatory Management System.

Source: Authors.

Singapore, New Zealand, and Australia are in the 'embedded' RMS stage. Indonesia, the Philippines, and Thailand are still in the 'starter or informal' stage while Viet Nam is in the 'enabled' stage. Malaysia, Japan, and South Korea are in the transition process.

This monograph is the second companion volume for the Project. It provides the background to Volume 1 by presenting a more technical analysis of the components of RMSs and the individual country studies prepared by the country

experts. The country studies include an analysis of the evolution of each country's RMS and an examination of the role of the RMS in two case studies. The research drew extensively on the judgment of the country experts; for example, the researchers came to a judgment about the significance of each individual element in the RMS in influencing the overall outcome of the case studies and the effectiveness of the overall national system.

Structure of this monograph. The monograph is in three parts. Part 1 is a short technical chapter which explores what is meant by 'a regulatory management system' and what are the 'elements' of an RMS. Part 2 focuses on OECD countries from the East Asia and Pacific region and includes the individual studies of each country's RMS and regulatory reform case studies for Australia, Japan, Korea, and New Zealand. Part 3 focuses on ASEAN countries and includes country studies for the Philippines, Thailand, and Viet Nam along with a chapter that compares Malaysia and Singapore.

Part One

Chapter 1 by Derek Gill focuses on defining what an RMS is, drawing out the elements that make up an RMS, and distinguishing the RMS from the wider public management and policy development system. It defines the formal RMS as the set of special measures that apply to the development of new, or the review of existing, regulations but do not apply to other policy interventions. It draws the distinction between the formal RMS (what is in place) from the requisite RMS (what is required for an ideal or high-performing RMS). The requisite RMS would have the full set of functionality that is needed in a high-performing or ideal system. The distinction between the formal and the requisite systems is important in country case studies in Parts 2 and 3 of this volume. These discuss both how the formal RMS affected the outcomes of the case studies and how a requisite system might have changed those outcomes.

Part Two

Chapter 2 by Peter Carroll, Gregory Bounds, and Rex Deighton-Smith reviews the coherence of the formal RMS in Australia and explores how that system was applied in two contrasting case studies of regulatory change. The paper explores the broad success of the National Competition Policy legislative review and the relatively disappointing outcome of the Seamless National Economy Agenda.

Chapter 3 by Naohiro Yashiro reviews the RMS in Japan. It explores the evolution of regulation in Japan from sector-based regulatory review through the adoption of Regulatory Impact Analysis and the current Special Zone approach. The chapter then considers how the RMS was applied to two case studies of regulatory change: Agency Worker Law and the Taxi Revitalization Law.

Chapter 4 by Song June Kim and Dae Yong Choi reviews regulatory reform in the Republic of Korea. The government has made great efforts to improve its RMS and to introduce regulatory reforms since the economic crisis of the late 1990s. The chapter first explores the evolution of regulatory reform and reviews the coherence of the RMS in Korea. Subsequently it explores how this system was applied in two case studies of regulatory change: golf course regulation and restriction of opening hours of food services businesses.

Chapter 5 by Derek Gill (along with Hayden Fenwick and Ben Temple from the New Zealand Treasury) explores the evolution of regulation in New Zealand from a sector-based regulatory review, through the adoption of Regulatory Impact Analysis, to the current increased emphasis of stock management. The case studies explore how the RMS was applied to two case studies of regulatory change – one failure (building controls) and one success (reform of motor vehicle licensing).

Part Three

Chapter 6 by Gilberto Llanto explores the evolution of regulation in the Philippines since the post-martial rule regime. This chapter tracks the macroeconomic and regulatory reforms, along with political and economic developments. It analyses the RMS in the Philippines, and concludes that while the Philippines does not have a coherent RMS, it does have some of the components of a coherent system. It then explores how some aspects of an RMS were applied in the successful case studies of regulatory change in the establishment of the National Competitiveness Council, a public-private partnership, and in the regulatory reforms of Quezon City's Business Permit and Licensing System.

Chapter 7 by Sumet Ongkittikul and Nichamon Thongphat explores the evolution of regulatory reform in Thailand since its democratisation. It reviews the coherence of the RMS in Thailand and the regulatory reform initiatives currently

underway. It then explores how the system was applied to two regulatory changes: one regulatory success (the Protection of Car Accident Victims [1992]) and one regulatory failure (passenger van licensing).

Chapter 8 by Thanh Tri Vo and Cuong Van Nguyen reviews the experiences of Viet Nam in improving its approach to regulatory management. As part of the market-oriented reforms since 1986, Viet Nam promulgated and amended a number of laws and regulations. Viet Nam then gradually introduced GRP, including regulatory impact assessment, online publication of draft regulations, enhanced regulatory planning, etc. Numerous efforts were also sought to simplify and control administrative procedures, the most notable of which were Project 30 (commencing 2007) and Resolution 19 (commencing 2014). Both Project 30 and Resolution 19 produced quick and material outcomes but further meaningful reforms of administrative procedures will depend on building confidence of stakeholders in the regulatory process.

Chapter 9 contrasts the cases of Malaysia and Singapore. It was written by Dato' Abdul Latif Bin Haji Abu Seman, Hank Lim of the Singapore Institute of International Affairs, and Shahriza Bahari of the Malaysia Productivity Corporation, with editorial assistance from Anne French. Singapore and Malaysia share a colonial history, but have taken very different paths with respect to regulatory reform, demonstrating that every country needs to find its own way. Singapore, for example, has not adopted the range of special measures seen in other developed countries' formal RMSs and instead relies on using a high-performing public sector to undertake regulatory management and reform as part of business as usual. By contrast Malaysia's approach to regulatory reform is centralised, led by the Malaysia Productivity Corporation. The impressive gains in regulatory quality in both countries lends strong support to the notion of equifinality, which suggests that a goal can be reached by various paths involving rather different journeys.

In summary many countries in the East Asia and Pacific region have been reviewing their RMSs with the aim of reducing the costs of doing business, improving competitiveness, and improving the quality of health, safety, and environmental regulation. This monograph highlights the experiences of the different countries on the long and winding journey to high performing regulatory systems, including the different starting points and paths taken.

PART ONE

DEFINING REGULATORY MANAGEMENT SYSTEMS

DEREK GILL

*New Zealand Institute of Economic Research
and Victoria University of Wellington*

Chapter I

Defining Regulatory Management Systems

Derek Gill^{#§}

New Zealand Institute of Economic Research and Victoria University of Wellington

Summary

The research question for the Economic Research Institute for ASEAN and East Asia (ERIA)–New Zealand Institute of Economic Research (NZIER) Regulatory Project is: ‘Which elements of Regulatory Management Systems (RMSs) generate the most value?’ The introduction to this note explores in more detail exactly what is meant by a *regulatory management system* and what the *elements* of an RMS are. We distinguish between the *formal* system (what is in place) and the *requisite* RMS (what is required for a high-performing regulatory system). In the diagram below, the requisite RMS is shown to include policy components (in dark blue at the centre), practices (in brown around the centre), institutions (at the bottom in grey), and the overall regulatory strategy at the top in light blue.

Every country has a unique regulatory system to make laws, regulations, and rules, and a set of procedures for reviewing them. Increasingly, countries are introducing regulatory management policies and strengthening their institutions to make their regulatory systems more effective. Regulatory management (‘regulating the regulation makers’) is a form of meta-regulation that includes both regulatory policymaking (‘regulating regulation developers’) and regulatory administration and enforcement (‘regulating the wielders of regulatory power’).

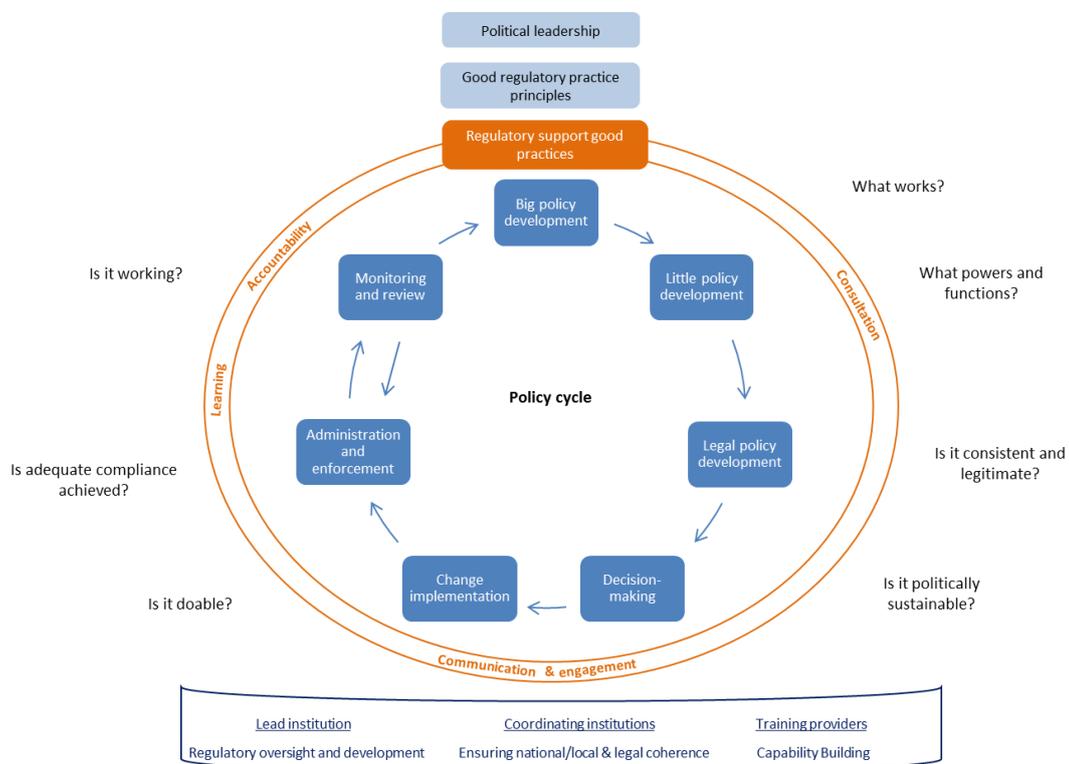
Lead author. Derek Gill Derek.Gill@NZIER.org.nz L13 215 Lambton Quay, PO Box 3479, Wellington, 6140 New Zealand.

§ This research was conducted as a part of the project of the Economic Research Institute for ASEAN and East Asia (ERIA) and the New Zealand Institute of Economic Research (NZIER), ‘Towards Responsive Regulations and Regulatory Coherence in ASEAN and East Asia: Deconstructing Effective and Efficient Regulatory Management Systems’. The opinions expressed in this chapter are the sole responsibility of the author and do not reflect the views of ERIA or any government involved in the project.

Figure 1.1 suggests that an ideal high-performing or requisite regulatory system needs to have four components:

- the policy cycle,
- supporting practices,
- institutions, and
- regulatory strategy.¹

**Figure 1.1. Elements Required for a High-Performing System
Requisite Regulatory Management System**



Source: NZIER.

¹ As discussed in Annex A, there is no rigorous definition of a regulatory management system (RMS) that adequately distinguishes the RMS from the wider public management, public policy, and public law systems within which regulatory management takes place. The approach adopted in this chapter is similar to that in OECD (1995), which suggests that an RMS has four main components: (i) regulatory quality tools, e.g. regulatory impact analysis (RIA), administrative simplification, evaluation; (ii) regulatory processes, e.g. consultation, accessibility; (iii) regulatory institutions, e.g. an oversight body, coordination for international/national/local coherence; and (iv) regulatory policies, e.g. good practice regulatory principles.

An element can be a part of the policy cycle, a supporting practice such as consultation, an institution, or a part of the regulatory strategy.

The *policy cycle* for developing regulations includes:

- 'Big Policy' development,
- 'Little Policy' development,
- 'Legal Policy' development,
- decision-making support,
- change implementation,
- administration and enforcement, and
- monitoring and review.

These components of the classic regulatory policy cycle need to be augmented by *supporting practices*:

- consultation,
- communication and engagement,
- learning, and
- accountability.

To be sustained, policies and practices in turn require the support of *key institutions*:

- a coordinating body that has the capability and mandate to oversee and develop the regulatory system and report on its performance;
- other institutions that ensure the quality of the RMS, such as legal drafting and consistency with other domestic laws and international obligations; and
- training providers who build the capabilities required.

A *regulatory strategy* is an explicit whole-of-government policy for regulatory quality. Often this takes the form of government endorsement of a set of 'good practice' or 'best practice' regulatory principles that are sometimes linked to trade and competition policies.

Context

Different countries have different systems to make and review laws, regulations, and rules. These RMSs are embedded in a much broader set of national governance arrangements that have two main features:

- an enduring set of constitutional provisions, legislative rules, norms, and decision-making processes and practices; and
- an enduring set of institutions responsible for ensuring that the provisions, laws, rules, norms, and decision-making processes and practices are consistently applied.

It is important to note that these institutions and provisions occur in a variety of national contexts that include:

- political-economic factors, such as the political leadership and commitment to national regulatory policies and institutions;
- the overall public law framework, such as a freedom of information law, open government policies and practices; and
- complementary interfaces with competition policy, sectoral regulation strategies, and international trade and investment rules.

Because each country's context is unique, there is no 'best practice' in regulatory management. However, countries are increasingly introducing 'special measures' to strengthen their systems for making and reviewing regulations. These special measures apply to the development of new, or the review of existing, regulatory interventions but not to other policy interventions, such as taxes and spending measures. Thus, the formal RMS consists of a set of special measures that a country applies to the development or review of regulations.

To illustrate, all countries have a policy development system. In some countries, new regulatory interventions are subject to a regulatory impact analysis (RIA). RIA is a special tool that does not apply to other policy interventions, such as spending on subsidies or transfers.

Definition of Terms

For this chapter and throughout the ERIA/NZIER RMS project, consistent use of terminology is needed.

By *regulation* we mean a legal instrument to give effect to a government policy intervention. While the terms used for legal instruments vary by jurisdiction, legal instruments here include all primary laws, secondary regulations, or tertiary rules.

By *formal RMS* we mean the set of special measures that apply to the development of new, or the review of existing, regulations but do not apply to other policy interventions.

By *requisite RMS* we mean the full set of functionality needed in a high-performing system for the development of new, or the review of existing, regulations.

By an *element* of an RMS we mean a required function that can be part of the policy cycle, a supporting practice, such as consultation, a regulatory institution, or a regulatory strategy, as shown in **Figure 1.1** above. (This broadly corresponds to the Organisation for Economic Co-operation and Development [OECD] [1995] distinction between regulatory quality tools, regulatory processes, regulatory institutions, and regulatory policy.)

In the rest of this note we focus on the individual components of the RMS (but at the whole-of-government level). For each component we explore the functionality required in a requisite system and the special measures that can be used to support that functionality.

We start in Part 1 with the regulatory policy cycle, which is summarised in **Table 1.1** (where the relevant 2012 OECD recommendation from Annex B is shown in brackets under 'Comment'). Part 2 explores supporting practices, Part 3 looks at regulatory institutions, and Part 4 at regulatory strategy. Annex A provides more background on the definition of an RMS, and Annex C provides further references.

Part 1. Regulatory Policy

Table 1.1. Regulatory Policy Cycle

| RMS Element | Question | Function | RMS Special Measure | Comment (OECD Recommendation) |
|---------------------------------------|----------------------------|------------------------------------|----------------------------|--------------------------------------|
| <i>Big Policy</i> | What works? | Intervention analysis | RIA | Increasing use of RIA (4) |
| <i>Little Policy</i> | What powers and functions? | Process and legal design | None | Country specific |
| <i>Legal Policy</i> | Consistency and legitimacy | Legal analysis | None | Country specific |
| <i>Decision-Making</i> | Political sustainability | Process, legal design and analysis | None | Country specific |
| <i>Change Implementation</i> | Is it doable? | Change management | None | Country specific |
| <i>Administration and Enforcement</i> | Is compliance achieved? | Capable credible regulator | Guidance | Country specific (789) |
| <i>Monitoring and Review</i> | Is it working? | Systematic review of stock | Stock Management tools | Little evaluation, reviews vary (5) |

OECD = Organisation for Economic Co-operation and Development; RIA = Regulatory Impact Analysis; RMS = Regulatory Management System.

Source: NZIER.

'Big Policy' Development

The focus of 'big policy' development is to address the question of 'what works'. ('Big' policy can be distinguished from the 'little' or operational policy that is required to make the 'big policy' effective.) The key functionality required for 'big policy' development is intervention analysis. RIA is a common special measure used in a range of countries to undertake this intervention analysis. The capability needed is the ability to consider regulation against other policy interventions to assess the most effective means of achieving the policy objective.

Common questions raised in this phase include:

- Is the problem clearly defined and is intervention necessary?
- What are the alternatives to regulation?
- Is regulation the most effective form of intervention?
- How are cross-border issues addressed, e.g. compliance with the General Agreement on Tariffs and Trade (GATT), General Agreement

on Trade in Services (GATS), and free trade agreement (FTA) provisions on goods and trade in services?

- Do the benefits of regulation justify the costs?

'Little Policy' Development

'Little policy' (or operational policy) is focused on the powers, functions, and capabilities that are needed to make the 'big policy' effective. The key functionality is a mixture of skills including design, legal analysis, and organisational analysis. The development of primary law, secondary regulations, and tertiary rules often requires consideration of little policy (and legal policy) issues. No common tool or special measure is used across countries, but in some cases some of these issues are covered by RIA systems and their accompanying documentation.

Key questions addressed in this phase include:

- What functions are needed?
- What legal powers are required to deliver those functions?
- What institution should have those powers and deliver those functions?
- How to organise those functions, e.g. what is an appropriate allocation of functions and powers to the private sector and within the public sector and to which level (or levels) of government?
- Is statutory independence required for the decision makers or the institution making the decision?
- What checks and balances are required?
- How should any new organisations required be designed?
- Do the regulators have the mandates, capabilities, and resources required?
- How will the regime be funded?
- What accountability is required?
- When and how will the regulation be reviewed?

'Legal Policy' Development

'Legal policy' and 'little policy' are generally done in parallel, as one informs the other as the law or rule is developed. Legal policy is focused on ensuring the legitimacy of the powers and functions involved and their coherence with the rest of the legal framework. The key functionality here is legal analysis. Every country has its own institutional arrangements and there is no common special measure used across countries. Key questions addressed in this phase include:

- Is there a legal basis for the regulation?
- Is this regulation consistent with superior and subsidiary law (vertical consistency) and related legislation (horizontal consistency)?
- Is the regulation clear, consistent, comprehensible, and accessible to users?
- Is there duplication and are there inconsistencies in administrative requirements?
- Is the draft compliant with international obligations?
- Is the regulatory regime proportional to the nature of the problem?

Decision-Making Support

Support is required for decision-makers in the executive and the legislature to handle the complexity of considering, developing, and amending laws. The key technical capabilities required are a combination of the little policy, financial, and economic analysis, and the legal policy skills discussed above. These technical capabilities are necessary but not sufficient conditions for high value-added decision-maker support. They provide a 'bottom line' which, if not achieved, risks undermining the credibility of the analysis provided. But on their own, technical skills are not enough. These skills need to be augmented by 'top line' values (such as risk sensitivity, proactive, whole-of-government views that are 'differentiating factors that create consummate value' (Behm et al., 2000, p.172). Every country has its own unique institutional arrangements, and no common special measures are used across countries.

Change Implementation

Change implementation is focused on 'what' is required for each function and 'how' to implement the change once decision makers have made firm decisions. The key functionality required is the ability to design and execute change. Every country has developed its own unique ways of working, but change management

planning is a common technique. Ideally, a change implementation plan is developed as a guide.

Administration and Enforcement

Administration and enforcement are focused on ensuring compliance with the regime by citizens and businesses. (Note this function includes the review of individual cases for fairness in administrative procedures.) Being an effective regulator is a real craft that requires a combination of capability, leadership, and credibility. Every country has its own institutional arrangements, and no common special measures are used across countries.

Key questions addressed in this phase include:

- What specific capabilities and what resources are required to support them?
- What is the regulatory compliance strategy that is required?
- What are the regulatory risks and the risk management strategies required?
- What procedures exist to review the procedural fairness and legality of regulatory decision-making?
- How should independence in decision-making be protected?
- How should regulators be made accountable?
- What information is required to support monitoring and review?

Monitoring and Review

Monitoring and review are focused on assessing whether a regulation is working as intended. Ideally, it is based on a monitoring and review plan, required as part of the RIA. Information generated can be used to fine-tune the implementation of the regulations and provide early warning of any big or little policy issues that need to be addressed. The key functionality required is the ability to gather information so the operation of the regulation can be reviewed.

Review describes a deliberative examination with a view to taking action. Reviews can occur at two levels: Reviews can be focused on the overall regime and its effectiveness, drawing upon evaluations where these are available. Reviews can

also occur at the level of an individual case or transaction as a means of providing an assessment of procedure and fairness of process, but this latter type of review is not the concern of this chapter.

In contrast with an everyday term such as review, 'evaluation' is a more formal term with a more precise meaning and a well-defined body of practitioners, supported by professional associations and journals. In this literature it is conventional to distinguish between ex ante impact evaluations and ex post evaluations. The latter take two main forms: a formative evaluation that provides information on improving a process, and a summative evaluation that provides information on short-term impact or long-term effectiveness (see HM Treasury Magenta book for further references on evaluation). The distinction in types of ex post evaluations is an important one. Formative evaluations focus on 'are we doing things right?' whereas summative evaluations focus on 'are we doing the right things?'

Ex post evaluation of regulation is a near-universal weakness across OECD countries. According to the OECD (2015, p.234), 'few countries assess whether underlying policy goals have been achieved, whether any unintended consequences have occurred, and whether there is a more efficient solution'. Key big policy questions addressed in this phase include:

- Is the regulation still necessary? Is there a convincing problem that the regulation seeks to address?
- Is the regulation effective in achieving its objectives?
- Is the regulation efficient by achieving the objective at lower cost than other feasible alternative options?

If the regime is necessary, efficient, and effective, there are a range of little policy and legal questions to be addressed about whether the operation of the regime could be enhanced by clarifying certain legal provisions, strengthening checks and balances, reallocating functions, improving the design, strengthening the capability of the regulator, etc.

Stock Management

Stock management reviews whether regulations are working as intended. The key functionality required is the ability to review groups of regulations systematically

to ensure they are effectively meeting their objectives. (It differs from monitoring in that the focus is generally on regimes, i.e. groups, rather than individual, regulations). By regulatory effectiveness we mean two things. First, have regulations been implemented and administered properly? Second, effectiveness also asks how well does regulation contribute to achieving impacts, such as altering the behaviour of citizens and businesses, which in turn influences both intended and unintended goals of the regulation?²

The Australian Productivity Commission, in its survey of Australian state and federal regulatory practices, suggests three types of reviews of regulatory regimes:

- Stock management – RIA, red-tape reduction, regulatory budgets, in/outs;
- Ad hoc – stocktaking, principle-based, benchmarking, in-depth reviews; and
- Programmed reviews – ‘sun-setting’, embedded in statute, post-implementation reviews.³

Thus, there are a wide range of ‘regulatory stock management’ tools that different countries have adopted, including the standard cost model, regulatory guillotine, red-tape reduction targets, ‘one-in, two-out’, or ‘one-in one-out’, regulatory budget, and the use of review clauses or sunset provisions. These review tools vary in their breadth (i.e. how wide the coverage is) and depth (i.e. the focus on administrative costs or wider distortions) and frequency (regularly programmed or ad hoc).

Key questions in the review phase include:

- What are the objectives of the regulatory regime?
- Has the regulatory proposal achieved the objectives for solving or mitigating the issue?
- Who were the target audiences (i.e. regulated individuals and organisations) of the proposed regulation?

² See <http://www.tbs-sct.gc.ca/rtrap-parfa/pmep-pmre/pmep-pmretb-eng.asp> for the Canadian advice regarding monitoring/review/evaluation

³ Australian Productivity Commission (2011), p.32.

- Who were the intended beneficiaries of the proposed regulation (e.g. the general public, specific groups within the public)?
- What behavioural changes in the target audience were intended to be achieved (e.g. awareness, understanding, capacity, compliance)?

Part 2. Supporting Practices

The discussion to date has focused on the components of the classic policy cycle. However, there is an increasing emphasis in the public policy literature on the role of citizens and businesses in achieving policy outcomes. Increasingly, policy development is less government-centred, as it seeks to draw on actors and institutions outside the formal policy system. This is particularly important for regulatory policy, as regulatory outcomes are co-produced in the interactions between the regulators and the regulatees. Contemporary policy development includes good supporting practices, such as:

- consultation,
- communication and engagement,
- learning, and
- accountability.

Consultation

Consultation can be undertaken for a number of purposes:

- to improve the overall legitimacy and consent to the proposed regime by those who are regulated,
- to improve the detailed design and operation of the regime by highlighting pressure points in administration and enforcement, and
- to control the bureaucracy.

As a result, consultation can occur at multiple stages in the RMS, for example:

- when addressing the big policy question of what works,
- when considering the little policy questions as to how the regulatory regime should operate,
- in the legal phase on how exactly the policy should be enacted in law,

- in the design of the change implementation stage, and
- in monitoring and review to see whether the regime is working.

Communication and Engagement

As regulatory effectiveness depends upon the behaviour of those regulated, open communication and active engagement with citizens and businesses are crucial. This suggests a need to emphasise 'interactive, participatory and process styles' rather than the harder 'rational and argumentative styles' (Mayer et al., 2004) of regulation development and enforcement.

Learning

Learning is used in this chapter in the everyday sense of the act or process of gaining knowledge. All regulatory changes have the nature of an experiment, as it is usually uncertain how the patterns of actual behaviour will evolve over time. Thus, it is important to have the ability to learn both about whether the regulatory regime is necessary, efficient, and effective, but also to learn about how to implement and enforce the regime more effectively to improve compliance. Learning arises from a range of sources of formal processes such as monitoring, reviews, audit, and evaluation, as well as more informal feedback and learning by doing.

Accountability and Transparency

Regulatory agencies use public resources and apply the coercive power of the state to their citizens and businesses. It is important, therefore, that regulatory agencies are publicly accountable for the use of those resources and the exercise of those powers.

Transparency is important to promote accountability as well as engagement. As a result, most developed countries have moved towards an online, readily searchable database of all laws and rules open to all those involved.

Part 3. Institutions

Policies and practices do not exist in isolation; they need to be sustained by institutions. **Figure 1.1** highlighted three sorts of institutions: lead institutions, coordinating institutions, and training providers.

The lead institution is a coordinating body that has the capability and mandate to oversee and develop the regulatory system and report on its performance. The OECD (2012) lists the roles of the 'standing oversight body' as including

- improving regulatory policy,
- quality control of regulatory assessments,
- coordinating ex post assessment,
- providing training and guidance on regulatory assessment and improving regulatory performance, and
- improving the application of regulatory policy.

In decentralised systems, it is important that the lead institution also assumes a role in developing the regulatory management capability of subnational governments to ensure consistency.

Other institutions undertake specialised roles to ensure the quality of regulation, such as an institution that specialises in legal drafting to ensure consistency between statutes and between primary laws, secondary regulations, and any tertiary rules.

A key requirement for regulatory coherence is that an institution takes responsibility for ensuring consistency between national and subnational regulations, and between national laws and international obligations. Training providers are also required to build the capabilities required.

Part 4. Strategy

Institutions need a mandate as well as capability. Regulatory reviews of OECD countries have highlighted the need for political commitment to regulatory reform and for this to be reflected in an explicit whole-of-government strategy or

policy for regulatory quality. A regulatory quality strategy needs political commitment at the highest levels of government, as well as a singularity of purpose to focus on improving regulations.

References

- Australian Productivity Commission (2011), 'Identifying and Evaluating Regulation Reforms'. http://www.pc.gov.au/projects/study/regulation-reforms/report_2011
- Behm, A., L. Bennington, and J. Cummane (2000), 'A Value-Creating Model for Effective Policy Services', *Journal of Management Development*, 19 (3), pp.162–178.
- Gill, D. (2011), 'Regulatory Management in New Zealand: What, How and Why', in S. Frankel (ed.), *Learning from the Past Adapting for the Future Regulatory Reform in New Zealand*. Auckland: LexisNexis NZ.
- Government of Canada (2009), 'Handbook for Regulatory Proposals: Performance Measurement and Evaluation Plan', <http://www.tbs-sct.gc.ca/rtrap-parfa/pmep-pmre/pmep-pmretb-eng.asp>
- HM Treasury (2011), *Magenta Book Guidance for Evaluation*, http://www.hm-treasury.gov.uk/data_magentabook_index.htm
- Mayer, I.S., C.E. van Daleen, and P. Bots (2004), 'Perspectives on Policy Analysis: A Framework for Understanding and Design', *International Journal of Technology Policy and Management*, (4(2), pp.169–191.
- OECD (1995), 'Recommendation of the Council of the OECD on Improving the Quality of Government Regulations', www.oecd.org/officialdocuments/publicdisplaydocumentpdf/
- OECD (2012), 'Recommendations of the OECD Council on Regulatory Policy and Governance', www.oecd.org/governance/regulatory-policy/49990817.pdf
- OECD (2015), *Regulatory Policy in Perspective: A Readers companion to the OECD Regulatory Policy Outlook*. Paris: OECD.

Annex A: Defining the Regulatory Management System

Each country has its own unique system to make and review laws, regulations, and rules. This regulatory management system (RMS) is in turn embedded in a wider public management system, which itself operates within the overall constitutional arrangements. Defining just what constitutes an RMS and how it is distinguished from the wider systems is a tricky challenge. There is no rigorous definition of an RMS that adequately distinguishes it from the wider public management, public policy, and public law systems within which regulatory management takes place. Gill (2011), in reviewing regulatory management in New Zealand, observed:

We looked in vain in the literature for a coherent definition of the regulatory management system. Jonathan Ayto from the NZ Treasury in email correspondence (dated 5 April 2011) on an early draft of this chapter usefully provided the following definition – regulatory management ‘could be described as a set of rules and constraints (formal and informal) that structure the processes of proposing, developing, implementing, administering, enforcing, and evaluating the performance of primary law, secondary regulation and tertiary rules. That ‘structuring’ will include the allocation of powers, functions and duties of the different participants. It will include both centrally determined and generic rules and processes, and decentralised and tailored rules and processes (Gill, 2007, p.178).

For the purposes of this project, we defined the term ‘formal regulatory management system’ as a set of special measures that a country applies to the development or review of regulations. By special measures we mean how the formal government system is augmented with features that apply specifically to primary laws, secondary regulations, and tertiary rules. Specifically, it aims to bring the focus onto the special measures and bespoke features of an RMS that do not apply to the general business of government.

According to the 1995 OECD guidelines on ‘good’ regulatory management, a regulatory management framework has four core components:

- Regulatory policies – a systematic government-wide approach to the use of regulatory instruments
- Regulatory tools – administrative simplification, sunset provisions, public consultation requirements, regulatory review and evaluation, compliance with enforcement guidelines, alternatives to traditional regulation, and regulatory impact assessments (RIAs)
- Regulatory institutions – with responsibility for centralised regulatory oversight in the executive and the legislature
- Regulatory procedures – administrative procedures controls, due process requirement, rules on giving notice and communication, training, etc.

Annex B: OECD (2012) – Summary of Recommendations of the Council of Regulatory Policy and Governance

1. Commit to an explicit whole-of-government policy for regulatory quality.
2. Develop regulations through open communication, transparency, consultation, and engagement.
3. Empower institutions for regulatory oversight.
4. Integrate regulatory impact assessment early into the policy process.
5. Review the regulatory stock systematically.
6. Publish reports on the performance of the regulatory policy programme.
7. Develop a consistent policy on the role and functions of regulatory agencies.
8. Establish effective case review processes.
9. Apply risk-based techniques to regulation.
10. Promote regulatory coherence between supra national, national, and subnational levels.
11. Foster regulatory management capacity at subnational government.
12. Pursue international regulatory cooperation.

PART TWO

REGULATORY COHERENCE: THE CASE OF AUSTRALIA

PETER CARROL

*University of Tasmania and
Australian National University*

GREGORY BOUNDS

Queensland Competition Authority

REX DEIGHTON-SMITH

Jaguar Consulting Pty Ltd.

REGULATORY COHERENCE: THE CASE OF JAPAN

NAOHIRO YASHIRO

Showa Women's University

REGULATORY COHERENCE: THE CASE OF KOREA

SONG JUNE-KIM

Kyungpook National University

DAE YONG CHOI

KDI School of Public Policy and Management

REGULATORY COHERENCE: THE CASE OF NEW ZEALAND

DEREK GILL

*New Zealand Institute of Economic Research
and Victoria University of Wellington*

Chapter II

Regulatory Coherence: The Case of Australia*

Peter Carrol

University of Tasmania and Australian National University

Gregory Bounds

Queensland Competition Authority

Rex Deighton-Smith

Jaguar Consulting Pty Ltd.

1. The Regulatory System in Context

1.1. Introduction

This part of the chapter provides a brief overview of the major features of Australia's legal and political system in relation to regulatory capacity, an outline of Australia's current social and economic development and a brief summary of the development of its regulatory management system (RMS), and recent assessments of regulatory quality in Australia.

* Our colleague and friend Greg Bounds passed away in the early stages of the research and writing of this paper. He had indicated that this might be the case and Rex Deighton-Smith agreed to stand by and take over Greg's role. Greg's input was, nevertheless, valuable and important, especially his contributions at the first working party meeting in Kuala Lumpur. We shall miss him.

This country study of regulatory coherence in Australia falls into three parts. Part 1 focuses on broad regulatory policy, including the regulatory management system (RMS), and its evolution over time. Parts 2 and 3 are case studies that contrast a successful regulatory reform programme with a less successful programme of regulatory change, and highlight the role of the RMS in each.

Australia has been ranked among the highest performing nations for both quality of government and regulatory quality in successive World Bank Governance Indicator (WBG I) series. In 2012, its percentile rank, for example, was 94.26 for Government Effectiveness (compared with 91.71 in 2002), and 97.13 for Regulatory Quality (compared with 91.67 in 2002) (World Bank, 2014). However, while of interest, the WBG I do not provide an in-depth indication of country RMSs, nor is there clear evidence linking RMS performance over time to the WBG I series indicators. This is largely because of the very limited information available, particularly quantitative, regarding RMS performance in any country. As can be seen in the sections below, while the available, limited information does indicate that Australia's RMS, notably its regulatory impact assessment (RIA) systems, have improved their performance over time, that performance has been variable and shows room for improvement. Successive governments have been aware of these limitations and have undertaken a variety of changes over time to reduce them.

1.2. Legal and Political System and Regulatory Capacity

Australia is a constitutionally based federation with a national government (hereinafter the Commonwealth Government or Commonwealth), based in part on that of the British system of parliamentary democracy, as well as some features of the USA's system. There are six state governments, namely, Queensland, New South Wales (NSW), Victoria, South Australia, Western Australian, and two territory governments, the Northern Territory and the Australian Capital Territory, similarly based on the British system.

Its legal system has its origins in the British system, although it has evolved its own distinct features since becoming an independent federated nation on 1 January 1901. The national and all state parliaments, with the exception of Queensland, are bicameral. At the national level the Parliament consists of a House of Representatives elected to represent single-member electorates and a Senate in which each state has an equal number of directly elected representatives. The government of the day is selected from the elected Members of Parliament by the governing party, or coalition of parties, with a Prime Minister and Cabinet, as is also the case at the state level. In addition, the Commonwealth

Government has a Governor-General, and each state a governor, who serves as the representative of the head of state¹, although with largely titular powers.

As a federal system, the Constitution allocates certain exclusive powers to the Commonwealth Government, although most are concurrent with the six states, NSW, Victoria, Queensland, Western Australia, South Australia, Tasmania, and the two territories, the Australian Capital Territory and the Northern Territory. The two territories are largely self-governing. The major powers of the Commonwealth include taxation, defence, external affairs, interstate and international trade, foreign policy, trading and financial corporations, immigration, bankruptcy and interstate arbitration. However, the state governments have substantial constitutional powers regarding their economies so that any nation-wide economic reform in Australia, especially microeconomic reform, usually requires the agreement and cooperation of the state and territory governments (Carroll and Painter, 1995). Hence, any major reform, or reform that involves areas over which the states have constitutional authority, requires continuing political and, often, legal cooperation on an intergovernmental basis.

As the political agendas of each government that make up the federation are rarely, if ever, identical, gaining such cooperation is always difficult and often time-consuming, with the result that major regulatory reform is similarly difficult and time-consuming. The recognition of this challenge led to the creation by the heads of Australian governments of the Council of Australian Governments (CoAG) in 1992. It is a forum for initiating, developing, and implementing reforms of national significance, although its importance has varied over time (Edwards and Henderson, 1995). The need and means for legislative cooperation between the jurisdictions is recognised in Subsection 51 (xxxvii) of the Constitution, which states that the Commonwealth Parliament may be given power to make laws with respect to matters referred by the Parliament or Parliaments of any state or states.

As a federal democracy, the various Australian governments are characterised by substantial, although varying, participation by organisations representing various

¹ The British Monarch is, formally speaking, a separately created monarch of Australia. State governors and the Governor-General of Australia are plenipotentiaries of the Crown in right of the relevant jurisdiction.

groups. This is particularly the case as regards business groups and trade unions, as well as a plethora of other interest groups. The major groups representing business, notably the Business Council of Australia (BCA) and the Australian Industries Group (AIG), have strongly supported, for the most part, the various waves of regulatory reform noted below, often providing reports indicating their views regarding the extent and quality of government regulation, as well as proposals for its reform, and for reforms to the systems of regulatory management (see, for example, most recently, AIG, 2014; BCA, 2013).

In the aggregate, the governments of Australia have substantial and sophisticated, albeit varying, regulatory capacity. The smaller states and territories, with more limited social and economic resources, typically have a more limited regulatory capacity for the reform of the existing stock of regulation and the assessment of proposed new regulation. As indicated in recent reports by Australia's Productivity Commission, one of the Commonwealth Government's major advisory bodies regarding the economy, and by the Organisation for Economic Co-operation and Development (OECD), Australia's RMSs have in place the institutions and processes necessary for an effective regulatory capacity, although they have room for improvement (Productivity Commission, 2011: x; OECD, 2010a). A 2010 OECD review of Australia's regulatory system noted that Australia had been one of the most successful OECD countries in weathering the global financial crisis and that what it described as 'mature regulatory settings' had worked in Australia's favour (OECD 2010b, 13). However, it also noted that there was room for improvement.

1.3. Social and Economic Development

Australia exhibits relatively high levels of economic development and social stability, with nearly 22 years of uninterrupted economic growth from 1992 to 2013. This was accompanied by falling unemployment and low levels of inflation, although the former increased slightly after 2008 (OECD 2014a). GDP (gross domestic product) per capita rose from US\$34,888 (PPP) in 2005 to US\$45,016 in 2012, and average household income per capita is US\$31,197. Much of the economic growth of the 2000s was associated with a mining boom and, as this receded, GDP growth had slowed. Similarly, productivity gains had slowed in recent years to below that of the leading OECD countries. In terms of trade, the period 2008–2013 saw Australia's already relatively low barriers to trade and investment reduced by the further reduction of import tariffs and simplification of

the screening and approval procedures for foreign direct investment, so that Australia now ranks fourth in the OECD for ease of trade and investment flows, behind the Netherlands, Poland, and Belgium (OECD, 2014b). Further details regarding Australia's socio-economic development can be found in OECD (2014b) and the Australian Bureau of Statistics (2014).

1.4. Regulatory Quality: Room for Improvement

Australia has nine RMSs, one for each state and territory, one for the Commonwealth Government, and one for CoAG. While, as noted, the capacity and quality of those systems are generally good, recent reports have indicated the need for improvement. In 2011, the Commonwealth's influential and largely independent Productivity Commission indicated the need for the following:

- the prioritisation and sequencing of reviews and reforms – with greater attention paid to the costs of developing and undertaking reforms,
- the monitoring of reviews and the implementation of reforms,
- the provision of advance information to achieve better focused consultations,
- improvements to incentives and mechanisms for good practice by regulators, and
- better identification of the best approaches for building public sector skills in evaluation and review (Productivity Commission, 2011: x).

A 2010 OECD review of Australia also noted that there was room for improvement:

- A culture of continuous improvement supported by evidence-based decision-making needs to be embedded more strongly in government practices, with ministers and their departments more clearly accountable for the quality of regulation in their portfolios.
- While Australian competition law had been effective in establishing robust and competitive markets, there was a need to give greater prominence to long-standing commitments to further reform of particularly challenging aspects of the transport, energy, water, and infrastructure sectors.
- The reduction of significant costs associated with inconsistent or duplicative regulatory regimes between the Australian jurisdictions that were a significant issue for competitiveness. Hence, the further streamlining of regulatory frameworks would enhance market openness,

as well as the ability to compete globally in knowledge-intensive industries (OECD 2010b, 13).

Most recently, a review of the Commonwealth's RIA system – the key instrument for assessing proposed new or modified regulation – was more critical of the performance of that system (Borthwick and Milliner, 2012). It found that while the Commonwealth's RIA was 'entirely consistent with' the OECD principles for such systems, major government, business, and not-for-profit stakeholders expressed substantial dissatisfaction with the system and the review recommended a range of changes.

1.5. The Evolution of Australia's Regulatory Management Systems: Waves of Reform

Australia's nine RMSs have evolved and changed over time, initially, for the most part, on an ad hoc basis within each of the nine jurisdictions. However, since the mid-1980s, there has been a series of more systematic waves of regulatory reform and, to a more limited extent, deregulation coordinated in part through CoAG. They have resulted in increasingly similar, but not identical, RMS for each jurisdiction, as well as strategic reviews of the existing stock of regulation and modifications to RIA systems. The focus here is primarily on the regulatory reforms of the Commonwealth Government, or those led by it in cooperation with CoAG.

The First Wave of Reform: 1983–1996

The first wave of reform commenced slowly in the mid-1980s under the Hawke Labor Government. It focused primarily on sector-based reform and selectively upon a few major areas of the existing stock of regulation that impacted most heavily upon business and the economy, such as the floating of the Australian dollar; a substantial deregulation and reform of financial market regulation, the rapid reduction of protective tariff barriers, and limited reform to industrial relations systems (for a useful description of the reforms undertaken in this period, see Kelly, 1994). As with the somewhat earlier New Zealand reforms of the 1980s, there was also an increasing move towards performance-based regulation and related economic instruments, and away from more traditional 'command and control' regulation. The first wave also included, on a very modest basis, the introduction in 1985 of a system for RIA, first in the Victorian state government and in the Commonwealth. This was aimed at improving the quality of the 'flow' of new and modified regulation.

Both sets of reforms were the result of a sharpened Australian appreciation that major productivity reforms were necessary if Australia was to successfully face increasingly competitive international challenges, at a time when its economic performance was relatively weak. This led to a new strategic commitment to undertake relevant reforms, supported in general by all major parties and the major business associations. The Commonwealth Government's Industry Commission (later renamed as the Productivity Commission) was an important actor in identifying, assessing, and promoting the need for such reforms (Carroll 1995, 76–98).

Table 2.1. Waves of Regulatory Reform in Australia

| Period | Reform Periods |
|--------------|---|
| 1983–1996 | <ul style="list-style-type: none"> • Floating of the Australian dollar • Financial market deregulation and reform • Rapid decline in tariff barriers • Selective, sector-based reform • Largely Commonwealth Government–based reforms |
| 1996–2006 | <ul style="list-style-type: none"> • Continuing, sector-based reform • Increased involvement of state and territory governments, with incentive payments from the Commonwealth Government for reforms achieved • National Competition Policy Reforms managed by National Competition Council • Reforms to RIA systems |
| 2006–2013 | <ul style="list-style-type: none"> • A new focus on human capital regulation • A continuing emphasis on reducing domestic, inter-jurisdictional, regulatory barriers to trade • A new CoAG Reform Council • Increased role for the Productivity Commission |
| 2013 onwards | <ul style="list-style-type: none"> • Increased emphasis on deregulation and savings targets • New review of regulation impacting on competition • CoAG Reform Council terminated |

CoAG= Council of Australian Parlements; RIA= regulatory impact assessment.

Source: Authors (2015).

While the bulk of the reforms in this first period were largely successful and have been relatively little modified since, the same cannot be said for the RIA systems. In summary, most of the period from 1986 to 1997 saw a slow and somewhat painful period of birth and infancy for the RIA system at the Commonwealth level, with widespread noncompliance with the RIA process and little discernible impact on the quality and extent of new or amended regulation regarding business (Auditor General, 1989; Head and McCoy, 1991, 163; Industry Commission, 1993; Argy and Johnson, 2003, 22; ORR, 1993, 272; Carroll, 2008, 17–32). A relative lack of political commitment by ministers and senior departmental and agency

executives resulted in policy development processes remaining largely unchanged, with an under-resourced, oversight unit, the Business Regulation Reform Unit (BRRU), often unable to discharge its advisory functions. At best, the BRRU had encouraged departments and agencies to view the development of new or modified regulation with regard to business somewhat more critically, in line with the government's new principle of the minimum of effective regulation (Industry Commission, 1993, 272; Carroll, 2008, 19). The primary reasons for the limited performance of the RIA system were:

- The RIA system was imposed at short notice upon departments and agencies by successive governments, eagerly supported by peak business associations and, increasingly, the government's own Productivity Commission. However, the departments were not enthusiastic about the imposition, with its implication that their existing policy development systems were inadequate (anonymous interviews conducted by Carroll at the state and Commonwealth level in the period 1993–1995 and 2007–2007).
- In addition, there was some feeling that the RIA system had a primarily ideological rather than a quality improvement purpose, aimed at freeing markets from regulatory control without convincing justification for such reform (Head and McCoy, 1991).
- The RIA represented, at least in its earlier years, an increased workload for the public service and, if it was to be accommodated in the fashion desired by the government, a degree of change to established policy processes and practices. Such organisational change, welcome or not, takes time to implement.
- Insufficient resources and staff for the oversight unit, BRRU, to achieve its objectives, leading to it being only able to comment on a small proportion of the total volume of new regulatory proposals (Auditor General, 1989; ORR, 1993, 271–272).
- BRRU was often consulted too late in the policy development process to have a significant impact on the quality and content of the regulations being proposed.
- BRRU devoted too many of its limited resources to its role of providing advice with regard to the regulatory impact statements (RISs) submitted to the Cabinet, compared with its other, particularly training, functions (ORR, 1993, 271–272).

- Given that successive governments in 1985–1996 had not provided the resources necessary for the tasks allocated to BRRU, especially as regards its monitoring of the RIAs undertaken by departments and agencies, it seems clear that the necessary ministerial and high-level executive commitment to, and support for RIA, had not been forthcoming, or had been very limited. Without such commitment, no reform is likely to be fully successful.

The Second Wave of Reform: 1996–2006

The second wave of regulatory reform, largely microeconomic in nature, again largely sector-based, commenced during the Hawke and Keating Labor Governments of the later 1980s and early 1990s, increased its impetus, and continued from 1996 under the first Howard Liberal/National Government. Because a great deal of this microeconomic reform agenda required federal state cooperative action, most of the strategic policy work for regulatory reform occurred through the then new CoAG. This second wave was notable for two broad sets of reforms. The first was the very wide-ranging National Competition Policy (NCP) reforms, which involved a detailed review of the existing stock of regulation for any anti-competitive impacts. The second was a set of reforms to RIA systems designed to improve the quality of the 'flow' of new and modified regulation.

The NCP reforms proved to be a lengthy (over 10 years) and largely successful review of 1,800 regulations at the national and state levels. It was based on three related agreements between the Commonwealth and state governments, signed in 1995: the Conduct Code Agreement, the Competition Principles Agreement, and the Agreement to Implement NCP and Related Reforms. The initiation and progress of the reviews were stimulated by incentive payments from the Commonwealth Government to the state governments for the successful completion of reviews, overseen by the National Competition Council (NCC) (Kain, Kuruppu, and Billing, 2003). The Productivity Commission later estimated that the NCP had boosted Australia's GDP by 2.5 percent or A\$20 billion (Productivity Commission, 2005a).

The success of the NCP reforms can be attributed to at least the following factors:

- It received support from all Australian governments, in turn based on substantial evidence of the likely gains to be made from reform provided by the Productivity Commission.
- As a broadly based reform programme, it improved the prospect that those who might lose from any one specific reform could still gain benefits from other reforms, making it easier to undertake reforms that would have been difficult to implement on a one-by-one basis.
- The NCP included a set of reform principles that provided a degree of flexibility for the state governments in implementing the resulting reforms, enabling them to be adapted to differing socio-economic and political environments.
- The reforms were prioritised and agreed in advance, so that each government was aware of its specific commitments and schedule.
- There was an effective public interest test to be applied in all of the reviews, with a presumption in favour of competition and the onus of proof being placed on stakeholders benefiting from a restriction on competition to demonstrate it should be retained (Productivity Commission, 2005a, 17). The guiding principle was that legislation (either existing or proposed) should not restrict competition unless it could be demonstrated that (i) the benefits of the restriction to the community as a whole outweighed the costs, and (ii) the objectives of the legislation could only be achieved by restricting competition. As such, NCP reversed the usual onus of proof for regulatory restrictions to be maintained.
- The reviews and assessment were, for the most part, conducted independently and in a public and transparent fashion, thus, encouraging public support.
- The distributional costs of regulatory change were identified as far as possible and transitional assistance was provided in appropriate cases.
- Most modified or new regulations resulting from the NCP reviews were systematically scrutinised.
- Perhaps most importantly, the Commonwealth Government provided incentive payments for completed reforms of an appropriate standard (Productivity Commission, 2005a).

The second set of reforms in the second wave focused largely on the introduction of new RIA systems for jurisdictions where they did not exist, and the improvement of existing RIA, with the aim of ensuring that any new or modified

regulations impacting on business and the economy would not exhibit the anti-competitive features and the often-cumbersome red tape that had stimulated the NCP reviews. The reforms extended to the CoAG when, in 1995, it agreed to the introduction of a RIA system to cover regulations with a national application. The bulk of RIA reforms were introduced by the 1996 Howard Liberal/National Government, which strengthened the Commonwealth's RIA system by:

- Expanding the resources available to the Office of Regulatory Review (ORR, the successor to BRRU) and stressing that the submission of a RIS, following a RIA, was mandatory for all departments and agencies.
- Requiring that RISs were to be tabled as one of the explanatory documents when proposals for legislative change were put before Parliament;
- Specifying that the Assistant Treasurer, although not a Cabinet minister, would be responsible for regulatory best practice, as a visible sign of greater political commitment to regulatory reform;
- Requiring the ORR to report to the Cabinet on departmental compliance with RIS requirements for regulatory proposals;
- Requiring the Productivity Commission to report annually, in public reports, on overall departmental and agency compliance with RIS (ORR, 1997; Productivity Commission, 1998).
- Establishing a separate Office of Small Business (OSB). The OSB was to be consulted for all Cabinet submissions that might have an impact on small business, and to develop and report annually on a system of nine regulation performance indicators. The departments and agencies would monitor and provide the OSB with data related to their own performance, with the OSB reporting annually on its performance against the regulation performance indicators, with the first report to be made in 1999 (Productivity Commission, 1999, 12).
- In 1998, Prime Minister Howard committed his second government to the introduction of annual regulatory plans for all departments and agencies, to be reported on by the OSB. The aim of this was to provide business and the community with timely access to information about past and planned changes to Commonwealth regulation, to make easier for businesses to take part in the development of regulation.

In the first 2 years of the reformed RIA system (1996–1997) at the Commonwealth level, compliance with the RIA process was lower than the average for the 1999–2006 period, as measured by the new regulation performance indicators (which proved to be of only limited value, see Carroll, 2008c). As the Productivity Commission put it, these 2 years were a learning period for all concerned and the level of compliance as expected improved (Productivity Commission, 1999, xviii). Several ministers' offices were also apparently not aware that the modified RIA requirements applied to them; there were also examples of differences of opinion between the ORR staff and departmental staff over how to interpret the RIA Guide (Productivity Commission, 1998, xix).

On a more positive note, for the relatively few RISs that were submitted in 1996–1997, the ORR felt that the level of analysis was adequate in 92 percent of cases (ORR, 1997, 44). The major reasons identified for the poor performance in these 2 years, in summary, were (i) a lack of awareness of the requirements of the new system, (ii) varying degrees of understanding of and priority accorded to the new system, (iii) a lack of resources for the ORR, and (iv) a slow process of cultural and organisational change resulting in a lack of integration of RIA into departmental policy processes (Productivity Commission, 1998, 1999).

After this initial 'learning period', the performance of the reformed RIA improved as regards process, although with significant variations between departments and between the Commonwealth RIA and CoAG's, as highlighted by the ORR's annual reporting of performance statistics. In terms of volume, for example, from 1999 to 2005, a total of 11,545 bills and disallowable instruments were introduced in the Commonwealth, with the ORR receiving 4,832 new RIS queries from agencies with regard to this total, of which it advised that 1,085 (9.4 percent) required a RIS. The relatively small proportion of bills and instruments subject to RIS was because most of the latter involved minor amendments to existing regulation that did not require the preparation of a RIS (Productivity Commission, 2005b, 79).

In summary, the performance of the RIA system at the core of the Commonwealth's RMS slowly improved through to the middle 2000s. However, it was often variable as regards both regulatory processes and regulatory content, leading to growing stakeholder dissatisfaction. In particular, there was growing pressure from business associations, such as the Australian Chamber of Commerce and Industry (ACCI) and the BCA, and from the Productivity Commission (see, for example, ACCI, 2005a; 2005b; BCA, 2005a; 2005b;

Productivity Commission, 2005b). This resulted in the establishment of the Taskforce on Reducing the Regulatory Burden on Business, to examine the impact of regulation on business and the RMS, which reported in 2006 (Regulation Taskforce, 2006). The task force was designed primarily to identify the views of business for the benefit of business, with its members being drawn from business, plus, as chair, the Chair of the Productivity Commission. The Howard Government accepted most of its recommendations (Australian Government, 2006).

As well as many detailed recommendations for the reform of specific regulations, the RMS, and the RIA, a significant proportion of the recommendations represented a plea for more effective support and resourcing for the RMS and RIA systems. The task force felt these resources were already largely in place but lacked the strong political and senior administrative commitment and support needed to make the systems more effective (Carroll, 2008b). The last of the Howard Government lost office in the 2007 Commonwealth election before it could implement the task force recommendations with which it agreed.

The Third Wave of Reform: From a National Reform Agenda to a Seamless National Economy

The third wave of regulatory reform, initially described as the National Reform Agenda, and then the Seamless National Economy, commenced in 2006 under the last Howard Government and received additional impetus following the election of the Rudd Labor Government in late 2007 (Carroll and Head, 2009).

This wave of reform encompassed:

- a substantial agenda of agreed initiatives aimed at increased productivity, including actual or proposed reviews of legislative and policy content, with a greater focus on human capital regulation, and a strong emphasis on reducing inter-jurisdictional, regulatory barriers to trade; and
- a series of reforms to national and intergovernmental policymaking structures and processes, including processes for performance oversight and for funding accountabilities. The reforms represented a major increase in the scale of CoAG's operations and that of the state governments, which were to have responsibility for the bulk of the implementation of the reforms.

The content, priorities, and plans for this wave of reform drew heavily on advice from a new advisory body, established in 2007, the Business Regulation and Competition Working Group (BRCWG), as well as Productivity Commission reports. The BRCWG drew up an implementation plan for 27 deregulation priorities identified by CoAG as priorities for reform, which was agreed to by CoAG in 2008. A further eight competition policy reforms were added in 2009, as indicated in the National Partnership Agreement to 'Deliver a Seamless National Economy', an agreement with its basis in the Intergovernmental Agreement on Federal Financial Relations (OECD, 2010b, 135–136). The Productivity Commission played a major part in helping achieve this new CoAG agenda, advising on the economic impacts of the reforms and collecting performance data to measure progress for the CoAG Reform Council (CRC). It also prepared a series of studies of 'Performance Benchmarking of Australian Business Regulation' in the Commonwealth and the states (Productivity Commission, 2014a). As with the NCP competition reforms a decade earlier under the National Partnership Agreement, the Commonwealth Government agreed to provide the states with A\$550 million, provided it felt that appropriate progress had been made, based on the advice of the CRC.

While it is still too early to offer final conclusions as to the performance of this third wave of regulatory reform which, as noted below, overlapped into what might become a fourth wave of reform, the CRC, in reviewing progress from 2008 to 2013 for the new Abbott Government, found that the stakeholders consulted agreed that CoAG had made significant progress in establishing an agreed course of action in the policy areas under the reform agenda and then delivering on these initiatives. In part, the CRC review was based on a consultant's report from Deloitte Access Economics, which found that substantial progress had been made, but that 'evidence of substantive change to outcomes is yet to emerge' pointed out that a number of the original agreements had been abandoned, suggesting a decline in what it described as the 'collaborative federalism' necessary for appropriate policy design (CRC, 2013; Deloitte Access Economics, 2013). However, the latter review also concluded that the regulatory reforms related to the 'Seamless National Economy' had mostly been met, although some were at risk in terms of time and target. In contrast, more than half of the competition reforms were at risk for both time and target reasons, adding impetus to the Abbott Government's new review of competition policy (Deloitte Access Economics, 2013, 25–26).

Provisional conclusions regarding the progress and performance of the third wave of reform include:

- The reform agenda was very ambitious, both as to extent and time frame, at least compared with previous periods of reform in Australia. It included complex areas of service delivery, with a greater emphasis on social policy reform than the macro- and micro-economic reforms of the previous reform periods.
- Not all elements of the planned reforms contained in the National Partnership Agreement and the Intergovernmental Agreement on Federal Financial Relations were well designed, given differences in the level of pre-existing agreement about appropriate ways of measuring both progress and outcome (Deloitte Access Economics, 2013, 34).
- A reduction in priority and time given to the reforms, particularly at the Commonwealth level with the onset of the global financial crisis.
- The slowing of momentum caused by continuing internal, ministerial, and Australian Labor Party differences that led to a change in Prime Minister, from Kevin Rudd to Julia Gillard, then to the election of the first Abbott Liberal/National Government in 2013.
- The election of an increasing number of Liberal/National Party Governments at the state level after 2007, with a greater range of differences from those of the Australian Labor Party governments of Rudd and Gillard, and a resulting decrease in the cooperation needed to achieve the intergovernmental, CoAG reform agenda.

A Fourth Wave of Reform? 2013 Onwards

The Abbott Government adopted a threefold strategy of reform when it came into office in September 2013. The first part focused on the need for extensive deregulation to reduce the adverse impact of regulation on business (Australian Government, 2013a; Douglas, 2014). This was a revived emphasis on deregulation, symbolised in the setting aside of two parliamentary days each year to repeal unnecessary and costly regulation, with a target of A\$1 billion per year. The first repeal day was in the House of Representatives on Wednesday, 26 March 2014. It received a slightly mixed reception in the media, with its claim of having achieved savings of over A\$700 million and cutting 10,000 pieces of legislation.

The second part consisted of a regulatory reform process regarding competition, commenced in June 2014, the first since the Hilmer review of competition policy in 1993 (Australian Government, 2014a). The third part consisted of a series of changes to the existing system for regulatory management at the national level, including (i) moving the Office of Best Practice Regulation (OBPR) from the Department of Finance and Deregulation to the Department of Prime Minister and Cabinet, (ii) creating a new Office of Deregulation in that department, (iii) appointing a Parliamentary Secretary responsible for its deregulatory activities (essentially downgrading the ministerial 'weight' given to deregulation, as it had been the responsibility of a Cabinet minister in the Rudd and Gillard Governments); revising the existing principles and guidelines for RIA (Australian Government, 2013b), and (iv) establishing a new Deregulation Division in Treasury's Markets Group. The Abbott Government continued to support several reform initiatives started under the Rudd Government, where progress had been variable, although it reduced the number of CoAG councils and modified its priorities (CoAG, 2013a). As the Abbott strategy of reform was put in place only in 2014 and his government overturned in September 2015, it is too early to comment in any detail as regards its performance and impact on regulatory policy and the RMS or, indeed, whether it constitutes a major 'wave' of reform to the extent experienced in the first three waves. At present his successor, Prime Minister Malcolm Turnbull, seems content to continue with the planned reforms.

1.6. Developing an Increasingly Sophisticated RMS: 1983–2013

The development of Australia's RMS into an increasingly sophisticated system has taken 30 years, expanding to cover national, state, and territory governments and most forms of regulation. A RIA system, gradually improved over time, has been put in place for all jurisdictions to cover proposals for new and modified regulation, with the cost of new regulations increasingly often being required to be fully offset by reductions in the existing stock of regulations. Similarly, to a varying extent, the existing stock of regulations have received a number of detailed reviews, with a focus on that with an adverse impact on competition and productivity. At the Commonwealth level, all regulations must be periodically reviewed to test their continuing relevance. These developments have been accompanied by supporting institutional changes, most notably:

- the creation of an oversight regulatory review unit close to the centre of government, largely responsible for the development and distribution of detailed regulatory reform guidelines for departments and agencies;

- increasingly for the Commonwealth, the creation of small deregulatory review units within major departments and agencies;
- the development of the independent Productivity Commission as the Commonwealth Government's major advisory body on all aspects of microeconomic reform. It provides regular reports and advice to the Commonwealth Government and CoAG regarding regulatory performance; and
- the development of CoAG as the major body for agreeing and overseeing regulatory reforms that cross jurisdictional boundaries.

1.7. The Current Regulatory Management System

The Commonwealth Government's RMS consists of three central agency oversight bodies and all government departments and agencies, directed and coordinated by the Prime Minister and the Cabinet, based on 'The Australian Government Guide to Regulation', which contains 10 basic principles regarding regulation and a guide to the preparation of a RIS. In addition, CoAG has a closely linked RMS outlined in the 'Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies'. This provides guidance for over 40 Commonwealth-state ministerial councils and related intergovernmental bodies that facilitate consultation and cooperation between the Commonwealth, state, territory, and local governments in Australia. The councils initiate, develop, and monitor policy reforms in the areas for which they are responsible, including the development of policy reforms for consideration by CoAG and the implementation of agreed reforms. The central agencies are:

- The Department of Prime Minister and Cabinet, particularly its OBPR and Office of Deregulation. The Office of Deregulation is responsible for (i) providing deregulation policy advice to the Prime Minister and the parliamentary secretary assisting the Prime Minister on deregulation; (ii) overseeing and coordinating the government's audit of regulation and its A\$1 billion annual regulation cost reduction target; (iii) facilitating the exchange of information on deregulation across the Government, in particular between deregulation units established in each department in 2013–2014; (iv) assisting the Prime Minister to establish a deregulation agenda with states and territories through CoAG; and (v) monitoring and providing reports to the government on the progress of its deregulation agenda. The OBPR manages the government's regulatory impact analysis

requirements. In addition, it assists agencies in preparing RIS through training and guidance, monitors and reports on the government's RIA requirements, and administers CoAG guidelines for regulation-making by national bodies. The new Deregulation Division of Treasury also provides advice on deregulation.

- The Attorney-General's Department has broad and specific responsibilities regarding all government regulation, including the Legislative Instruments Act, reviews embedded in statutes, and sun-setting requirements.
- The Australian National Audit Office (ANAO) undertakes targeted in-depth process and performance audits of all government agencies. It also provides 'best practice' performance guides such as that relating to the administration of regulation (ANAO, 2014).

The day-to-day work associated with the RMS is

carried out within line agencies and departments, including the development of RIS following the application of RIA, including those needed for embedded statutory reviews and sun-setting; the development of annual regulatory plans; and reporting on their regulatory performance to relevant central agencies. In addition, the Productivity Commission, as noted above, provides regular reports and advice to the Commonwealth Government and CoAG regarding regulatory performance.

1.8. The Coverage of the Regulatory Management System in Australia

In general, there has been a trend to expand the type and scope of regulation subject to RIA and requiring a RIS in all Australian jurisdictions, although at different rates, so that actual coverage varies between jurisdictions, with a wide range of exemptions and exceptions for minor regulations and an initial focus that was only on regulation impacting on business, the economy, and not-for-profits. This expanded so that by 2012 the only type of regulation not subject to a RIA requirement was quasi legislation, where only the Commonwealth, Queensland, and South Australia governments had such a requirement (Productivity Commission, 2012, 107–108). Furthermore, in 2014 the Abbott Liberal/National Government specified that all regulatory proposals to be submitted to the Cabinet be subject to RIA, not only those impacting on business, the economy, and not-for-profits.

However, in practice, the volume of primary and subordinate legislation actually subject to RIA, for example, in 2010 and 2011, varies from 0.5 percent (Western Australia) to 6.5 percent (Northern Territory) of the total annual, new, or amended regulation being considered in each jurisdiction (Productivity Commission, 2012, 110). This is because the requirement for RIA applies only to regulatory proposals that will have a significant impact, with variations between governments. Moreover, the proportion of RIA undertaken varies greatly by jurisdiction, with the Commonwealth accounting for over 30 percent of the total and CoAG, Victoria, and NSW for another 50 percent. The explanation for this small volume and varying distribution lies primarily in the considerable exemptions and exceptions from RIA that are permitted in all jurisdictions, their varying volumes of legislation and varying commitment to RIA systems.

1.9. RMS Actors and Issues

As with all RMS and similar policy development processes, the type and role of actors involved and the extent of their involvement vary according to the policy being subject to the RIA process and the stage of the process involved. Similarly, the issues that emerge and their impact on RIA performance tend to vary somewhat. In general terms, five types of actor are involved: (i) the relevant ministers; (ii) the public servants or/and consultants undertaking the assessment; (iii) the RIA oversight body; (iv) parliaments, especially parliamentary committees; and (v) non-governmental actors, notably relevant business associations, and to a lesser extent, trade unions.

Parliament

Where a regulation is tabled in Parliament, a RIS (or its equivalent) must be included, including treaties that have significant regulatory implications, but excluding post implementation reviews (PIRs). It is not required that Parliament actually examine the RIS, nor is it undertaken formally as a matter of routine, other than in NSW, Victoria, Tasmania, and the Australian Capital Territory. However, given the typical dominance of the parliamentary process by the government in power, at least in lower houses, the extent to which such committees undertake rigorous scrutiny of RIS is variable, with varying evidence as to their performance (Deighton-Smith, 2013). To date, other than in the form of an occasional, minor reference to RISs in case law, the courts have been silent in relation to RIS, as is the case in most European countries.

Until recent years, there has been a very low rate of reference by parliamentarians to RIS or RIA in debates and committee sessions, although it has now sharply increased. RIS can be used both in the attempt to improve the quality of proposed legislation, which is their basic aim, and for party political and electoral purposes, by casting doubt on the validity of the regulatory objectives and policymaking capacity of the government of the day, as revealed or allegedly revealed by the RIS tabled in Parliament. Hence, it is not surprising that, increasingly, opposition parliamentarians have tended to make most use of the material provided by RIS, or to indicate the inadequacy of a tabled RIS.

Ministers

When RIA systems were introduced, especially with their initial narrower focus on regulation impacting on business, they tended to be regarded as an 'add on', something to be undertaken after the traditional policy process had been completed, a view that has persisted, albeit to varying extents (Borthwick and Milliner, 2012, 47). Hence, it is not altogether surprising that, as reported in 2012, ministers, their offices, and departments and agencies still exhibit a widespread lack of full acceptance of RIA and RIS, and no minister consulted in the preparation of a major Australian report felt that RIS had any relevance to their or the Cabinet's decision-making, demonstrating either a distinct lack of commitment to the RIA philosophy, or the weaknesses of the RIS they have perused, or both (Borthwick and Milliner, 2012, 9, 37, 38). This is likely to be because RIA processes constrain ministerial authority and influence in decision-making, unless an exemption from the process can be gained. Given that ministers display a lack of acceptance of the value of the RIA and RIS, their views highly likely percolate down into the departments for which they are responsible, acting as a disincentive for systematic and rigorous application of the process by public servants.

Public Servants and Regulators

In Australia, regulators are mostly public servants and play a key and challenging role in the RMS, especially as regards RIA and RIS. In the early years of regulatory reform, there was an unsurprising lack of familiarity with the processes of reform, and individual members of the public service still often have only a limited experience with the RIA, as they are undertaken infrequently by departments and agencies. Whereas advice and training from the oversight body have reduced these problems, regulators have not entirely overcome them. This is especially so regarding the measurement of the costs and benefits of proposed regulation,

where the relevant expertise was in short supply. This led to the provision of relevant training by the OBPR and the development and required use of a computer-based standard cost model (the 'Business Cost Calculator') to simplify the process.

Despite this, as the OBPR's annual reports usually indicate, departmental estimates of regulatory costs–benefits are often unsatisfactory and the then chairman of the Productivity Commission, Gary Banks, indicated that in 2004 only 20 percent of tabled RIS contained even an attempt at quantifying the costs related to proposed regulations (Banks, 2005, 10). The adequacy of assessment of the net impact of proposed regulation remains a challenging issue with varying views as to how to proceed. The Borthwick and Milliner review, for example, while noting the value of quantitative assessment, recommended that the OBPR be less rigid in assessing the quantitative cost–benefit analysis and impacts data in RIS and PIR, and should give greater consideration to qualitative assessment where quantitative material is insufficient (Borthwick and Milliner, 2012, 73). There is little sign that this view has been accepted and the OBPR recently released even more detailed guidance and requirements for quantifying costs and benefits, described as the 'Regulatory Burden Measurement Framework', and renamed the 'Business Cost Calculator', as the 'Regulatory Burden Measure' (OBPR, 2014d).

Outside of the departmental officials and regulators undertaking reviews, those in the Productivity Commission and the Australian Competition and Consumer Commission provide influential advice on economic matters. In particular, the Productivity Commission has

- acted as a major advocate for regulatory reform, based on the research it undertakes, including frequent regulatory reviews and the performance of RIA systems;
- provided CoAG with regular assessments of the economic impacts, costs, and benefits of the various reform programmes developed over recent decades;
- provided reports on performance in implementing agreed reforms; and
- provided annual reports to the Commonwealth on the performance of government services.

While, as noted above, the OBPR and similar bodies have long provided relevant training and information for public servants and regulators in an ongoing effort to improve their capacity, coherence and performance, continuing dissatisfaction with regulator performance, particularly from the business community, stimulated the development of a proposed Regulator Audit Framework (Productivity Commission, 2014b). In large part, this was adopted by the Abbott Government in 2014 and, following public consultation, was put into practice in July 2015 (Media Release, 2014b). It establishes a common set of six performance measures enabling an assessment of regulator performance and their engagement with stakeholders, which will be published annually based on externally validated data.

RIA Oversight Bodies

The OBPR (the successor to ORR) administers the Commonwealth RIA system. Its key activities are

- assisting agencies in preparing RIS through training and guidance;
- monitoring, reporting, and advising in relation to the RIA requirements; and
- most importantly, advising departments and cabinet as to the adequacy of the RIS.

History suggests that the effectiveness of such oversight bodies on the performance of RIA systems, especially compliance, is limited. A major review of the Commonwealth's RIA system found that, while there had been a distinct increase in compliance with the RIA process from the mid-1990s, it was by no means perfect (Regulation Taskforce, 2006; Carroll, 2008). The criticisms and recommendations of review were largely accepted by the Howard Government in 2006 and the changes were detailed in a revised Best Practice Regulation Handbook.

Despite these and later changes, in 2012 two major reports concluded that there was a major gap between RIA principles and what actually happened in practice in the policy development process, despite a 27-year operation (Borthwick and Milliner, 2012, 72; Productivity Commission, 2012, 2). As a result, the new 2013 Coalition Government of Tony Abbott moved the OBPR to the Department of Prime Minister and Cabinet and established a new Office of Deregulation within the department, responsible to a parliamentary secretary for deregulation, both in

order to signal greater political commitment and support for the RMS and the reform agenda.

Despite their successive organisational relocation and the slowly increased resources available to them, there is little direct evidence as to the actual impact on regulatory performance of the oversight body responsible for the Commonwealth RIA, nor is there for any similar oversight body in Australia or elsewhere.

Non-government Actors

The Commonwealth RMS system focused initially on regulation impacting on business and the economy, then broadened to include not-for-profits, and only since 2013 was it expanded to include all community groups and individuals. The bulk of non-government actors have been overwhelmingly from business and, to a lesser extent, from trade unions and the larger not-for-profits. Business associations such as the Australian Chamber of Commerce and Industry, Australian Industrial Group, and the BCA have been regularly consulted in regard to regulatory proposals, although the extent and quality of consultation have varied, and have often been surprisingly low, leading to the development of a specific government policy on consultation and a requirement for each RIA to include an approved consultation plan (AIG, 2014; BCA, 2005, 2013; Australian Public Service Commission, 2005, 56).

1.10. Regulatory Management System Procedures

The RMS procedures centre on the RIA system and administered by the OBPR; similar procedures exist in the states and territories. The details of the procedures and guidance advice are provided in the Best Practice Regulation Handbook (OBPR, 2014a), and the Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies (OBPR, 2014a).

In addition, the OBPR provides detailed guidance regarding each stage, the use of the Regulatory Measurement Framework, cost–benefit analysis, the assessment of competition implications, risk analysis, environmental valuation, and the Trade Impact Assessment (OBPR, 2014c).

In summary, the sequence of procedures is as follows:

Annual Regulatory Plans

All departments or agencies are required to develop an annual regulatory plan in consultation with their Deregulation Unit and the OBPR that indicates likely new or modified regulation to be developed. It is published on websites in July each year and provides stakeholders with an early indication of potential regulatory change that enables them to offer their views and submissions in a reasonable time frame.

Initiating the Development of a Regulation: The Preliminary or Early Assessment

Departments and agencies are required to commence regulatory development, including the proposed removal of regulations, by first considering and developing preliminary answers to the seven questions specified in 'The Best Practice Regulation Handbook' (p. 5). A written summary of the answers is then provided to OBPR, which advises whether or not a RIS is required and, if so, of what type. It must be signed off by a deputy secretary, secretary, or chief executive and the decision-maker must not have finalised any decisions about the preferred option at this point. Three types of RIS are specified: short, standard, or long form, depending upon the extent and type of impact of the proposed regulation. Each form specifies the tasks to be undertaken in developing the RIS. The only exemptions from the requirement for a RIS are: (i) for minor matters not being considered by The Cabinet where the proposed change is likely to have an insignificant impact; and (ii) in exceptional circumstances, an exemption can be granted by the Prime Minister at the formal request of the departmental minister.

Preparation of a RIS in Discussion with the Deregulation Unit and the OBPR

If a RIS is required, one is prepared by the department or agency (an external consultant can be used) drawing on the advice of the departmental Deregulation Unit and the OBPR, and detailed consultation with those likely to be affected, based on a required consultation plan. It must include: (i) the consideration of a range of options including, where applicable, a justification for establishing or amending standards in areas where international standards already apply (in particular, agencies are asked to consider opportunities for aligning regulations with those of New Zealand); (ii) detailed costing and an assessment of the net

benefits, using one or more of cost–benefit analysis, risk analysis, and a new Regulatory Burden Measurement Framework; (iii) an implementation plan; and (iv) an evaluation plan that describes how the recommended option will be evaluated in the future, if accepted and implemented. More detailed formal advice regarding each of these items is provided by the OBPR (OBPR, 2014b).

The OBPR Final Assessment

The final assessment is a two-part process. In part one the OBPR comments on whether the RIS is consistent with the government’s requirements and adequately addresses all required elements, including the quantification of regulatory costs and associated red tape reduction offsets. It may comment on whether the RIS accurately reflects stakeholder feedback on the analysis and whether the options considered reflect the full range of policy options available, including those suggested by stakeholders. The OBPR provides formal written comments, which are not published, within 5 working days if improvements to the RIS are required.

In part two, OBPR assesses the RIS for consistency and adequacy, within 5 working days. A RIS is assessed as consistent if it conforms to all applicable processes and has all necessary inclusions, such as an appropriate consultation approach and a minimum of three policy options, one of which must be a non-regulatory option. OBPR can find a RIS as non-compliant with RIS requirements if any of the analysis is unsatisfactory, the costing inaccurate, or the consultation process inadequate. When OBPR assesses a RIS as compliant, it can proceed to the relevant decision maker, usually Cabinet, for a final decision.

One of the initial aims of the RIA in Australia was to strengthen the Cabinet’s collective ability to scrutinise regulatory proposals that came from its individual ministers. This was to take the shape of the RIS document, which provided ministers with relevant information and, most importantly, the OBPR and its predecessors were charged with providing, for Cabinet, an assessment of the extent to which each RIS that reached Cabinet level actually complied with the requirements for a RIS. In the earlier years, ORR only had limited success in providing such assessment, with a 1989 review by the Commonwealth Auditor-General noting that the ORR was not achieving this objective because of insufficient resources (Auditor General, 1989; Industry Commission, 1993). However, it should be noted that ORR and its successors were not responsible for providing a detailed critique of the adequacy of each RIS, only an assessment of whether or not it complied with the RIS requirements. In practice, of course, its

comments on compliance provided useful material regarding the adequacy of the proposed regulation as a whole.

A department or agency can proceed to the decision maker even if the RIS is found to be non-compliant. However, the OBPR publishes all RIS and its assessment of them on the OBPR website and the relevant department is required to publish it on its own website. Hence, interested stakeholders – including parliamentarians, other agencies, and, of course, the media – can view the assessment and, especially if it has been found to be non-compliant, is likely to attract adverse comment. If the proposed regulation is tabled in Parliament, the RIS is included with the explanatory material.

Post Implementation Review (PIR)

Where a regulation is exempt from the RIA process and the need to submit a RIS, it is required that it be subject to a PIR that is similar to the process and content of a RIS.

Sun-setting of Regulations

Australian jurisdictions have made considerable and growing use of 'sun-setting' provisions, which require regulation to be reviewed after a specified period of time (typically 10 years), especially for subordinate legislation. The Commonwealth lagged behind the states in the inclusion of such provisions, with it commencing on a systematic basis following a 2006 review, reinforced by the Abbott Government in 2014. In addition, there have existed a large number of regulations exempted from such review (normally via the RIA process), weakening its impact. Similarly, the review requirement in RIS has not usually been accompanied by subsequent monitoring to ensure that such reviews are undertaken, even by oversight bodies. In addition, with the realisation that many thousands of such reviews would need to be undertaken from 2014, the Commonwealth Government decided that, where the sun-setting review does not involve significant change, a department will be allowed to self-assess the performance of the instrument and its assessment will be published in lieu of a RIS. While these limitations were clearly identified by the Productivity Commission, as yet there exists no substantial evidence as to the extent and effectiveness of most sun-setting systems (Productivity Commission, 2011).

Managing the Existing Stock of Regulations

In addition to the RIA system, Australian jurisdictions have developed a range of means for managing the existing stock of regulations, although these have lagged somewhat behind the development of the RIA system perhaps because of the extent of the additional workload involved in periodic systematic reviews of existing regulation. Hence, in 2007, as part of the Government's response to the 2006 Report of the Taskforce on Reducing Regulatory Burdens on Business:

- The Productivity Commission was asked to conduct ongoing annual reviews of the burdens on business arising from the stock of government regulations
- The Commonwealth Government introduced a 'catch-all' requirement that any regulation not subject to sun-setting or other evaluation be reviewed every 5 years. However, there is little information available as to when such reviews are scheduled, the findings of past reviews, or on whether changes to regulation have occurred as a result
- The Commonwealth Government initiated a series of partnerships between the Minister for Finance and Deregulation and ministerial colleagues with responsibility for particular regulatory arrangements. These partnerships were to enable a review of the extent to which the regulatory frameworks are unnecessary or poorly targeted

Based on its experience in conducting annual reviews of the stock of regulations, in 2011 the Productivity Commission was asked to examine, in part, the existing system for managing and reviewing the stock of regulations. It found that:

- A range of approaches is required to ensure that the stock of regulations are fit for purpose, ranging from 'good housekeeping' measures to in-depth reviews.
- There should include better prioritising and sequencing of reviews and reforms.
- More information on progress in implementing review recommendations should be provided.
- The provision of advance information to stakeholders was needed to achieve better focused consultations.
- There was a need for appropriate incentives and mechanisms for good practice by regulators.

- There was a need for the further building up of skills in evaluation and review (Productivity Commission, 2011).

1.11. Assessing Australia's Regulatory Management Systems

Australia is one of the earliest OECD members to develop a coherent system of RMS, borrowing from the earliest developers (e.g. the USA) and from the OECD. It has been further developed and refined over the past 3 decades and is generally regarded as of high quality although, as noted by the OECD and a number of other external reviews, there is still room for improvement. This applies to both the RIA process and proposed new regulation, and to the management of the stock of regulations. While the earlier waves of reform undertook reviews of the stock of regulation, for example, the NCP reforms, it was not until the latter half of the 2000s that there was markedly greater pressure for departments to periodically and more systematically review the entire stock of regulations for which they were responsible.

The new regulatory reform processes were gradually embedded in a reformed, institutional structure that provided the centre of government with a gradually increased capacity to manage the RMS, including the OBPR, the Office of Deregulation, departmental deregulation units, and the Productivity Commission. As any RMS exists in a dynamic and essentially political environment, change will likely be an ever-present fact of life for those involved in RMS (OECD, 2010b; Productivity Commission, 2011; Borthwick and Milliner, 2012).

As noted in detail above, the RMS system has had a number of weaknesses, several of which have been remedied, or partially remedied, over time. Nevertheless, the system displays a relatively high level of policy coherence horizontally, at the national, Commonwealth level, managed by key institutional structures (OBPR, the Office of Deregulation, the Productivity Commission, and agency deregulation units). This is less so vertically between the Commonwealth and state governments, as the latter have substantial, constitutionally based, regulatory authority. However, the development of CoAG and its regulatory agreements, the development of CoAG's own RIA process, and the use of bodies such as the NCC have substantially improved vertical coherence. There is also a growing degree of international coherence, focused on a Commonwealth requirement that agencies align regulations with those existing internationally or,

if not, demonstrate why this should not be the case as part of the RIA process (Australian Government, 2014b).

Departments and agencies have improved, if to varying extents, their performance with regard to meeting RIA *process* requirements. However, they have been rather less successful with regard to improving the *content* of new and amended regulation, or of the existing stock of regulations. In 2012–2013, for example, of the 66 RIS required, 64 were assessed as adequate, a compliance rate of 97 percent, up from 88 percent in 2011–2012. A total of 95 PIRs were required, of which 3 were non-compliant, 18 had not been implemented, 43 had not been commenced, 11 had commenced, 6 were completed but not published, and 14 were completed and published. Only one agency had not prepared the required annual regulatory plan. The CoAG RISs were slightly less adequate and compliant (OBPR, 2013).

As indicated, the bulk of new or modified regulations are not subject to detailed scrutiny in the RIA system and the production of a RIS, unless they will proceed to the Cabinet. While this reduces the administrative cost of RIA and RMS as a whole, it means that a large volume of new or modified regulations, albeit of a relatively minor nature, are not prepared to the same detailed standards, although all are now required to be costed using a new 'Regulatory Burden Measure', an information technology-based tool. It provides an automated and standard process for quantifying regulatory costs on business, community organisations, and individuals using an activity-based costing methodology. While such minor regulations, individually, may be of limited impact, in aggregate and over time as their number tends to increase, they can have a significant and possibly negative impact on the economy and business. The Turnbull Government, following on from the Abbott Government, is addressing this issue in the context of the existing stock of regulations and its new deregulation strategy.

Management of the existing stock of regulations has received greater attention in recent years, especially following the Productivity Commission's 2011 report on 'Identifying and Evaluating Regulation Reforms'. The bulk of the report's recommendations have been, or are currently being, put into practice, but it will be some time before a judgment can be made as to their impact on performance.

Various reasons account for the variations in performance, several of which have persisted over time, notably:

- A relative lack of influence and authority for the RIA oversight bodies (BRRU, ORR, OBPR), although these have been increased over time, most recently with the move of the OBPR to the Department of Prime Minister and Cabinet and the creation there also of an Office of Deregulation.
- A relative lack of resources for oversight agencies, although this has been slowly increasing over time, with increased budget allocations.
- A varying lack of regulatory expertise in analysis in departments, although expertise has grown slowly over time and it is still limited as regards the application of cost–benefit analysis and risk analysis. The proposed introduction of a new Regulator Audit Framework, aimed at annual comparative assessments of the performance of regulators, might provide the information necessary to further improve that performance.
- A varying, but often very limited commitment to, and respect for, the RIA process and the resulting RIS by ministers, leading to adverse impacts on regulatory culture within departments (see Box 1).
- A lack of systematic attention to the need for regular, systematic reviews of the stock of regulations.
- And, of course, by the often inherently difficult process of finding solutions to complex problems.

Box 1. Status of the RIA Process

It was clear that notwithstanding statements supporting the RIA Framework and RIA process by the Minister for Finance and Deregulation, other ministers and their offices did not approach the RIA process with the degree of commitment that a 'mandatory' process of government required. Indeed, there seemed a clear lack of appreciation of what the RIA process actually involved and a view that this was really something for agencies to handle rather than for ministers to be concerned about. Significantly, none of the ministers consulted saw that RIS had any relevance to their, or the Cabinet's, decision-making (notwithstanding RIS being attached to the relevant Cabinet submission or decision document) (Borthwick and Milliner, 2012, 38).

The varying performance of RMS, especially RIA and RIS, may also be because any system for policymaking in a democracy inevitably and continuously will be subject to competing political pressures from those desiring change for the benefits they hope it will bring, to those who resist change, for fear the benefits

that they currently receive will diminish or be eliminated. The making of regulation is an intensely political process and occurs in multiple arenas in which the regulation selected is determined as much by the relative power of the participants as by the process and the quality of regulatory content, especially where, as is usually the case, the selected regulation only partly resolves the problem it addresses. Efforts to promote a greater degree of rationality, such as RIA, are to be welcomed for any improvements in content and process performance they might bring but they are not immune from the exercise of power in the policy process. This is the central problem faced by RIA and its adherents. It is the reason that popularly elected ministers will always vary in their degree of support for such a system, for they are players in that process, acutely sensitive to its demands and constraints. If they are not, they do not remain as ministers for any length of time.

2. The National Competition Policy Legislative Review

Parts 2 and 3 of this paper explore two regulatory reform programmes undertaken in Australia in recent decades, both of which sought to increase competition across the national economy: the National Competition Policy (NCP) and the Seamless National Economy Agenda (SNEA). The contrasting experience of these reform programmes helps elucidate the role of the RMS in driving successful reform programmes. A particular focus is on the role of the Productivity Commission in the respective reform programmes.

2.1. The Productivity Commission

The Productivity Commission is the pre-eminent source of independent expert advice on microeconomic reform issues for the Australian Government. Its core function is 'to conduct public inquiries at the request of the Australian Government on key policy or regulatory issues bearing on Australia's economic performance and community well-being.' It also undertakes research on a range of issues at the request of government.

The Productivity Commission reports to the Treasurer (the Minister of Finance) but is an independent body established via its own Act of Parliament, with commissioners and a chairman who can only be removed by Parliament. The

Productivity Commission is the latest evolution in a series of bodies providing advice on industry policy issues to government. The focus of these bodies has transformed over time, reflecting changes in the dominant views within the Australian political sphere on industry policy issues. Thus, the major steps in this revolution as follows:

- The Tariff Board was established in 1921, with the largely protectionist role of provide advice to government on the provision of assistance to import-competing industries.
- It was re-established as the Industries Assistance Commission in 1973, with powers to hold inquiries and to submit reports to the minister, as well as provide an annual report on assistance to industry and its impact on the economy and on industry performance.
- The Industries Assistance Commission was re-established as the Industry Commission in 1989–1990, with a focus on assisting industry to become more internationally competitive, and explicit recognition in its legislation for the first time of the desire of the government to reduce industry regulation. It was also required to report on the social and environmental consequences of its recommendations.
- The Industry Commission was merged with two other bodies to become the Productivity Commission in 1998. Its role was broadened to cover areas of both state and federal governments' responsibility and to encompass all sectors of the economy.

Given the central importance of the Productivity Commission to the Australian RMS, the following case studies will review two major reform programmes undertaken in Australia since its establishment through the prism of an assessment of its involvement in, and importance to, the outcomes achieved. They will therefore highlight both the potential benefits to regulatory policy of governments establishing a professional, independent source of advice similar to the commission (as, for example, is provided by the USA's Office of Information and Regulatory Affairs and, more recently, by the New Zealand Government's new Productivity Commission), and consider its importance in relation to other identified critical success factors.

2.2. The Trigger for the Changes

Australia embarked on a large-scale process of microeconomic reform following the election of a new federal government in 1983. This was a response to a long period of relative economic decline. As the reform programme gathered pace, it became increasingly apparent that the limited scope of the existing competition policy arrangements would limit future reform opportunities and inhibit the development of a competitive economy in Australia. The federal government was at the time implementing a 'new federalism' policy and sought, as part of this, to adopt a national approach to competition policy reform, based on agreements between itself and state/territory governments. State and federal heads of government agreed to pursue such an approach in 1992.

2.3. The Sequence of Events and Key Steps

The Hilmer Review of competition policy was commissioned in 1992 and reported in 1993. Its recommendations led to all state and territory heads of government adopting, in 1995, a compendium of NCP agreements and to the passage of the Competition Policy Reform Act 1995 by the federal government (Kain et al., 2003).

At the centre of the NCP agreements was a systematic and comprehensive programme of legislative reform, the NCP Legislative Review Program, which was accompanied by new scrutiny requirements in relation to the adoption of restrictions on competition in any new legislation. The review programme required each participating government to compile a list of all legislation for which it was responsible, which contained substantive restrictions on competition, and to develop a review timetable that would see all such legislation reviewed and reformed between 1996 and 2000. The initial stocktake of legislation containing restrictions on competition identified 1,700 Acts for review – a larger-than-anticipated stock.

Reviews were required to be conducted in accordance with the NCP Guiding Legislative Principle. This stated that existing legislative restrictions on competition should only be maintained, and new restrictions only imposed, where a two-part test is met:

- the benefits to society as a whole of the restrictions clearly outweigh the costs; and

- there is no alternative means of achieving these benefits that is less restrictive of competition.

A National Competition Council (NCC) was established (as an intergovernmental body) with the role of assessing whether review and reform obligations were being met by participating governments and reporting annually to the federal government on this issue.

A system of 'competition payments' was established as part of the agreement establishing the legislative review. This required the federal government to make cash transfers to state governments, subject to their meeting their reform obligations, as advised by the NCC. The payments were justified on the basis that most of the 'reform dividend' would flow to the federal government through higher tax receipts resulting from higher levels of economic activity, and that a partial redistribution of these benefits to the states, in recognition of their contribution to achieving the reform, was appropriate.

2.4. The Key Players

The independent Hilmer Review, chaired by a business academic, was fundamental to determining the broad design of the NCP programme, with its recommendations largely being accepted by heads of government. The central agencies at each level of government drove the detailed design of the NCP agreements and their obligations, with the Federal Treasury (i.e. the Ministry of Finance) being particularly influential, notably in developing the Guiding Legislative Principle.

During the implementation phase, the NCC was the key player at the national level, particularly because of its responsibility for monitoring and reporting on compliance annually and making recommendations regarding the distribution of the competition policy payments.

Individual ministries within each government were also major players, taking primary responsibility for the completion of the legislative reviews, albeit that their conduct was often outsourced to expert consultants. Ministries were also responsible for developing reform recommendations, while these had to be

approved by the Cabinet in each state, given the need for legislative amendment or even repeal in order to implement them.

Central agencies coordinated the programme within the administration and were responsible for compiling the annual reports of each government to the NCC.

The Productivity Commission was also a key player at several stages of the process, as outlined in the following discussion of key success factors. In general terms, its role was to contribute to the development of a better understanding of the benefits and dynamics of reform among a wide range of stakeholders, using both ex ante and ex post analyses. This was largely achieved through the publication of three major reports at different stages of the reform process, although the Productivity Commission also participated extensively in the public debate over the reforms.

Business groups and other stakeholders were also engaged in a wide range of review activity, given that process guidelines emphasised the need to undertake significant consultation with affected parties during the review process. Some business representative bodies were strong proponents of reform in a wide range of areas.

2.5. Key Success Factors

Most of the identified legislation was subjected to review during the life of the programme. However, rather than being completed in 2000, the programme continued for 9 years, until 2005. While significant restrictions on competition remain in some areas, very substantial pro-competitive changes resulted and the legislative review programme was widely seen as a significant success.

A number of factors were important contributors to the success of the programme. First, the breadth of the reform programme helped generate widespread support by creating an expectation that all would capture some benefits and incur some costs, for example, with job losses in some sectors being offset by expansions elsewhere as the economy became more flexible. Also,

dynamic gains were thought to be available from enhancing competition, which might be lost if reform were too narrow.

Second, significant transparency provisions in key areas of the programme helped maintain momentum. Annual progress reporting by the NCC, which focused particularly on reform outcomes, helped create pressure on participating governments to maintain reform momentum by highlighting any areas in which reform obligations were not being met. Industry associations representing the major corporate sector in particular were strong proponents of reform, and governments sought to avoid the stigma of being identified as non-compliant with their obligations.

A further transparency element was the requirement that reviews incorporate significant stakeholder consultation (e.g. public hearings, written submissions, publication of draft reports, etc.). This helped ensure that the rationale for restrictions and the implications of removing them were well understood, and improved the quality of the resulting reform recommendations. That said, it arguably also provided a platform for strong lobbying against reform.

Third, the system of 'competition payments' constituted a tangible incentive for state governments to pursue reform. While the absolute amounts involved were modest, these payments represented discretionary funding for state governments. In addition, withholding part of these payments had symbolic importance as a tangible indicator of significant noncompliance on the part of a government.

Fourth, the Productivity Commission contributed substantially to the success of the legislative review at three stages of the process, as follows:

- In advance of the commencement of the review programme (in 1995), it published a report that estimated the future benefits expected to be obtained by implementing the NCP agreements, notably including the legislative review programme (Industry Commission, 1995). This report provided credible estimates of the scale of the benefits that would be achieved and, in so doing, helped strengthen the political consensus in support for the programme at a time when significant concerns were being raised about the potential social impacts. More generally, it

contributed to a fuller understanding of the gains from competition policy reform.

- During the review process, concerns were expressed increasingly strongly about the distribution of the benefits and costs of reform and risked undermining support for the continued implementation of the NCP agreements. The existence of the Productivity Commission as a credible and respected analytical and advisory body enabled the federal government to respond to these concerns by commissioning a detailed review of the impacts of the policy in the various regions of Australia. The resulting report (Productivity Commission, 1999b) concluded that implementing the NCP would increase income in all regions of Australia but for one, thus demonstrating that the benefits of reform were widely spread. Moreover, it showed that the size of the impact of NCP on the one region that would not obtain a net income benefit (and would bear losses in employment numbers) was small relative to the changes caused by a range of other economic impacts and changes.
- In the final stages of the legislative review, a third Productivity Commission study was published (Productivity Commission, 2005a), which summarised the overall impact of the NCP, including the legislative review and reform programme and other key elements. This partly ex post analysis concluded that the benefits the policy had delivered had far outweighed costs, contributed to a long period of uninterrupted economic growth, and had supported innovation. Moreover, the benefits were widely spread, with both high- and low-income earners and both country and city areas having received net benefits. This further review arguably cemented societal views of the merits of the NCP programme and paved the way for the subsequent adoption of a 'second wave' of competition policy reform.

2.6. Role of Different Elements of the Regulatory Management System

The adoption of the Guiding Legislative Principle was central to the achievement of the outcomes obtained by the legislative review programme. The principle is clearly derived directly from the RIA requirements that are one of the core elements of the RMS. The first part of the principle is based on the cost-benefit principle, while the second reflects the widely adopted RIA requirement that all options capable of achieving the identified policy objective should be identified

and assessed, and that with the greatest net benefit chosen. The existence of this principle as a core requirement meant that, in practice, RIA-like disciplines and approaches based on cost–benefit analysis were widely adopted in the review process. Moreover, the existing RIA processes operating at the national and state government levels were adopted as the core means of ensuring that the principle was applied to new regulatory proposals.

Second, as noted above, transparency and formal public consultation processes are key elements of the RMS that were embedded into the NCP legislative review process, albeit that an explicit requirement that all review reports should be made public would have improved performance in this area.

Institutional considerations constitute a further key element of regulatory policy. As noted in OECD recommendations and reports on this issue, appropriate institutions must be in place to undertake key roles; they must be adequately resourced; and responsibility must be carefully allocated to appropriate institutions. As discussed above, the NCP legislative review involved the creation of a substantial new institution (i.e. the NCC) and an allocation of review and reform responsibilities that gave primary responsibility to regulating ministries, but subjected them to substantial oversight backed by significant incentives for strong performance.

2.7. Other Contributions of the Productivity Commission

In addition to the roles of the Productivity Commission noted above, it also undertook a number of other related roles as regards the NCP. The first, leading up to the appointment of the Hilmer Committee, was that of advocacy and provision of factual information on the potential benefits of regulatory reform and a more competitive economy. This occurred especially in its annual reports and its first annual review of progress in microeconomic reform. Such advocacy, coming from an expert largely independent body, provided important support for those promoting the need for a review of regulations that impacted on competitiveness.

Following the move of the Productivity Commission to the Treasury portfolio in 1989, competition received added emphasis, including, for example, four inquiries

addressing impediments to competitiveness, which dealt with government (non-tax) charges on industry, impediments to international trade in services, food processing, and travel and tourism.

The impact of those promoting reform is enhanced if their arguments are supported by strong factual evidence as to the likely benefits. The research and reports of the Productivity Commission and its predecessors were especially important in this regard. In particular, this included its development of the sophisticated ORANI, multi-sectoral model of the economy, enabling the systematic asking of 'what if' questions regarding the impact of regulation and possible reforms (IAC, 1987b).

As well as the stress on the need for reform contained in its reports, senior staff of the IAC (often very senior public servants) and, in particular, its chair, were increasingly active in promoting the need for reform, drawing on the factual material contained in its research reports, as well as their own expertise.

The second role performed by the Productivity Commission was as a staffing resource for other key actors in the development and implementation of the NCP, notably the NCC. Several NCC senior staff were drawn from the Productivity Commission (as well as Treasury); a number of secretariat services were also provided to the NCC.

The third role was that of a contributor to a number of the reviews of regulations targeted in the NCP, including a detailed submission to the NCC Review of the Australian Postal Corporation Act 1989. Similarly, at the request of the panels established for the reviews of the NSW Dairy Industry and the Queensland Dairy Industry, the Productivity Commission made detailed submissions to both reviews. The requests were an acknowledgement of the value and experience gained from earlier PC reviews of the dairy industry.

In the following section, we will explore the 'second wave' of competition policy reform and the establishment of the SNEA. This is an example of a less successful programme of regulatory reform. Significantly, this case is characterised by the relative under-use of the Productivity Commission as a reform advocate, information provider, and advisor. It also demonstrates the existence of

diminishing returns from further reforms in circumstances in which a successful and wide-ranging reform programme has already been undertaken and the consequent need to pay careful attention to both programme design and implementation if significant benefits are to be achieved. A key lesson in this regard relates to the negative effects of an undue rush to adopt and implement reform.

3. The Seamless National Economy Agenda (SNEA)

3.1. The Trigger for the Changes

Following the completion of the NCP legislative review programme in 2005, attention turned to the potential for adopting a 'second wave' of competition policy reform. This was based on awareness of the fact that the legislative review had had limited success in removing costly restrictions on competition in several areas,² and that there were opportunities to address additional areas of restriction on competition that arose in many cases, from the federal nature of the Australian Constitution. That is, much of the focus was on reducing or eliminating barriers to competition across state borders. It was therefore based on identifying areas of regulation that were not necessarily anti-competitive per se but where *differences* in regulatory requirements between states restricted competition in practical terms.

In addition, the OECD had recommended in its 2009 review of regulatory reform in Australia that the government should 'Develop a more systematic and transparent approach to reducing the burden of regulation'. The then government's response highlighted the SNEA as a key initiative in this regard.

The SNEA has three parts, being:

- 27 'deregulation priorities' agreed by the CoAG;
- 8 priority areas for competition reform, also agreed by CoAG; and

² In particular, the Productivity Commission advocated completing what it regarded as the unfinished NCP reforms and these items became the first two-thirds of the 2006 National Reform Agenda. Subsequently, these items became the 49 items of the SNE (Deloitte Access Economics, 2013, 74).

- continued development and improvement of the existing arrangements for scrutiny of new regulatory proposals (i.e. RIA and related processes) to increase the efficiency of new regulation.

The 27 deregulation priorities entailed the adoption of significant programmes of reform in specific areas of regulation. These typically involved achieving regulatory uniformity in the field in question, or else closer regulatory harmonisation between jurisdictions. This necessarily also implied a process of modernisation, ensuring that the uniform regulatory standards and approaches adopted were consistent with best practice. Examples of deregulation priorities include the establishment of a single national regulator for a range of health professions, the adoption of uniform workplace health and safety legislation and regulation, and the adoption of a National Occupational Licensing Scheme covering a range of trades such as plumbing and building.

The outcomes sought through the SNEA were:

- creation of a seamless national economy, thus reducing costs incurred by business in complying with unnecessary and inconsistent regulation across jurisdictions;
- enhancing Australia's longer-term growth, improving workforce participation and overall labour mobility; and
- expanding Australia's productive capacity over the medium term through competition reform, thus enabling stronger economic growth (CoAG, 2008).

3.2. Sequence of Events and Key Steps

The SNEA was agreed by CoAG in 2008. Its objective was to reduce the costs of regulation and enhance productivity and workforce mobility in areas of shared Commonwealth, state, and territory responsibility.

The Inter-Governmental Agreement that adopted the SNEA broadly noted the division of responsibilities between federal and state/territory governments along constitutional lines but did not identify in detail the roles of specific institutions. However, in general terms, regulatory reforms were to be developed under the auspices of the CoAG Ministerial Councils, supervised by the CoAG Business

Regulation and Competition Working Group and ultimately endorsed by CoAG itself (i.e. heads of government).

The successful NCP model of providing incentive payments for the states was also adopted for SNEA, with A\$550 million to be paid over a 5-year period. Moreover, 10 of the 27 'deregulation priorities' contained in the SNEA were identified as being particularly important, with state governments remaining eligible to receive the full amount of reform payments only if all reform milestones were met in these areas.³ In the event, however, these became some of the most problematic of the reforms.

Despite the experience of the NCP legislative review, which saw the time taken to complete the agreed reform programme more than double from initial estimates, an ambitious timetable for delivering the reforms was initially agreed by CoAG through its Business Regulation and Competition Working Group, a body established to facilitate the achievement of the SNEA. The adopted timetable covered a 5-year period in total (the last year being 2012–2013), although much shorter time spans were proposed to complete many of the 27 deregulation priorities. As an example, the process of developing, agreeing, and implementing a complete suite of uniform workplace health and safety legislation was scheduled to be completed in 3.5 years. In practice, many of the early milestones were not met and timetable revisions occurred frequently.

The CRC was required to report annually on progress in achieving the milestones set out in the implementation plan, while this reporting was to be supplemented by more detailed and technical analysis to be supplied by the Productivity Commission. The Productivity Commission was asked by CoAG to report on the implementation and impact of the SNEA every 2 to 3 years, with these reports addressing both achieved and prospective benefits. However, while the agreement was reached in March 2008, the first Productivity Commission report (Productivity Commission, 2012b) was not published until early 2012. No subsequent report of the commission has been released. In addition, the SNEA was to be reviewed by the federal government, in consultation with the states, in 2011.

³ That is, unmet milestones in relation to the remaining 17 deregulation priorities would not automatically lead to withholding of reform payments.

3.3. Key Players

The SNEA, as a wide-ranging reform agenda, necessarily included numerous key players. Given the 'top-down' nature of the reform, CoAG mechanisms were central to the process. This included CoAG itself (i.e. heads of government meetings), the Business Regulation and Competition Working Group, and the ministerial councils.

Ministerial Councils

Of note is that the ministerial council structure, which had evolved organically over a number of years as specific areas of regulatory cooperation developed, was substantially overhauled on two occasions during the life of the SNEA. These changes had substantial implications for their roles in the reform process.

CoAG announced in February 2011 that the previous structure of over 40 councils would be replaced with a new structure of only 12 standing (i.e. permanent) and 11 'select' councils. However, less than 3 years later, in December 2013, the structure was again changed to one of eight 'CoAG councils' by the incoming Abbott Government, each covering broad areas of policy, with the former distinction between standing and select councils abolished and all councils now being 'time limited'.

The consolidation of councils responded to several factors, notably:

- Concerns regarding the proliferation in council numbers had developed over many years, particularly in relation to the risk of fragmentation and loss of policy coherence;
- At a more micro level, specific administrative problems arising where council memberships did not include all ministers responsible for a particular area of reform in some cases, thus frustrating reform efforts; and
- General concerns that the council structure did not reflect a strategic reform focus and thus enable the benefits of reform to be maximised.

Central Agencies

The increasing concern to ensure a strategic reform focus and to speed the pace of reform also saw central agencies become more closely involved in the design of the reform agenda. The fact that this reform initiative was developed as a single inter-governmental agreement with the specific areas of regulatory reform to be addressed being identified in some detail ex ante inevitably meant that the central agencies were important players in the process. This enhanced role for central agencies necessarily tended to reduce the importance of line agencies in determining the strategic direction of the reforms and the broad content of the changes adopted.

As noted above, the Productivity Commission was given a specific role of reporting in detail on the impact of reforms, with these reports initially being intended to be presented regularly (on a biennial basis), although this has not occurred in practice. This role was similar to that played by the Productivity Commission in respect of the NCP, as set out above. In practice, however, a further role played by the Productivity Commission was that of identifying many of the priority areas for regulatory reform, as noted above. This reflected the fact that the development of the reform agenda drew on the outcomes of various Productivity Commission reviews undertaken in recent years, as well as its assessment of the performance of the NCP.

Critical Success Factors

A February 2014 Final Report released by the CRC reviewed reform performance across 45 areas, including all those identified in the SNEA. It found that significant reforms had been achieved in 31 of the 45 areas, but that 'substantial further attention' from CoAG was required in respect of the remainder.

As the above suggests, while some significant reforms were adopted, implementation performance generally disappointed expectations. In at least one case (the National Occupational Licensing Scheme), the proposal for a national regulatory scheme was officially abandoned (CoAG, 2013b). In several other cases, implementation was partial in nature and not in accordance with expectations. For example, while six of eight jurisdictions have adopted national occupational health and safety laws, the other two (Victoria and Western Australia) are not currently intending to do so. Moreover, of the six that have

legislated, most adopted Acts differed in at least some respects from the agreed national model.

States that have decided not to adopt the national approach developed under the reform projects have generally made this choice as a result of emerging evidence suggesting that there would not necessarily be net benefits in doing so. For example, Victoria commissioned its own RIS on the occupational health and safety laws (being unconvinced by the quality of the national RIS), which found that the net benefits of change were minimal, while the distribution of the benefits and costs favoured larger business at the expense of smaller ones (PwC, 2012). Subsequent academic research has also supported this conclusion (Windholz, 2010).

Concerns in this area were, paradoxically, driven in part by the post-implementation performance of reforms adopted in some areas. For example, national health practitioner registration came into effect as scheduled in mid-2010 but has been criticised for poor legislative design, concerns over inadequate accountability, regulatory duplication and inefficiencies, consequent substantial increases in registration costs, and concerns as to the effectiveness of new nationally based practitioner complaints and discipline procedures (Legislative Council of Victoria, 2014).

A number of factors have been identified as significant in limiting the success of the SNEA. One area of concern is that the changes adopted in the respective roles of CoAG, its ministerial councils, and other entities in tandem with the reforms are believed by many to have been less successful than expected. The moves to consolidate the council structure and adopt a more centralised approach to determining and implementing the reform agenda meant that CoAG and central agencies also took on a larger role in developing and agreeing on the reform programmes, at the expense of line agencies (Harwood and Phillimore, 2012).

These changes were the outcome of prior concerns that the existing reform arrangements, which saw ministerial councils as largely driving the process, had had limited success in practice. There was a consequent desire to more effectively drive the new reform agenda. However, there is significant doubt as to whether the changes made improved actual reform performance, although it is too early to make a final judgment for several of the reforms implemented. As noted

above, the SNEA has taken significantly longer than originally envisaged, while significant parts have been either delivered only in part or abandoned altogether.

Some research suggests that there is a strong link between the increased degree of centralisation adopted and these resulting problems. Because reform priorities have in many cases been set centrally, with limited reference to the line agencies and/or the ministerial councils responsible for those areas of policy, the choice of regulatory reform priorities was often poorly informed, while the objectives sought were similarly poorly specified in many cases. Evidence exists of areas of regulation that had previously been considered for harmonisation/reform but rejected by subject matter experts on grounds of costs and benefits were subsequently included in the SNEA programme. For example, a report commissioned by CoAG found that:

The substantial departures from the IGA framework mean that it has played a very limited role in driving reform. Neither has the commitment to minimising input controls and freedom in the deployment of funding been maintained. A number of the original Agreements have been abandoned, associated with a decline in collaborative federalism in policy design.

COAG played a vital role in gaining agreement on action at a head of government level. In part this was at the expense of active involvement by line ministers and their departments. That suited high-level objective setting and agreement making. However, more focus is now required on process and execution. This means that line ministers and their departments at both levels of government need to be effectively engaged at all stages of the design and delivery of policy. COAG oversight of progress against the agreed reform agenda needs to be an item of consideration at a COAG meeting each year, supported by an independent assessment of progress provided by the CRC through its chair (Deloitte Access Economics, 2013, i).

A key point of context in this regard is that regulatory harmonisation and uniformity initiatives have been pursued in Australia for several decades and have been the subject of a strong reform focus at least since the adoption of mutual recognition acts at national and state government levels in the early 1990s. This meant that many of the largest available gains from reform had already been achieved: for example, regulatory harmonisation had been pursued in the workplace health and safety area since the late 1980s. This meant that the

imperative to carefully weigh the potential benefits and costs of further moves toward uniformity was necessarily particularly strong. In the event, this did not always occur: Deloitte Access Economics argued in its review that the rapidity with which the reform agenda was adopted and the demanding timelines imposed meant that many reforms were not well designed, while their implementation was also unduly rushed. It found that a more 'considered' approach would likely have been more effective (2013, 35).

The 2012 report of the Productivity Commission on the actual and prospective impacts of the adoption of the SNEA found that the potential benefits of implementing the SNEA and related reforms was around A\$4 billion per year in reduced business costs and A\$6 billion per year (or 0.5 percent) in increased GDP. While these represented worthwhile potential gains, it is notable that they are equivalent to less than one-tenth of the benefits estimated by the Productivity Commission to have accrued from implementing the NCP legislative review. In addition, the Productivity Commission reported in 2012 that 'most reforms are either still in train or have only just been implemented'. Hence, this was essentially an ex ante analyses. A 'period of adjustment' was said to be required before these benefits would be attained, but it was estimated that they should be mostly felt by around 2020.

More positively, the adoption of financial incentives to facilitate reform, as used in the NCP legislative review, was supported in published reviews of the SNEA. A November 2014 'Lessons for Federal Reform' final report found that progress on reform was significantly enhanced through reward payments. The council noted that 'governments have made better progress implementing the reforms that attract reward payments than they have made on the reforms that do not attract reward payments'. It found that governments have completed 21 of 26 reforms in which rewards were offered, and only 10 of 19 reforms where no reward was offered.

3.4. Role of Key Elements of the Regulatory Management System

The OECD's work on regulatory policy emphasises the importance of having an appropriate range of well-designed institutions to support the implementation of the policy and of carefully allocating reform responsibilities among them. The

problems highlighted above suggest that weaknesses in this area were significant in explaining the shortcomings of the SNEA.

The centralisation of responsibility undertaken in the interests of achieving greater reform momentum and a more strategically coherent reform programme was only partially successful. While many reforms were achieved in accordance with the very demanding schedules set out at the commencement of the programme, the reforms adopted failed to meet expectations in many ways, while others were not completed. The relative lack of input from line agencies and the amalgamation of formerly specialised ministerial councils is likely to have been a significant factor in this outcome. While there may be some degree of necessary trade-off between centralised and decentralised models of reform in terms of benefits and costs, there is a need to focus on how best to balance these considerations. In the current case, this implies ensuring effective input from subject matter specialists is retained while simultaneously providing strong and strategic direction from the policy centre.

The largely 'top-down' approach to the SNEA reform may also be reflected in the approaches adopted to consultation. Peak business groups, particularly those representing the corporate sector, were strongly in favour of most of the SNEA agenda and appear to have been influential in its design and development. Conversely, the concerns of smaller businesses, occupational groups, and other interested parties appear not to have been widely understood early in the policy process. More timely consultation with these groups would likely have led to earlier recognition of their concerns and consequently to problems with the proposed reforms being identified and addressed.

Successful reform relies on being able to convince stakeholders that significant benefits will result, while the above problems meant that this was not possible in many areas and reform was sometimes not implemented, or only partly implemented, when it became apparent that this was the case, as documented in the comments on the 'programme logic' of the SNEA made in the Deloitte report highlighted above.

Finally, greater use of the Productivity Commission as a resource capable of contributing to the development of the specific reform programme, as well as aspects of its implementation, might have improved the performance of the

SNEA process. The commission played a similar role, or set of roles, that it had played in regard to the NCP process, including that of reform advocate, information provider, and advisor. However, its advice seems not to have been drawn upon as fully as might have been expected. Thus, a significant element of the RMS was relatively underused.

4. Conclusion

This chapter has summarised the development and current status of the Australian RMS and provided two contrasting case studies of major recent reform programmes, focusing on the role of key RMS elements in their completion. The contrasting experience of these case studies suggests that, even in a context in which a highly developed RMS exists and there is substantial prior regulatory reform experience, reform processes and outcomes can vary widely. A key consideration is that policymaking, and therefore regulatory reform, is a highly political process, one that is necessarily subject to the particular political demands and constraints that dominate from time to time. This fact underlines the importance of a well-functioning RMS in contributing to more objective policy processes and consequently to successful reform outcomes. At the same time, it implies that the influence of the RMS remains limited and subject to political and other constraints.

References

- ACCI (2005a), 'Holding Back the Red Tape Avalanche: A Regulatory Reform Agenda for Australia, Position Chapter, November.
- ACCI (2005b), 'Modern Workplace: Safer Workplace – An Australian Industry Blueprint for Improving Health and Safety', April.
- AIG (2014), *National CEO Survey Burden of Government Regulation*. Sydney: AIG.
- ANAO (2014), *Administering Regulation: Achieving the right balance*. Canberra: ANAO.
- Argy, F. and M. Johnson (2003). 'Mechanisms for improving the Quality of Regulations: Australia in an international context', *Productivity Commission Staff Working Paper*, Melbourne: Productivity Commission.
- Auditor General (1989), *Reports on audits to 31 December 1988*. Canberra: Australian National Audit Office, AGPS.

- Australian Bureau of Statistics (2014), 'Popular Statistics'. Canberra: Australian Bureau of Statistics.
<http://www.abs.gov.au/AUSSTATS/abs@.nsf/web+pages/statistics?opendocument#from-banner=GT>
- Australian Government (2006), 'Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business - Australian Government's Response, as at 20 November 2006',
http://www.eowa.gov.au/Reporting_And_Compliance/Australian_Government_Response.pdf
- Australian Government (2013a), *Cutting Red Tape*. Canberra: Department of Prime Minister and Cabinet. <http://www.cuttingredtape.gov.au/>
- Australian Government (2013b), *Office of Best Practice Regulation*. Department of Prime Minister and Cabinet.
<http://www.dpmmc.gov.au/deregulation/obpr/index.cfm>
- Australian Government (2014), *The Australian Government Guide to Regulation*. Canberra: Department of Prime Minister and Cabinet.
http://www.cuttingredtape.gov.au/sites/default/files/documents/australian_government_guide_regulation.pdf
- Australian Government (2014a), *Competition Policy Review*. Canberra: Australian Government. <http://competitionpolicyreview.gov.au/>
- Australian Government (2014b), *The Australian Government Guide to Regulation*. Canberra: Department of Prime Minister and Cabinet.
http://www.cuttingredtape.gov.au/sites/default/files/documents/australian_government_guide_regulation.pdf
- Australian Public Service Commission (2005), *State of the Service 2004-05*. Canberra: Public Service Commission.
- Banks, G. (2005), 'Regulation-making in Australia: Is it broke? How do we fix it?' A public lecture at the Australian National University as part of the Public Lecture Series of the Australian Centre of Regulatory Economics (ACORE) and the Faculty of Economics and Commerce, 7 July, ANU, Canberra, <http://www.pc.gov.au/speeches/cs20050707/index.html> (accessed 7 February 2007).
- Borthwick, D. and R. Milliner (2012), 'Independent Review of the Australian Government's Regulatory Impact Analysis Process',
<http://www.finance.gov.au/deregulation/docs/independent-review-of-ria-process.pdf> (accessed 29 July 2013).
- BCA (2005a), *Locking in or Losing Prosperity – Australia's Choice*. Melbourne: Business Council of Australia.
<http://www.bca.com.au/content.asp?newsID=99077> (accessed 12 June 2006).

- BCA (2005b), *Business Regulation Action Plan for Future Prosperity*. Melbourne: Business Council of Australia.
- BCA (2013), *Improving Australia's Regulatory System*. Melbourne: Business Council of Australia.
- Carroll, P. (1995), 'Federalism, Microeconomic Reform and the Industry Commission', Chapter 5, in P. Carroll and M. Painter (eds.), *Microeconomic Reform and Federalism*. Canberra: Federalism Research Centre, Australian National University.
- Carroll, P. (2008a), 'The Regulatory Impact System: Promise and performance', Chapter Two, in P. Carroll, R. Deighton-Smith, H. Silver, and C. Walker (eds.), *Minding the Gap Appraising the Promise and Performance of Regulatory Reform in Australia*. Canberra: ANU E Press.
- Carroll, P. (2008b), 'Rethinking Regulation', Chapter Six, in P. Carroll, R. Deighton-Smith, H. Silver, C. Walker, *Minding the Gap Appraising the Promise and Performance of Regulatory Reform in Australia*. Canberra: ANU E Press.
- Carroll, P. (2008c), 'Measuring Regulatory Performance', Chapter Three, in P. Carroll, R. Deighton-Smith, H. Silver, C. Walker, *Minding the Gap Appraising the Promise and Performance of Regulatory Reform in Australia*. Canberra, ANU E Press.
- Carroll, P. and B. Head (2009), 'Regulatory Reform and the Management of Intergovernmental Relations in Australia', *Australian Journal of Political Science*, 45 (3): 407–424.
- Carroll, P. and M. Painter (eds.) (1995), *Microeconomic Reform and Federalism*. Canberra: Federalism Research Centre, Australian National University.
- CoAG (2008), 'Partnership Agreement to Deliver a Seamless National Economy', http://www.federalfinancialrelations.gov.au/content/npa/other/seamless_national_economy/national_partnership.pdf
- CoAG (2013a), 'COAG Councils', Canberra: COAG. https://www.CoAG.gov.au/CoAG_councils
- CoAG (2013b), 'Communique', COAG Meeting, 13 December 2013.
- CRC (2013), 'Lessons for Federal Reform: COAG Reform Agenda 2008–2013', Report to the Council of Australian Governments, Canberra: CRC. <http://www.CoAGreformcouncil.gov.au/reports/reform-progress/lessons-federal-reform-CoAG-reform-agenda-2008-2013.html>
- Deighton-Smith, R. (2013), Personal correspondence with author P. Carroll, 19 September 2013.
- Deloitte Access Economics (2013), 'Assessment of Progress under the COAG Reform Agenda', Deloitte,

- <http://www.CoAGreformcouncil.gov.au/sites/default/files/files/DAE-CRC-COAG%20Reform%20Progress%20Report-FINAL%2006Nov13.pdf>
- Department of the Prime Minister and Cabinet (2014), *The Australian Government Guide to Regulation*. Canberra: Department of the Prime Minister and Cabinet.
- Douglas, J. (2014), *Deregulation in Australia*. Canberra: Treasury.
http://www.treasury.gov.au/~media/Treasury/Publications%20and%20Media/Publications/2014/Economic%20Roundup%20Issue%202%202014/Documents/PDF/04_Douglas.ashx
- Edwards, M. and A. Henderson (1995), 'Council of Australian Governments A Vehicle for Reform', in P. Carroll and M. Painter (eds.), *Microeconomic Reform and Federalism*. Canberra: Federalism Research Centre, Australian National University, pp 21–51.
- Harwood, J. and J. Phillimore (2012), *The effects of COAG's national reform agenda on central agencies*. Melbourne: Australia and New Zealand School of Government.
- Head, B. and E. McCoy (eds.) (1991), *Deregulation or Better Regulation?* Melbourne: Macmillan.
- Industry Commission (1993), *Developments in Regulation and its Review, 1992/3*.
- Industry Commission (1995), 'The Growth and Revenue Implications of Hilmer and Related Reforms', Final Report, March 1995.
- Kain, J., I. Kuruppu, and R. Billing (2003), Australia's National Competition Policy: Its Evolution and Operation: Canberra, E-Brief, Parliament of Australia.
- Kelly, P. (1994), *The End of Certainty. Power, Politics & Business in Australia*. St. Leonard's NSW: Allen & Unwin.
- Legislative Council of Victoria (2014), *Inquiry into the Performance of the Australian Health Practitioner Registration Agency*. Legal and Social Issues Legislation Committee.
- Media Release (2014a), 'White Paper on Reform of the Federation', 28 June, Canberra, <https://www.pm.gov.au/media/2014-06-28/white-paper-reform-federation>
- Media Release (2014b), 'New Regulator Performance Framework', 29 October, Canberra, <http://www.cuttingredtape.gov.au/parl-sec/media/new-regulator-performance-framework>
- Moran, A. (1986), 'The Business Regulation Review Unit', *Canberra Bulletin of Public Administration*, 13(3), pp. 283–87.
- OBPR (2013), *Best Practice Regulation Report 2012–13*. Canberra: Department of the Prime Minister and Cabinet.

- OBPR (2014a), *The Best Practice Regulation Handbook*. Canberra: OBPR.
http://www.cuttingredtape.gov.au/sites/default/files/documents/australia_n_government_guide_regulation.pdf
- OBPR (2014b), 'Best Practice Regulation Making', Canberra: OBPR,
<http://www.dpmc.gov.au/deregulation/obpr/proposal/index.cfm>
- OBPR (2014c), 'OBPR', Canberra: OBPR,
<http://www.dpmc.gov.au/deregulation/obpr/reporting-publications/publications.cfm#Guidance>
- OBPR (2014d), 'Regulatory Burden Measure', Canberra: OBPR,
<http://www.dpmc.gov.au/deregulation/obpr/rbm/index.cfm>
- OECD (2010a), 'Government Capacity to Assure High-Quality Regulation in Australia', Paris: OECD, <http://www.oecd.org/australia/44529857.pdf>
- OECD (2010b), *Australia: Towards a Seamless National Economy*. Paris: OECD.
http://www.oecd-ilibrary.org/governance/oecd-reviews-of-regulatory-reform-australia-2010_9789264067189-en
- OECD (2014b), 'Statistical Profile of Australia', Paris: OECD, http://www.oecd-ilibrary.org/economics/country-statistical-profile-australia_20752288-table-aus
- OECD (2014b), 'Compare Your Country – Product Market Regulation', Paris: OECD, <http://www.oecd.org/australia/going-for-growth-2014-australia.htm#pmr>
- Office of Regulation Review (1993), *Regulation and its Review, 1992–1993*. Canberra: Industry Commission.
- Office of Regulation Review (1997), *Regulation and its Review, 1996–1997*. Canberra: Industry Commission.
- PwC (2012), 'Impact of the Proposed National Model Work Health and Safety Laws in Victoria', Supplementary Impact Assessment, Price Waterhouse Coopers.
- Productivity Commission (1998), *Regulation and its Review 1997–1998*. Canberra: Productivity Commission.
- Productivity Commission (1999a), *Regulation and its Review 1998–1999*. Canberra: Productivity Commission.
- Productivity Commission (1999b), *The Impact of Competition Policy Reforms on Rural and Regional Australia*. Canberra: Productivity Commission.
- Productivity Commission (2005a), 'Review of National Competition Policy Reforms', *Report No. 33*. Canberra: Productivity Commission.
- Productivity Commission (2005b), 'Productivity Commission 2005, Regulation and its Review 2004-05', *Annual Report Series*. Canberra: Productivity Commission.

- Productivity Commission (2011), *Identifying and Evaluating Regulation Reforms*. Canberra: Productivity Commission.
- Productivity Commission (2012a), 'Regulatory Impact Analysis: Benchmarking', *Research Report*. Canberra: Productivity Commission.
- Productivity Commission (2012b), 'Impact of CoAG Reforms: Business Regulation and VET', *Productivity Commission Research Report*, April 2012.
- Productivity Commission. 2014a. *Publications*. Canberra: Productivity Commission. http://www.pc.gov.au/search/publications?queries_query_query=performance+benchmarking&query_query_logic=AND&queries_by_publication_type_query_posted=1&queries_by_publication_type_query=&queries_by_date_query_posted=1&queries_by_date_query=&results_per_page_text_box=20&queries_by_type_query=Publication&search_page_5146_submit_button=Search¤t_result_page=1&results_per_page=20&submitted_search_category=&mode=
- Productivity Commission (2014b), *Regulator Audit Framework*. Canberra: Productivity Commission.
- Regulation Taskforce (2006), 'Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business', *Report to the Prime Minister and the Treasurer*. Canberra, January. http://www.pc.gov.au/_data/assets/pdf_file/0007/69721/regulation-taskforce.pdf (accessed 5 August 2013).
- Windholz, E. (2010), 'Evaluating the harmonisation of Australia's OHS Laws: Challenges and Opportunities', *Asia Pacific Journal of Public Administration*, 32(2): 137–162.
- World Bank (2014), *Worldwide Governance Indicators*. Washington, DC: World Bank. <http://info.worldbank.org/governance/wgi/pdf/c168.pdf>

Chapter III

Regulatory Coherence: The Case of Japan

Naohiro Yashiro[#]

Showa Women's University

Japan

1. Introduction and Country Context

Japan is a developed country with the third largest gross domestic product (GDP) and the 24th highest per capita GDP in the world. It has a constitutional monarchy like the United Kingdom, and the legislature (Diet) is a bicameral structure consisting of the House of Representatives (the Lower House) and the House of Councillors (the Upper House). Although its institutions look similar to those of western democracies, the Japanese political system has unique characteristics. The Diet has less real authority; for example, two-thirds of the bills presented are drawn up by civil servants, whose ratio of passing to introducing is 80 percent compared with 30 percent for those presented by congressmen in the last 5 years (Cabinet Legislation Bureau, 2014). Also, the recent change in government from the Liberal Democratic Party (LDP) to the Democratic Party of Japan (DPJ) in 2009–2012 for the second time in the post-war period has not brought about major policy changes.

The central government has stronger power over the local government. The local governments account for 60 percent of general government expenditure but 40 percent of revenue, which indicates the dominance of central government through the transfer of money and legislative control over local governments. There have been calls to decentralise public administration for many years, but ministries have retained administrative control over local governments. For

[#]Naohiro Yashiro's contact: n-yashiro@swu.ac.jp Showa Women's University, 1–7–57 Taishido, Setagayaku, Tokyo, 154–8533 Japan

example, prefectures and cities can make additional regulations within central government legislation unless prohibited, but local governments cannot deregulate central government regulation. In this sense, reform towards market-based regulatory governance and decentralisation of central government's authority to stimulate competition between local governments has many things in common with reducing the administrative power of the central government.¹

Japan's administrative system in the central government is characterised by decentralised and independent ministries with powerful bureaucracies armed with broad administrative discretion and by close and informal links between public servants, producer groups, and political parties (OECD, 1999). The power of the bureaucrats is diversified across ministries, reflecting various interest groups in the society which influence the bureaucrats directly or indirectly through politicians. It is one of the major reasons regulatory reforms against the vested interests of certain producers have been difficult, as the bureaucrats tend to follow their predecessors' examples.

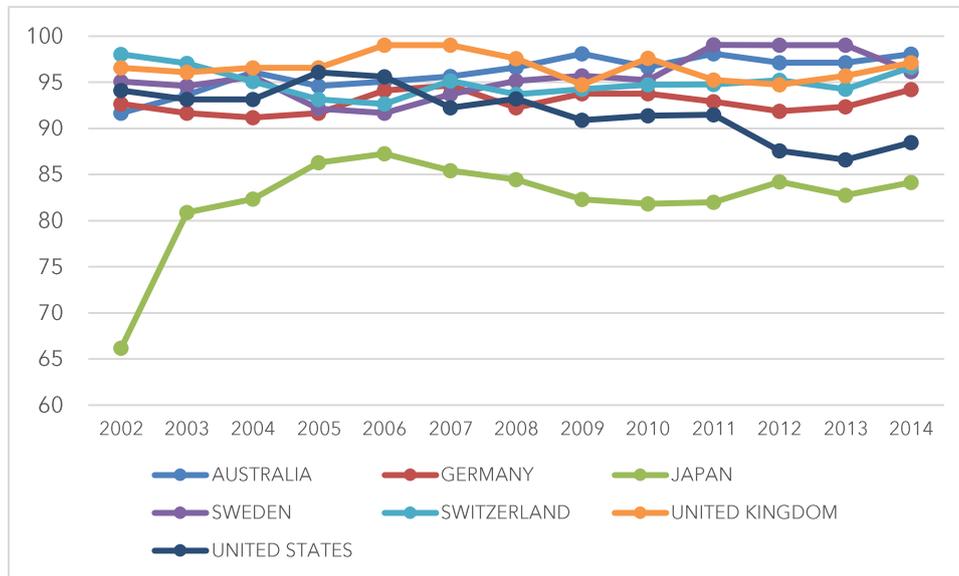
According to the World Bank Governance Indicators, Japan is ranked relatively high for various government indicators. In the percentage rank of regulatory quality, Japan had been catching up with countries with best practice in the first half of the 2000s under the Koizumi Government, but the improvement has halted since then (**Figure 3.1**).

The political leadership of the Prime Minister is usually weaker than his counterpart in other democracies, except Koizumi who oversaw the privatisation of the public postal corporation against strong political resistance in 2001–2006. The LDP has been a major ruling party in the post-war history of Japan. The

¹ For example, the Ministry of Labor keeps the public employment matching services, despite a request to shift the authority of the service to local governments to enable coordination with the minimum income maintenance programme. This is in line with the ministry's policy against the opening of the employment matching services to the private sector under government jurisdiction.

general election of August 2009, which resulted in the DPJ becoming the ruling party, hardly changed things until the return of the LDP in December 2012.

Figure 3.1. Percentage Rank of Regulatory Quality

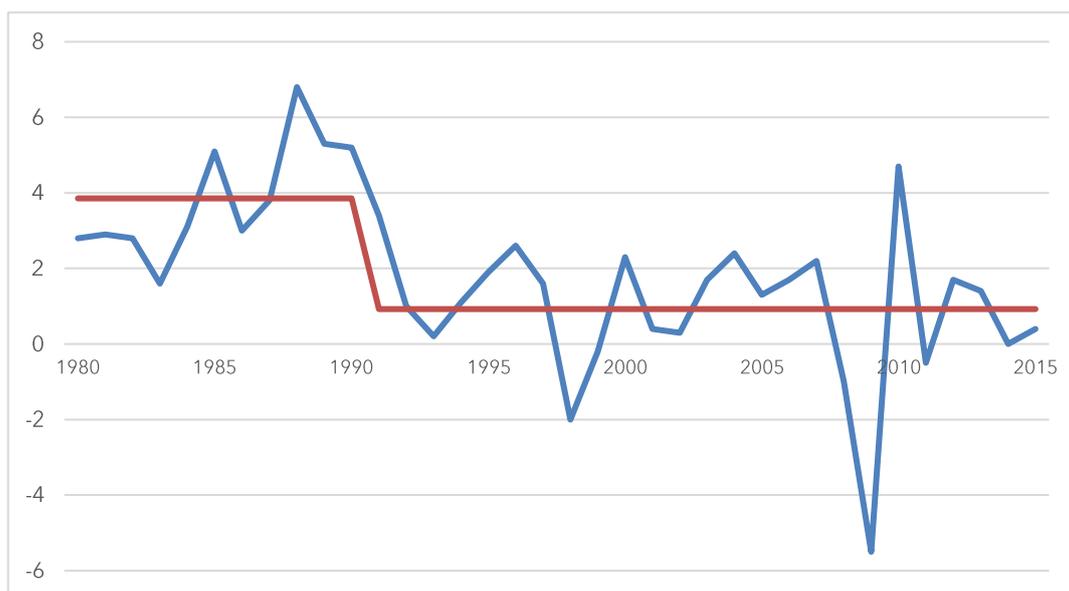


Source: World Bank.

The pattern of Japan's post-World War economic development consisted of three phases – the high economic growth period until the mid-1970s, the modest economic growth period up to the end of 1980, and the long economic stagnation since then. The need for regulatory reform to improve the supply side of the economy has been urged particularly in the third phase of the so-called 'Lost Decades'. In the next section, we discuss the evolution of regulatory policy since the 1980s up to the most recent 'Abenomics' phase or Prime Minister Abe's New Growth Strategy of Japan.

Japan's economy had been marked by high rates of economic growth of 10 percent on average (at constant prices) with a 2 percent unemployment rate until the mid-1970s (**Figure 3.2**). However, with the maturing of the economy, the high economic growth pattern gradually changed, and the role of Japanese public administration shifted away from an economic planning-oriented style to one supporting market-led economic growth. With increasing government budget deficits, reforming the public sector and improving the regulatory governance system have also become an important policy agenda (**Figure 3.2**).

Figure 3.2. Real GDP Growth (%)



GDP = gross domestic product.

Source: Prime Minister's Secretariat.

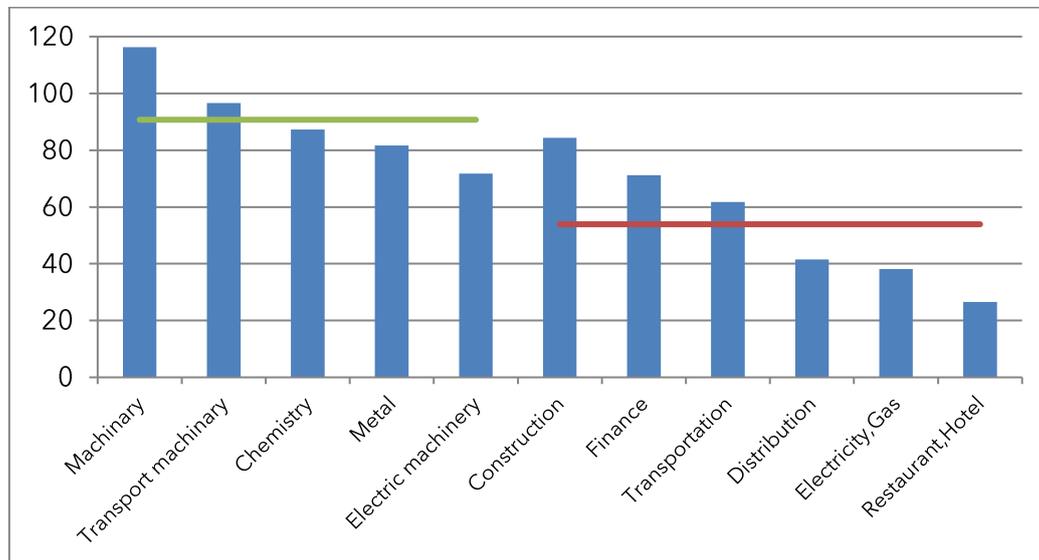
The government-led economy had been effective in terms of catching up with the developed economies, but the scheme has become obsolete because of the following factors:

First, as the economy matures with per capita GDP increasing to advanced country levels, it becomes difficult for the public sector to satisfy the diverse demand of the people; also, the role of markets becomes more important. Whereas the international competition faced by the manufacturing sector automatically leads to market-based production, the agriculture and service sectors have remained under the protection of the government. Comparing labour productivity of major industries with that of the United States (US), it is on average 91 percent for the manufacturing sectors and 54 percent for the non-manufacturing sectors (**Figure 3.3**).

Second, the public corporations had been running large deficits, which had to be financed by the general government budget, leading to an accumulation of public debt. It is mainly due to less efficient business management, strong labour unions, and political pressure against reducing inefficient activities of corporations. For example, National Railways Public Corporation was forced by

politicians to maintain local railways despite persistent deficits due to declining passenger numbers.

Figure 3.3. Productivity Ratio to the United States (100) in 2009



Source: Ministry of Economy, Trade and Industry.

Third, the regulations on business activities had often lacked transparency and had been arbitrary, particularly for newcomers. Thus, they are de facto non-tariff barriers to foreign firms. With increasing trade and foreign direct investment from abroad, they tend to induce foreign pressure for opening up the domestic markets.

2. The Evolution of the Japanese Regulatory Management System

2.1. Historical Background

Regulatory reform was initiated by Prime Minister Nakasone, who set a target of fiscal consolidation without tax increase to prevent expansion of the government sector in 1982–1987. The policy was in line with those adopted in the US under President Regan and in the United Kingdom under Prime Minister Thatcher in the 1980s. He set up the Provisional Commission for Administrative Reform consisting of private sector experts. Major steps were taken towards reforming out-of-date regulations and privatising government enterprises in areas such as

communications, railways, and tobacco production. This approach of appointing private sector experts, including business leaders, to major committee members has been passed on to the succeeding organisations for regulatory reform (**Table 3.1**).

Table 3.1. Significant Events in the Development of Regulatory Reform in Japan 1982 to Present

| Period | Significant Situation |
|-----------|--|
| 1982–1987 | The Nakasone Government |
| 1984–1987 | Privatization of Public Corporations of Telecommunication and Railways |
| 1993 | The Administrative Procedure Law |
| 1995–1997 | The Deregulation Action Plan |
| 1996–1998 | The Hashimoto Government |
| 1998 | The Three Year Programme for the Promotion of Deregulation |
| 1999 | The Public Comment Procedure |
| 1998–1999 | The Deregulation Committee |
| 1999–2001 | The Regulatory Reform Committee |
| 2001–2006 | The Koizumi Government |
| 2003 | Special Zone for Structural Reform |
| 2001–2004 | Council for Regulatory Reform |
| 2004 | Regulatory Impact Analysis Law |
| 2004–2007 | Council for the Promotion of Regulatory Reform |
| 2006 | Market Testing |
| 2007–2010 | Council for Regulatory Reform |
| 2013 | National Strategic Special Zone |
| | Council for Regulatory Reform (revived) |

Source: Author.

Regulatory reform creates private demand, which has been suppressed by the regulation with no additional fiscal costs, though it takes longer before the full effects can be observed (OECD, 2010). The mood for regulatory reform returned under the Hashimoto government from 1996 to 1998 after the Japanese economy plunged into the so-called ‘Lost Decades’ from the early 1990s. Japan’s average economic growth fell from 4.5 percent on average in 1980–1989 to 1 percent in 1990–2014. This was due not only to the bursting of the ‘asset bubble’ in the early 1990s but also to regulations that were unsuitable to the economic and social circumstances at that time, with increasing globalisation of economic activities and rapid ageing of the population.

During the 2001–2002 recession that followed the ‘dotcom bubble’, regulatory reform became the main focus of the Koizumi Government’s economic growth strategy from 2001 to 2006, with a fiscal stimulus package much smaller than

those used in Japan's previous economic crises.² Prime Minister Koizumi nominated Heizo Takenaka as Minister for Economic/Fiscal Policy to coordinate economic policies through the Council of Economic and Fiscal Policy. Minister Takenaka played a role in enhancing the privatisation of the postal corporation and regulatory reform, by coordinating the decentralised power of various ministers.

Though the regulatory reform was not considered to be an important issue by the succeeding Prime Ministers and the DPJ Government during 2009–2012, the current Prime Minister Abe, who had succeeded Koizumi but left within a year due to illness, returned to power at the end of 2012. He adopted a top-down policy approach similar to the one under Koizumi, and has been eager to reform regulations, making them more market-based to stimulate economic growth. Abe's recent economic package includes labour market reforms such as increasing the labour force participation of women, and improving corporate governance and lowering corporate tax to improve Japan's business environment.

Prime Minister Koizumi appointed a minister for regulatory reform in 2001, but his power was the same as that of the other ministers in charge of various regulations. This is in contrast with the authority of the Cabinet Legislation Bureau in the Prime Minister's Cabinet, which has the power to amend the laws proposed by various ministries to avoid legal inconsistencies.

2.2. The Role of Foreign Pressure

Japan's ministries for protecting the interest of producers have overwhelming political power, particularly compared with the ministry in charge of consumer protection and the Fair Trade Commission, which is supposed to ensure fair market competition. This imbalance of power between producers and consumers was changed by foreign pressure in trade negotiations or peer reviews as part of

²The size of the fiscal stimulus package adopted during the 2001–2002 recession was 25 trillion yen (¥), compared with ¥60 trillion on average for the three policy packages adopted between 1992 and 2009 (OECD, 2010).

the meetings of the Organisation for Economic Co-operation and Development (OECD). Though the foreign government pressure for reforming Japan's domestic protective measures primarily reflects the interests of foreign producers for increasing their exports to Japan, it will also be beneficial to domestic consumers as it stimulates competition in domestic markets.

Japan had a series of trade disputes, mainly with the US, which was its largest trading partner in the post-war period. The US government often requested the Japanese government to remove non-tariff barriers in its domestic markets to enable US firms to increase their sales, thereby reducing the large bilateral trade deficit of the US with Japan. A typical case was the liberalisation of the cell phone market, which was previously monopolised by Japan's state company. When the regulatory reform to remove the monopoly had finally been carried out, the share of US firms in the Japanese telecommunications market did not increase, contrary to original expectations. This was mainly due to new entries of the Japanese private firms in the open domestic markets.

Another case is that of US pressure to remove the barriers to large-scale opening of retail shops, i.e. supermarkets or department stores in Japan's local communities. The law protecting the small retail shops in local communities was revised, but the subsequent entry of US firms was negligible, and the beneficiaries were all Japanese firms that had been denied entry to the local markets. In both cases, foreign pressure was useful in stimulating regulatory reform and enhancing market competition to increase the benefits to Japanese consumers.

Free trade agreements are a systematic way of using foreign pressure towards stimulating market competition, which is otherwise not possible in the distorted power balance between producers and consumers in domestic politics. In this sense, the Trans-Pacific Partnership agreement, which aims to minimise tariff and remove domestic measures that discriminate against foreign firms, is a step forward to enhancing regulatory reform in Japan.

2.3. Economic versus Social Regulations

A country's optimal regulatory management system (RMS) depends on the types of regulations it has. First, there are typical economic regulations such as business permits or the licensing system. Regulatory reform in Japan originally focused on lowering business costs by removing business regulations that had become obsolete as a result of changed economic circumstances. Such reform of administrative procedures is not difficult as few objections arise against such simplification. However, recent developments in this area have been in the agricultural cooperative system, to promote competition despite strong political power, at the initiative of the Prime Minister. Some of the limits on corporate farm ownership have been relaxed to compete with the agricultural cooperative.

Second, Japan passed a law liberalising electricity in the retail sector, which is due to be implemented in April 2016. Various companies have entered the regional markets, which used to be monopolised by electricity companies. The reform will be continued with the separation of the electricity companies between generation and transmission sectors, ensuring the neutrality of distribution through legal unbundling in 2018–2020. The regulatory reform should lower the prices of electricity for energy-using firms and consumers.

Third, there is the economic regulation on taxis and trucks to avoid 'excessive competition'. Taking the example of taxis, the ministry in charge of transportation often estimates consumer demand for taxis given the current standard prices in the region, and sets the ceiling of the taxis that meet the estimated demand. Such law is clearly a de facto 'production cartel' that protects the interests of existing taxi companies. It would be possible, therefore, to remove the regulation if the political pressure reflecting the vested interests can be overcome.

However, regulatory reform becomes more difficult when it has eventually expanded to include social regulations related to lifestyles, concerning labour, health, welfare, or education services. Compared with economic regulations, the reform of social regulations are more controversial, and the negotiations with the ministries in charge of the regulation become more time consuming, reflecting

the objections of various social groups. These reforms often require alternative measures for protecting workers or consumers. In other words, the quality of the regulations could be improved by minimising the social costs combined with a better safety net.

The Regulatory Reform Plan of 1998 indicated that economic regulations should be removed in principle, but the social regulations have to be at a minimum level. Regarding social regulations, there is a debate as to what extent the market economy is appropriate for allocating social resources. For example, the introduction of market competition, which implicitly assumes consumer sovereignty, should be limited, accounting for asymmetric information between physicians and patients, or between teachers and students. This logic may justify some public intervention to overcome this asymmetry, such as creating an independent organisation to evaluate the quality of professional services.

However, the regulation often goes beyond it, and tends to prohibit the entry of corporate firms for the protection of consumers. The logic behind this is that corporate firms 'exploit' consumers to maximise their profits, whereas non-profit organisations do not. Based on this logic, corporate firms are not allowed to manage hospitals and clinics or buy farmland for cultivation. Also, even when corporate firms are allowed to enter the markets, they are not provided with tax advantages or government subsidies, which are granted to non-profit organisations providing similar services in the field of education or welfare. Such exclusion of corporate firms is de facto protection for small non-profit organisations. The better regulation should be a universal one covering both for-profit firms and non-profit organisations in the interest of consumers. For example, the corporate firms providing electric power are obliged to provide 'universal services' under the Law of Electricity Business, i.e. they also have to provide unprofitable areas with electricity.

Recent issues regarding social regulations are closely related to social insurances. Healthcare services of both public and private hospitals and clinics are covered by the healthcare insurance controlled by the government. The public health and nursing care insurance officially sets the prices for reimbursement of treatments and drugs for individual care. A key issue is the implicit regulation that those

reimbursement prices should be the same as market prices. In other words, hospitals or nursing care homes cannot charge consumers higher prices than the officially set ones even though consumers are willing to pay more for better quality services. This principle of 'prohibiting the mixed billing of public and private services' is based on an egalitarian rule. However, it actually prevents competition for better quality of services in the market. Thus, regulatory reforms in health and nursing care services have to cover public insurance reform to give consumers wider choice.

Recent regulatory reform focuses on childcare services, where it is important to stimulate women to have jobs at a time of declining trend in labour force growth. Japan is to increase the number of childcare places, both publicly and privately provided, through regulatory reform to accommodate about 0.4 million children by March 2018. Also, after-school childcare centres are being created to provide care for 0.3 million children by March 2020 (OECD, 2016).

2.4. Special Zones for Regulatory Reform

A major invention in the history of Japanese regulatory reform is the special zone approach. There is strong resistance to regulatory reform by respective ministries. Their argument against reform, particularly of social regulations, is that they cannot take responsibility for the possible negative effects on consumers. Thus, to persuade the ministries in charge of the social regulation, reform takes the form of social experiments in limited geographical areas under the responsibility of the local government accepting the risk voluntarily. Unless there are any problems in the special zone, the regulatory reform will eventually be implemented nationwide.

Various types of special zones were established in the 1990s and beyond. The most significant cases were the special zones for structural reform, which were formulated in 2003 under an initiative of the Koizumi Government. The basic framework of the special zones was created by the central government, but the establishment was based on an initiative of the local authorities. In this sense,

these special zones were also an experiment of decentralisation of governance in the highly centralised government structure of Japan (Yashiro, 2005).

This decentralised decision-making process of the special zones is based on the idea that competition between local authorities to establish unique special zones would lead to more efficient outcomes than when the central government imposes them based on political considerations. Examples of the regulatory reforms are those allowing private corporations to manage agricultural businesses, which had previously been limited to family businesses. Also, reforms of the fire regulations accounted for an improvement in technologies for preventing fires. Such regulatory reforms creating new economic activities and employment could not have been realised outside such special zones. The economic impact is estimated to have increased private investment by ¥0.6 trillion and employment by 18,000. However, interest in the special zones has decelerated with the decline in the Prime Minister's leadership.

Prime Minister Abe established the National Strategic Special Zone as part of his economic growth strategy in 2013. This was based on an assessment of past special zones, which failed to keep up momentum; thus, a small committee for supporting special zone business was established based on private sector proposals. In this new version of the special zone, the ideas for regulatory reform are collected from the private sector. These are negotiated between the independent regional government organisation in charge of special zones and respective ministries in the relevant council, consisting of selected ministers and private sector experts headed by the Prime Minister. After the regulatory reforms are agreed, the business plans are processed for each special zone by the council members, including the local firms and mayors in the area headed by the minister in charge of the special zone. This council is needed for an efficient management of the special zones, as various administrative obstacles arise with the starting up of new businesses utilising regulatory reforms.

In the National Strategic Special Zones (NSSZs), regulatory reform has been proceeding. For example, foreign housemaids have been granted working visas, an exception to the restriction on foreign unskilled workers. It is also discussing a

law to facilitate the establishment of foreign enterprises and promote entrepreneurship.

3. The Current State of the Regulatory System (circa May 2015)

This section surveys Japan's system for managing regulation development and review over the last decade in terms of improving regulatory quality.

3.1. Regulatory Quality

An important aspect in assessing regulatory quality is ensuring regulatory transparency (OECD, 1999). The impact of a regulation does not necessarily arise from the law itself but from the way the law is interpreted in detail in actual cases by bureaucrats in their respective ministries. 'Administrative guidance' plays an important role in Japan's regulation. Though this is 'guidance' (often not in written form) to private firms by the ministry in charge of the law, it works as de facto strict regulation; for example, a firm's application would not be accepted if the firm did not follow the ministry's guidance. The administrative guidance actually constrains the decision-making process of private firms, and is often a disadvantage for newcomers, including foreign firms, intending to start a business in Japan.

To solve these problems, the Administrative Procedure Law was enacted in 1993. It required ministries to publish the objective criteria for judging applications for permissions, and to explain the reasons when applications are rejected. At the same time, the law ensures that administrative guidance should be within the legal mandates. Also, in 1999 the government introduced the Public Comment Procedures for all government regulations to make public consultation systematic with a standardised commenting period of 1 month.

However, the Administrative Procedure Law does not always work effectively. The recent banning of sales of most pharmaceuticals through the Internet by the Ministry of Health, Labour and Welfare (MHLW) is a good example. Though the

Law on Pharmaceuticals does not prohibit Internet sale, the ministry prohibited it through an administrative guidance. MHLW finally revised the law in June 2014 to allow sale of most pharmaceuticals via the Internet based on the Supreme Court judgement supporting a private firm that brought a case against the ministry's decision.

3.1. Flow Policy Tools for Regulatory Reform

Regulatory Impact Analysis

Regulatory reform in Japan started with sector-specific economic regulation such as pertaining to national railways or telecommunications, which were closely related to the privatisation of public corporations in the 1980s. It became more reliant on general regulatory regimes with the Three Years Regulatory Reform Plan in the 1990s. Also, in 2004, a regulatory impact analysis (RIA) was introduced as a trial practice; it was formally adopted in 2007. It covers all the regulations to be established or revised by ministries in a particular year. RIA is a typical method to assess the costs and benefits of new regulations, or revision of existing ones, on the private sector. The report of the RIA to be prepared by ministries has to include the following items:

- whether a regulation has any impact on an economic agent;
- the effects of a regulation, such as reducing the number of competitors, limiting the choices for competition, or reducing the incentives for competition;
- the description of the effects arising from the regulation.

The object of RIA for assessment is limited to laws enacted in the Diet, excluding those presented by congressmen and the supplementary regulations set by each ministry. However, that the assessment of lower level regulations is exempted is actually a major problem because detailed regulations are more important in terms of restraining actual business activities.

There are major problems with the way RIAs are implemented in Japan. First, the RIA is not used in the actual process of enacting a law but after the basic framework of the regulation has become a formality; so it does not have much impact on the formation of regulations. Second, there are not enough

quantitative cost–benefit analyses on the effects of regulation as estimated by the ministries in charge. In 2013, out of 128 RIA cases reported, quantitative data were provided in only five cases; the others only had descriptive assessments (MIC, 2014). Third, there are no effective enforcement mechanisms for each ministry to provide quantitative estimates, and no uniform method for evaluation of the social costs of regulations is indicated. This is mainly because the institution responsible for RIA fails to supervise each ministry’s assessment; it only publishes those results on the homepage. Thus, the OECD recommended that the government develop a common method of evaluating the quantitative effects (OECD, 2005). However, the effective use of RIA has not been implemented.

3.2. Stock Policy Tools for Regulatory Reform

Core Institutions for Regulatory Reform in the 1990s and Beyond

There are both permanent and temporary institutions at the core of regulatory reform. The **Administrative Evaluation Bureau** in the Ministry of Internal Affairs and Communication is a permanent institution responsible for improving the process of administrative procedures, including RIA and public comments. This bureau, however, is part of the large ministry covering miscellaneous activities, and regulatory management is not considered a top priority. Also, the ministry is independent of the minister in charge of regulatory reform. This fragmented nature of regulatory management is a factor in its inefficiency.

An independent institution responsible for regulatory reform is the **Council for Regulatory Reform (CRR)**, an ad hoc institution consisting of business leaders and experts in the private sector. The CRR was established in the Prime Minister’s Cabinet in 2001 on a temporary basis, initially for 3 years, and has been succeeded by similar institutions up until the present.³ It publishes a comprehensive annual report on regulatory reform, which is incorporated into the Three Years Deregulation Plan of the Cabinet in the following fiscal year and is to be implemented in the revision of the laws in subsequent years. The plan includes

³ The Council for Regulatory Reform (CRR) is the institution established for a fixed term of 3 years, and its actual name changes each time.

only proposals agreed upon by the ministry concerned, in accordance with Japan's tradition of decentralised policymaking by each ministry. The CRR has no enforcement authority and its effectiveness largely depends on the leadership of the Prime Minister. It represents consumer interest for the more efficient regulations. For example, ministries favour ex ante regulations such as granting firms permission to enter a market, whereas consumers prefer ex post regulations, such as notification to control the quality of firms' products in the markets. Ex post regulations are more transparent and do not deter market competition, but they require more manpower for supervising producers.

The **Council on Economic and Fiscal Policy** (CEFP) was established in the Cabinet Office in 2001, and is broadly responsible for economic and fiscal policy, including regulatory reform and open market policies. This institution has a dual nature: on one hand, it is officially an 'advisory board' to the Prime Minister consisting of four private sector experts, five ministers, and the governor of the Bank of Japan. On the other, it is a de facto decision-making body on major economic policies when the Prime Minister gives clear direction on specific policies, and the record of the discussion is published a few days later. The role of the CEFP in the policymaking process was quite important under Prime Minister Koizumi, who often made clear policy directives. However, this has not always been the case with other Prime Ministers.

Both the activities of the Council on Economic and Fiscal Policy and the RRC were halted in 2009–2012 under the DPJ rule, which was supported by the labour unions and not positively disposed towards regulatory reform; hence, regulatory reform did not move ahead during this period.

Both organisations were restored by Prime Minister Abe, who also utilises a new institution, the **Industrial Competitiveness Council**, which actively pursues economic and industrial policies including regulatory reform. A major purpose of this council's reforms is to make Japan the country where it is easiest to do business in the world. Major reforms being carried out are labour market regulations, corporate governance, corporate tax reductions, and reforms relating to electric power companies. Since 2013 it has been planning for the New Growth Strategy of Japan every June, which is authorised by the Cabinet.

Another organisation established by the Abe Government is the Council on National Strategic Special Zones (NSSZs). The NSSZs are an initiative to create business-friendly conditions by promoting various regulatory reforms. This initiative was first authorised by the Diet in 2013 and followed by the appointment of six specific zones in May 2014. The process of NSSZs is similar to that of previous initiatives such as the CRR and the Council on Economic and Fiscal Policy. The council collects proposals from local governments and private firms or institutions, negotiates with respective ministries, and makes decisions under the leadership of the Prime Minister. However, existing organisations have overlapping roles and better coordination is needed.

The Three Year Plans for Regulatory Reform was first established in 2001 by the CRR and reformed every year; the most recent plan was published in June 2015. The plan formulates the results of the discussions, negotiations, and public debate on various issues and in various fields of regulatory reform in a particular year. The agreement between the CRR and respective ministries is confirmed by the Cabinet. Based on this regulatory reform plan, each ministry is obliged to change existing regulations into more market-friendly forms.

Public comments procedures were introduced in 1999 as the public consultation mechanism, and enforced by law in 2006. Any proposals for forming, modifying, or abolishing the current regulations have to be open to the public at least 1 month in advance. Each ministry in charge of the regulation has to show these proposals with the background data on their home page, collect comments, and reply to those comments. Final decisions on regulatory changes would be made based on these comments. However, these procedures are mainly a formality. In reality, cases where a law was revised based on public comments have been rare. The US government suggested to strengthen the public comment procedures by lengthening the period for public comments, ensuring agencies give public comments ample consideration, seeking views from the public on the effectiveness of the public comment system, allowing opportunities for the public to suggest improvements, among others (USTR, 2008).

Market testing was introduced under the Koizumi Government. It is based on the 'Law on Reforming the Public Service by Introducing Competition' of 2006.

The idea behind the law is that, unlike the privatisation of public enterprises, the government maintains ownership of public enterprises, but the agency actually providing the services could have either public or private employees. Tendering for public sector contracts is open to private enterprises, and proposals from both private and government agencies are equally considered. In the cases of US local governments, private and public competition is almost the same. However, the performance of the public agency has improved due to competitive pressures from the private sector.

In Japan, market testing was introduced only indirectly. For example, the Ministry of Health, Labour and Welfare (MHLW) provided a part of the services of the public employment offices, such as consultation for job seekers or accepting job offers by employers. Rather than putting all the services to the market test, the MHLW offers the services of six local offices for tender to private agencies, and compares the performance with similarly sized local offices managed by government employees. According to this indirect way of market testing, government employees achieved better results. The assessment of this market testing is difficult, partly because the testing period was 1–3 years for individual private agencies, and public employees are obviously more experienced in their jobs. Also, the target of the market testing is just a part of the function of public employment offices. Private agencies are likewise at a disadvantage vis-à-vis public agencies, which could combine these services with their main job-matching services.

Introducing review clauses was suggested in the Three Years Regulatory Reform Plan in 1998, but they are optional and often introduced as a means of political compromise. Other stock management tools such as sunset provisions, red tape reduction targets, 'one-in, two-out' or 'one-in, one-out', regulatory budget, regulatory agenda, and regulatory scans or plans have not yet been implemented.

3.3. Evaluation of Effects of Regulatory Reform

The quantitative effects of regulatory reform from 1990 to 2005 were estimated by the Prime Minister's Cabinet. Regulatory reform eliminating entry barriers or price regulations would stimulate market competition and increase demand through falling prices. Thus, the basic method used here is to measure the increase in consumer surpluses due to falling prices, and compare it with the consumer surplus in the base year before the regulatory reform. The net increase in consumer surplus is considered to be equivalent to the effects of regulatory reform. The estimations for 1997, 2002, and 2005 are shown in **Table 3.2**.

Table 3.2. Consumer Benefits from Regulatory Reform

| | | (Billion Yen) | | |
|-----------------------------|-------------------------------|---------------|--------------|--------------|
| | | 1997 | 2002 | 2005 |
| Telecommunication | Cell phone | 1312 | 2630 | 2788 |
| | Domestic airline | 192 | 273 | 121 |
| | Railway | 4 | 260 | 484 |
| Transport | Taxi | 3 | 8 | 13 |
| | Truck | 1567 | 3231 | 3431 |
| | Car inspection | 533 | 835 | 864 |
| Energy | Electricity | 1054 | 2641 | 5663 |
| | Urban gas | 31 | 228 | 458 |
| | Petroleum products | 1513 | 2266 | 2141 |
| Finance | Securities commission fees | 150 | 470 | 529 |
| | Property insurance premium | 58 | 214 | 316 |
| Food | Rice | 170 | 527 | 625 |
| | Liquor | 315 | 874 | 796 |
| Others | Cosmetics and pharmaceuticals | 17 | 81 | 118 |
| Total | | 6923 | 14536 | 18345 |
| % of National Income | | 1.8 | 4.0 | 5.0 |

Source: Prime Minister's Cabinet, 2007.

Regulatory reform has increased the aggregated consumer surplus by an accumulated amount of ¥18.3 trillion in 2005 from the baseline without the reform, which amounted to 5 percent of national income. These are broad impacts of reform, and not necessarily those associated with reforms enacted during crisis episodes. This result only reflects the first-round effect of an increase in consumer surpluses; the possible increases in employment arising from a net increase in demand and multiplier impacts are not accounted for.

4. Assessment of Japan's Regulatory Management System

4.1. Incrementalism in Regulatory Reform

The recent OECD report on regulatory reform in Japan said, 'Although positive incremental changes have taken place across many of the areas, ...most of the general regulatory difficulties relating to the market openness within the Japanese economy still exist today' (OECD, 2004). The overall assessment of Japan's RMS is still 'lack of adaptability' in the public administration, such as slow decision-making process, allowing special interest groups to block needed change, resulting in 'incrementalism' in policymaking (OECD, 1999).

Given the strong resistance to reform in various sectors based on the logic that any reform of the current social regulation may risk people's lives, innovative mechanisms were developed to limit the effect on certain geographical areas of social experiments, such as Special Zones for Structural Reform in 2003 and NSSZs in 2013. The former special zones were experiments in regulatory reform and decentralisation, as they largely depended on the initiatives of local authorities, and did not involve any tax waivers or subsidies. The latter special zones were based more on the initiatives of the central government with regulatory reform and some fiscal incentives combined. The special zone approach is key to overcoming the current decentralised regulatory management by independent ministries. It is because they compile the exceptions to the current laws in the special zone law rather than abolishing or revising the current law of respective ministries.⁴

Also, there are protection measures for local small firms for public works. Local governments or public corporations have to provide equal opportunities for tendering public sector contracts to small local firms. For example, public orders

⁴ These special zones are similar to those in China. The Chinese government takes an incremental approach to introducing a market economy in a specific region while maintaining socialism in the rest of the country.

for construction of highways have to be divided into multiple construction areas so that small local firms can take on the work, rather than large construction companies that can deploy economies of scale for construction. Such laws protecting employment by local firms are costly, but have been maintained as a de facto income redistribution policy. Maintaining such protection measures requires strong political leadership and a balancing of all competing interests.

4.2. Improvement of the Regulatory Impact Analysis

The lack of an effective enforcement mechanism of the RIA is a symbol of Japan's slow adoption of regulatory management. This is mainly due to the lack of a powerful leading agency on meta regulation, which means there is no external reviewer and individual ministries can get away with poor RIA results, as discussed above. Ideally, we need an independent regulatory review agency such as the Productivity Commission in Australia. Another possibility is that the CRR plays the role of monitoring the RIA of respective ministries to prevent negative effects on economic activities. If the CRR, which currently reviews only the existing regulations, could successfully check the establishment of new regulations with poor RIA, it should be more effective in terms of regulatory management.⁵ Also, if it were given the authority to monitor new regulations, the CRR would strengthen its bargaining power vis-à-vis the respective ministries to enhance regulatory management.

4.3. Role of Open Market Policy

Regulatory reform to move towards market-based regulation in the domestic markets is consistent with open market policies or trade liberalisation. Japan joined the negotiations of the Trans-Pacific Partnership Agreement (TPP) in 2013, where lowering Japan's high import tariffs on agricultural products is a key issue. A major reason why the tariff on rice, which is a major crop in Japan, is set at the

⁵ Two legislative branches of the Japanese government check new registration. One is the Ministry of Treasury under budget constraint, and another is the Cabinet Legislation Bureau to ensure consistency with existing laws.

extremely high level of 778 percent is the production cartel led by the government to increase farmers' income by keeping the price at a high level. Thus, the regulatory reform in agriculture – by shifting the means for protecting farmers' incomes from the current price-supporting policy to direct income subsidies from the government – will make it possible to lower the tariff and benefit consumers. In this sense, foreign pressure through multilateral trade negotiation is an effective means of moving ahead with domestic regulatory reform. However, the recent agreement reached in the TPP negotiations involves a compromise allowing Japan to retain the high tariff on rice but having to accept an import quota at zero tariff as the minimum access or a certain quota for importing at zero tariff from the US and Australia.

4.4. Better Coordination between Regulatory Reform and Competition Policies

For better regulatory governance against the background of the diversified authorities of ministries, the role of competition stimulating policy is important. Japan's Fair Trade Commission (FTR) is an independent government organisation prohibiting cartels or other competition-restricting behaviour of firms against consumer interests. A major problem with FTR is that it covers only private firms, and excludes government-led cartels or price setting in specific industrial sectors. It is mainly because ministries are assumed to pursue the public interest, whereas in reality they are more biased in favour of protecting producers' interests. Thus, the higher level of organisation under the Prime Minister's leadership is required to coordinate the policies between the government organisations with conflicting interests for the sake of consumer interests.

Though the majority of the ministries reflect the interests of producers in various fields, the Consumer Protection Agency is an exception. The agency's basic policy stance is setting sector-specific regulations for consumer protection, and not shifting current regulations towards market-based ones. This is why organisations consisting of private sector members are needed to protect consumer interests by stimulating competition between domestic and foreign producers through regulatory reform.

On the other hand, political leaders tend to establish new organisations to demonstrate their leadership on reform. Prime Minister Abe established the Industrial Competitiveness Council as the headquarters of industrial policy as part of the economic growth strategy. However, the major role of this council is regulatory reform, which overlaps with the existing CRR. In this sense, the role of the Council of Economic and Fiscal Policy, which had been the headquarters of economic policy under the Koizumi Government, should be important for coordinating the various organisations for regulatory governance.

Parts 2 and 3 below outline two recent regulatory reform case studies in Japan. These case studies share a common feature: both regulatory reforms proceeded well in the beginning because they were supported by the strong political leadership of the Koizumi Government, but the momentum was gradually lost and eventually reversed. This reversal was due mainly to the absence of rigid oversight institutions or supporting policy practices for regulatory reform. Oversight and support are necessary for a high-performing RMS in Japan.

The following section explores the case of the reform of the Agency Worker Law. The tightening of this legislation is considered an overall failure. This case demonstrates the importance of independent institutions that validates government assessments, as well as better coordination of the institutions that oversee regulatory reform and the institutions in charge of RIA management.

5. The Case of the Agency Worker Law

5.1. Historical Background

The Agency Worker Law refers to the law that regulates people's work style through employment agencies. The law was established in 1985 and it basically prohibited agency workers, except those with certain skills such as translators or information technology engineers. It was based on the historical incidence of exploitation of unskilled workers by employment agencies before World War II.

The law was drastically changed in 1999 and 2004 to open the door to agency workers of all occupations except four specific categories (construction workers, harbour labourers, security guards, and healthcare workers⁶). This deregulation was consistent with Article 181 of the International Labor Organization (ILO), which Japan adopted in 1999. ILO Article 181 aims to increase job opportunities for those who have suffered persistent unemployment mainly in Europe, and at the same time to protect agency workers from being locked into disadvantageous positions. As a result, the basic policy stance in Japan's regulation of agency workers had changed from a positive list approach to a negative list approach.⁷

However, the liberalisation of agency workers has not been accompanied by job stability for them. This is mainly because their jobs in the company they are dispatched to are limited to less than 3 years except for certain skilled job categories. This is to protect the regular workers who may otherwise be substituted by the agency workers in the same companies. In this sense, the law which had originally been conceived to protect agency workers actually turned into a law protecting regular workers in the same job category.⁸

At the end of the first decade of the 2000s, the liberalisation of agency workers slackened and came to a halt with the coming into power at the end of 2012 of the DPJ, which is supported mainly by the labour unions consisting mostly of regular workers. The opposition to the liberalisation of agency workers arose mainly because of a trend increase in non-regular workers, including agency workers, which was considered to be a source of the increasing income disparities in the labour market. Thus, the law was revised in 2012 to limit the contracts of agency workers who are employed for less than 30 days, based on the logic that their jobs are particularly unstable. Such legislation was not favourable for agency

⁶ These exceptions in the agency workers are partly a reflection of sectionalism of the bureaucracy. These occupations are under the jurisdiction of ministries other than the Ministry of Health, Labor and Welfare (MHLW) in charge of agency workers.

⁷ Negative list here means that the agency workers are allowed in all the occupations except for those prohibited.

⁸ For details of Japan's labour market practices, see Yashiro (2011).

workers as it reduced their job opportunities. It was also not consistent with the Agency Worker Law at that time, which limited the length of employment contracts to 3 years, based on the logic that the longer the period of the contract, the more likely regular employees would be substituted by agency workers.

The revised version of the Agency Worker Law that was passed by the Diet in 2015 eliminated the negative list of the occupations that cannot be taken on by agency workers with a regular employment contract with an employment agency with no time limit. This implies the equal treatment of agency workers with long-term contracts and regular workers. Agency workers who have a temporary contract with an employment agency, however, are subject to a 3-year limit with no exception.

Japan's labour market is different from that of other developed countries in that labour unions are not organised by occupation or industry but by firm. Most regular employees – those guaranteed to be employed up to the mandatory retirement age, which in most cases is 60 years – belong to a single union, i.e. both the white-collared and blue-collared workers are members of the same company labour union. A firm-based labour union tries to protect its members from competition in the labour markets, including agency workers.

The actual number of agency workers is not significant, accounting for only 6 percent of total non-regular workers. Majority of them are part-time workers and fixed-term employment contract workers (**Table 3.3**). Nevertheless, agency workers are the focus of labour market reform, mostly because they belong to the occupational labour market rather than the typical firm-based internal labour market. Also, since their skills are relatively high among the non-regular workers, they have a greater chance of replacing regular workers in the firm.

Table 3.3. Composition of Non-regular Workers

| | 2014 | | 2002 | |
|---------------------------|----------------|------|----------------|------|
| | (1000 persons) | (%) | (1000 persons) | (%) |
| Part-time workers | 13470 | 68.6 | 10530 | 72.6 |
| Contract workers | 4110 | 20.9 | 2300 | 15.9 |
| Agency workers | 1190 | 6.1 | 430 | 3 |
| Others | 860 | 4.4 | 1250 | 8.6 |
| Total non-regular workers | 19630 | 100 | 14510 | 100 |
| Regular workers | 32780 | | 34890 | |

Source: Labour Force Survey.

The labour unions try to prevent an increase in agency workers who have skills compared with labour union members. Thus, in exchange for accepting the deregulation of job categories for agency workers, the 3-year limit on the duration of work was applied to all agency workers in a particular firm. This reflects the insider–outsider conflicts of interest between agency workers and regular workers, though the interests of agency workers are not reflected in the firm-based labour unions, and thus not in the Council on Labour Policy (Yashiro, 2011).

The increase in non-regular workers, particularly agency workers, has become a social issue in Japan. It is said that agency workers easily lose their jobs during recession and that their wages are lower than those of regular workers in similar occupations. The labour unions claim that the increase in agency workers has been the major source of widening income disparity and that the number has to be limited. However, it is also true that regular workers' jobs are secured by laying off agency workers during recession. The employment adjustment over the business cycle in Japan is heavily biased against non-regular workers, including agency workers. The real problem with the Agency Worker Law is that it does not accommodate the conflict of interests between regular workers and agency workers.

5.2. Key Players in Regulatory Reform

The legislation process of the Agency Worker Law is as follows: The first step is that the Council on Labour Policy, consisting of the representatives of the firms' associations, labour unions, and academic experts, accommodates the conflicts between the social partners. It subsequently makes a proposal based on such consultation, which is sent to the Minister for Health, Labour and Welfare. Based on this proposal, the MHLW drafts a bill and presents it to the Diet. As the major issues of conflict in the labour markets have already been addressed by the Council on Labour Policy, usually no major changes are made in the Diet.

Concerning the Good Regulatory Practices (GRPs) for Internal Coordination of Rule-making Activity, formal procedures of the RIA and public comments are required by the Policy Evaluation Act of 2001. However, the content of the RIA of the Agency Worker Law in 2013 was just a formality, and included only the administrative costs for the public relations of the reform of the law. The 'social costs' associated with the reform of the law such as the possibility of an increase in unemployment, which is the most important part of the RIA, were simply 'considered to be zero'. The Ministry of Internal Affairs and Communications, which is responsible for RIA management of respective ministries, simply accepts the result with no comments.

5.3. The Role of the Regulatory Impact Analysis

Although the RIA framework exists in Japan, it is based on self-reporting by ministries and no independent institutions check the validity or make an assessment of the content of the reports provided by the ministries. The case of the revision of the Agency Worker Law in 2012 is a typical example. Quantitative analysis of the revision of the law may not be easy, but private research organisations asked the major firms that use agency workers for their expected reactions to the tightening of the regulation. A few firms reported they would increase regular workers, and others would simply substitute agency workers with other types of non-regular workers.

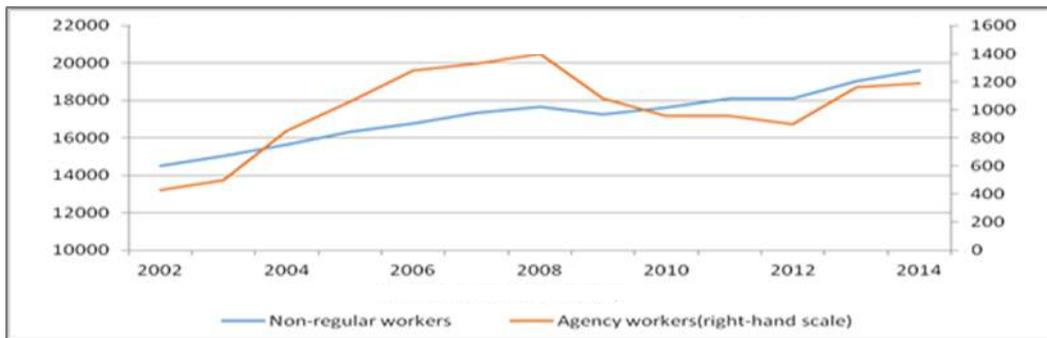
The CRR, which is the most important regulatory reform body, is not a permanent oversight institution but an ad hoc organisation with a limited operation time of 3 years. The organisation has played a role in enhancing regulations through review of existing ones. In the case of the Agency Worker Law, the CRR made a report arguing for the reduction of the negative list of occupations allowed for agency workers. Also, the current rigid rule – that the agency workers' jobs are classified into certain job categories and any additional work carried out outside these categories is considered a violation of the law – needs to be revised.

Through the negotiation with the MHLW which is in charge of the regulation, the resulting agreement would be included in the Three Years Regulatory Reform Plan, which is usually compiled at the end of the year. The ministries are obliged to follow up on the agreement in the plan. During negotiations, all CRR can do is try to persuade the ministries as it has no authority over them. Each ministry has veto power over the proposals put forward by the CRR. The regulatory reform works only when the ministry's view is close to that of the CRR, as the CRR cannot take an initiative on its own, mainly due to political pressure.

The Impact of the Revisions of the Agency Worker Law

Up until 2008, the number of agency workers increased more rapidly than that of other non-regular workers, reflecting the regulatory reform of agency workers. However, it declined sharply reflecting the Lehman Shock in 2009–2010, which is not surprising as demand for agency workers tends to fall during recessions. With the end of the recession, demand for agency workers quickly recovered in many countries. In Japan demand for agency workers stagnated and has not recovered to the previous peak level, unlike the other categories of non-regular workers. From 2008 to 2014, the number of agency workers declined by 0.2 million compared with a 2.2 million increase in other types of non-regular workers (**Figure 3.4**). This contrasting pattern can be partly attributed to the regulation on agency workers introduced in the first half of 2010.

**Figure 3.4. Agency Workers and Total Non-regular Workers
(1,000 persons)**



Source: Labour Force Survey.

What Difference Could An Enhanced Regulatory Management System Have Made?

In the final section, we pose a hypothetical question ‘What role could an enhanced RMS have played in the case of the Agency Worker Law?’ If the mandate of RIA had been rigorously imposed on the MHLW which is in charge of the Agency Worker Law, the tightening of the regulation in 2012 could have been avoided, as it was not based on a quantitative RIA. Also, stock management provisions would have revised the Agency Worker Law towards the international standard. It is meant to protect agency workers, rather than regular workers, and their efficient utilisation in the labour market.

Three components are needed for a highly performing regulatory system – a quality policy cycle, supporting policy practices like consultation, and capable oversight institutions (Gill, 2015). In the case of Japan, a lack of efficient oversight institutions that review new regulations and stock management provisions are major reasons the regulatory system is inadequate.

For example, the current provision of limiting the period of engagement for agency workers in the same company to 3 years to avoid replacing regular workers in the same job would be substituted with the basic provision of the ‘same wage for same job’, so that the employment of more costly agency workers would be limited to exceptional cases. The role of the RMS should be to provide prior consultation by the CRR to the respective ministry to create a better regulation, rather than the current ex post nominal consultation after the regulation has been set politically between the various interest groups involved.

The following section examines the case of the Taxi Revitalization Law. Overall this case is considered an unsuccessful reform and demonstrates the need for systems to forecast potential costs and benefits such as an effective RIA mechanism.

6. Taxi Revitalization Law – The Law for Controlling the Supply and Fares of Taxis

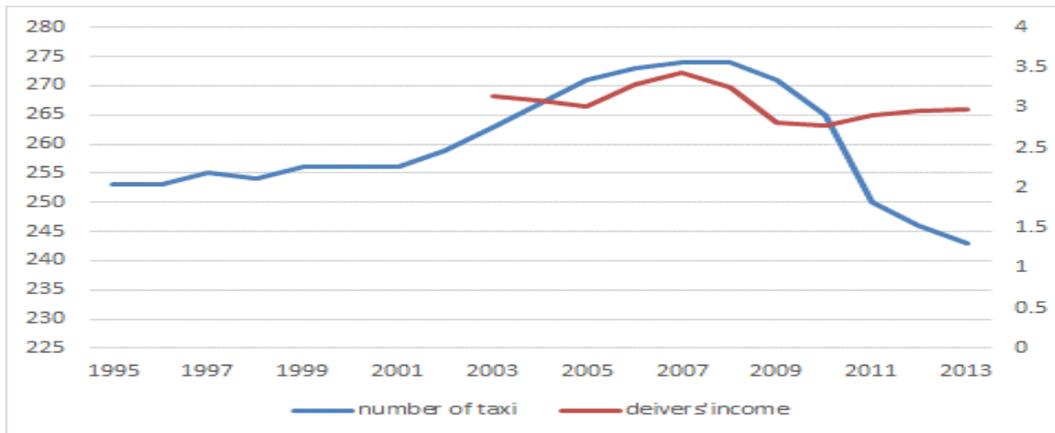
6.1. Historical Background

The regulation of taxis in 1955 set a uniform fare structure for each region. It also controlled the number of vehicles to meet officially estimated potential demand. The justification for such regulation is the prevention of ‘excessive competition’ between taxi companies. The policy was a de facto government-led price cartel reducing the supply of taxis in a region for the benefit of taxi companies and at the expense of consumers. The logic behind the regulation was that an excess supply of taxis would lead to lower wages and longer working hours for taxi drivers, which is likely to risk passengers’ safety. This is partly because most of the wages of employed taxi drivers are not fixed monthly but based on a certain share of their revenue. Thus, it is suggested that there are ‘social costs’ arising from the entry of excessive numbers of taxis in the regional market. An example of such costs is the congestion on city roads caused by a large number of taxis waiting for passengers, or the degradation of air quality in urban areas.

Nevertheless, the taxi regulation was liberalised in 2002 along with similar transport regulations based on the idea that market intervention by the government to control supply should be abolished. This regulatory reform was initiated by the CRR under the Koizumi Government, which pursued market-based policies. The Road Transport Vehicle Act was revised by the Ministry of Land, Infrastructure, Transport and Tourism (MLITT) to abolish the supply control of taxis, though taxi fares remained limited within a certain range. As a result, new taxi companies entered the market and existing companies increased their taxi fleets. Thus, more than 10,000 taxis were added in the nationwide market, which

created new employment opportunities and a better service for consumers (Figure 3.5).

Figure 3.5. Number of Taxis and Average Income of Drivers



Source: Ministry of Land, Infrastructure, Transport and Tourism.

However, demand for taxis has hardly increased, which is not surprising as the regulation on price control basically remained unchanged. Taxi fares were allowed to fluctuate within a range of 10 percent above and below the original price level. As a result of this 'unbalanced deregulation' between quantity and price, most of the added taxis became underutilised, and the revenue of the average taxi companies and the income of taxi drivers continuously declined. This created strong political pressure on regulatory reform from the association of taxi companies.

In 2009, MLITT established the Taxi Revitalization Law to restore the policy of controlling the number of taxis in specific areas where competition was considered to be particularly excessive. These specific areas accounted for about a quarter of total taxi areas in the country, covering 90 percent of corporate taxis, which were concentrated in urban areas. The law introduced an incentive mechanism for taxi companies to reduce their vehicles and temporarily strengthen price control by narrowing the range in which fares were allowed to fluctuate from 10 percent to 5 percent.

In 2013, the regulation was further tightened based on the recognition that the previous incentive mechanism for reducing the number of taxis had not been effective. This time congressmen of both the government and opposition parties presented the law. This new law directly controlled the number of taxis; not only the entry of new taxi companies was prohibited but uniform reductions of existing taxis were enforced in specified regions. It also stipulated additional areas where there is a risk of excessive competition, and discouraged companies from expanding their fleets. In both areas, the administration limited taxi fares within a certain range.

6.2. Effects of the Legislation

The trend of the taxi drivers' average annual income has not necessarily been affected by the tightening of the regulation. The taxi drivers' wages had already started to decline before the deregulation in 2002, reflecting the slowing of economic growth in the early 1990s. It is mainly because the elasticity of demand for taxis with respect to income is relatively high as it is for other luxury services, that taxi drivers are much affected by the 'economising' behaviour of consumers. Also, tightening the regulation in 2009 could not have reversed the declining trend of taxi drivers' wages compared with average wages.

Legislation initiated by Diet Members does not commonly occur in Japan, as most bills are prepared by ministries. However, once a congressmen-led law has been passed, the Regulatory Reform Committee does not have the authority to revise it through negotiation with the MLITT in charge of taxi administration.

6.3. Policymaking for Road Transport (including taxis)

The government justified its intervention in the taxi market by calling it 'social regulation' to protect passenger safety. However, in reality it is economic regulation to protect the revenues of the existing taxi companies by limiting the entry of new competitors. Policies on road transportation including taxis are basically set by the Council on Transportation in the MLITT. The council makes a proposal to the minister, and a bill based on the proposal will be made by the

ministry and presented to the Diet. As for any bill, within the government are 'checking systems' for new legislation. However, this only pertains to the aspects of budget constraint and consistency with previous laws; there are no remarks from the viewpoint of good regulatory practice.

Empirical research on the effects of the establishment or revision of laws is not done systematically. Concerning the abolition of the supply control of taxis in 2002, a study examining the effects on the local taxi market indicated the negative impact on taxi drivers' wages, though no analysis was undertaken on the effect in terms of consumer benefits in that research. Also, other positive effects resulted from an increase of competition in the taxi markets arising from regulatory reform. For example, the introduction of a new fixed taxi fare scheme between the airport and downtown avoids the risk of an unexpectedly high fare due to heavy traffic congestion. Another example is the introduction of value-added taxi services for handicapped passengers or escorting services for children.

A major reason for the unbalanced deregulation of the taxi market is that it allowed an unlimited increase of taxis, while constraining the taxi fare was a political compromise. It has brought about an excess supply of taxis with no matching demand through price adjustments. Had there been an adequate RIA on measuring the price elasticity of demand for taxi services, the MLITT may have been persuaded to accept greater price flexibility.

In the past, there were cases for raising taxi fares in several regions, and the impact on demand varied by region. In urban areas with various alternative modes of public transportation, a higher taxi fare was not an effective way to increase the revenues of taxi companies. However, the opposite was found to be the case in rural areas, where the demand for taxis is inelastic to prices as there are few alternatives. Hence, had the fare been allowed to be lowered in urban areas where excess supply of taxis is high, it would have increased demand for taxis, so the damage to taxi companies could have been limited.

Although taxi companies may fear lower fares would further decrease their revenue, there are various ways to lower prices while keeping the current basic

taxi fare schedule constant. One is to lower the minimum fare for short distances. For example, the current minimum taxi fare in the Tokyo metropolitan area is ¥730 for the first 2 kilometres. If the price were set at ¥350 for the first 1 kilometre, and it would subsequently be raised to ¥730 for the first 2 kilometres, demand for taxis over short distances would be stimulated without the risk of the total tax fare being lowered. The same logic could be applied to longer distances. The Osaka region has a taxi fare system that reduces the fare beyond ¥5,000 by half, a system intended to stimulate passenger demand for travelling longer distances.

What Difference Could An Enhanced Regulatory Management System Have Made?

Clearly taxi services should be regulated to a certain degree. Under the better RMS, the best mix of regulatory reform will be to tighten the social regulation of taxi drivers while removing the economic regulation on entry and price setting at the same time. An example of social regulation is to oblige taxi drivers to take a minimum of 11 hours rest between working overnight shifts for the safety of passengers. The role of RIA and prior consultation of the CRR with the MLITT should be important in providing useful information based on economic logic.

An accumulation of the case studies on related transportation sectors could be utilised for the better RMS. For example, the liberalisation of the regulations for highway buses brought about a 20 percent increase in passengers from 2003 to 2012. It was due mainly to the removal of the regulation on both fare and number of highway buses in 2002, which was in contrast with the remaining price controls for taxis. Also, changing bus drivers is mandatory after driving for 9 hours or over a distance of 600 kilometres a day for the safety of passengers.

The Japanese example also illustrates the importance of considering an adequate safety net for the various categories of the unemployed, as part of a condition to create a common understanding and acceptance of reform. For example, many part-time or temporary workers are not originally covered under the unemployment insurance scheme, even if some reforms have been made to improve the situation. Thus, an enhanced RMS may well implement additional regulations for maintaining the safety net for employees and consumers.

7. Conclusion

This chapter has explored the evolution of regulation in Japan, from sector-based regulatory review to the adoption of RIA and the current special zone approach. This chapter has identified that Japan's RMS is still not sufficiently adaptable and various sectors strongly resist reform. Japan does not have an effective enforcement mechanism for the RIA and lacks coordination between regulatory reform and competition policies. A major problem of Japan's RMS is a divergence of the institutions – between the CRR as a core of the regulatory reform and the ministry in charge of the RIA management. Also, various councils for regulatory reform coexisted without replacing the previous ones by new organisations, preventing efficient regulatory management.

Parts 2 and 3 explored two case studies of regulatory change: the Agency Worker Law and the Taxi Revitalization Law. These cases studies were at first considered successes due to strong political leadership; but as such leadership faded eventually these became overall failures. They demonstrate the lack of effective oversight institutions and supporting policy practices for regulatory reform. An enhanced RMS should have made a significant difference to the outcome of these cases.

Overall, the Japanese experience suggests that the RMS requires adequate supporting measures, such as enforcement by the respective ministries, to be effective. However, this experience also suggests that RMS provisions, such as the RIA, could significantly benefit policymaking by providing sound economic analysis of potential reform. To sum up, the Japanese government already has various tools for regulatory reform by international standards, though their utilisation is currently just a formality. An exception is the Council of National Strategic Special Zones, which was established in 2013.

An answer to the hypothetical question of what difference an enhanced RMS could have made is the following: First, it would substitute the need for strong political leadership on individual items of regulatory reform, and establish more sustainable regulatory management over time regardless of changes in

government. Second, one could estimate the consequences of the policy changes by utilising economic analysis for RIA, so that the same mistakes are not repeated. Third, a better RMS could contribute to the economic growth strategy through the better allocation of human resources in the medium term.

The Japanese experience suggests that a better RMS is like an insurance policy for the government (Gill, 2016). Each ministry tends to move towards what it considers 'national interest' but the outcome might be quite costly to the people. The RMS suggests more effective policies to achieve the coordinated national interest within the government.

References

- Asia–Pacific Economic Cooperation (2011), *Good Regulatory Practices in APEC Member Economies – Baseline Study*. Singapore: APEC.
- Conway, P., V. Janod, and G. Nicoletti (2005), 'Product Market Regulation in OECD Countries 1998–2003', *OECD Working Papers*, No. 419, Paris: OECD.
- Cabinet Legislation Bureau (2014), Report on the Number of Bills (in Japanese). <http://www.clb.go.jp/contents/all.html>
- Economic and Social Research Institute (2014), *A Study on the Economic Analysis of Evaluating the Regulations*. Tokyo: Cabinet Office, Government Office (in Japanese).
- Ministry of Internal Affairs and Communication (2007), *The Final Report on Policy Evaluation on Regulation*. Tokyo: MIC.
- Ministry of Internal Affairs and Communication (2014), *Lecture Materials on Policy Evaluation*. Tokyo: MIC (in Japanese).
- OECD (1988), *OECD Economic Survey of Japan*. Paris: OECD.
- OECD (1999), *Regulatory Reform in Japan*. Paris: OECD.
- OECD (2005), *OECD Review of Regulatory Reform Japan*. Paris: OECD.
- OECD (2010), *Regulatory Reform for Recovery*. Paris: OECD.
- OECD (2016), *Going for Growth*. Paris: OECD.
- Prime Minister's Office (2006), *Report on Evaluation of Structural Reform No. 6*. Tokyo: Prime Minister's Office (in Japanese).

- Prime Minister's Office (2007), *Economic Effects of Regulatory Reform*. Tokyo: Prime Minister's Office (in Japanese).
- USTR (2008), Annual Reform Recommendations from the Government of the United States to the Government of Japan under the US–Japan Regulatory Reform and Competition Policy Initiative. Office of the US Trade Representative.
- Yamamoto, T. (ed.) (2009), *Introduction to the Regulatory Impact Analysis*. Tokyo: NTT Publishers (in Japanese).
- Yashiro, N. (2005), 'Japan's New Special Zones for Regulatory Reform', *International Tax and Public Finance*, 12(3), pp.561–74.
- Yashiro, N. (2011), 'Myths about Japanese Employment Practices: An Increasing Insider–Outsider Conflict of Interests', *Contemporary Japan*, 23(2), pp.133–55.

Chapter IV

Regulatory Coherence: The Case of the Republic of Korea

Song June Kim^{#§}

Kyungpook National University (KNU)

Dae Yong Choi

KDI School of Public Policy and Management

Part 1: The Evolution of Regulatory Management in the Republic of Korea

1. Introduction and Country Context

The legal system of the Republic of Korea (henceforth, Korea) is a civil (codified) system based on the national Constitution. Since its adoption in 1948, the Constitution has been revised several times, most recently in 1987 at the beginning of the Sixth Republic. It sets out the structure of government and states there are three governmental branches: the legislative branch (National Assembly), the executive branch (Administration), and the judicial branch (Courts). As with most stable three-branch systems of government, it uses a system of checks and balances. For example, judges on the Constitutional Court are partially appointed by the executive and partially by the legislature. Likewise, a resolution of impeachment passed by the legislature, is sent to the judiciary for a final decision.

[#] Lead author. SongJune Kim songjune@knu.ac.kr. 80 Daehakro, Buk-gu, Daegu 41566, Republic of Korea.

[§] This research was conducted as a part of the project of the Economic Research Institute for ASEAN and East Asia (ERIA) and New Zealand Institute of Economic Research (NZIER) 'Towards Responsive Regulations and Regulatory Coherence in ASEAN and East Asia: Deconstructing Effective and Efficient Regulatory Management Systems'. The authors would like to thank SunGwon Ha for his capable assistance with this research. The authors are also deeply indebted to the members of this project for their invaluable suggestions.

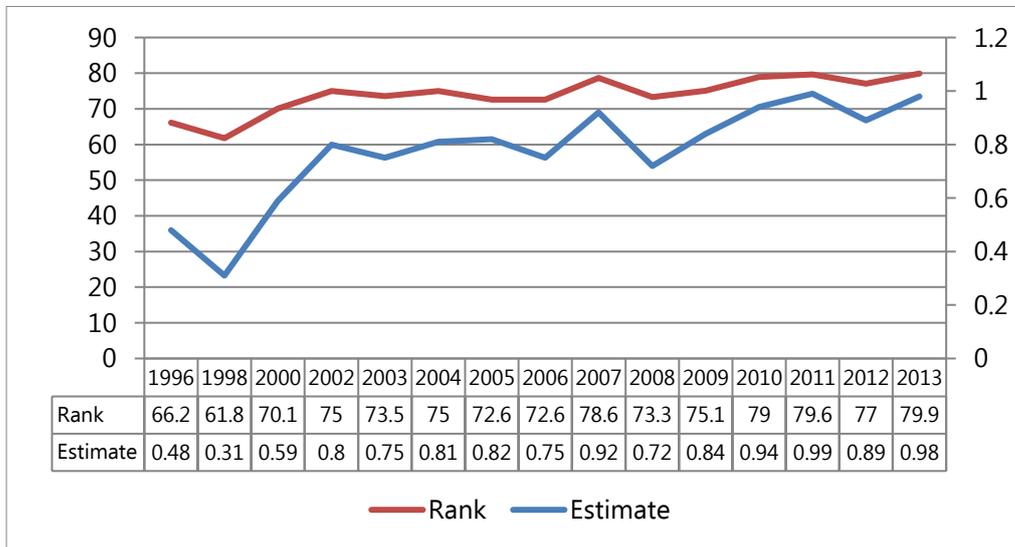
Under the Constitution, legislation in the form of statutes or laws can be enacted by the National Assembly. When a law is passed by the National Assembly and sent to the executive branch, it is promulgated by the government on approval of the President through publication of its text in the government's Official Gazette. Beneath statutes and laws are 'Presidential Enforcement Decrees', which is subordinate legislation made by the Cabinet or the State Council composed of ministers to implement a law. Below these decrees are 'Rules', which are regulations written by each ministry and used to implement practical details in accordance with a law or a presidential enforcement decree. Korea has a presidential system of government with a relatively independent chief executive. The executive and legislative branches operate primarily at the national level, although local governments also carry out local functions.

The Constitution states that local governments deal with matters pertaining to the welfare of local residents, and manage public property and facilities, and may enact provisions relating to local autonomy regulations within the limits of the law. The head of a local government manages and supervises administrative affairs except as otherwise provided by the law. The local executive functions include those delegated by the central government, such as the management of public property and facilities, and the assessment and collection of local taxes and fees for various services. Local governments have very limited policymaking authority. In general, most local government policies depend on how national policies are implemented, including regulatory reforms.

Korea is one of the world's fastest-growing developing countries (KDI School and Ministry of Strategy and Finance, 2012). Gross domestic product rose from US\$5.313 trillion to US\$11.292 trillion (Korea was ranked the 12th-largest economy in the world in 2012). However, in terms of economic freedom, Korea scored only 70.3, making its economy the 34th freest among the 177 countries included in the 2014 Index of Economic Freedom (by the Heritage Foundation), with declines in labour and monetary freedom offset by gains in the management of public spending and fiscal freedom over the previous year. Korea was ranked eighth in terms of the Economic Freedom Index out of 41 countries in 2014 in the Asia-Pacific region (The Heritage Foundation, 2014). According to the Worldwide Governance Indicators, the estimate for regulatory quality in Korea was 0.3 in 1998, but this increased to 1.0 in 2011. The index of regulatory quality indicates that overall regulatory quality improved considerably over a relatively short period (The World Bank Group, 2013).

Overall regulatory quality improved dramatically from 1996 to 2013 (**Figure 4.1**).

Figure 4.1. Regulatory Quality, Republic of Korea

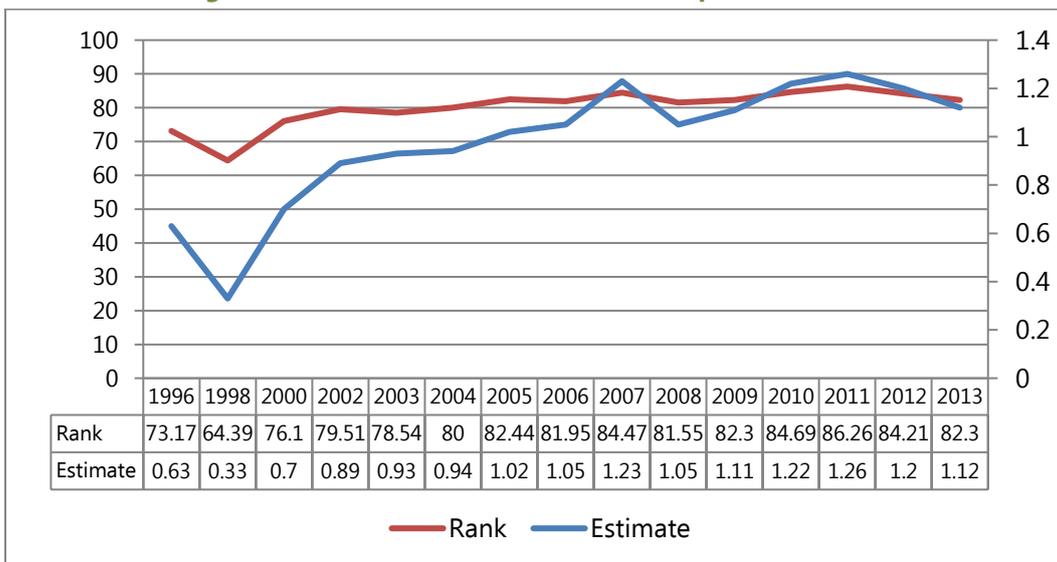


Notes: Percentile rank among all countries (ranges from 0 to 100 rank); estimate of governance (ranges from about -2.5 to 2.5 governance performance).

Source: World Bank, 2014.

As shown in **Figure 4.2**, government effectiveness also improved over the same period.

Figure 4.2. Government Effectiveness, Republic of Korea



Notes: Percentile rank among all countries (ranges from 0 to 100 rank); estimate of governance (ranges from about -2.5 to 2.5 governance performance).

Source: World Bank, 2014.

2. The Evolution of Korea's Regulatory Management System

2.1. Evolution with Each Administration

In the evolution of Korea's Regulatory Management System (RMS), the initial area of focus was control and management of regulatory inflation. Regulations were often of low quality, increasingly obsolete, indeed harmful to fast-changing economic and social conditions, even in their early stages.

The goals of the RMS have evolved with each change in administration:

- Kim Dae-jung Administration (1998.2–2003.2): Recovery from the financial crisis
- Roh Moo-hyun Administration (2003.2–2008.2): Realisation of social equity and qualitative regulatory reform
- Lee Myung-bak Administration (2008.2–2013.2): Business-friendly regulatory reform
- Park Geun-hye Administration (2013.2–present): Economic revitalisation and creative economy

The objectives of the RMS are to improve economic performance, quality of life, and government effectiveness, including regulatory transparency and accountability. The RMS clarifies the goal that reform policies should pursue market-friendly regulations suitable for a global environment by replacing command-and-control instruments with market competition (Choi, 2001).

The Kim Dae-jung Administration

The Kim Dae-jung Administration was launched in 1997 during a period of foreign exchange turbulence in Asia that was to lead to the full-blown Asian financial crisis. To receive an International Monetary Fund (IMF) bailout package at the end of 1997, immediately before the beginning of the Kim Dae-jung Administration, the government had to agree to the conditions of the IMF. Many of the requirements were related to economic regulatory reform, including capital market opening, improving corporate governance structures, and restructuring the economy along market principles. As a consequence, regulatory reform became a major political goal of the Kim Dae-jung Administration from the start. The Presidential Regulatory Reform Committee (RRC) was established in

accordance with the Framework Act on Administrative Regulations (FAAR), legislated at the end of the Kim Dae-jung Administration (Kim, T.Y., 2003).

Based on the FAAR, the RRC was responsible for all regulations under the jurisdiction of various government offices. A total of 11,125 regulations were registered with the RRC, and the committee set the goal of eliminating 50 percent of these, abolishing 5,430 cases (or 48.8 percent) and improving 2,411 cases (or 21.7 percent) in 1998. In 1999, the RRC reviewed the remaining 6,811 regulations that had been neither abolished nor improved in 1998, abolishing 704 cases (or 7.4 percent) and improving 570 cases (or 8.4 percent). In 2000, it reviewed 2,533 regulations stipulated in lower administrative orders, such as public announcements, guidelines, and by-laws and 1,675 quasi-administrative regulations enforced by associations and public corporations, modifying 2,045 cases (or 57.2 percent) of the total (Ha and Choi, 2012).

The Roh Moo-hyun Administration

No administration in Korea had been more socialist in its political leanings than the Roh Moo-hyun Administration. Generally speaking, this administration placed greater emphasis on distribution and balanced development than on efficiency. Regulatory reform was not a major concern and the role of the RRC was diminished during the government's initial stages. However, the government later realised that the lack of any major regulatory reform effort was one of the reasons for disappointing investment levels by corporations and weak job creation. As a result, the government subsequently began to push for regulatory reform (Kim and Lee, 2008).

The government emphasised improving regulatory quality rather than reducing the quantity of regulations, focusing on 'bundled regulations' that stretched across a broad range of ministries. The Presidential Council for Promoting Regulatory Reform convened by the President and the Ministerial Meeting for Regulatory Reform presided over by the Prime Minister were both established in 2004, while the Regulatory Reform Task Force (RRTF) was formed as an affiliated organisation (Ministry of Public Administration and Security, 2010). The government let the RRTF improve key regulations, while allowing the RRC to examine regulations that had been recently promulgated or required strengthening, as well as regulations that needed to be improved according to the FAAR.

The Lee Myung-bak Administration

Although the Lee Myung-bak Administration gave high priority to regulatory reform in its national agenda, the regulatory information system (RIS) was not running well at that time. It was widely acknowledged that systematic digitisation of regulatory information would be required for effective regulatory information, registration, and review (Prime Minister's Office, 2013a). Hence, the administration set up a basic plan for establishing a RIS in 2009 and conducted a sunset project to improve the functioning of the RIS. As a result, the entire regulatory life cycle was digitised and can now be accessed online. These regulation stages included new and reinforced regulation proposals, regulatory review data, registered regulations, expired regulations, and annual regulatory reform performance reports (Lee, 2012).

The government also provided a Regulatory Information Portal service through a comprehensive overhaul of the RRC's homepage¹ after 2010, to provide regulatory information in easier and more convenient ways. The Regulatory Information Portal was expected to make it easier for users to search for laws and regulations one by one by ensuring more systematic regulatory management. The government also enhanced regulatory quality and administrative efficiency to upgrade the system to integrate and manage all central and local government regulations (Prime Minister's Office, 2013a).

The Park Geun-hye Administration

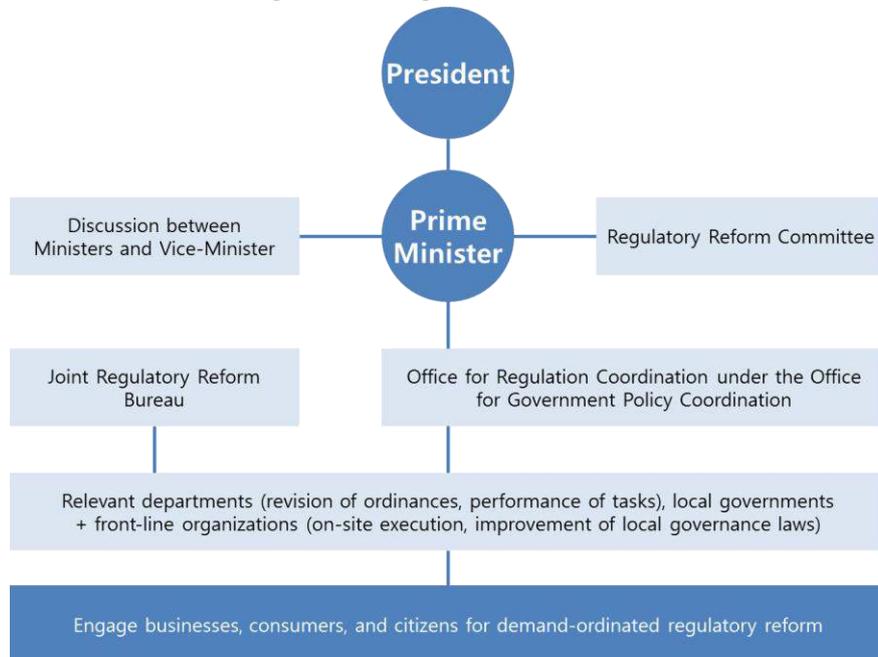
The current Park Geun-hye Administration has taken the initiative in regulatory reform by reducing regulation and lowering obstacles in the public sector. It is focusing vigorously on removing unnecessary regulation and renovating the legal system to enable individuals or businesses with creative ideas to turn them into new products and services, and quickly enter the market. To achieve this, the government is building soft infrastructure to enable convergence between different industrial sectors by allowing small and medium-sized enterprises (SMEs) to enter the market without unnecessary barriers. It is also taking steps to remove unnecessary walls between government agencies by building a system of creative collaboration to provide one-stop services that meet the needs of companies (Korea Culture and Information Service, 2014).

¹ <http://www.rrc.go.kr>

The motivation and active participation of civil servants are a fundamental element in the success of regulatory reform. Regulatory reform, like any other government reform, is doomed to fail without enlisting the backing of civil servants who hold the key to the executive branch. The Park Geun-hye Administration is making great efforts to change Korea's civil service culture into one that is more conducive to regulatory reform (Kim, J.K., 2014).

Recognising the importance of regulatory reform, President Park has been addressing regulations that are a major obstacle in each sector in her 'Ministerial Meetings on Regulatory Reform' chaired by herself. On 20 March 2014, the President presided over ministerial and official private–public sector meetings on regulatory reform in the manner of an 'ultimate debate', pushing forward regulatory reform by encouraging openness, communication, and participation (Kim, S.J., 2014). The Park Geun-hye Administration's regulatory reform is particularly meaningful because it is being actively pursued by strong presidential leadership. It has engaged with both the private and the public sectors, and the entire process is open for all people to see and communicate on in a transparent manner. This demonstrates that regulatory reform clearly reflects the administration's governance philosophy of openness, sharing, communication, and cooperation (Korea Culture and Information Service, 2014).

Figure 4.3. Organisational Chart



Source: Korea Culture and Information Service, 2014.

2.2. Changes in Focus over Time

In a globalised, market-driven economy, traditional government regulations were challenged because of the heavy regulatory burden imposed on businesses, the degree of administrative discretion required, and the low levels of compliance. The RMS therefore focused on eliminating outmoded and excessive regulation, and establishing instead a comprehensive and systematic mechanism to effectively review and manage new regulations.

The focus of regulatory reform and economic policy of the Kim Dae-jung Administration aimed to support recovery from the economic crisis that had erupted towards the end of 1997. In compliance with the FAAR, the administration set up the RRC, which was under direct presidential control. The RRC conducted a review and reform of existing regulations, together with a review of new and reinforced regulations, following the RMS as stipulated in the FAAR. This enabled Korea to overcome the challenges of the crisis, thanks to its regulatory reforms (Lee, 2011).

The Roh Moo-hyun Administration did not claim to make regulatory reform one of its major policy agenda items in the early phase of its term. On the contrary, there was a strong perception that regulatory reform might be used to secure the interests of higher-income groups by pursuing a policy of relentless competition in the market, rather than protecting lower-income citizens. Such an inclination led to the incapacitation of the RRC and its functions. However, robust global economic growth notwithstanding, no significant progress was made in terms of job creation. The government subsequently realised that these problems were attributable to sluggish corporate investment. Regulatory reform was therefore seen as a necessity to improve regulatory quality, although not to reduce the number of regulations (Ha and Choi, 2012).

The Lee Myung-bak Administration put regulatory reform at the top of its policy agenda, as the best way of enhancing national competitiveness and creating jobs. Under the Presidential Council on National Competitiveness (PCNC), the regulatory reform steering group was jointly operated by the Korea Chamber of Commerce and the government, while the RRC was kept intact. The key 'policy regulations' – such as those for governing metropolitan areas, restrictions on share ownership, and the separation between industrial and financial capital –

underwent extensive reform. All of these areas were previously considered untouchable, so these reform efforts were proof of remarkable progress. Progress was made in upgrading the basis for enhancing quality control, and carrying out scientific and rational management of regulations by instituting various regulatory reform measures, such as conducting temporary regulatory relief to overcome the economic crisis, applying sunset clauses to more regulations, registering unlisted regulations, and setting up an information system for regulations (Lee, 2011).

The Park Geun-hye Administration is now focusing on regulatory reform to foster a creative economy. The term 'creative economy' means the process of creating jobs and industries through the convergence of science, technology, culture, and industry in new and innovative ways. Park's strategies to achieve economic targets include tackling public sector reforms and boosting domestic demand by promoting SMEs and the services sector, together with comprehensive regulatory reform. The Park Geun-hye Administration is implementing sweeping regulatory reforms at home to facilitate investment to stimulate domestic demand, while externally it is stepping up efforts to create a business environment that is more favourable to foreign companies than any other country in the world. The Foreign Investment Promotion Act endorsed by the government was passed in February 2014 and is expected to generate about ₩2.3 trillion of investment and 14,000 new jobs. Moreover, the Tourism Promotion Act is expected to create about ₩2 trillion in new investment and 47,000 new jobs.

2.3. Changes in the Locus of Regulatory Management System over Time

Since 2010, the locus of RMS has shifted towards more positive ways of listening to and understanding public opinion based on the FAAR, after it had been located not far from the government's main offices in its early stages. If the head of a central administrative agency intends to establish a new regulation or reinforce an existing regulation, he/she should gather the opinions of other administrative agencies, civic groups, interested parties, research institutes, and experts through public hearings and the pre-announcement of legislation (Article 9, Hearing Public Opinions, FAAR).

The website for regulatory reform allows citizens to voice their opinions on everything from issues relating to regulatory reform, to civil servants who have

made a positive contribution towards reform, to less successful aspects of reform. All opinions that citizens submit are automatically transferred to the Regulatory Information Portal of the Office of Government Policy Coordination and processed quickly. All recommendations for improving regulatory systems receive a reply within 14 days from the relevant government organisation concerning their applicability.

2.4. Changes of Key Themes

The Korean government began to intensively review and examine new or reinforced regulations through the RRC (RRC, 2014). Sixteen years after it was first established in 1998, the RRC is currently being led by its eighth chairman, and its members are composed of regulatory reform experts from academia, business, and citizen groups.

The PCNC was established under the Lee Myung-bak Administration as a new presidential regulatory reform organisation. While the RRC focused on examining new and reinforced regulations, managing regulatory information and the regulatory reform of each ministry, and the rearrangement and management of regulatory reform-related policies, the PCNC's emphasis was on strengthening national competitiveness by controlling key policies that have a greater impact on state affairs and bundles of regulations that involve multiple ministries. But no clear boundaries of working scope were drawn between the RRC and the PCNC in dealing with the reform of existing regulation, allowing them to engage in mutual cooperation and competition for regulatory projects.

The Lee Myung-bak Administration also established the Public–Private Joint Regulatory Reform Task Force composed of government officials and staff from the PCNC and the Korea Chamber of Commerce and Industry, with the goal of reforming regulation in the field of business (Prime Minister's Office, 2013a). The task force hosted meetings jointly with local chambers of commerce and associations to engage in talks with the relevant people and visited industrial sites and engaged in face-to-face dialogues with business people. The task force is a private entity made up of experts and government officials, and is able to make rapid decisions regarding regulatory issues and proposals for their reform. Through such a system, the percentage of cases accepted as needing reform increased to 80 percent, from the previous 30 percent (Prime Minister's Office, 2013a).

The government has pursued e-Government as a core vehicle to sharpen its competitive edge, based on its global-leading information technology (IT) network and software infrastructure, such as widespread broadband internet network, Government for Citizens (G4C), and Government for Business (G4B) Internet sites. It has initiated the 'Smart e-Government Strategy' to help people access public services without constraints of space, time, or medium by integrating Korea's cutting-edge IT technology and public services. The strategy is also part of continuous government efforts to address Korea's low birth rate, its ageing population, and other social issues, and to proactively respond to social security, public welfare, and future issues (Ministry of Security and Public Administration, 2013).

3. The Current State of the Regulatory Management System

3.1. Flow and Stock Policy Tools

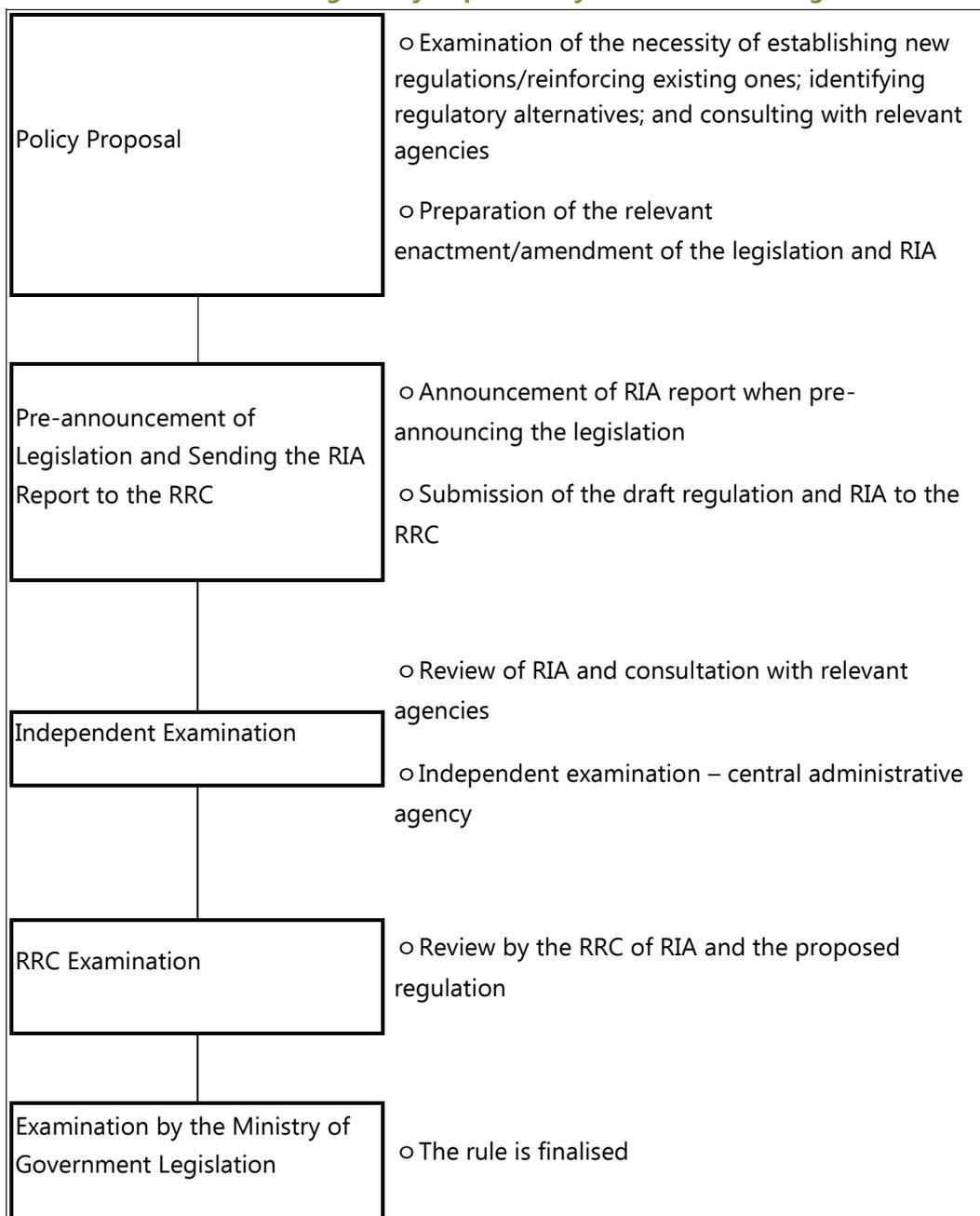
The principle of cost-effective regulation in Korea was consolidated by the implementation of regulatory impact analysis (RIA). RIA is the 'means to predict and analyse the impact of a regulation on the everyday lives of citizens, as well as on the social, economic, administrative and any other aspects, by using objective and scientific means and thus to establish a standard which serves as the basis for determining the appropriateness of the regulation' (Article 2 of FAAR). RIA reports are prepared for the issuance of new regulations and the reinforcement of existing regulations. RIA has become an effective tool for improving the quality of regulation on the basis of cost-benefit analysis (CBA) and other analytical tools.

To enhance the efficiency of RIA, the government revised its guidance manual in December 2008, specifying the details of those groups subject to regulation and interested parties. To raise the effectiveness of the administration and encourage the compiling of the analysis, the RRC had ministries use the RIA draft without having to create additional data. It also encouraged them to use the RIA report for regulatory review (Office for Government Policy Coordination, 2013).

One of the most remarkable changes was the removal of unnecessary factors in RIA guidance and the addition of multiple regulatory alternatives in the CBA.

In addition, the intensity and methods of regulation, and whether they limit market competition and impact due to the difference in size of the businesses, were added to the contents of the RIA report (RRC, 2013).

Table 4.1. Regulatory Impact Analysis and Rule-making



RRC = Presidential Regulatory Reform Committee.

Source: Prime Minister’s Office, 2013b.

The ‘stock’ policy tool is regulated under the FAAR. According to Article 8 of the FAAR, the effective (or review) period for which a regulation remains in force is set as no longer than that required to achieve the objectives of the regulation,

and the period must not exceed 5 years. If an extension of the effective (or review) period of a regulation is necessary, the head of the central administrative agency will request an examination by the RRC 6 months before its expiry (Article 8 – Stipulation of Effective Period of Regulations).

The ‘sunset system’ on existing regulations was put forward by the Lee Myung-bak Administration. The government studied the possibility of introducing a sunset system on all existing regulations twice, in November 2009 and June 2010, and concluded that 1,600 regulations out of about 7,000 existing regulations (about 23 percent) were subject to a sunset system review. The regulations subject to the sunset system were made public and managed through the RIS to enhance public trust in regulatory reform. The number of applications of the sunset system since 2010 has continued to increase, indicating that the new system has successfully taken root.

Table 4.2. Components of Regulatory Impact Analysis

| |
|---|
| 1. Need for Regulation |
| 1-1. Problem statement (background and causes) |
| 1-2. Need for establishing new regulations and reinforcing existing regulations |
| 2. Review of regulatory alternatives and CBA |
| 2-1. Review of regulatory alternatives |
| 2-2. Comparison of the CBA results |
| 2-3. RIA of small and medium-sized enterprises |
| 3. Propriety and feasibility of regulatory content |
| 3-1. Adequacy of regulations |
| 3-2. Consultation with stakeholders |
| 3-3. Feasibility of implementation |

CBA = cost–benefit analysis.

Source: Prime Minister’s Office, 2013b.

Under the current RMS, all regulations must be based on legislation and a central administrative agency must register a regulation with the RRC. According to the Enforcement Decree of the FAAR, the head of a central administrative agency must register the name, content, legal basis, administrative agency, extension of the effective period, contents of lower statutes related to implementation, and the date of promulgation and implementation of the regulation (Article 4,

Registration and Procedures of Regulation). This register system makes the management of the stock of regulations relatively more efficient and more transparent. The RRC developed a computerised database system in 1999 and has since published this database online (Kim and Kim, 2014).

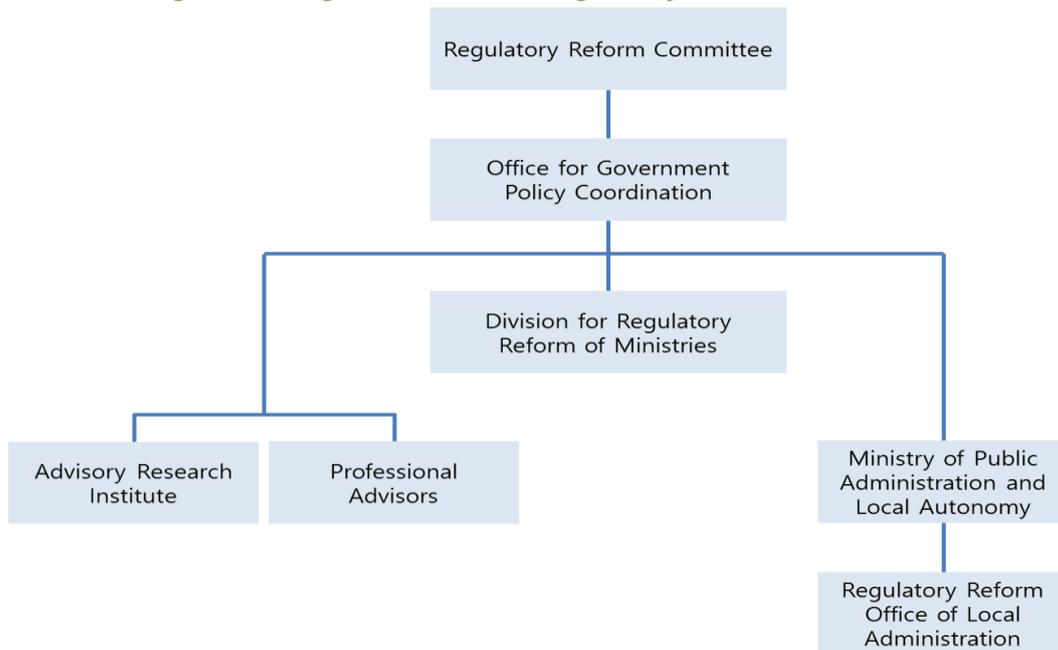
Since its introduction, Korea has struggled to effectively review existing regulations, similar to most countries. As a result, the Park Geun-hye Administration recently established the Public–Private Joint Expert Committee under the RRC to strengthen the regulatory review system. This committee is composed of two subcommittees: the Expert Committee for Institution Study (ECI) and the Expert Committee for Costs (ECC). The ECI carries out research on regulatory institutions and evaluates existing regulations issued by industries and citizens, while the ECC supports the operation of a regulation cost system (cost-in, cost-out), etc.

3.2. The Regulatory Reform Committee

To launch systematic and comprehensive regulatory reform, Korea enacted the FAAR and set up the RRC in 1998 (Article 23 of the FAAR, 1998). Since its establishment, the RRC has played a key role in the RMS, as it has the legal authority to substantially review all ministries' plans for regulatory transparency.

The RRC consists of civilian members, government members, and two co-chairs (the Prime Minister and a civilian co-chair). It is responsible for deliberating the basic direction of regulatory policy, as well as reviewing and improving the RMS (Choi, 2003).

Activities related to implementing methods and procedures refer to the decision mechanism, which includes aggressive participation of the private sector and implementation of RIA. These features are required for reforms to be processed and depend primarily on the political will and capacity of reformers. Both participation of the private sector and RIA implementation are invaluable in helping to persuade interest groups to agree to reform (Park and Im, 2009).

Figure 4.4. Organisation of the Regulatory Reform Committee

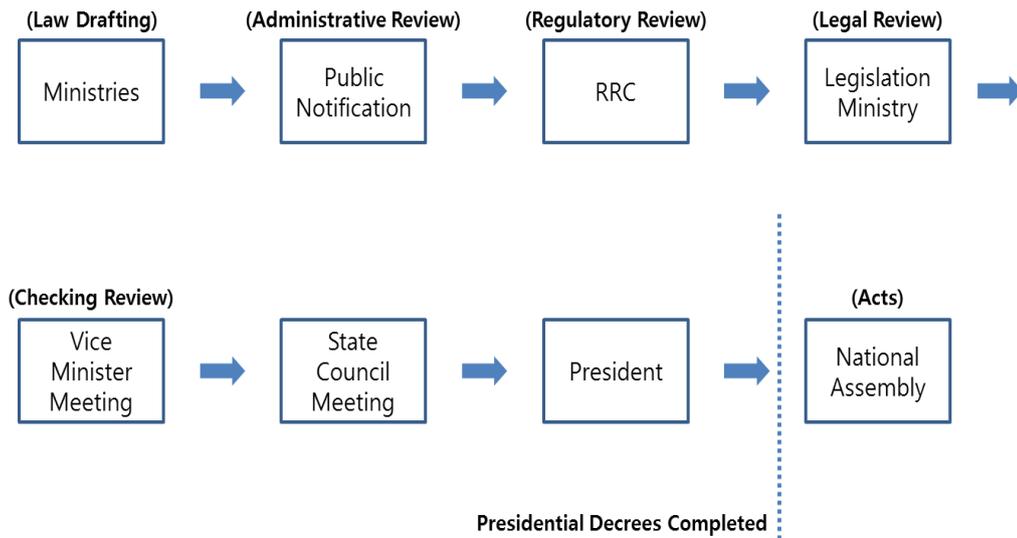
Source: Ha and Choi, 2012.

The RRC holds the central position in managing the RMS and reform policy under the auspices of the Prime Minister. The Prime Minister's Office (PMO) has a coordinating capacity and distinctive role in interlinking with central ministries and the RRC. The central administrative agencies and local governments operate their own regulatory review committees, consisting of civilian representatives and government officials, similar to the RRC. When the central administrative agencies improve or modify regulations, they have their own regulation review committee to review the regulations prior to submission to the RRC. They have also set up and implemented their own annual regulatory review.

The head of a central administrative agency must request an examination by the RRC if he/she intends to establish a new regulation or reinforce an existing regulation. In cases of a legislative bill, the request for an examination must be made prior to filing a request for an examination of the legislative bill with the Minister of Government Legislation. When an examination is requested, he/she must submit to the RRC a draft of the regulation, along with the following documents (Article 10, Request for Examination):

1. RIA report under Article 7(1);
2. Opinion from an independent examination under Article 7(3); and
3. Summary of opinions submitted by administrative agencies, interested parties, etc. under Article 9.

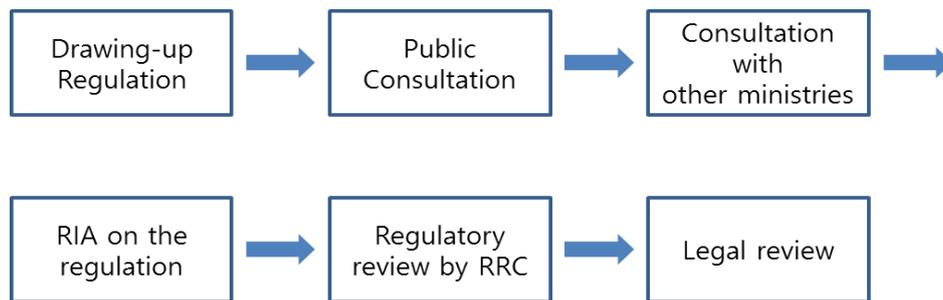
Figure 4.5. The Process of Formulating Regulation



RRC = Presidential Regulatory Reform Committee.

Source: Authors.

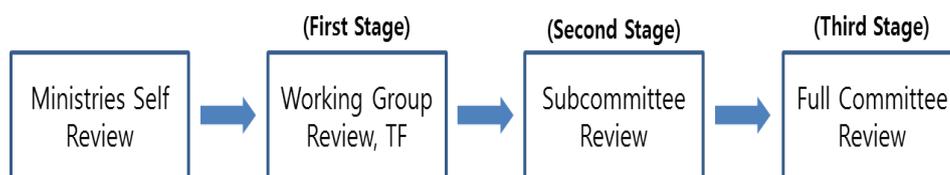
Figure 4.6. Review Process of New/Amended Regulation



RRC = Presidential Regulatory Reform Committee.

Source: Authors.

Figure 4.7, Review Process of Existing Regulations



RRC = Presidential Regulatory Reform Committee; TF = trade facilitation.

Source: Authors.

The coverage of the RMS has changed since 1997. The Kim Dae-jung Administration made an exception for the affairs executed by the National Assembly, the Courts, the Constitutional Court, the Election Commission, and the Board of Audit and Inspection; and the affairs relevant to criminal matters, criminal administration, and security measures. It also excluded matters relevant to national security, defence, foreign affairs, unification, and tax, which are not subject to the FAAR, as determined by presidential decree.

The Roh Moo-hyun Administration supplemented some exclusions, such as matters relevant to (i) enrolment, draft, mobilisation, and training; (ii) military installations, the protection of military secrets, and the defence industry; and (iii) the items, rates, imposition, and collection of taxes (FAAR, 1997; 2005).

The scope of the current RMS encompasses broad economic and social regulations except those concerning taxation, national defence, and punitive measures (Article 3, Scope of Application) as follows:

- Affairs executed by the National Assembly, the Courts, the Constitutional Court, the Election Commission, and the Board of Audit and Inspection;
- Affairs relevant to criminal matters, criminal administration, and security measures;
- Matters relevant to information and security-related duties under the National Intelligence Service Act;
- Matters relevant to enrolment, draft, mobilisation, and training under the provisions of the Military Service Act, the United Defense Act, the Establishment of Homeland Reserve Forces Act, the Framework Act on Civil Defense, the Emergency Resources Management Act, and the Framework Act on the Management of Disasters and Safety;

- Matters relevant to military installations, the protection of military secrets, and the defence industry; and
- Matters relevant to the items, rates, imposition, and collection of taxes

3.3. The Role of Local Government Regulation

Local governments play an instrumental role in implementing regulatory reform down to street level in Korea. They develop regulatory reforms that are best suited to their own local circumstances, as the central government delegates its functions to a subordinate authority. They may enact municipal ordinances concerning their affairs within the purview of laws and subordinate statutes.

When local governments determine matters concerning restrictions on the rights of residents, the imposition of obligations on residents, or penal provisions, they must have the authority delegated by law. Heads of local governments may enact municipal rules concerning their competent affairs to the extent delegated by laws and subordinate statutes, or by municipal ordinances (Articles 22 and 23, Local Autonomy Act).

3.4. Regulatory Oversight Mechanism

Overall regulatory oversight for regulatory reform is mostly undertaken by the government, with the Office for Government Policy Coordination (including the RRC) as the central agency. The RRC makes regulatory information and regulatory review results open to the public through the RIS, while also utilising the RIS to collect opinions from the public (Prime Minister's Office, 2013a).

Furthermore, the regulatory oversight mechanism is manned by citizens' active participation through the SME ombudsman and citizens' monitoring groups, among others (Regulatory Reform White Paper, 2013). The government provides information on all regulations, as well as the government's regulatory reform efforts, on the Regulatory Reform Portal Site so that people can oversee and contribute to the reform process in real time.

The Korean government allowed for regulatory oversight by establishing an Ombudsman Office for SMEs under the Small and Medium Business Administration to reflect the opinions of SMEs. Since its inception, the Ombudsman Office for SMEs has registered 3,634 cases of difficulty and dealt with 3,338 of those cases. For instance, the mandatory use of accredited certificates was highlighted as a barrier to active electronic banking after hearings. For this reason, the relevant regulations were improved to enable small transactions of under US\$282 through smart phones without accredited certificates. Such reform has enabled SMEs to reduce costs by US\$250 million annually, which had previously been used for applying for the accredited certificates (Prime Minister's Office, 2013a).

3.5. Evaluation

According to the FAAR, the RRC verifies and inspects the improvement in, and operational conditions of, the regulations of each administrative agency to measure the effective regulatory improvement and may request that relevant institutions conduct public opinion surveys to objectively carry out verification, inspection, and evaluation. The RRC must evaluate the findings of the verification and inspection, and report back to the President and the State Council. If the RRC deems that regulatory improvement has been passive or not implemented appropriately based on the results of its verification, inspection, and evaluation, it may suggest necessary revisions to the President (Article 34, Inspection and Evaluation of Regulatory Improvement).

Table 4.3. Regulatory Reform Satisfaction Index

| | Citizens | Policy Experts | Civil Servants |
|-------------|-----------------|-----------------------|-----------------------|
| 2005 | 56.2 | 61.0 | - |
| 2006 | 58.2 | 67.7 | - |
| 2007 | 54.8 | 63.0 | - |
| 2008 | 59.5 | 66.3 | 60.7 |
| 2009 | 62.9 | 66.5 | 63.6 |
| 2010 | 64.8 | 70.7 | 63.9 |
| 2011 | 65.0 | 72.6 | 64.1 |
| 2012 | 67.6 | 73.1 | 68.7 |
| 2013 | 65.7 | 71.9 | 69.0 |

Source: Regulatory Reform White Paper (2005–2013).

In addition, the RRC must publish annually and promulgate a white paper regarding the status of major government regulatory reform issues to citizens (Article 35, White Paper on Regulatory Reform). The Prime Minister's annual budget for regulatory reform is US\$1,557,059 (Annual Revenue Expenditure Budget, 2014). Almost half of this total budget, or US\$764,998, is assigned for operating costs of the RRC. In 2014, about 28 percent went towards building an information system for regulatory reform and 22 percent went towards the operations of the Public–Private Joint Regulatory Reform Task Force.

4. Assessment of Korea's Regulatory Management System

4.1. Coherence

Korea adopts a whole-of-government approach towards RMS and regulatory reform. The RMS is based on a permanent regulatory reform system, and regulatory reform has been consistently carried out by the RRC. Under the PMO, the RRC is able to comprehensively determine the basic direction of regulatory policy horizontally across different domestic regimes and vertically across levels of government. Most critical 'bundled regulations' are interconnected with the affairs of multiple ministries. The PMO, whose role is to coordinate the diverse stances across ministries, is in charge of dealing with core regulations and bundled regulations involving multiple ministries. The PMO and each ministry are encouraged to compete in pursuing regulatory reform through the systematic assignment of duties according to their resulting impact and importance.

The Regulatory Reform Task Force was established to tackle the difficulties faced by businesses and to monitor the effects of regulatory reform regularly. In an effort to deal with new or strengthened regulations, the PMO established a seamless regulatory reform system, reviewing the need and feasibility of regulation by reflecting people's stances, not those of the relevant agencies.

The PMO formed in 2006 a 'Local Government Regulatory Reform Task Force', which combined government officials from the Office of Government Policy Coordination, the Ministry of Government Administration and Home Affairs (MOGAHA), and experts from research institutes. It also expanded training opportunities for local government officials to change their regulatory mindset

and enhance their skills. The PMO refers reform issues and proposals collected from local governments and businesses to the central government for review (RRC, 2006). The Park Geun-hye Administration has spurred more regulatory reform by local governments, as it sees this as being essential for the implementation of effective reform (MOGAHA, 2014).

To ensure international coherence, the RRC has also abolished existing regulations that fail to fit global standards. The RRC participates in various international cooperation programmes, such as the Organisation for Economic Co-operation and Development (OECD) Country Review (1999–2000), the OECD review of regulatory review monitoring programme (2006–2007), and the Asia-Pacific Economic Cooperation (APEC) Deregulation Report. The 2000 OECD Review stated that the cumbersome Korean system of standards and conformity certification was deemed by trading partners to be a source of obstacles to trade. Since then, the government has implemented an active policy in favour of enhanced transparency of the standardisation and certification system, and increased the use of global standards (OECD, 2007). To strengthen regulatory coherence, the RRC ensures that policies for all concerned areas are mutually supportive. The central government initially sets the regulatory reform agenda and then the regional and local governments follow. This mechanism for coordination within and between governments on regulation and its reform is set up to maximise the benefits of reform and strengthen regulatory coherence.

To avoid duplication and inconsistency of regulations, the RRC introduced a central registration system for regulations. Ministries are required to register regulations under their jurisdiction to the RRC in a form that includes the content of regulations, the legal authority, and the responsible agency. Using this registration system, Korea has established a useful database for subsequent regulatory management.

4.2. Assessment

By and large, Korea has made significant progress in terms of establishing a robust RMS required to enhance regulatory quality and to succeed in regulatory reform. As the OECD said, Korea's massive deregulation was fairly effective and intensive in dealing with the effects of the economic crisis within a short period after the Kim Dae-jung Administration (OECD, 2000).

In its initial stages, regulatory reform focused on the quantity, rather than the quality, of regulation. It relied heavily on political support stemming from the desire to recover from the economic crisis. The government has actively adopted OECD recommendations and guidelines since then (OECD, 2007). As a result, the focus of regulatory reform shifted from reducing the overall quantity of regulations to improving regulatory quality. This transformation was impressive in that it occurred relatively rapidly. However, both political will and government efforts to maintain the momentum of reform subsequently weakened, and the pace and intensity of reform slowed as the economy recovered. The Lee Myung-bak Administration recognised regulatory reform as a means to increase national competitiveness and made regulatory reform an important government priority. In effect, the President became a strong advocate in pushing for regulatory reform. The current Park Geun-hye Administration is aware that regulatory reform serves to solidify national competitiveness and to bolster the creative economy. The Park Geun-hye Administration is placing greater emphasis on implementing more advanced and comprehensive reform measures. To date, institutionalised reform in Korea has been successful in dealing with potential problems of reform by strengthening policy attention and public support. The government has tried to maintain reform momentum by giving it a high priority to meet public expectations.

The current registration system for regulations coming from local governments in Korea has not been managed and operated efficiently, especially compared with central government administration. Poor and inconsistent registration of regulations at the local level of government has resulted in fundamentally inefficient and incomplete regulatory reform in local governments.

In sum, the government's efforts to improve RMS and regulatory reform have produced major gains in moving towards a global market-driven economy. The radical approach of the current government is remarkable, having had a tremendous impact on the entire regulatory stock. It has laid the groundwork for moving towards market-driven regulations by clearing regulations through government intervention.

In Parts 2 and 3 of this chapter, we explore the details of two regulatory changes: golf course construction controls and the opening hours of food services businesses. In particular, we explore regulatory reform in response to the

economic crisis of the late 1990s and the evolving process of regulatory reform and the RMS.

Part 2 on the evolution of golf course regulation in Korea illustrates that multiple regulatory responses are necessary to adequately respond to the unintended consequences of regulation. Because of its iterative nature, golf course regulation was responsive to environmental needs, as well as to industry demands and the government's attempts to transform existing policy.

Part 2: The Case of Golf Course Regulation in Korea[#]

1. Introduction

Until the early 2000s, it took a great deal of time and effort to undertake and complete the construction of a golf course in Korea; the administrative procedures alone took 3 to 4 years. Since the reform carried out in accordance with the 'Golf Course Promotion Policy' in 2004, the time required has been halved to around 1 to 2 years. Regarding the economic benefits as a result of regulatory reform, total administrative cost savings of ₩3.7 billion have been made for each golf course, and total potential savings of ₩388.5 billion may have been made if applied to all 105 golf courses that were under construction during the period (Lee et al., 2006).

The contribution of regulatory reform towards golf course construction has not simply been limited to reducing administrative costs and the time required. As a golf course is being constructed, the economic effects are also positive as a result of the hiring of local residents and stimulating the construction business (Cho, 2004). The number of golf course users has increased in accordance with the government's efforts to promote golf as a popular public sport since 1988. Such positive economic effects have been pioneered through golf course construction and have also worked as a driving force in mitigating burdensome golf course regulations. However, some unintended side effects were caused by mitigating a number of golf site regulations. To construct golf courses at lower cost, entrepreneurs began construction in mountainous areas where land is cheaper.

[#] Part 2 is authored by Song June Kim.

However, nearby areas suffered environmental damage. For example, agricultural pesticides used in managing grass on golf courses caused environmental contamination in neighbouring areas.

Throughout this process, Korea's RMS has attempted to consider both the benefits and costs, and to reflect the opinions of both experts, and directly concerned parties and environmental organisations. As a result, the RMS has developed into a more objective and transparent system. The improvement of the RMS has played a significant role in minimising the extent of trial and error in the process of regulatory reform and reducing the social costs. Likewise, Korea has reformed golf course regulations in a way that mitigates the burden of the regulations and any negative impacts of this mitigation of regulatory burdens simultaneously.

The purpose of this chapter is to discuss the evolving process of regulatory reform and the RMS with special reference to the case of golf course regulatory reform. The efficient and effective ways of implementing regulatory reform is also discussed, by examining the characteristics of the RMS for successful golf course regulation and by understanding the improvements in the RMS.

2. The Requests for Regulatory Reform

Taking the opportunity of the 'Declaration of Golf Popularization' in 1988, the Korean government has consistently implemented its Golf Course Promotion Policy in pursuit of stimulating the domestic economy by means of promoting the popularity of golf and absorbing the demand of golf tourists to go overseas in pursuit of golf (Green Korea United [GKU], 2008). As a result, the number of annual golf course users increased significantly – from 500,000 in 1990, to 1.7 million in 2000, and to 3.71 million in 2009 (Oh and Jeon, 2010). This shows the degree to which golf became a popular public sport, with a participation rate of 8.5 percent among the domestic population in 2009.

The steady increase in the number of golf courses in Korea can be largely explained by supply side and demand side factors. First, on the supply side, the increase was due to a significant decrease in the burden on golf course entrepreneurs stemming from the government's support for tax and financial

benefits in 1989. The government reduced or exempted composite land tax, valuable land tax, and added a special consumption tax for golf course entrepreneurs, as well as transforming luxurious property into general property. In the case of companies constructing golf courses, the government recognised this as being for business purposes, paving the way for companies to obtain bank loans for the construction (GKU, 2008). As a result, major companies could participate in the golf course business with greater ease, and the financial burdens for golf course construction decreased considerably, while investors could cover construction costs through bank loans and membership distribution (Wang, 1991).

Second, in the early 2000s, golf courses were generating high rates of return. The average rate of return of listed companies at that time was 7.2 percent; but by adopting a membership system, golf courses could produce about 3.6 times this level of profit, at 26.1 percent. Companies that had been unable to find alternative investments due to the economic recession were motivated to make profits through golf course construction (Mo, 2006).

From the perspective of consumers, demand for golf increased in line with rising income levels and the partial implementation of a 5-day working week. From 2003 to 2004 in particular, the increase in the number of people using public golf courses who did not have membership, at 9.5 percent, was higher than the rate increase seen among membership-based users, at just 4.9 percent. This indicated that the popularity of golf accelerated based on the rise in the number of golf course users, paving the way for an enlargement of the golf course user base (Mo, 2006).

Third, golf courses are one of the main sources of economic resources for local governments. The taxes levied on golf courses consist of acquisition tax, registration tax, property tax, and comprehensive real estate tax, plus a specific consumption tax and value-added tax that are levied on golf course users (Oh and Jeon, 2010). Taxes that can be drawn on by local governments are acquisition tax, registration tax, property tax, specific consumption tax, and value-added tax. These tax revenues are an attractive means of raising funds by local governments, given their normally weak base of financial resources. Golf courses are large-scale businesses requiring an average ₩60 billion to construct and secure regular tax revenues from golf course users.

Despite the steady increase in domestic demand for golf, however, there have been problems with the slow pace of golf market growth due to a shortage in supply and with a surge in outbound golf tourism due to relatively expensive fees at home. Compared with population per golf course in major countries in 2003, the United States had one golf course for every 14,000 people; Japan had one golf course for every 52,000 people; and the United Kingdom had one golf course for every 28,000 people. In contrast, Korea had one golf course for every 210,000 people. Given the level of income in Korea compared with other countries, demand for golf courses seems to be inadequate (RRC, 2003). For this reason, the high cost of golf in Korea, making it more expensive than other countries, has led to an increase in Korean golf tourists going overseas to play golf. This is the reason the number of overseas golf tourists has continuously increased – from 40,940 in 2000, to 54,697 in 2001, and to 93,135 in 2002, and then to more than 100,000 golfers in 2003 (The Hankook Ilbo, 2003).

In 2003, the government discussed institutional measures to expand golf course construction to mitigate the imbalance between supply and demand, and absorb overseas golf tourists, as well as creating jobs and stimulating local economies as part of an effort by the then government's economic stimulus policy. First and foremost, the government attempted to simplify the approvals procedure for expanding golf course construction and to improve regulation in an environment-friendly way. For this, a joint task force was established to investigate policy measures to deal with location-related problems, improve the approvals procedure, reduce the financial burden, and strengthen environmental management in response to golf course construction by reviewing current regulations and case studies. The government then estimated that the effect of golf course construction on the local economy would reach ₩137.9 billion and create 1,145 new jobs each year. For an 18-hole membership-based golf course construction, this includes ₩78.9 billion of production effect, ₩33.3 billion of added-value effect, ₩17.1 billion of income effect, ₩2.7 billion of net indirect tax effect, and ₩5 billion–₩9 billion of registration tax and acquisition tax (Mo, 2006).

3. The Process of Regulatory Reform

3.1. Existing Golf Course Regulation (before 2003)

The 1988 Golf Promotion Policy mainly focused on the maintenance of laws and a reduction in the tax burden. As a result, the government changed the legal basis for golf courses in order to set the stage for developing golf into a major public sport in 1989. Golf courses, once included in the category of 'luxurious facilities' according to the 'Tourism Promotion Act', were then included in the category of 'physical training facilities' in accordance with the legislation of the 'Installation and Utilization of Sports Facilities Act (IUSFA)'. Accordingly, golf courses were transformed from amusement parks into physical sites, according to the Cadastral Act, and received benefits by being exempt from onerous taxes. One decade later, in 1999, the obligations to establish golf courses as an annex and to pay for a golf course development fund were abolished, according to IUSFA. Accommodation could be set up inside a golf course. The financial burden of managing a golf course was also minimised, thanks to taxation benefits, whereby the rate of acquisition tax was reduced from 15 percent to 10 percent (Mo, 2006).

The government-led Golf Promotion Policy, however, has not always been consistent. Despite mitigating regulations aimed at minimising burdens on golf course management and promoting a wide range of facilities, one site regulation that has a direct impact on the increasing number of golf courses has been reinforced. The government legislated 'Criteria for the Formulation of Landscape Plans in a Quasi-Urban Area' to reinforce regulations on facility standards in semi-urban areas in February 2001, restricting reckless golf course construction in 2003 under the 'National Land Planning and Utilization Act' (NLPUA), and replacing the existing 'Utilization and Management of the National Territory or Urban Planning Act'.

3.2. The Reform of Golf Course Regulation (2003–2004)

In 2003, the government started to consider ways to mitigate golf course regulation as part of its effort to rationalise regulation aimed at stimulating tourism and the sports industry. The government abolished the regulation restricting the site areas for golf courses and ski resorts, and instead improved

the regulation by expanding preserved land by 20 percent to 25 percent for nature conservation. This measure was aimed at keeping more Korean overseas golf tourists in the country by increasing the number of domestic golf courses, lifting the restrictions on site areas for accommodation at golf courses in response to family-level tourism demand, and utilising land rationally in the case of local golf course construction, through the 'Act on Special Cases Concerning the Regulation of the Special Economic Zones for Specialized Regional Development' (RRC, 2003).

Golf course regulation was selected as a strategic project by the RRC in 2004. The RRC designed the purpose and strategy for improving construction-related regulations in order to stimulate local economies by creating employment, and to construct environmental-friendly golf courses by rationalising regulation and reducing the construction period and the costs. The government also implemented regulatory reform by dividing the work into four sectors: site/facility sector, licensing-procedure sector, regulatory transparency sector, and finance/taxation aid improvement sector (Lee et al., 2006).

With regard to the site/facility sector, a number of policy measures were implemented in terms of golf course construction/support within a large complex or a city, the removal of irrational restrictive regulations on golf course facilities, the improvement of areas and criteria for mountainous districts, the extension of construction areas to include vulnerable product-based or marginal farmland, and an extension into utilising seashore hill areas and idle landfills. For licensing procedures, the government paved the way for simplifying duplicate procedures, improving the environmental and traffic impact assessment system, minimising the number of required documents, and improving licence-related one-stop services.

Regulatory transparency minimised the discretionary influence of public officials by modifying the regulations that were not based on legislation and by reviewing the concerned legislation. The standard of advance environmental assessment was also legislated at the level of a lower statute, such as an enforcement ordinance or notification, so entrepreneurs can know the requirements in advance. The finance/taxation support sector improved the operation of local tax, the special consumption tax, and the Sport Promotion Fund in order to mitigate the burden on entrepreneurs and users.

Through such regulatory reform, in the case of one newly constructed golf course, it is estimated that private companies' net benefits would increase by about ₩3.7 billion in licensing procedures for the business plan, by about ₩16 million in simplified negotiating procedures with the concerned agencies, by about ₩24 million in the environmental impact assessment system, and by about ₩4.6 million in the adjusted size of the targets of the traffic impact assessment.

However, the government-led mitigation of golf course regulation tended to cause reckless construction of golf courses, thus bringing about disputes due to lack of public consensus in advance. First, the restricting regulations over farmland conversion areas and over mountainous areas in the gross area were mitigated or abolished. In so doing, however, the increase in golf course construction around inexpensive and easy-to-purchase mountainous areas led to forest destruction and even to the destruction of ecologically protected areas. Following regulatory reform in 2004, the change in forest conversion areas surged threefold in 2005 and then by 4.5 times in 2006 compared with 2004. Consequently, the construction of golf courses in mountainous areas caused considerable forest destruction.

Table 4.4. Changes in Forest Conversion Areas

(Unit: m²)

| | 2004 | 2005 | 2006 | 2007 | June, 2008 | Total |
|------|-----------|------------|------------|------------|------------|------------|
| Area | 3,290,000 | 10,060,000 | 14,850,000 | 14,600,000 | 8,790,000 | 51,590,000 |

Source: GKU, 2008.

Second, public consensus with regard to mitigating golf course construction regulations was insufficient. The government estimated that mitigating regulations would lead to direct economic effects amounting to ₩27 trillion, helping to alleviate the economic recession. Civil society, however, pointed out that structural reforms needed to address the fundamental causes of the economic recession – households' bad loans and a weak correlation between exports and domestic demand – and these should come first in the economic recovery. It also argued that economic revitalisation through golf course construction was likely to overheat the real estate business, causing adverse side effects and environmental pollution, outweighing the benefits of golf course construction (Kukminilbo, 2004). Whether or not in agricultural areas, some areas were proactive in soliciting golf course construction beneficial for local development (The Munhwa Ilbo, 2004), while other areas started movements to prevent construction (The Kyunghyang Shinmun, 2004).

3.3. Regulatory Adjustment (after 2004)

The government made continuous efforts to address the problems caused by regulatory reform in 2003–2004. To begin with, the government attempted to complement site regulations for golf courses by improving four impact assessment systems, establishing the Business Difficulties Resolution Center, and evaluating the strategic projects on regulatory reform. Improving the four impact assessment systems led to well-written evaluation reports and reinforced the responsibility of assessment agents. The government also set up a standard model for the evaluation report by different business types – housing site, road, golf course, etc. – and distributed this to entrepreneurs to make a qualified impact assessment beyond a certain level.

Although golf course construction within water-supply source protection areas had been banned across the board, the Business Difficulties Resolution Center revised the standard for golf course locations to approve construction, when pollution could be reduced by the environmental impact assessment. Thus, these measures brought about positive results in golf course construction, avoiding pasture sites located within water-supply source protection areas. In assessing strategic projects, regulation of golf course construction was selected as one of the main strategic projects in the architectural/construction sector and subject to regulatory reform. As a result, the uniformly applied provisions, such as the size of the golf course, were abolished, and the process by which mayors or governors approved business licences was also omitted to speed up the administrative procedures (RRC, 2005).

In 2006, the main provisions, methods, and issues of advance environmental assessment were chosen through detailed evaluation of the newly established reinforcing regulations. The main provisions are supposed to consider geography, landscape, green belt, ecology, water quality conditions, and other local traits, and to complement the existing 'Enforcement Decree of the IUSFA (Installation and Utilization of Sports Facilities Act)' and 'Regulations Related to Standards of Sites and Conservation of Environment for Golf Course'.

Table 4.5. Focus Areas of Advance Environmental Assessment

| Focus Assessment Areas | Assessment Method and Details |
|-------------------------------------|---|
| Geographical Features and Landscape | <p>Make an assessment of whether excessive topographical changes would damage the landscape.</p> <p>Areas with a gradient of 25° (5m×5m), taking up more than 40 percent of the area where a golf course would be constructed. (Its suitability will be reviewed and decided according to business viability, but it should also consider local preservation).</p> |
| Green Belt and Ecology | <p>Make an assessment of whether it includes areas indicating favourable ecological zoning.</p> <p>Areas with a good natural environment (e.g. areas with first-class ecological zoning in accordance with Article 34 of the 'Natural Environment Conservation Act').</p> <p>Areas where endangered wild animals and plants according to Article 2 of the 'Wildlife Protection and Management Act' inhabit the site where the proposed golf course would be constructed. (Such an area makes it a rule to be exempted.)</p> |
| Water Quality Condition | <p>Reviewing whether an area has lost its environmental benefits because of damage to waterfront areas (e.g. streams and lakes)</p> <p>Areas that should be mainly assessed in golf course. Suitability should be assessed by considering pollutants caused by waste water and rainfall and of outflow water treatment measures.</p> <p>Areas within 300m of the full water level of an agricultural reservoir with available reservoir storage of more than 300,000m³</p> <p>Areas within 300m of a national or local stream. Local streams are limited to local first-class streams with asterisk 1 according to the Enforcement Decree Of The River Act of a Presidential Decree No. 20722).</p> <p>Areas within 300m of a waterfront boundary designated by Article 4 of the 'Act on the Improvement of Water Quality and Support for Residents of the Riverhead of the Han River System', the 'Act on Water Management and Residents Support in the Nakdong River Basin', the 'Act on Water Management and Resident Support in the Geum River Basin', and the 'Act on the Management of Water and Support of Residents in the Yeongsan and Seomjin River Basins'.</p> |
| Other Local Characteristics, etc. | <p>Reviewing the suitability of golf course location considering other significant environmental impacts in addition to No. 1 or No. 3, or other local traits.</p> |

Source: 'Regulations Related To the Prior Environment Reviewing Items and Methods of Golf Course Construction', 2006.

A provision for 'The Investigation on Used Amounts of Pesticide in Golf Courses and the Method to Inspect Pesticide Residue' was legislated, according to which all golf courses in Korea should inspect and analyse the used amount of pesticides and pesticide residue twice a year – once in the first half and once in the second half of the year. The information provided has helped prevent environmental pollution by golf courses of the surrounding land, groundwater, and streams (Ministry of Environment [MOE] & National Institute of Environmental Research, 2015).

In 2008, the government improved regulations for locating and establishing golf courses by incorporating a process of regulatory improvement in the tourism/services sector, as well as the proposals for regulatory reform. In the process of regulatory improvement in the tourism/services sector, the government reinforced regulations on mountainous gradients in the environmental impact assessment by revising 'Regulations Related to the Main Prior Environment Impact Assessment's Review Items and Method' and 'Regulations Related to the Standard for Golf Courses and Environmental Preservation'. The total percentage of the secured forest site, as well as the total percentage of the golf course area in comparison with the forest area by province were abolished. The government also revised the 'Directive on Land Propriety Assessment' by gathering projects on regulatory reform, whereby the standards were mitigated and golf courses could be located within 300m–500m of the full water level of an agricultural reservoir.

3.4. The Outcomes of Regulatory Reform (since 2010)

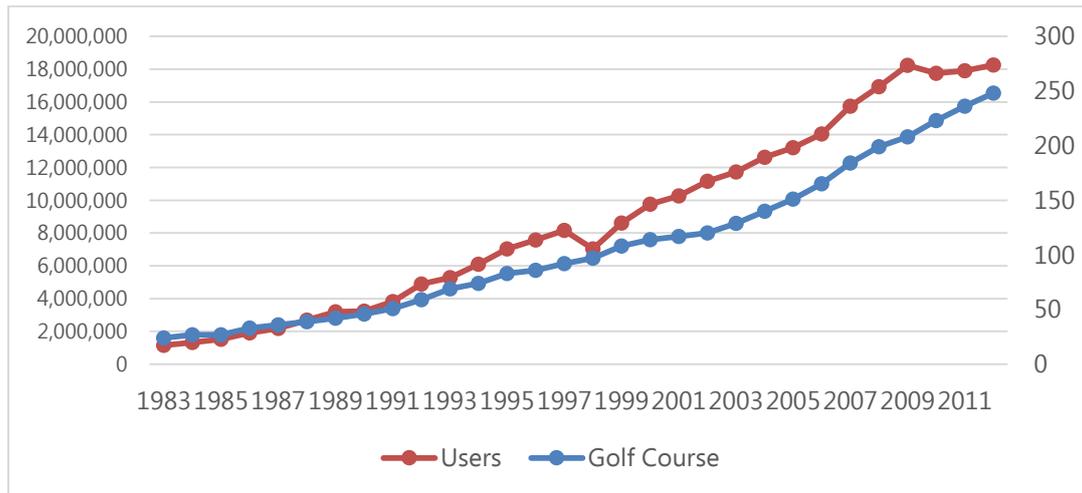
Overall, regulatory reform of golf course regulations has been a success. The number of golf courses has increased, whereas the number of regulations concerning golf course sites has decreased. Environmental damage caused by golf courses has decreased considerably with the strengthening surveillance and supervision of environmental pollution.

The number of domestic golf courses increased tenfold over the past 3 decades, from 24 in 1983 to 248 in 2012. After the reform of golf course regulations was completed in 2003–2004, golf course construction increased much faster than in the period prior to regulatory reform, as is evident from an annual average 6 percent increase. Since demand for golf courses has still not been fully met, this

stronger annual increase may be the result of facilitating the autonomous entry of private companies and a high rate of return of up to 30 percent (Kim and Kim, 2011). It could be argued, therefore, that the government's reform of site regulations has provided the institutional foundations for greater balance between supply and demand in the golf market.

Figure 4.8. Changes in the Numbers of Golf Course Users

(Unit: people, place)



Source: Korea Golf Course Business Association.

Regulatory reform of golf course construction has been through a reduction of the total number of relevant regulations. In 2004, the number of regulations related to golf course construction was 251, including the majority of regulations for sites and procedures, and 69 main regulations. Through the process of regulatory reform, the government began to improve the 46 remaining regulations: 13 on sites/locations, 11 on facilities/operations, three on taxation/financial aid, and 19 on simplifying licensing procedures. In 2007, about 96 percent of the regulations out of a total of 46 target regulations had been improved: 38 regulations had been completed, 6 regulations were in process, and the remaining 2 regulations had been carried forward (Office for Government Policy Coordination [OGPC], 2007).

Clearly, consistent monitoring and surveillance of environmental pollution caused by golf course construction contributed to a reduction in the detection frequency of pesticide residue and reduced the number of cases where pesticides with high toxicity were used. In 2011, no pesticides were detected on golf courses in Gwangju (2), Gyeongsangbuk-do (44), Chuncheongnam-do (21), and Jeonranam-

do (31), although they accounted for 24 percent of the total golf courses in Korea and 21.6 percent of the total use of pesticides. On a national scale, the use of pesticides with high toxicity has not been reported since 2006, and the inspection results on pesticide residue in each golf course have also shown clean results, with the exception of 2010 (Kim et al., 2014).

Table 4.6. Degree of Regulation Improvement by Sector
(Unit: case, %)

| Sector | Number of Target Regulations | Rate of Improvement (Proceeding, Completed Regulation, Regulation Target) |
|-----------------------------------|-------------------------------------|--|
| Site Area Securing | 13 | 92 |
| Facility/Operation | 11 | 100 |
| Taxation/Fund Aid | 3 | 66 |
| Approval Procedure Simplification | 19 | 100 |
| Total | 46 | 96 |

Source: Prime Minister's Office, 2007.

4. The Role of the Regulatory Management System

With regard to the regulations for golf courses in Korea, the wide variety of regulations, so-called 'bundled regulation', have had a complex impact on the construction and use of golf courses. Recognising problems with bundled regulation, the government significantly mitigated site regulations in the sectors of site/facility, licensing procedure, regulatory transparency, and finance/taxation aid through regulatory reform in 2004. These resulted in a higher rate of golf course construction than prior to regulatory reform. However, while the government's uniformly implemented regulatory reform facilitated golf course construction, even in mountainous areas due to inexpensive land prices, it also caused environmental damage in mountainous areas.

To deal with the problems caused by deregulation, the government gave shape to the provisions that should be considered in the case of constructing golf courses through the notification from the MOE. As a result, the process of reforming the government's regulation has changed into regulation of the balance between the benefits to entrepreneurs and to environmental protection.

As noted, the regulations for golf courses have constantly improved in Korea for the following reasons. Firstly, the RMS designated a period of regulatory reassessment to be implemented within 5 years, according to the FAAR, to ensure transparency and responsibility. Secondly, regulatory objectivity was ensured in the RIA by indicating existing objective research outcomes. Lastly, wide participation by stakeholders served as a window for garnering public opinion.

4.1. The Obligation for Regulatory Reassessment

The FAAR sets a time limit on regulations and reassessment of regulations to strengthen monitoring and reassessment of regulations. When establishing or strengthening regulations, the chief of a central administrative organ must set the regulation's time limit and reassessment time limit, and stipulate them in legislation. A regulation's time limit is supposed to be set at no more than 5 years.

Also, when it is necessary to extend the existing time limit or reassessment time limit, this must be approved in a preliminary review by the RRC. For instance, the provision of 'The Investigation on Used Amounts of Pesticide in Golf Courses and the Method to Inspect Pesticide Residue' was revised in 2009, 2011, and 2014 following its legislation in 2006. Through the revision process, decisions on the use of pesticides became clearer, and the use of pesticides on golf courses could be more easily identified. Through the reassessment time limit, changes to the legislation can be considered by abolishing or revising articles within the designated period.

4.2. Ensuring Objectivity through Regulatory Impact Assessment

Among various regulations relating to golf courses, the 'Notice of Proposed Rulemaking on the Prior Environment Reviewing Methods of Golf Courses' stipulated that the area with a gradient of 20°–30° should be less than 50 percent of the total area covered by the gold course construction. As the regulation was strengthened in 2006, the proportion of areas with gradients of 25° was reduced to below 30 percent, since constructing golf courses in mountainous areas not only damaged the environment but also threatened golf course safety. In this context, the government implemented the RIA based on assumptions for the

construction of a 991,735 m²-sized golf course while at the same time reinforcing regulations.

The government estimated the value of business-planned sites through the Contingent Valuation Method (CVM) and calculated regulatory costs considering the rate immovable to advance environmental assessment from 2011 to 2014, and the annual golf course establishment plan. Given the overall costs and benefits, it was estimated that social net benefits would increase by about ₩6.6 billion. Thus, it could support its justification for the reinforced regulations with an objective analysis.

Table 4.7. Cost Benefit Analysis of Regulation

| | Regulation Costs | Regulation Benefit | Social Benefits/Costs |
|----------------------|---|---|---|
| Total Amount | ₩51 billion/ 991,735 m ² | ₩57.6 billion/ 991,735 m ² | ₩6.6 billion/ 991,735 m ² |
| Basis of Calculation | Costs that are not constructed by evaluation standard | 18% of the property value of the first-class land per <i>pyeong</i> with ecological naturalness | Regulatory cost benefit– Regulatory cost |

Source: MOE, 2006.

4.3. Public Consultation Process for Stakeholders

The process of public consultation on regulations was instrumental in increasing transparency and responsibility, and reaping positive results in terms of increased compliance by the regulatory target groups (Choi, 2011). Article 9 of the FAAR stipulates the need for public consultation through various means when establishing or reinforcing regulations.

In the process of reforming golf course regulations, the government attempted to garner public opinion by setting up a Joint Private–Public Regulatory Reform Task Force, established and operated by the Business Difficulties Resolution Center. This collected public opinion by initiating public contests for people’s proposals regarding regulatory reform. In establishing the regulation prior to the notification of the advance environmental assessment of a golf course, opinions were collected from the departments concerned (Ministry of Culture and Tourism, Ministry of Maritime Affairs and Fisheries), stakeholders concerned (golf industry, Korea Golf Course Business Association), and experts (architectural industry,

Construction Association of Korea, Korea Institute of Policy Evaluation) (MOE, 2006).

5. Evolution of the Regulatory Management System

The basic principles of Korea's RMS were established in 1997 by FAAR. The issuance of regulations requires a legal basis and the most effective way is required to ensure objectivity, transparency, and fairness to realise the purpose of the regulations. This principle has continued until now, and legislating or amending golf course regulations is also based on such principles. Nonetheless, society has continuously requested for regulatory reform, either because complicated regulations have failed to fully reflect reality, or because regulations have negatively impacted individual activities.

Golf course regulatory reform has been one of the most representative regulatory processes undertaken. As the demand for golf increased, so the need for more golf courses grew, and the government attempted to carry out regulatory reform in accordance with public demand. However, due to environmental destruction caused by golf course construction, the government had to find a balance during the process of legislating/amending the relevant regulations. Despite the considerable time and costs incurred in legislating/amending site regulations in the early 2000s, Korea's current regulatory reform is being implemented more effectively than it had been in the past.

In light of the regulatory policy cycle, regulatory objectivity and transparency have been achieved through a wide range of impact assessments aimed at legislating or amending regulations. This also helps to better understand bundled regulation through a regulatory map, while international agreements and regulatory levels in relation to other countries are also considered. In terms of policy support, the government has attempted to ensure regulatory compliance by varying the windows used to collect people's opinions and proactively participating in advertising major policies. With regard to the regulatory agency's monitoring and surveillance, a legal amendment procedure is in progress to strengthen the status of the RRC, which handles domestic regulations.

5.1 Regulatory Policy Cycle

In light of the regulatory policy cycle, the reform of golf course regulations in 2003 has evolved into a far more objective and transparent regulatory policy. It has implemented various types of RIA that directly impact on the improvement of golf course regulations, and has continuously improved legislating/amending regulations to reflect international agreements, such as those of the World Trade Organization and free trade agreements, through a regulatory map to promote easier recognition of bundled regulation.

First, in dealing with a certain regulation, the Korean government makes an in-depth evaluation from various perspectives based on RIAs, the Technology–Regulation Impact Assessment, the Small-Business Impact Assessment, and the Competitive Impact Assessment. Also, the government attempts to conduct a more professional RIA by implementing a RIA on detailed parts of technology regulation, small business, and fair competition. Such a RIA ensures specialty by establishing and operating the ‘Technical Regulatory Reform Task Force’, the ‘Small and Medium-Sized Enterprise Regulatory Reform Task Force’, and the ‘Fair Competition Regulatory Reform Task Force’ in accordance with the ministry responsible for regulations and with each regulatory sector.²

Second, complementing the existing regulatory registration system, the government has created a regulatory map in an attempt to help the regulatory target group to better understand bundled regulation consisting of complicated procedures. The main function of a regulatory map is to easily recognise the whole regulatory process by schematising the regulatory system, process, and relevant documents with regard to a certain sector. After total inspection of the relevant regulations and regulation categorising, the final draft is completed through a process of mutual relationship analysis, flow charts, and diagramming. This process reduces regulatory costs by helping the regulatory target group with its understanding of the regulatory procedures and provides an opportunity to assess whether there are duplicate or unnecessary regulations (RRC, 2007).

² ‘Regulations Related to Establishment and Operation for Regulatory Reform Task Force for Field-Based Regulatory Reform Operation’.

Third, Korea has established and amended regulations in consideration of World Trade Organization agreements and free trade agreements to correspond to global standards. These agreements aim to minimise unnecessary trade barriers in pursuit of free trade among member states. Barriers should not be added in legislated or amended regulations unless absolutely necessary, such as related to the environment, security, and public health. For these reasons, the government has attempted to comply with the agreements by adding the process to assess whether regulations, legislated or amended in the process of the RIA, impede free trade. This is another way of ensuring regulatory transparency, as it helps other member states to better understand the domestic regulatory status and prevents discriminatory treatment.

5.2. Supporting Policy Practices

In accordance with the development of data communication technology, the practice of supporting government policies has gradually expanded. Public consultations vary and PR via SNS (Social Networking Service) has narrowed the distance between the government and the people. First, the windows for garnering public opinion have become more diverse. In 2003, the government set up the Joint Public–Private Regulatory Reform Task Force, established and operated by the Business Difficulties Resolution Center, in an attempt to garner public opinion by initiating public contests for people’s proposals regarding regulatory reform.

In 2014, the government communicated with people through various channels: interview websites (Regulatory Reform Sinmungo in Regulatory Information Portal), ministries’ official websites, SNS, etc. People’s opinions concerning regulatory reform, proposed in Regulatory Reform Sinmungo, are transferred to the regulation-related department, where it is decided whether or not to accept them. Clarifying the process increases transparency and people’s satisfaction. As of February 2015, the number of opinions registered in Regulatory Reform Sinmungo totalled 22,732; 9,942 opinions had been replied to and 269 opinions were under review/discussion.

The government also conveys policy information via mobile messenger programmes such as Kakao Talk and MyPeople. Since individual users choose whether they wish to receive the information, it carries a greater power of

delivery compared with newspapers or the mass media, which target unspecified individuals. Using SNS, Twitter, and Facebook as the main means of communicating with people has paved the way for providing prompt feedback regarding government policies and increasing policy advertising.

5.3. Supporting Institutions

In 2014, the 'Legislative Bill of Regulatory Reform Act' was proposed in the National Assembly of the Republic of Korea. Although FAAR had been gradually revising the legislative bill, this was proposed on account of its failure to reflect the changing regulatory environment (Kim, 2014). The proposal included ways to legislate 'cost-in, cost-out' and to strengthen the functions of the RRC.

Since its establishment in 1998, the RRC has carried out reviews and mediation of regulatory policies, as well as the evaluation and organisation of regulation (OGPC, 2015). Prior to investment, the government attempted to authorise the RRC to promote reform more effectively with powers of inspection of duties and submission of opinions for institutional improvements over the President, National Assembly, and local governments through the Special Act on Regulatory Reform (Moon, 2014).

6. Conclusion

The government's regulatory reform can be initiated for several reasons. In some cases it is in response to requests from people who feel inconvenienced in their economic and social activities by a certain regulatory policy; in other cases it is to transform the existing regulatory system for more successful implementation of a certain policy. It seems that the reform of golf course regulation was initiated by a combination of the two, as mentioned above. In other words, demand for golf courses had increased significantly with the rising popularity of golf, and so the government mitigated golf course regulations based on its policy objectives of stimulating the economy and reducing the number of Korean golfers becoming overseas golf tourists. Despite this, regulatory reform focused only on revitalising golf and created other problems.

As burdensome site regulations were mitigated, many entrepreneurs seized the opportunity to construct golf courses, helping achieve the policy objectives of increasing the number of golf courses and users. However, some golf courses that were constructed in mountainous areas because of cheaper land have caused widespread environmental damage, while agricultural pesticides used to protect grass on golf courses have caused environmental pollution in neighbouring areas. In an attempt to address such side effects, the government suggested regulatory improvements in the form of existing regulatory reform.

Due to regulatory reform aimed at preventing reckless environmental damage, the regulations were improved in a far more objective and scientific way than would have been possible under previous regulatory reform. Compared with regulatory reform initiated in 2004, the government's regulatory improvements tended to reinforce existing regulations. In aiming to increase the number of golf courses and users, however, the Golf Promotion Policy contributed not only to achieving this policy objective but also to reducing environmental damage and pollution through regulatory improvements.

The success of regulatory reform in Korea lies in having regular periods for regulatory assessments within the RMS; in predicting more objective and rational regulatory impacts via the RIA; and in ensuring regulatory compliance, as well as transparency, by gathering the opinions of concerned experts and stakeholders. The current RMS has been strengthened with more specialisation than the RMS of 2003, and improved in such a way as to establish more transparent procedures.

The regulatory policy cycle system has adopted guidelines for the RIA based on its subdivision into professional fields, laying out procedures for bundled regulation using a regulatory map, and international agreements. Policy support has raised effectiveness of policy advertising by garnering public opinion in various ways and utilising SNS or Social Networking Service for proactive communication with stakeholders. It should also be noted that strengthening the RRC would pave the way for far more effective regulatory reform.

Through a public consultation process with various groups, the RMS has contributed to reduced uncertainties caused by regulatory enforcement, reduced social costs, and greater regulatory compliance of the regulatory target groups. It thus appears that continual development of the RMS, reflecting social

requirements and changes in the political environment, is the best way to ensure successful regulatory reform.

In the following case, we explore the reform of opening hours of food services businesses. This case shows the central role of the RMS in initiating and institutionalising reform and in harmonising political leadership and public backing in support of reform coherence and performance. It also shows how market competition is fostered and civilian autonomy encouraged.

Part 3: The Case of the Reform of Opening Hours of Food Services Businesses in Korea[#]

1. Introduction: Reform of Opening Hours of Food Services Businesses

Before the regulatory reform of 1998, food service businesses had been required to obtain permits from government authorities with details concerning the condition of premises, the facilities, the number of employees, sanitation, etc. Obtaining a permit was a lengthy process partly because the authorities had to confirm whether the standards in the business facilities were adequate. Failure to uphold standards resulted in complaints to the authorities and complaints were also made after the issuance of permits, as businesses were under strict regulation by local government officials and the police to protect social safety and juveniles against the abuse of alcohol and violent crime. Except for Jeju Island and seaport cities, opening hours were restricted to midnight, and those breaking the rules faced severe penalties in most metropolitan cities (RRC, 1999). In essence, the opening hours of food service businesses were restricted by metropolitan mayors/provincial (Do) governors based on regional circumstances, as shown in **Table 4.8**.

Table 4.8. Restrictions on Opening Hours, by Region

| Opening Hours | Region |
|---------------|--|
| Until 24:00 | Seoul, Daegu, Gwangju, etc. – 11 City/Do |
| Until 02:00 | Busan, Incheon, etc. – 4 City/Do |
| No limitation | Jeju (Special area for tourism) |

Source: White Paper on Regulatory Reform, 1999.

[#]Part 3 is authored by Dae Yong Choi.

Food services businesses are categorised as follows:

- Rest restaurant businesses: Cooking and sale of mainly tea, ice cream, etc., or cooking and sale of food in fast-food stores or snack bars, where alcoholic drinks are not allowed
- General restaurant business: Cooking and sale of food, where alcoholic drinks are allowed
- Karaoke bar business: Cooking and sale of mainly alcoholic beverages, where customers are allowed to sing
- Entertainment bar business: Cooking and sale of mainly alcoholic beverages, where workers engaged in entertainment may be employed, or entertainment facilities may be established, and customers are allowed to sing or dance.

The Regulatory Reform Committee (RRC), established in April 1998, launched far-reaching reforms of existing regulations by setting reform guidelines abolishing anti-competitive practices and encouraging civilian autonomy. According to these reform guidelines, ministries drew up plans to clear existing regulations. And the RRC directly tackled policy regulations that had normally been regarded as being in the hands of administrative bureaucrats. The regulation of opening hours of food services businesses was among these regulations.

The emphasis of the RRC reform was on encouraging business activities based on market competition and civilian autonomy. The aim was to transition towards demand-oriented regulation instead of supply-oriented regulation. Many restaurant owners complained about the strict enforcement of regulations and police raids, which gave rise to the practice of bribing enforcement officials. Differences in opening hours by region were also regarded as unfair (RRC, 1999). The restriction on the opening hours of restaurants up to midnight in metropolitan cities caused inconvenience to people, particularly night workers and tourists. Fairness was also an issue due to the differences in opening hour restrictions between different tourist zones, tourist hotels, and City/Do industries. Excessive police and administrative enforcement was used to regulate opening hours. The RRC had announced the start of regulatory reform of food service businesses by abolishing the restrictions on opening hours in May 1998.

Although the reform met with strong opposition and resistance, it abolished restrictions and changed the licensing system for food service businesses from a strict permit system to a more flexible report system.

2. Impetus for the Change of Opening Hours of Food Services Businesses

The RRC played a vital role in reforming business rules and regulations that restricted or hindered economic activities and civilian autonomy. Outdated and excessive regulations were eliminated under the regulatory reform programme. Food service businesses welcomed the reform scheme to abolish restrictions on opening hours, as it enabled them to boost their profits by extending opening hours. Local governments also welcomed the reform scheme because it removed troublesome work to impose the previous regulations and it eliminated a source of corruption for enforcement officials.

But civic organisations such as women's organisations, religious organisations, and consumer groups claimed that the restrictions on opening hours of food service businesses were necessary and that opening hours should not be liberalised because of possible social harm and damage. They were especially concerned about the liberalisation of entertainment bars' opening hours. They insisted that such liberalisation would lead to a surge in the number of bars, which in turn would lead to rampant overconsumption of alcohol and a bad environment for young people.

Initially, with criticism against the RRC's scheme mounting, the President passively supported the RRC by remaining silent on the issue. The debate was fuelled by media attention and the proposed reform scheme became the subject of heated and emotional exchanges. Reactions to the reform scheme from women's, consumer, and environmental groups were highly emotional, as the move was deemed to lead to a decay of social health and moral values. These groups argued that if restrictions were abolished, men would drink all night and juvenile delinquency would rise.

Despite fierce opposition, the RRC continued to push forward with the reform and tried to persuade opposition groups by increasing public awareness. The RRC and the government actively and continuously briefed the public on the rationale behind the reform and its positive effects, and consistently entered into dialogue with opposing groups. After two months of public consultations, an agreement was reached and the reform proposal was endorsed by opposition groups. These opposition groups accepted complementary action to strengthen social protection from the detrimental effects of greater numbers of entertainment bars.

Given the concerns of opposition groups over entertainment bars, the RRC arranged supplementary measures to strengthen juvenile protection. Civic organisations argued that the RRC's stance was based on a strongly pro-business approach and that there should be representatives from civic groups in the RRC to ensure social safety and consumer protection. As a result, the RRC agreed to invite representatives of civic groups as members.

Open dialogue and discussions in public hearings, continuous persuasion by the RRC, and its step-by-step approach to deregulation ultimately led to a lifting of the restrictions on opening hours of food services businesses. The opening hours of rest and general restaurants were liberalised from 15 September 1998, and those of karaoke and entertainment bars from 1 March 1999. General deregulation for start-ups in the food services businesses was changed from a strict permit system to a more flexible report system. In addition, the processing period of the licensing system was reduced from 3 to 5 days, with a permit immediately obtainable on receipt of an application, and ex post if official confirmation was needed. The results of the reform are summarised in **Table 4.9**.

Three forces came together to create the impetus for reform of opening hour restrictions on food services businesses:

- external pressure for reform triggered by the Asian financial crisis of 1997,
- an institutional framework for regulatory reform was in place, and
- internal organisational dynamics created pressure for reform.

Table 4.9. Reform of Opening Hour Restrictions on Food Services Businesses

| Element | Before 1998 | What Changed |
|--|---|--|
| Restrictions on opening hours | Until 24:00h in Seoul, Daegu, etc. – 11 City /Do Until 02:00h in Busan, Incheon, etc. – 4 City/Do No limitation in Jeju | No restriction on rest and general restaurants from September 1998 No restriction on karaoke and entertainment bars from March 1999 |
| Spot raids by enforcement officials and police | Strict enforcement and penalty | No spot raids by officials on opening hours according to the above periods |
| Start-up restaurants | Strict ex ante permit system with confirmation by local authorities | Report system with ex post complement by confirmation from November 1999 |
| Processing period | 3–5 days | Immediate permit from November 1999 |

Source: White Paper on Regulatory Reform, 1999.

2.1. External Pressure for Reform (Asian Financial Crisis of 1997)

The Asian financial crisis of 1997 provided a strong motive for undertaking reform of the existing regulations to overcome the crisis. It triggered the radical reform of the entire regulatory system, with the government intervening in the private sector to encourage greater market competition and civilian autonomy. This general consensus between the government and the general public for strong reform was possible due to a shared desire to overcome the impact of the economic crisis.

2.2. Institutional Arrangements for Regulatory Reform Had Been Prepared Before the Crisis

Korea started to conduct administrative reform and deregulation in the 1980s to address demand for reform arising from a government-led development strategy. The reforms undertaken suffered from some limitations, such as a weak legal basis for institutional arrangements and longer-term sustainability, its ad hoc basis, temporary basis, or advisory role. Having learned the lessons of this reform experience, the government enacted the FAAR in 1997 to provide a systematically sound and sustainable legal basis for regulatory reform. The major contents of the FAAR are as follows:

- establishing the RRC as a central reform driver and oversight body with a majority of civilian members, led by the Prime Minister and a civilian co-chair;
- introducing regulatory managerial tools, such as regulatory reviews, regulatory impact analysis, registration and publication, etc.; and
- monitoring and evaluating the impacts of regulatory reform work.

Although enacted in 1997, the FAAR was enforced only from 1998 onwards.

2.3. Internal Organisational Dynamics that Created Pressure for Reform

In April 1998, the government established the RRC and launched drastic regulatory reform based on the FAAR to overcome the impact of the economic crisis. The RRC set the reform guidelines for existing regulations and announced some critical reform agendas, such as abolishing restrictions on the opening

hours of food service businesses to encourage market competition and civilian autonomy. Each ministry was required to submit its draft reform plan to the RRC, which was then reviewed and the reform objectives agreed upon.

Regarding the reform of opening hour restrictions, the relevant ministries and agencies were not in opposition. The internal interactions and coordination between the RRC and the ministries and agencies were well managed in accordance with the policy process. However, civic organisations did oppose the reform and strongly resisted the reform agenda, citing the need to protect social values and juveniles. The RRC, the Prime Minister's Office (PMO), and government ministries held public consultations and raised levels of awareness of the reform and continued to hold dialogue with groups opposed to the reform. As a result, continuous persuasion by the RRC and its step-by-step approach to deregulation ultimately led to the removal of restrictions on opening hours of food service businesses. The opening hours were liberalised in a step-by-step approach from September 1998. The Ministry of Welfare in charge of implementing the restriction took action by revising the relevant decrees.

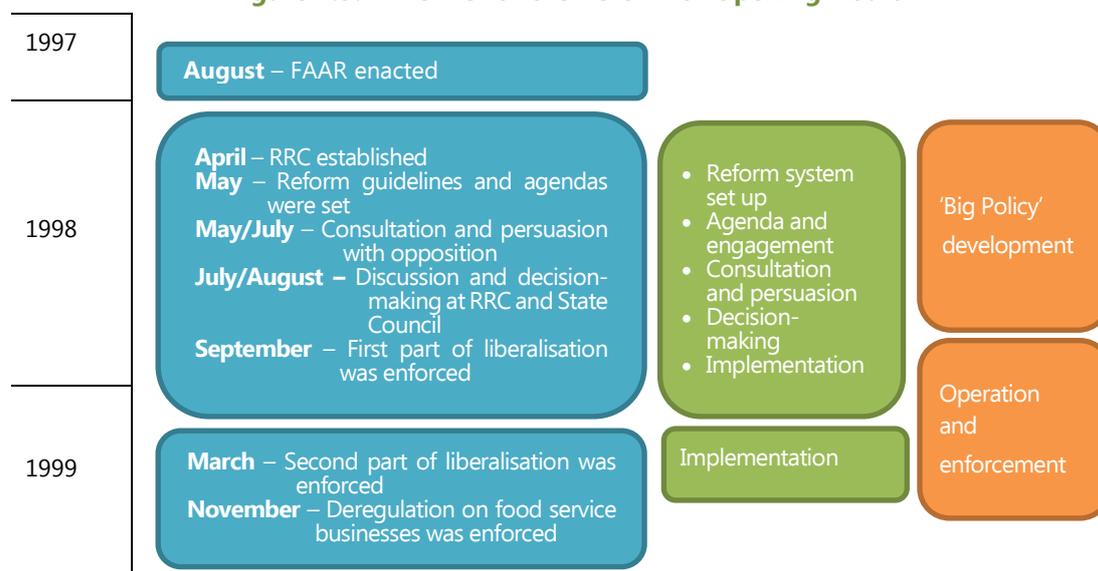
3. The Sequence of Events

The reform measures proceeded in eight phases in the following sequence:

- establishing the RRC in April 1998;
- giving reform guidelines by the RRC to ministries in May 1998;
- announcing the reform initiative on opening hour restrictions by the RRC in May 1998;
- conducting public consultations and raising awareness by the RRC with relevant agencies and opposition groups, from May to July 1998;
- conducting discussions for decision-making at RRC meetings, with the Ministry of Welfare proposing to change the permit system for food services businesses to a report system between August to September 1998;
- taking the policy process for implementation to the State Council meeting in September 1998;
- enforcing no restrictions on opening hours on rest and general restaurants by revising the Ministerial Notification in September 1998;

- enforcing no restrictions on opening hours on karaoke and entertainment bars by revising the Ministerial Decree in March 1999; and
- enforcing a report system of food services businesses by revising the Presidential Decree in November 1999.

Figure 4.9. Timeline for the Reform of Opening Hours



FAAR = Framework Act on Administrative Regulations; RRC = Presidential Regulatory Reform Committee.

3.1. Institution Building and the Reform Drive (late 1997–April 1998)

The FAAR was enacted to provide legislative authority for stable regulatory reform in August 1997, which resulted from accumulated reform experience and lessons learnt from the limitations of temporary and advisory reform. The FAAR firmly guaranteed the private sector’s involvement and civilian majority rule in comprising the RRC as a reform driver. Coincidentally, the institutional arrangements were coming into force at the critical time of the Asian financial crisis, which provided a strong motive for later enforcement to overcome the impact of the subsequent economic crisis in 1998.

The first step was to set up the RRC composed of a majority of civilian members and government ministers, co-chaired by the Prime Minister and a civilian. The RRC played a central role in leading the reform drive by setting reform guidelines and agendas. The core principle was to encourage market competition and civilian autonomy by clearing away existing regulations. The RRC took the

initiative of reforming opening hour restrictions on food services businesses by launching its regulatory reform in May 1998. The reform agenda was raised on the grounds that opening hour restrictions restrained business activities in the private sector to an excessive degree relative to the standards of a market economy and general behaviour. Complaints from such businesses had already been expressed because of the inconvenience to customers and perceived unfair differences between regions.

3.2. Public Consultation and Decision-Making (May 1998–September 1998)

The reform plan was welcomed by both relevant businesses and local governments, with the latter no longer required to undertake site raids and impose penalties. However, civic groups such as women's organisations, religious organisations, and consumer groups claimed that the restrictions on opening hours of food services businesses were necessary to minimise social harm and damage. These groups were especially concerned about the liberalisation of the opening hours of entertainment bars. They insisted this would increase the number of bars and lead to rampant overconsumption of alcohol, and create an environment detrimental to young people.

Despite fierce opposition, the RRC together with relevant ministries and agencies continued to push ahead with the reform and tried to persuade opposition groups by increasing public awareness of the reform. The RRC and the government continuously briefed the public on the rationale and positive impacts of the reform and dialogued with opposition groups to reach an understanding. Finally, after 2 months of public consultations an agreement was reached and the reform proposal was endorsed by opposition groups, which accepted complementary action to strengthen social protection from entertainment bars.

Once the public consultations had succeeded in reaching agreement with opposing groups, formal discussions and a decision-making process quickly followed in the policy process. The Ministry of Public Health and Welfare drafted a reform plan to clear away existing regulations. The draft was finalised at the RRC and was presented at the meetings of the Vice Ministers and the State Council, composed of Cabinet ministers, for a formal decision by the executive. The relevant ministry took the required action to follow through the policy process, including the revision of laws for implementation, such as the reform of

the licensing system for food service businesses, into a report system with reduced administrative formalities.

3.3. Policy Implementation and Enforcement (September 1998–November 1999)

Implementation of the liberalisation of opening hours of food services businesses was carried out step-by-step according to the strength of social values, beginning with rest and general restaurants and moving on to karaoke and entertainment bars. To protect social values, and especially juveniles, complementary action such as police patrolling, monitoring, and preventative actions against urban crime and violations were significantly reinforced by the relevant agencies. Rapid decision-making and implementation were possible because of the reform consensus between the government and the private sector to overcome the impact of the economic crisis by taking radical action through regulatory reform. Strong leadership on reform with public support made it possible to take prompt and dramatic action

4. The Role of the Regulatory Management System

The RMS was set up with the implementation of the FAAR in 1998, together with the establishment of the RRC. The reform of restrictions on opening hours was one example of the abolition of existing regulations under the RRC's initiative to encourage increased market competition and civilian autonomy. The RRC played a central role in pushing ministries to cut existing regulations by half. This reform work involved a major policy to review the entire regime of regulations, including the revision of related and subordinate rules. While the lifting of opening hour restrictions on food services was done by revising decrees, the reform work was part of a major policy to change the entire regulatory regime.

The RRC, as the core part of the RMS, took a central role in reforming the opening hours of food service businesses, together with handling opposition groups. This essentially moved into the stage of public consultations and communication in support of the reform initiative. The RRC and the PMO were heavily involved in coordinating and persuading opposition groups, including raising awareness among the wider general public.

The RMS provided a strong platform for enhancing accountability and transparency by changing regulations, as shown in this case study. The RRC endorsed accountability and transparency by setting out reform guidelines and proposals for the regulatory agencies. The response of the regulatory agencies to the liberalisation of opening hour restrictions initially was reluctant because of opposition from civic groups and a reduction in regulatory influence. However, the RRC took pre-emptive action by setting out the reform guidelines and announcing the reform plan to the public, making the reform both accountable and transparent. This emboldened both those inside and outside government, making them more zealous in dealing with opposition to the reform.

The case of reform on opening hour restrictions highlighted the positive role of the RMS in terms of its impact on the policy cycle, policy practices, and the promotion of increased market competition and civilian autonomy. This was achieved by using normative logic, as opposed to a more analytical approach based on cost–benefit analysis (CBA), in the initial stages of establishing the RMS. The RMS was meant to reform regulatory policy and implementation, both institutionally and substantively, reflecting the fact that there was a pathway from administrative reform to regulatory reform in Korea.

The institutional arrangements for the RMS were designed to facilitate regulatory reform linked to the policy process. In other words, if there were no RMS, such reform would not occur. Or if a reform were undertaken, it would take much longer to reach agreement between the government, stakeholders, and civic groups.

- Conducting drastic reform on existing regulations coupled with crisis management;
- Institutionalising regulatory reform with public–private partnerships in a civilian majority composition;
- Launching regulatory reform systematically and comprehensively; and
- Harmonising political leadership with public support to achieve reform coherence and performance.

The results of reform were estimated in various ways. One factor was the effect of deregulation on the market, as seen in **Table 4.10**. The total number of food service businesses and their rate of increase from 1997 to 2000 is shown in **Table**

4.10. In addition, the wide variety of restaurants and branded coffee shops in Seoul has only occurred since the liberalisation of the industry in recent years, and can be seen as one of the fruits of regulatory reform.

Table 4.10. Change in the Number of Food Services Businesses in the Republic of Korea

| Year | 1997 | 1998 | 1999 | 2000 |
|----------------------|---------|---------|---------|----------|
| No. of Food Business | 550,526 | 543,030 | 564,686 | 570, 576 |
| (Increase rate, %) | | (-1.4) | (4.0) | (1.0) |

Source: Korean Statistical Information Service (www.kosis.kr/statistics).

5. What Difference Could An Enhanced RMS Have Made?

With respect to the reform of opening hours, the RMS played a central role not just in initiating policy change but also in supporting policy practices and the reform process. Although there was no CBA, the reform was supportive in advocating increased market competition and civilian autonomy. By linking the RMS with the Prime Minister as co-chair, and served by the PMO, the RMS could play an oversight role of ministries in conducting regulatory reform. It could also support policy development in the process of drafting reform proposals, consultations, discussions, and coordination of decision-making at State Council meetings.

In terms of the hypothetical question: 'What role could an enhanced RMS have played in the case of opening hours regulation?', if the case had been subject to the current RMS, would the outcome have been very different? It is necessary to consider what elements of the problem were foreseeable in advance and which were not. Korea has also introduced measures targeted at improving regulatory policy development and strengthening its institutions to make its regulatory system more effective and bring it in line with other OECD countries. The key components are as follows:

- a quality policy cycle,
- supporting policy practices (such as consultation), and
- capable oversight institutions.

5.1. The Regulatory Policy Cycle

There are two important managerial tools to apply to this case: the role of the RIA in the review of new regulations, and the role of stock management to keep regulatory regimes under review. Regarding the RIA, this seems to have an important impact in terms of identifying the costs and benefits of reform proposals. Subsequently, discussions concerning reform options can be based on coherent issues between stakeholders and the RRC. The same effect also applies to stock management of regulations by the RMS in checking the flow and stock of regulations to reduce regulatory burdens and costs in general.

5.2. Supporting Practices

Policy development for regulatory management includes the following supporting policy practices:

- consultation,
- communication and engagement,
- accountability and transparency, and
- learning.

The liberalisation of opening hours was aimed at encouraging greater market competition and civilian autonomy in response to demand from the food services sector concerning strict administrative controls and frequent intervention. This demand for reform from a regulated sector would be easily channelled under the current RMS. However, the case of reform in 1998 was initiated because of a strong administrative influence at that time. The RRC set the reform guidelines and pushed the regulatory agencies to reform. In line with this policy orientation, the RRC and the PMO were directly involved in consultations, communication, and engagement, while shouldering accountability for the feasibility of the reform.

The case of opening hours included challenging issues, such as handling the opposition of civic groups intermingled with the discussion of social values. Government agencies superior to the regulatory agencies played a critical role in dealing with these opposition groups. A more focused approach would be to make reform possible under the auspices of political leadership. Administrative implementation capacity could be better engaged in reform efforts and help deal with obstacles to reform at the critical time. Without the imperatives driven by

the economic crisis at that time, this approach to reform would not have been workable. In other words, it would not necessarily be possible under the current RMS because of the interest group politics that prevail. If there is serious rivalry and confrontation between interest groups, then the reform agenda could be in stalemate. An enhanced RMS would provide a sound basis for consultation, transparency, and accountability between stakeholders, including regulators. There is still a gap in applying RIA to existing regulations, which is required in reviewing new regulations or strengthening existing regulations.

5.3. Oversight Institutions

Korea has sound institutional arrangements in which the RRC and the PMO monitor and evaluate regulatory matters through the functions of regulatory review and registration. All central agencies follow the compulsory review process in making or changing regulations. The PMO, in administrative terms, plays a central role in leading ministries' regulatory management by monitoring and evaluating performance, with the RRC served by the PMO. The PMO's oversight role on regulatory management is combined with its function of policy evaluation over central ministries. On regulatory management, central ministries are closely linked with the RRC and the PMO. Local governments have their own jurisdiction over regulatory management, although regulations relating to delegated affairs are under the management of central line ministries. Local governments are encouraged to adopt the RMS in line with the central government and their performance is evaluated by the Ministry of Government Administration and Home Affairs. Although this oversight institution works well with the executive branch, closer cooperation on the RMS with the legislative branch is called for.

6. Conclusion

The case of the reform of opening hours was the product of regulatory reform to abolish existing regulations aimed at encouraging increased market competition and civilian autonomy. The Asian financial crisis of 1997 and the subsequent economic crisis triggered regulatory reform, the use of which had been prepared in advance by enacting the FAAR setting up the institutional framework. This simultaneously established the RMS with the enactment of the FAAR in 1998. The RRC, as a core component of the RMS, played a central role in conducting

Table 4.11. Policy Cycle Elements of the Case Study on the Reform of Opening Hours of Food Services Businesses

| Policy Cycle Elements | National RMS tool | Significance of Impact | Where could a requisite system have made a difference? |
|--|--|--|---|
| Main Policy | Reform on existing regulations | Very significant | Regulatory Reform Committee (RRC) |
| Minor and legal policy | Revising decrees | Very significant | |
| Decision-making support | RRC | Very significant reform – hard work for persuading the opposing groups | |
| Change implementation | Revising decrees | Very significant | |
| Administration and enforcement | | Very significant – change of enforcement | |
| Monitoring and review | Stock stewardship | No significance—allowing the autonomy by deregulation | |
| Supporting policy practices | | | |
| Consultation communication and engagement | RRC and Prime Minister's Office (PMO) | Very significant – wide ranging consultation and engagement | PMO |
| Learning | | Significant – lack of on-the-ground learning | |
| Accountability and transparency | Public law | Significant – strong accountability and transparency requirements in place | |
| Supporting Institutions | | | |
| Regulatory policy principles | Principles and policy in place | Very significant – mood of the times was for regulatory reform | |
| Lead institution | RRC, PMO, and Ministry of Health and Welfare (MHW) | Very significant – RRC played a leading role | MHW |
| Coordinating institutions and training providers | RRC, PMO, and MHW | Very significant – RRC played a coordinating role | |

regulatory reform by setting guidelines for the review of ministries' reform plans. The RRC proposed the reform on opening hours of food service businesses, was directly involved in dealing with opposition groups, and completed the reform

through to implementation. It enhanced reform performance by switching from a strict permit system for food service businesses to a more flexible report system. The RMS contributed to establishing regulatory reviews, the RIA, a regulatory register, and publication of regulations, although no RIA was applied to the reform of opening hours as the initial stages of regulatory reform focused on abolishing unnecessary and obsolete regulations.

Summary Comment

Since the economic crisis of the late 1990s, the Government of the Republic of Korea has sought to strengthen the RMS to improve the quality of regulation and reduce unnecessary regulatory burdens. This chapter has explored the evolution of Korea's regulation as the RMS has sought to eliminate outmoded and excessive regulations and establish a comprehensive and systematic mechanism to effectively review and manage new regulations.

Part 1 of this chapter explored the evolution of regulatory reform and the coherence of the RMS in Korea. It outlined a range of government initiatives that sought to increase coherence and efficiency. The authors found that (i) the government successfully strengthened policy focus and garnered public support; (ii) the central administration was better at registering regulation than local administrations, making regulatory reform incomplete and inefficient at the local level; and (iii) the massive deregulation responded effectively to the economic crisis within a relatively short period.

Part 2 examined how this system was applied to the reform of golf course regulation. This case illustrated that iterative reform responded effectively to both the original policy problem and the unintended consequences of policy responses. In this case, golf course regulation was responsive to environmental needs, as well as industry demands and the government's attempt to transform existing policy.

Part 3 considered the reform of the opening hours of food services businesses. This reform sought to abolish the restrictions on opening hours of these businesses and move from a strict permit system to a report system for licensing. This case illustrates the central role of the RMS in initiating and institutionalising

reform and harmonising political leadership and public support to sustain reform coherence and performance. This case shows successful encouragement of market competition and civilian autonomy, as demonstrated by the increase in the total number of businesses in the post-crisis period from 1997 to 2000.

References

- Bank of Korea (2014), 'Principal Indicators on National Accounts (2005 reference year, 1970~)'. Economic Statistics System: <http://ecos.bok.or.kr/>
- BusinessKorea (2014), 'Deregulation Policy Regulation Cost-in, Cost-out Plan in Testing', 22 July.
- Choi, D.Y. (2001), A Radical Approach to Regulatory Reform in Korea. ' *The Annual 2001 Conference of the American Society for Public Administration at Rutgers University*', 1–16. New Jersey: American Society for Public Administration.
- Choi, D.Y. (2003), 'How Effective is the Korean Model of Regulatory Reform to Cut Down Existing Regulations?', APEC–OECD Cooperative Workshop, pp.119–127, Vancouver, Canada: APEC–OECD.
- Choi, G.Y. (2011), 'Current Trends in Public Consultation: Focused on the OECD Evaluation of Germany, France and the UK', *Journal of Law & Economic Regulation*, 4(2), pp.125–132. Seoul: Center for Law & Public Utilities in Seoul National University.
- Green Korea United (GKU) (2008), *Golf Courses, Swallow Up the Territory*. GKU.
- Ha, B.K. and H.K. Choi (2012), 'Regulatory Reform and Economic Development – Korea's Experience in Regulatory Reform', Prime Minister's Office, Republic of Korea.
- Jo, C.G. (2004), Regulatory Reform of Golf Courses, Urgent Debate Forum for Golf Activation Policy of the Participatory Government Presentation Material.
- KDI School and Ministry of Strategy and Finance (2012), *Korea's Intellectual Property Rights System and its Application to the Phases of Industrial Development: Focusing on the Patent System*. Seoul: Ministry of Strategy and Finance.
- Kim, D.J. et al. (2014), 'Status and Management Strategy of Pesticide Use in Golf Courses in Korea', *Journal of Applied Biological Chemistry*, 57(3), pp.267–77.

- Kim, J.K. and J.C. Kim (2011), 'A Study on How Tax Policy Affects the Structure and Competition Behavior in Golf Industry', *Journal of Law and Politics Research*, 11(2), pp.559–79.
- Kim, J.H. and H.Y. Lee (2008), 'Evaluation of Regulatory Reform in Roh's Government', *Korean Public Administration Review*, 42(2), The Korea Association for Public Administration.
- Kim, J.K. (2014), 'Towards the Regulatory Improvement Raising Regulatory Quality', *Public Law*, 42(3). Korean Public Law Association.
- Kim, J.S. (2014), 'Legislative Bill of Regulatory Reform Act for National Happiness, Job Creating, Enforcement of National Competitiveness', Public Hearing Presentation Material for the Legislative Bill of Regulatory Reform Act, Saenuri Parti and the Youido Intitute.
- Kim, T.Y. (2003), 'An Evaluation of Regulatory Reform of the Kim Dae-jung Administration: with the Focus on the Regulatory Reform Governance', *Journal of Regulation Studies*, 12(1), Seoul: Korea Economic Research Institute.
- Kim, T.Y. and S.J. Kim (2014), *Regulatory Impact Analysis in Korea: Past and Future*. Hsinchu, Taiwan: Industrial Economics and Knowledge Center, Industrial Technology Research Institute of Taiwan, Ministry of Science and Technology.
- Kim, S.J. (2014), 'Regulatory Reform in Korea: Government Efforts, Policy Direction and the Role of RIA', International Regulatory Impact Analysis Conference, Taiwan: National Development Council.
- Korea Culture and Information Service (2014), 'Six Key Words of Park Geun-hye Administration's Major Policies.' Ministry of Culture, Sports and Tourism.
- Kukminilbo (2004). 'Picking Up Momentum due to Revitalization by Golf Courses', *Kukminilbo*, 9 August.
- Lee, Hyukwoo (2012), 'Evaluation of Regulatory Reform in Lee Myung-bak Government', *Journal of Regulation Studies*, 21(2), Seoul: Korea Economic Research Institute.
- Lee, J.H. et al. (2006), *The Economic Impact of Strategic Tasks' Regulatory Reform*. Seoul: Korea Institute of Public Administration.
- Lee, Z.S. (2011), 'Korea's Experience in Regulatory Reform and Achievements, 2010 Modularization of Korea's Development Experience: Private Sector Development', Ministry of Strategy and Finance (MOSF) and Korea Development Institute (KDI).

- Ministry of Environment (MOE) (2006), *Review of Reinforcement Regulation: The Prior Environment Reviewing Items and Methods*. Seoul: MOE.
- Ministry of Public Administration and Security (2010), *Government for Citizen*. Seoul: Ministry of Public Administration and Security.
- Ministry of Security and Public Administration (2013), *e-Government of Korea: Best Practice*. Seoul: Ministry of Security and Public Administration.
- Mo, H.S. (2006), '(A) Study for a Scheme of Activation of Developing Golf Course: A Study on the Lines of Administration and Supply of Finance' (Master's thesis). Seoul: Graduate School of Public Administration in Hanyang University.
- Moon, H.S. (2014), 'Review of Legislative Bill of Regulatory Reform Act – Action of Regulatory Reform and Effectiveness of the Bill', 'Public Hearing Presentation Material for the Legislative Bill of Regulatory Reform Act', Saenuri Parti and the Youido Intitute.
- OECD (2007), *OECD Reviews of Regulatory Reform: Korea, Progress in Implementing Regulatory Reform*. Paris: OECD.
- OECD (2000), *Regulatory Reform in Korea*. Paris: OECD.
- Office for Government Policy Coordination (OGPC) (2007), *Regulatory Reform Plans for Activation of Tourism/Leisure Industry*. OGPC.
- OGPC (2013), *Guidelines for Regulatory Impact Analysis*. OGPC.
- Oh, Y. and B.W. Jeon (2010), 'Research on Taxation of Golf Courses', *Korea Tax Research*, 10(3), pp.343–78, Korea Tax Research Forum.
- Park, J.H. and B.Y. Im (2009), 'Is Regulatory Impact Anlysis Needed?', *Korean Journal of Public Administration*, 47(1), Seoul: Graduate School of Public Administration, Seoul National University.
- Prime Minister's Office (2013a), 'Beyond the Crisis: Regulatory Reform of the Lee Myung-bak Administration (2008–2013)', Prime Minister's Office.
- Prime Minister's Office (2013b), 'The Guidelines for RIA Report', Prime Minister's Office.
- Prime Minister's Office (2014), 'Guide.' The Regulatory Reform Portal: <http://www.better.go.kr>
- Regulatory Reform Committee (RRC) (2003), '2003 Regulatory Reform White Paper', RRC.
- RRC (2005), '2005 Regulatory Reform White Paper', RRC.

RRC (2007), '2007 Regulatory Reform White Paper'. RRC.

RRC (2013), '2013 Regulatory Reform White Paper.' RRC.

The Hankook Ilbo (2003), [Statistics] More than 100,000 People Took a Golf Trip in This Year. *The Hankook Ilbo*, 28 December.

The Heritage Foundation (2014), *2014 Index of Economic Freedom: South Korea*. The Heritage Foundation.

The Kyunghyang Shinmun (2004), 'Opposite the Golf Courses at the Organic Farming Area', *The Kyunghyang Shinmun*, 13 July.

The Munhwa Ilbo (2004), 'Golf Course? Welcome to Our Town', *The Munhwa Ilbo*, 7 July.

The World Bank Group (2013), 'WGI 2013 Interactive,' Worldwide Governance Indicators, <http://info.worldbank.org/governance/wgi/index.aspx#home>

Wang, G.N. (1991), 'Jumbled up Golf Course Policy Assessment – Damaged Territory by Government Lead', *The Hankyoreh*, 6 August.

Websites:

Korea Golf Course Business Association, <http://www.kgba.co.kr/>

Ministry of Environment (MOE) and National Institute of Environmental Research, <https://sgis.nier.go.kr/>

Regulatory Reform Committee (RRC), <http://www.better.go.kr>

Samsung Economic Research Institute (SERI), <http://www.seri.org>

Chapter V

Regulatory Coherence: The Case of New Zealand

Derek Gill^{#§}

New Zealand Institute of Economic Research and Victoria University of Wellington

Part 1: The Evolution of Regulatory Management in New Zealand

1. Introduction and Country Context

New Zealand is a small developed country which ranks 27th in the world in terms of gross domestic product (GDP) per capita and 9th on the broader United Nations Development Programme (UNDP) Human Development Index and ranked top in the social progress index. It is one of only a handful of countries that can trace an uninterrupted history of parliamentary democracy back to the mid-19th century. New Zealand has unique constitutional arrangements resulting in a significant concentration of power in the Cabinet. Dominant features of these constitutional arrangements include the lack of a formal written constitution, the absence of a second chamber, a political system dominated by two major well-established parties, and a highly cohesive system of Cabinet government.¹ The Westminster system was modified in 1996, instigating the legislature to be elected using mixed-member proportional representation. Since this change, no

[#]Lead author: Derek Gill derek.gill@NZIER.org.nz L13 215 Lambton Quay, PO Box 3479, Wellington, 6140 New Zealand. Hayden Fenwick from the New Zealand Treasury contributed to Part 1 of this paper.

[§] This research was conducted as part of the collaborative project of the Economic Research Institute for ASEAN and East Asia (ERIA) and the New Zealand Institute of Economic Research (NZIER), 'Towards Responsive Regulations and Regulatory Coherence in ASEAN and East Asia: Deconstructing Effective and Efficient Regulatory Management Systems'. The author wishes to express his appreciation to the New Zealand Ministry for Foreign Affairs and Trade for sponsoring this project. The author is deeply indebted to the reviewers of this paper for their invaluable suggestions and particularly acknowledges the comments received from Peter Mumford, Julie Nind, and Ben Temple. The opinions expressed in this paper are the sole responsibility of the author and do not reflect the views of the ERIA or the Government of New Zealand.

¹ See Gill (2013, p.569) for a longer discussion of the constitutional features of New Zealand and how these affect law and regulation making.

government party has had an absolute majority in Parliament, but instead have governed with coalition or support parties.

Furthermore, New Zealand is one of the most centralised jurisdictions in the Organisation for Economic Co-operation and Development (OECD); over 90 percent of government workers are employed by central government organisations, and almost all citizen-facing public services – including policing, fire services, education, and health – are central government activities. A recent review of local government regulation (New Zealand Productivity Commission, 2013a) concluded that almost all local regulation was undertaken as an agent of central government, with little locally initiated regulation. As such, this chapter will focus almost exclusively on central government regulation.

New Zealand has been ranked consistently highly for both the quality of government and on regulatory quality since the World Bank Governance Indicators series began in 1996. As examples of this, the 2012 survey ranked New Zealand very highly on a range of quality of government measures: control of corruption (2nd out of 215 countries), rule of law (4th out of 215), voice and accountability (5th out of 215 countries), political stability (7th out of 215), and government effectiveness (9th out of 215). New Zealand ranks 4th on regulatory quality (World Bank, 2015). Other indices also show high scores: the Transparency International Survey (2014) ranked New Zealand second least corrupt country, New Zealand was second in the world (after Singapore) for the ease of doing business (World Bank, 2015), and the World Justice project ranked New Zealand 6th overall ranking between 4th and 10th (out of 120 countries) on open government measures, and between 2nd and 13th on different measures of limits to government.

Interestingly, this front-runner position on regulatory quality predates the attempts to formalise the regulatory management regime. The next section discusses the evolution of New Zealand regulatory policy over the last 30 years.

2. Evolution of the New Zealand Regulatory Management System

Regulatory policy in New Zealand has gone through four overlapping phases (**Box 1**):

1. Sector-based reform – with extensive regulatory reform in 1984 and the early 1990s and ongoing changes thereafter
2. Compliance cost reduction – an episodic series of initiatives introduced from the early 1990s until the mid-2000s
3. Regulatory flow management – the flow of new regulations has been focused through regulatory impact analysis (RIA) and a Code of Good Regulatory Practice commencing in 1998
4. Regulatory stock management – increased emphasis on stock management, starting in 2009, in addition to flow management

The election of a reformist Labour Government in 1984 was a watershed in economic and government management in New Zealand – but this ‘quiet revolution’ has been extensively documented elsewhere (James, 1986). In brief, the demand for these reforms arose from sustained poor economic and broader social performance culminating in an economic crisis in 1984. The drive also came from a new political administration committed to change and bureaucratic elite groups that supported and were capable of executing the changes.

Box 1. Significant Events in the Evolution of the Regulatory System

| Period | Significant Milestones |
|--|---|
| 1984–mid-1990s (sector based) | <ul style="list-style-type: none"> ○ Labour government launches the ‘quiet revolution’ – a wide-ranging reform programme ○ Removal of much economic regulation and widespread use of performance regulation |
| Early 1990s–mid-2000s (compliance cost focus) | <ul style="list-style-type: none"> ○ Period of consolidation and refinement under National and Labour administrations ○ Compliance cost reduction programmes |
| 1997–2008 (flow management) | <ul style="list-style-type: none"> ○ Regulatory Impact Analysis (RIA) regime introduced ○ Ministry of Economic Development lead role on regulatory management and reform |
| 2008–2015 (stock management) | <ul style="list-style-type: none"> ○ Treasury assumes lead role on regulatory management ○ New national administration–led with a new portfolio Minister for Regulatory Reform ○ Regulatory stewardship expectations established along with public disclosure of departments’ strategies and systems to meet this requirement ○ Greater regulatory disclosure to Parliament |

Source: Compiled by the author.

Once underway, the reform programme created its own dynamic as sectors exposed to increased international competition pushed for the sheltered sectors also to be reformed. What is important to note for this study is that regulatory reform was part of a wide programme of macroeconomic stabilisation, trade liberalisation, and structural reforms that affected private capital, product, and labour markets, as well as the government sector. In a short time, New Zealand moved from being one of the most heavily regulated economies in the OECD to being on the 'regulatory frontier'.

Phase 1 – Sector-Based Reform

The initial regulatory policy focus was on sector-based reforms. A rolling programme of changes was introduced, starting with financial markets, moving to selected product markets including government trading enterprises, then non-trading government and labour markets. While there was reduced use of sector-specific economic regulation, it would be misleading to describe New Zealand's approach as deregulation. Instead the widespread regulatory reform since the mid-1980s includes changes regarding:

- the focus of economic regulation moving away from sector-specific economic regulation in favour of more reliance on general regulatory regimes (such as the Commerce Act);
- the mix of regulation, with reduced use of sector-specific economic regulation, but increased social and environmental regulation; and
- the style of the regulation, with reduced use of command and control in favour of more use of performance-based regulation and economic instruments, such as using auctions to allocate licences and property rights

Once the initial period of widespread reform was over, New Zealand embarked on a period of consolidation, refinement, and more incremental changes to the economic regulatory regime. When surveying the regulatory reforms as a whole, what is striking is how much economic change has been sustained, and how few substantive amendments have been enacted to the broad thrust of the economic policies introduced in the decade after 1984.

As would be expected, there have been some modifications and adaptations to the economic policy settings since the mid-1980s. For example, in network industries, the attempt to rely on light-handed regulation based on general anti-competition provisions of the Commerce Act has not proved sustainable, and New Zealand has moved to more sector-specific regulation (Scott, 2013). Financial market regulation was tightened after 1999 following the rapid liberalisation of the mid-1980s. Labour market regulation has ebbed and flowed with changes in administration, while attempts to introduce widespread reform of occupational regulation, announced by successive governments, have never been successfully enacted. Overall, however, what stands out is the continuity rather than the changes.

Part 2 of this chapter explores two case studies of regulatory change: building controls and vehicle licensing. In the case of the transport sector, while there have been changes to the organisational arrangements, the regulatory changes introduced in the early 1990s involving an increased focus on safety have been sustained. There has been no return to the economic regulation of the past. In the case of building controls, while the regime has been extensively modified as a result of the problems with leaky buildings, the performance-based approach to building controls has been retained, but with more emphasis placed on guidance and 'how-to' documents (Mumford, 2011). There has been no move back to the prescriptive input-based regulation of the past.

Overall, what is striking is how much change has been sustained, as New Zealand moved to a period of consolidation, refinement, and more incremental changes. What is also clear is that New Zealand has not sustained its path-breaking role. The 2011 OECD economic report states that 'OECD indicators suggest that New Zealand's long-standing front-runner status in product market regulation has been eroded away over the past decade or so. Regulatory quality has deteriorated somewhat' (OECD, 2011, p.101). This deterioration according to the OECD product market regulation survey data is not due to any significant absolute decline in regulatory quality. Rather, it is relative erosion, which reflects more on New Zealand's early path-breaking regulatory reform and the subsequent catch up by other OECD countries.²

² Conway (2011) used OECD product market regulation data to suggest New Zealand is now inside the regulatory frontier in part because of increased regulatory uncertainty.

Phase 2 – Compliance Cost Reduction

The second phase, which began in the early 1990s and spread over a decade, saw a number of compliance cost reduction initiatives led by the Ministry of Economic Development. These initiatives included departments producing detailed compliance cost reduction plans, a ministerial inquiry in 2001 undertaken by an independent task force, omnibus bills to remove red tape, but no sustained requirement on departments to undertake ongoing reviews of their regulatory stock. A key change was in 1995 when the Cabinet agreed to institute a compliance cost assessment to accompany all Cabinet papers (a requirement that was subsequently removed, then reinstated, and finally abolished in 2007).

Phase 3 – Flow Management

The third phase, which commenced in 1997, focused on the flow of new regulations through RIA, and supported by a Code of Good Regulatory Practice.³ While episodic efforts to reduce compliance costs continued, with the introduction of RIA, focus shifted to building policy capability of the public service. The Regulatory Impact Statement (RIS) framework was designed to ensure that costs to business along with costs of wider distortions were factored into the analysis of new policy proposals being considered by the Cabinet.

The RIA system has been refined as it developed over time. The approach adopted in New Zealand has a strong emphasis on RISs being embedded as part of a good policy development process rather than being a compliance requirement to be hurdled at the end of the policy development process. RISs now have broad coverage of all substantive government bills and are widely accepted by departments, although systematic evidence on their use by ministers and parliamentarians is lacking.

However, the quality of RISs, although they have been improving, remains of concern. The Treasury's RIS on the proposed Regulatory Responsibility Act

³ The third element of the package was the requirement for a generic policy development process, which was agreed by the Cabinet but never effectively rolled out across departments. The fourth element, the department's proposal for regulatory responsibility legislation, was not accepted by the government.

commented: 'We all know that the analysis we see in Regulatory Impact Statements (RISs) is often not of the highest standard, and as a consequence is little used or valued' (Ayto, 2011). The Treasury estimates that in 2012 only 62 percent of RIAs fully met Cabinet requirements and subsequent reviews 'suggest that the quality of RISs has not improved' (Sapere Research Group, 2015, p.9).

Phase 4 – Stock Management

The fourth phase commenced simultaneously with the Treasury assuming the regulatory management oversight function in 2008, and the emphasis shifted to augmenting the management of the flow of new regulations with the RIS process, to also build a stock management system. This system now includes:

- statutory expectations for departmental chief executives on regulatory stewardship,
- public disclosure of departments' strategies and systems for meeting their regulatory stewardship expectations (including how they will manage their stock of existing regulations),
- information on a department's regulatory priorities are included in the Four Year Plans (replacing annual regulatory plans), and
- departmental disclosure statements to accompany legislative changes as they are introduced in Parliament.

This system is augmented by the Treasury undertaking and publishing an assessment of the quality of regulatory regimes against the Best Practice Regulatory Principles (New Zealand Treasury, 2012a; 2015). Simultaneously, legislative amendments have been developed to enhance the disclosure to Parliament about any proposed new legislation. Part 2 of the Legislation Amendment Bill (before the House, but yet to be debated) proposes strengthening Parliament's role in reviewing new legislation (New Zealand Treasury, 2012b).⁴

The major development over this period was the introduction of statutory expectations for departmental chief executives on regulatory stewardship. The Treasury has been proactive in developing guidance around the new regulatory

⁴ The bill was introduced into Parliament in May 2014 but in early 2016 when this paper was prepared, the bill had yet to have its first reading. For details of the legislation see the Treasury discussion document on the indicative legislation (13 August 2012).

stewardship provisions applying to departmental chief executives. Moreover, as part of the government's response in 2015 to the Productivity Commission Inquiry (2014), departments are now required to publicly disclose their strategies and systems for meeting their regulatory stewardship expectations (including how they manage their stock of regulations). These requirements are still 'a work in progress' and the impact is untested, but represents a potential significant shift in the focus of the New Zealand regulatory management system (RMS).

Examining the four phases of regulatory reform in New Zealand over the last 30 years, a number of themes have emerged about the focus, locus, coverage, purpose, and style of regulatory policy.

Focus

Regulatory reform has consistently focused on reducing the potential for total distortion from regulation. Apart from the decade of episodic attempts starting in the early 1990s and the recent initiative under the public service targets system, there has been little systematic focus on attempts to reduce administrative and compliance costs.

New Zealand has deliberately chosen not to adopt some system-wide stock management techniques, such as standard cost reduction developed by the Netherlands, as part of its formal RMS.⁵ This resistance to a focus on administrative costs is because:

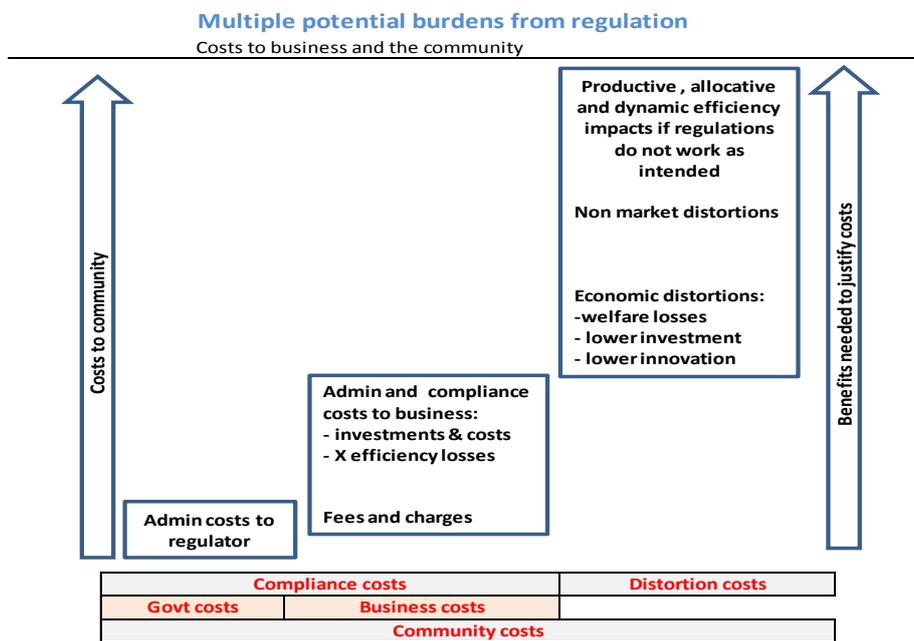
- the narrow focus on costs rather than wider net benefits;
- the major costs of regulation are generated by distortions to behaviour rather than administrative costs;
- the experience of other countries, in that applying these tools they can impose considerable administrative costs and the benefits are disputed;
- scarce resources are focused on arbitrary targets for gains that are small with the risk of hitting the target and missing the mark;

⁵ Where red tape or compliance cost reduction measures are undertaken, they are generally within separate programmes or within specific portfolios, such as the government's Better Public Services target to reduce business costs from dealing with government by 25 percent by 2017, through a year-on-year reduction in effort required to work with agencies (which is a target within Result 9). New Zealand businesses have a one-stop online shop for all government advice and support they need to run and grow their business (<http://www.ssc.govt.nz/bps-interaction-with-govt>) and the review of local government red tape (<http://www.beehive.govt.nz/release/taskforce-tackle-loopy-rules-and-regulations>).

- the tools are blunt and make little use of existing information about relative performance in different regulatory areas as they impose arbitrary rules concerning target levels, scope, timing, or trade-offs; and
- finally, these tools tend to have a limited life – because the rules are arbitrary and centrally imposed, they are viewed as a compliance exercise from the start, and any opportunities for shortcuts or gaming are quickly exploited.

New Zealand has instead tried to build a stock management system that is consistent with a focus on encouraging departments to exercise responsible regulatory stewardship over their regulatory regimes and institutions, using tools that are better tailored to individual departmental circumstances. The tools selected for stock management have tried to focus on mainstreaming regulatory management as part of the public management duties of departments (linked to Chief Executive Performance Reviews) rather than requiring compliance with the requirements of an entirely separate RMS.

Figure 5.1. Administrative Compliance and Distortion Costs Compared



Source: New Zealand Institute of Economic Research (NZIER) adapted from the Victorian Productivity Commission.

Locus

The locus of regulatory reform however has shifted over time. As discussed, after the initial emphasis on sector-based reform and a brief period of administrative streamlining focused on ease of doing business initiatives, attention shifted to improving the quality of policy advice on proposed new rule-making through RIA and most recently to management of the regulatory stock.

Coverage

The coverage of the regulatory management regime has expanded so that the range is arguably the most comprehensive of all the OECD countries with only two significant exclusions: local government whose rule-making is negligible in New Zealand and the application of RIA (and associated disclosures) to tertiary rule-making. The new regulatory stock management provisions apply to all central government primary law, secondary regulations, and tertiary rules. Unlike other jurisdictions, there are no significant exemptions from RIA requirements for primary legislation other than private members' bills. All substantive government bills (that is, all other than those with no regulatory or policy impact) are expected to have a RIS. A review of just under 100 recent bills suggests that all but a handful had a RIS where one was required.

RISs also apply to secondary legislation, that is, regulations that take effect following Cabinet agreement by Order in the Council. RISs are not required for tertiary legislation. Tertiary legislation is detailed rule-making delegated to public bodies such as the development of detailed codes and standards where no Order in the Council is required.

Purpose

The purpose and rationale of the RMS has changed over time. The initial focus with compliance cost reduction was to enable Cabinet Ministers collectively to make better decisions by providing the Cabinet with additional *information* on the compliance costs of the regulatory proposal. With RISs, the purpose has changed to place greater emphasis on improving the *policy capability* of departments underpinning the advice going to ministers. With the recent development of regulatory stewardship expectations for departmental chief

executives, the purpose shifted to increasing the scrutiny of existing interventions.⁶

Style

The style of political change also has altered. The extensive programme of regulatory and other reforms from 1984 until the mid-1990s was based on a 'crash through' style of political change management. This was enabled by the concentration of political power in the Cabinet, which was relatively unconstrained by constitutional requirement or formal consultation requirements. The New Zealand political system of the time was variously described as 'an elected dictatorship' and the 'fastest law maker in the west' (Palmer 1979). The role of Parliamentary Select Committees has been strengthened. The change in the electoral system, however, tempered the power of the Executive even though the Cabinet remains strong (according to Palmer and Palmer, 1997), so New Zealand is no longer the 'fastest law maker in the west'.

Successive recent administrations have moved away from the 'crash through' approach to policy change based to building a broader consensus for reforms. This in turn puts a premium on more inclusive consultative processes that engage key stakeholders in co-design of policy regimes. Consultation now tends to be more focused on big policy design issues than in the past, when consultation was limited to 'little' policy improvements in how the reforms should be applied.

3. Current State of the Regulatory System (as of 31 July 2015)

Section 2 discusses how the regulatory system evolved from sector-based approaches, to attempts to improve the flow of new regulatory proposals, through to more recent attempts that systematically examine whether the stock of existing regulations are fit for purpose.

Flow Management

The main 'flow' policy tools have been through the use of RIA, supported by good regulatory practice principles. Unlike comparable jurisdictions, quantitative

⁶ Gill (2011) explored the rationale for regulatory management in more detail.

techniques like cost–benefit analysis (CBA) or formal risk assessment do not form the centrepiece of the New Zealand system.

Stock Management

New Zealand has eschewed the use of ‘stock’ management tools, such as the standard cost model, regulatory guillotine, red tape reduction targets, ‘one-in, two-out’ or ‘one-in one-out’, regulatory budget, and the regulatory agenda, and has no formal requirement for the use of review clauses or sunset provisions.⁷ In terms of stock management, amending legislation that clarified the statutory responsibility for departmental chief executives to undertake regulatory stewardship was introduced only recently. Prior to that, responsibility for management of the regulatory stock was left unassigned, beyond limited Cabinet requirements for regulatory scans and plans.⁸

Policy Coherence

There is a robust interdepartmental process within the Executive in the policy development phase focused on improving policy coherence both horizontally across policy regimes, and to ensure consistency with international trade obligations and to a lesser extent vertically to ensure consistency with local government policy regime and capability.⁹ The RIS process has added more rigour and robustness to the policy development process. For example, the RIS guidance requires that international trade obligations are explicitly considered in the development of regulatory regimes and the Ministry of Foreign Affairs and Trade is consulted if necessary. Each RIS is accompanied by a disclosure statement, signed by a named departmental official, that specified requirements have been met, and drawing attention to any issues such as the lack of data or time for adequate consultation, which might affect the reliability of the analysis. The RIS together with the Disclosure Statement that accompanies bills made publicly available at the time the legislation is introduced into the house.

⁷ Gill and Frankel (2014) found that only 1.7 percent of primary legislation had any statutory review provision and no secondary regulatory had review provisions. Interestingly s158–160A of the Local Government Act requires by-laws to be reviewed within 5 years of introduction and then every 10 years thereafter. However, local government passes relatively few by-laws, so the requirement is not onerous.

⁸ The NZ Productivity Commission (2014) report survey results suggested two-thirds of existing legislation was either obsolete or not up to date.

⁹ See the NZ Productivity Commission (2013a) Local Regulation Final Report for criticisms and comments on vertical coherence of the New Zealand system.

Consultation

There is less formality around the requirements for consultation. There are no general formal legal procedural requirements, such as notice and comment or consultation requirements, and there is no equivalent of the Administrative Procedures Act 1946 in the United States (US). In general, consultation can be undertaken for a number of purposes: as a means of attempting to control the bureaucracy (as in the US), to improve the overall legitimacy and consent to the proposed regime by those who are regulated, or to improve the detailed design and operation of the regime by highlighting pressure points in implementation.

Historically, consultation in New Zealand was focused on highlighting pressure points and improving detailed design rather than improving the legitimacy of what is proposed. Engagement with the business sector and civil society varies, depending on the nature of the issue and the style of the government of the day. Instead, the procedures followed tend to be case by case. Consultation on big policy is tailored to the particular situation and is not a one-size-fits-all approach. An example of this is the development by the Inland Revenue Department of a standardised procedure – the Generic Tax Policy Process – that has not been adopted by other agencies.

However, a key feature of the New Zealand system is the role of Parliamentary Select Committees in improving the detailed design through the scrutiny of legislation, including the public submission process. The routine involvement of the public in this way is unusual and is a part of the broader consultative framework in New Zealand.¹⁰ Commenting on the quality of Select Committee reviews in New Zealand, the late George Tanner, former Parliamentary Counsel, observed (in email correspondence) '[a]t its best, it works well and is probably a more effective scrutiny process than many upper Houses around the world' (Gill, 2011, p.567).

Consultation is also necessary as part of the process of developing secondary delegated regulation and other delegated legislation. In New Zealand, it is possible to seek judicial review of the decision to exercise the power to make

¹⁰ A good source of information is the relevant chapter of David McGee's *Parliamentary Practice in New Zealand* (2005).

delegated legislation. Consultation addresses the possibility of judicial review if all relevant (and no irrelevant) issues have been considered.

The New Zealand Productivity Commission (2014) reported that around one-half of the 50 statutes they reviewed had a statutory consultation requirement of some kind. It is important to note that statutory obligations to consult are only part of the picture. There are strong presumptions that support consultation, often and early, and expectations for consultation are included in the Cabinet Manual, the RIA Handbook, as a key criterion in RIA assessments and the Legislation Advisory Committee guidance.

In general, the development and review of regulation is dominated by public agencies within the Executive. Even in the parliamentary consideration phase, officials from the sponsoring department support the House Select Committee as they consider submissions on proposed primary legislation. However, Select Committees can appoint their own advisors and their considerations remain an important and valuable check and balance on the Executive. The dominant role of the Executive does not equate to control.

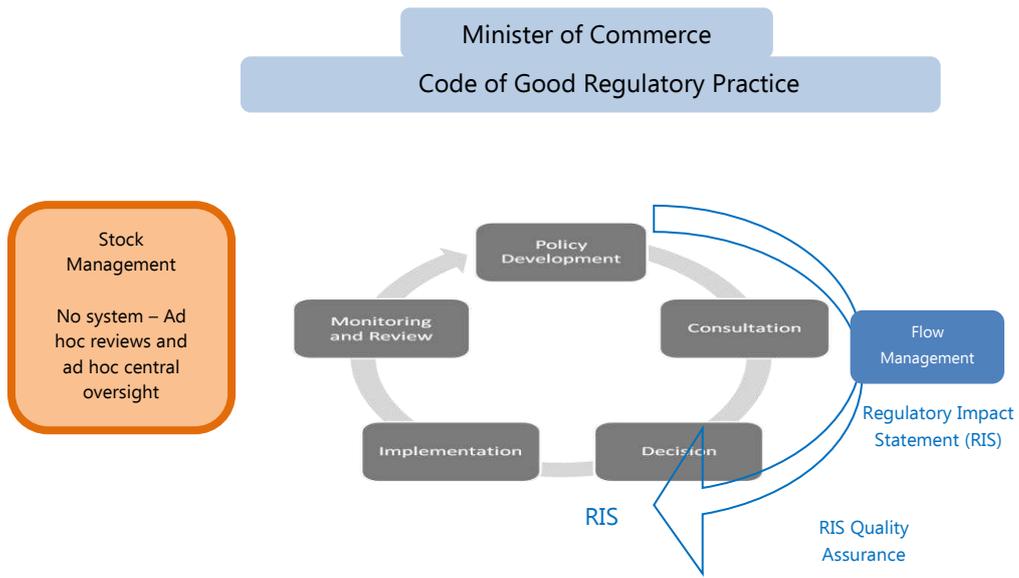
Moreover, there is increasing use of more innovative co-design and co-production initiatives such as the Land and Water Forum.¹¹ These reflect a change in political style from the 'crash through' approach to a consensus building through more inclusive consultation so the changes are more likely to stick.

System Evolution

The evolution of the RMS between 2008 and today can be seen by comparing **Figure 5.2** (the system in 2008) and **Figure 5.3** (the system in 2015). The development of a new regulatory regime often goes through a number of phases—the strategic or the 'big what' phase where a regulatory response is selected from a range of possible policy interventions, the tactical or 'how' phase where the regulatory policy is developed, the operationalisation or 'the 'little what' where the detailed 'little policy' legal analysis is undertaken and drafting prepared. Consultation with stakeholders can occur in any of these phases.

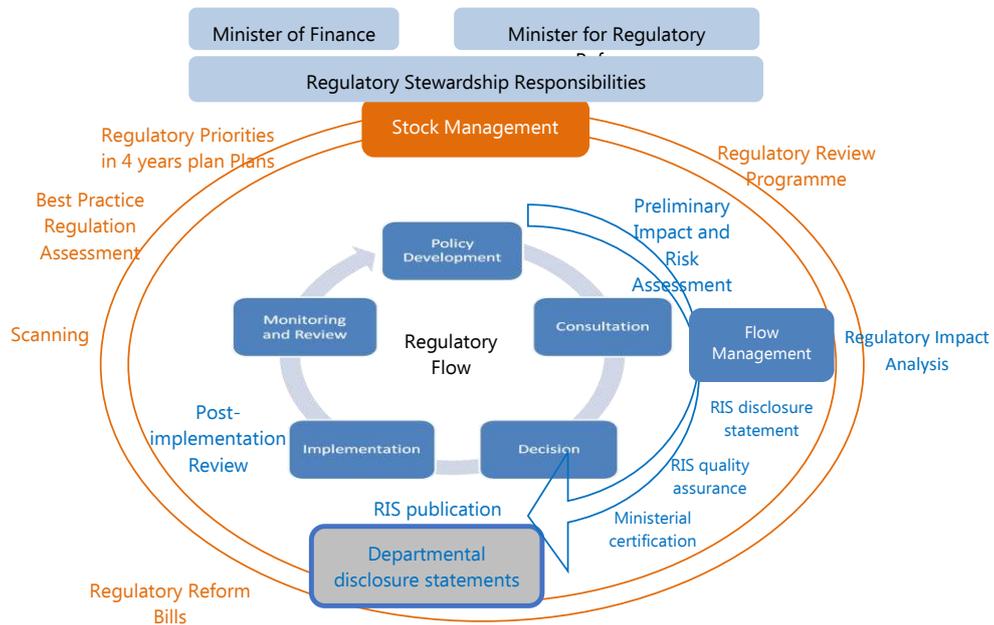
¹¹ The Forum led the co-design of water management standards by agricultural environmental and policy interests that helped shape the national policy statement which took effect from August 2014, <http://www.mfe.govt.nz/publications/fresh-water/national-policy-statement-freshwater-management-2014>

Figure 5.2. The Formal System, 2008



Source: New Zealand Treasury.

Figure 5.3. The Current Formal System, 2015



RIS = regulatory impact statement.
Source: NZIER based on New Zealand Treasury.

Big Policy Focus

The main phase when regulatory management tools are applied is policy development in particular in the initial 'big what' and the 'how' policy design phases through the RIS process. The left-hand side of **Figure 5.3** shows how the preliminary RIS informs the 'big what' phase while the RIS is developed alongside the 'how' phase. There are few extra resources or special measures applied to detailed 'little policy', legal design, parliamentary deliberation and decision, or the implementation and conduct of regulators. No general formal requirements for monitoring and review would enable learning about effectiveness. However, in cases where the RIS was inadequate, a post implementation review can be required.

Governance and Coordination

The governance of the RMS has received increasing attention in OECD countries. In New Zealand's case, two main agencies provide coordinating capacity:

- The Treasury is the national coordinating body on regulatory management, tasked with oversight of regulatory systems, including RISs and regulatory policy, which reports to the Minister of Finance and the Minister for Regulatory Reform.
- The Parliamentary Counsel Office has the statutory function to develop all drafting instructions (other than for tax law).

Five other institutions play important roles:

- The Legislation Design and Advisory Committee provides detailed guidance on public law issues and legal review of draft legislation.
- The Law Commission undertakes independent review of legal issues and makes recommendations for reform.
- The Productivity Commission undertakes a similar role to the Law Commission completing inquiries on topics referred by the government, including recent reviews of local government regulation and the overall regulatory system (**Box 2**).
- The Parliamentary Select Committees whose scrutiny of all legalisation (other than bills considered under urgency) allows for a public submission process.
- The Parliamentary Regulations Review Committee, which examines all secondary regulations and proposed regulation-making powers, and investigates complaints about regulations.

Box 2. New Zealand Productivity Commission – Regulatory Institutions and Practices

The New Zealand Productivity Commission completed a major detailed review of the central government regulatory system in 2014. It concluded with recommendations on:

- creating a default presumption that engagement and consultation will have been undertaken before new legislation is introduced,
- developing a strategy to review the stock of existing regulation,
- improving the focus on the review of the effectiveness of regulation,
- increasing the scope for 'repairs and maintenance' to bring legislation up to date,
- improving the capability of regulatory agencies through the development of communities of practice and professional cadre leadership,
- professionalising staff by strengthening the skills of those undertaking regulatory functions, and
- improving system leadership by augmenting the Treasury's regulatory capability and introducing a head of profession.

There are no equivalent roles for the administration and enforcement of regulation by regulatory agencies or regulatory monitoring review or evaluation (Gill and Frankel, 2014).

The main locus of attention is executive procedures, rather than those of parliamentary or judicial branches of the central government, or how the government engages with business and civil society. As discussed in the Introduction, Part 2 of the Legislation Amendment Bill currently before the House involves strengthening Parliament's role in reviewing new regulation. The Treasury has been proactive in developing guidance around the new stewardship provisions applying to departmental chief executives, but this is still a work in progress and the impact is untested.

4. Assessment of the New Zealand Regulatory Management System

Every country's programme of regulatory reform and its RMS needs to be understood in the context of the constitutional arrangements, government capability, the overall level of economic and social development, and the critical constraints on improving economic and social performance.

New Zealand started the mid-1980s with high levels of government capability and economic and social development but with a sustained period of relative

decline in economic performance that created a political platform for change. The unique constitutional arrangements, in particular the concentration of power in the Cabinet, allowed for rapid change to be driven through. The Cabinet and Cabinet Committee system is arguably the strongest of all Westminster countries, as is the Select Committee review process.

New Zealand's RMS is embedded in a much broader set of arrangements that has two main features:

- An enduring set of norms, principles, rules, and decision-making processes which take the form of constitutional conventions and legislative rules. These include the Cabinet Office Manual, Parliament's Standing Orders, and various statutes including the New Zealand Bill of Rights Act, the Constitution Act, and the State Sector Act.
- An enduring set of institutions that are responsible for ensuring that the norms, principles, rules, and decision-making process are consistently applied. These include an independent and non-partisan public service, Parliamentary Select Committees, Parliament's Regulations Review Committee, the courts (principally through judicial review), the Legislation Advisory Committee, the Law Commission, and some government agencies such as the Ministry of Justice.

A system of regulatory management has evolved with two broad objectives:

1. To improve the quality of policy advice, and hence decision-making, by requiring analysis to be undertaken and assumptions clarified and for the disclosure of information relating to new regulatory proposals.
2. To create greater incentives to review the existing stock of regulation at appropriate intervals.

New Zealand was an early mover on regulatory reform in the OECD. The sector-based reform programme was among the most widespread and comprehensive of any of the established OECD countries. By contrast, New Zealand has been a cautious follower on regulatory management. Whereas New Zealand was a pioneer on regulatory reform in the use of auctions to allocate fisheries quotas and radio spectrums for example, it drew heavily on the experience of other OECD countries (Australia in particular) in the development of its RIS system. New Zealand's adoption of RIA coincides with the increase in the use of RIA across almost all OECD countries, rather than leading the way. More recently, New

Zealand has adopted its own unique approach to regulatory stewardship and has elected not to use administrative cost reduction as a tool for stock management.

Regulatory Coherence

Looking at the New Zealand system as a whole against the various dimensions of regulatory coherence:

- There is extensive focus on policy coherence horizontally across different domestic regimes and to a lesser extent vertically across levels of government through the RIS process, officials committees, the Cabinet Committee, and the Parliamentary Select Committee process.
- The policy development system also allows for consideration of international coherence, that is, consistency with international obligations and regional connectivity.
- There is less emphasis on coherence over time as New Zealand tends to take a 'set and forget' approach.
- There is less focus on regulator coherence, in the sense of how well the capability, mandates, and resources of the regulators are lined up.¹² While the RIS includes a section on implementation, reviews of RISs have highlighted that this is often the weakest section in the RIS and there is little sustained emphasis on building the capability of regulators.
- There is not the same across the board attention to coherence from the perspective of regulatees, for example the avoidance of duplication and inconsistencies in administrative requirements, as there is to policy coherence. Whereas some agencies, such as the Inland Revenue Department, have standard operating procedures that allow for consultation with affected parties, others do not. Around one-half of statutes contain consultation provisions.

Themes from the New Zealand Experience

Looking at the New Zealand experience, a number of themes have emerged, including the links between regulatory management and regulatory quality, the

¹² Since the completion of this review, there have been a number of decisions that aim to improve and professionalise the practice of regulation discussed in Manch, et al. (2015).

political approach to change, the particular emphasis on policy coherence and the lack of use of administrative cost reduction tools, and the focus on 'big' policy development rather than regulatory practice.

The *first* theme is that while New Zealand has been ranked consistently highly for both the quality of government and on regulatory quality, this ranking predates the introduction of a formal RMS and arose from a wide-ranging regulatory reform programme. The introduction of a formal RMS has enabled those gains to be locked in and sustained. However, they were not sufficient to offset a relative decline in regulatory quality as other OECD countries caught up with New Zealand.

The *second* theme is the modification in the political approach to change, moving from the 'crash through' approach to building a broader consensus for more reforms through more inclusive consultation so the changes are more likely to endure.

The *third* theme is the emphasis on policy coherence through the use of RIA, supported by good regulatory practice principles ('flow' policy tools). RIA is now standard in OECD countries, but New Zealand's approach to RIA has been different with great emphasis placed on integration of RIA into the policy process. Unlike comparable jurisdictions, formal techniques such as CBA or formal risk assessment do not form the centrepiece of the New Zealand system.

The *fourth* theme is that New Zealand has largely avoided the use of 'stock' management tools focused on administrative costs. Recent reforms of stock management have tried to focus on mainstreaming regulatory management as part of the public management duties of departments, rather than building separate stock management systems.

The *fifth* theme relates to the almost exclusive focus on the coherence of 'big' policy as opposed to 'little' or operational policy, the practices and capabilities of regulators, the effectiveness of regulation, or the experience of those being regulated.

The *final* theme is that as a result of the emphasis on coherence of 'big' policy, the main locus of attention is executive policy procedures, rather than those of parliamentary or judicial branches of the central government.

Parts 2 and 3 of this chapter explore the details of two regulatory changes to: building controls, and the licensing of motor vehicles. In particular, the chapter explores the drivers of the regulatory changes and the extent of the role played by the regulatory management system tools and procedures.

The failure of the performance-based building code, which led to widespread problems with 'leaky buildings' is instructive for examining the limits of regulatory management systems. The next section discusses how the primary failure was not the use of a performance-based building code as such, but how it was implemented; in particular not having a strategy in place to monitor how the new building technologies performed on the ground. A stronger regulatory management system would not have prevented the regulatory failure and would not have stopped the transfer of part of the wealth losses to taxpayers, but it may have resulted in the problem emerging earlier, reducing the losses.

Part 2: Leaky Buildings – Unpacking the Role of the Regulatory Management System in a Regulatory Failure¹³

1. Introduction – Leaky Buildings in a Nutshell

New Zealand's 'leaky homes' crisis' is widely regarded as an expensive example of regulatory failure (NZ\$11.3 billion [\$US9 billion] or around 13 percent of GDP in 1998). While individual house designs failed, it is less clear in what sense the reforms were a 'regulatory failure'. Arguably, as will be shown below, the reforms succeeded in achieving the initial goals of allowing more innovation and the adoption of new techniques, designs, and products in building construction.

¹³ This section of the chapter draws extensively on the PhD research of Dr Peter Mumford and subsequent papers by Dr Brent Layton and Mike Hensen, James Zuccollo, and John Yeabsley of NZIER. I am grateful for the comments from Dr Peter Mumford on an earlier version of this part of the chapter.

The reforms are, however, an example of how not to implement performance-based regulation and were a political failure. Although effective in achieving their objective, they were not efficient in the sense of achieving the objective at lower cost than other feasible alternative options. The policy objectives could have been achieved without incurring the costs of leaky buildings if the regime had been implemented better. The wealth losses were highly concentrated, and there was a public outcry that resulted in sustained political pressure for government intervention, increased regulation of building occupations, and government financial support to affected building owners.

The primary failure in the design of the initial regulatory regime was not the use of a performance-based building code as such, but how it was implemented. In particular, the system as deployed assigned responsibility to territorial local authorities that lacked the expertise to approve new building technologies and there was no monitoring 'in the field' to see how they were performing in practice.

A stronger RMS would have been unlikely to identify the complex interactions that created the regulatory failure and would not have stopped the reforms or the subsequent transfer of some of the wealth losses to taxpayers. It is possible, however, that more systematic scanning and monitoring might have identified the problem more quickly, reducing the losses incurred. More robust ex ante appraisal of the reforms may also have identified the risk posed by new building technologies and the need to monitor of how these technologies performed 'on the ground'.

2. Impetus for Change to the Building Code¹⁴

When the new building code came into force on 1 January 1993, New Zealand replaced its previous prescriptive or standards-based regulations for the construction of new buildings with a new performance-based regime. The aim of the reform was to improve overall economic performance by enabling greater innovation and efficiencies in the building sector. This in turn was expected to improve overall economic performance because the construction sector is large

¹⁴ This section and much of the rest of the chapter draws extensively on the research of Dr Peter Mumford (2011).

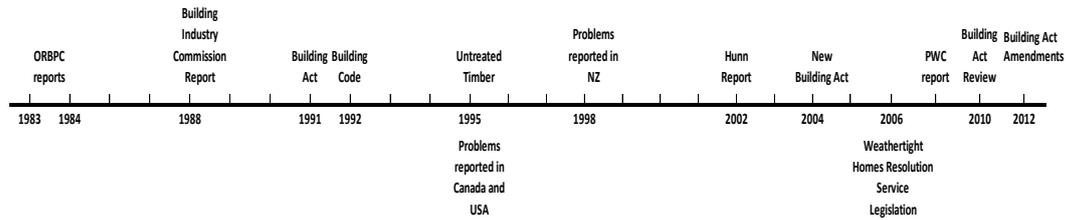
(representing approximately 4 percent of GDP) and provides important inputs into production and consumption in the rest of the economy.

New Zealand was not alone in making the change to building controls. New Zealand based its approach on the so-called Nordic Code, and similar reforms were introduced in Australia, Great Britain, Canada, and Japan around the same time. The origins of the performance-based building regime in New Zealand have been traced back to the late 1970s when professional associations and the building industry representatives reacted against the prescriptive standards-based regime that made the industry 'over-regulated and controlled'.¹⁵ **Figure 5.4** shows the chronology of the reforms starting in 1982 when the government established the Office of the Review of Planning and Building Controls. Although the office's two reports released in 1983 did not initially get political traction, the ground was laid for the 1988 report of the Building Industry Commission to be more positively received. This report was largely adopted by the government and provided the blueprint for the regime (**Box 3**) that was rolled out in the new Building Act 1991, and the performance-based building code that came into force at the beginning of 1993.

The legislative framework for building controls (Building Act 1991) may have been adequate to address the risks of performance-based regulation through effective control over novel technologies for which approvals were sought. Over time, however, the central regulator, which had broad objectives and limited funding, interpreted its monitoring and control functions narrowly by focusing on the operation of the regime overall rather than on specific new technologies. What was delivered, relative to the original design, was a regime where more emphasis was placed on the goal of reducing compliance costs. Quality control applying to alternative solutions was weaker due to the reliance on territorial authorities.

¹⁵ Office of the Review of Planning and Building Controls (1983), quoted by Mumford (2011, p.7).

Figure 5.4. Key Events in the Leaky Buildings Saga



NZ = New Zealand; ORPBC = Office of the Review of Planning and Building Controls; PwC = PricewaterhouseCoopers; US = United States.

Source: NZIER.

While the 1988 Building Industry Commission report provided the immediate trigger for change, the wide-ranging structural reform programme discussed in Part 1 of this chapter provided a policy context that favoured performance-based regulation. The new building code was introduced in New Zealand at a time when similar performance-based regimes were also introduced for health and safety, land use planning, the regulation of hazardous substances, and the introduction of organisms. Prescriptive regulations such as the old standards-based building code were seen as an anchor that contributed to a secular decline in New Zealand's relative economic performance. It was expected that the adoption of new designs and products enabled by the new performance-based code would act more like a sail than an anchor.

Moreover, the 1982 and 1988 reports had built a wide body of acceptance of the need for change among all the peak bodies concerned. The building-related professional associations, building material producers, and industry representatives supported the changes. The policy community within the bureaucracy was focused on delivering new approaches to regulation as demanded by a reformist government. The mood of the times, which emphasised the need to move to performance-based regulation, break down bureaucratic barriers, and minimise compliance costs, was reflected in the parliamentary debates and the report back from the Parliamentary Select Committee.

Box 3. The New Performance-Based Building Regime

Key features of the new building control regime included:

- A new national performance-based code – standards complemented by ‘alternative solutions’ that met new performance code requirements
- Consolidation of all building-related controls into a single law
- ‘One-stop shop’ for seeking building consents
- An independent oversight body (the Building Industry Authority)
- Building consents and inspections carried out by local authorities and authorised private building certifiers

(See Mumford, 2011, p.11, for more details)

3. The Sequence of Events

3.1. 1993–2005 – The Problem Emerges

The reforms were successful in introducing experimentation and innovation, but not in the way the original proponents of the regime had anticipated. Dwellings continued to be constructed using standard designs; but in a number of urban locations, a new style of dwelling became popular based on a Mediterranean design that needed less land area. Key features of this design included new cladding systems (for example, flush plaster finishes and the use of sealants to create a watertight seal), the lack of eaves, and cladding attached directly to wooden framing in which there was no drainage cavity. In addition, there was a change to the New Zealand standard for timber treatment, which allowed the use of kiln-dried (untreated) framing rather than the traditional chemically treated timber.

Unfortunately, New Zealand does not have the climate of the Mediterranean. New Zealand experiences heavy rain often accompanied by strong winds that can drive water through joints. In the absence of drainage cavities, water was not able to escape, resulting in rotting of the untreated timber framing.

It took some time for these design defects to become apparent as the houses literally rotted from the inside out. The problems first merged in British Columbia, Canada, which has a similar climate to New Zealand. It took some time before the lessons from British Columbia were applied to New Zealand. The main regulator – the Building Industry Authority – focused on monitoring the operation of the regime overall rather than specific new technologies. Nearly 7 years passed from

the first substantiated reports of the problem in British Columbia and sustained investigations into the nature and extent of the problem in New Zealand.

Three major reviews in the early 2000s placed different weights on the different factors that contributed to the problem. These factors included a lack of guidance, a lack of professional skills of builders and cladding installers, a lack of effective supervision, a lack of effective regulation, and consumers being insufficiently informed (**Box 4**).

Mumford (2011), in the most authoritative study to date, suggested that, overall, the problem had not been a result of poor work by builders, but that constructed buildings were also prone to failure. This raised something of a paradox – why had good builders built leaky buildings? Mumford attributed the leaky building problem to a range of factors that interacted in ways that had been difficult to foresee in advance. He concluded (email correspondence dated 14 October 2014) that the failure had resulted from:

The change from a standards-based regulatory regime – where technology shifts are on the margin and occur through a process of incremental trial-and-error – to a performance-based regime displaced traditional institutions for aggregating knowledge required for risk-based decision-making. At the same time, the new performance-based regime had been permissive of greater technology shifts, which demands more of decision makers who are operating in an environment of inevitable uncertainty. The significance of the regime change had not been well understood and new institutions did not evolve.

Box 4. Competing Explanations of the Leaky Building Problem

The perceived causes of the failures identified in the three reviews that were carried out:

- A competitive building environment, which created an imperative to cut costs, also led to the cutting of corners
- A lack of professional trade skills and judgment
- A lack of effective supervision and inspection – buildings were being built using a series of subcontractors, with no one having responsibility for overall quality control
- An emphasis on the product, not the building system. In this case the cladding product, not on whether that cladding, in that particular design, in those particular weather conditions, would keep the water out
- A lack of sufficient guidance in acceptable solutions and verification methods
- Consumers who were not sufficiently informed about the implications of the choices they were making
- Failures in the regulatory backstop, which ranged from inadequate consenting and inspections by territorial authorities, through to inadequate monitoring of outcomes by the Building Industry Authority

Box 5. Complex Causation of the Leaky Building Problem

The leaky buildings problem was due to the interaction of a range of factors, including:

- The tipping point problem – tolerance for the new designs was finely balanced; leaky buildings occurred due to the complex interactions between innovative designs, the New Zealand climate, uneven quality of monolithic cladding installation, and lack of owner maintenance
- Uncertainty arising from experiments – builders had inadequate knowledge of the uncertainty they faced when building with new materials and techniques
- Lack of information – success of the cladding required regular maintenance by owners, a feature that was not made clear to individual householders
- The difficulty of detecting latent defects – problems took time to emerge because the houses literally rotted from the inside out
- The problem of many hands – many players, including designers, builders, and subcontractors installing cladding, and building inspectors were involved in one construction
- Lack of monitoring – the main regulator, the Building Industry Authority, interpreted its monitoring role narrowly by focusing on the operation of the regime overall rather than specific new technologies
- The weakest link – the interaction of alternative solutions, new products, and the New Zealand environment required ‘expert’ judgments about how elements would operate as a system, but the front line regulators lacked the capability to provide this level of expertise

3.2. 2004 Building Reforms – Stopping the Rot

In 2004, a new Building Act that extensively modified the 1991 regime was enacted. Although the performance-based approach to building controls was retained, more emphasis was placed on strengthening consumer protection, and on providing more guidance and ‘how to’ documents. Key elements of the reforms included:

- strengthening the role of the central regulator (disbanding the Building Industry Commission and creating a new Ministry of Building and Housing)
- reviewing the performance-based Building Code, increasing the amount of support in relation to meeting code requirements through the provision of more ‘how to’ technical documents, and providing for bans on particular ways of building in particular circumstances
- ensuring that there is a base of capable (qualified and knowledgeable) people to undertake building design and critical elements of building work and inspection, notably by providing for

the licensing of building practitioners and requiring accreditation and audit of building consent authorities

- strengthening the competence of building consent authorities by requiring them to be accredited
- strengthening support for consumers through mandatory warranty terms implied in all contracts for building work, making builders liable for latent defects in their work (although the reforms did not mandate the means of delivering on warranties) (DBH, 2010).

Although individual house designs failed and the implementation of the reforms meant they were a political failure, the reforms were not a failure of performance-based regulation as such. Arguably, as shown in **Box 6**, the reforms succeeded in achieving the initial goals of allowing more innovation and productivity in building construction and may indeed have a positive net present value (NPV) (Layton, 2010). Rather, it was a failure in how to implement a performance-based regime in a way that achieved the policy objective of greater building innovation while ensuring that downside risks were kept within manageable limits.

That is not to suggest that the weather tightness problem was not important or should not be treated seriously. Individuals affected had suffered major financial losses and considerable emotional distress. Moreover, New Zealand would have been better off had it captured the innovation benefits but avoided the weather tightness issues. In effect, the NPV would have been higher if this particular technological experiment had been curtailed or modified before so many buildings were built. The weakness of the regulatory system was that it did not apply the appropriate expertise in approving this technology and, given that innovation will inevitably involve some risk-taking, it did not monitor the technology 'in the field' to see how it was performing in practice. As the wealth losses had been concentrated, there was sustained political pressure for government intervention.

Box 6. Evaluation of Leaky Buildings – Regulatory Failure or Successful Regulatory Experiment?

PricewaterhouseCoopers (PwC), in a report for the Department of Building and Housing, estimated that the total number of New Zealand houses built between 1992 and 2008 with weathertightness problems, at the midpoint estimate of 42,000 affected houses, was forecast to cost a total of \$NZ11.3 billion (2008 dollars) (PwC, 2009). However, this estimate is something of a high tide mark. By focusing on the total fiscal costs and not netting out transfers and other benefits, the economic cost of leaking buildings was overstated. Layton (2011) and Hensen, Zuccollo, and Yeabsley (2013) made changes to the PwC estimate to make it comparable to the net present benefit calculation in a cost–benefit analysis. In particular, the PwC methodology ignored the gains in productivity and building performance, which was the reason the reforms had been introduced. Hensen, Zuccollo, and Yeabsley (2013) concluded (emphasis added to the original) ‘Depending on how much the changes increased productivity in the building sector, and the value of the health and other unquantifiable social costs they generated, it is not inconceivable that the changes in 1991 generated a positive net present benefit when compared with maintaining the pre-1991 regulatory regime.

It would be wrong to conclude from these rough calculations that the weathertightness problem does not matter, or was not a regulatory failure...What the calculations do highlight is that to evaluate a policy or proposed policy it is important to compare apples with apples and to try to enumerate all costs and benefits on a common basis. Just looking at the costs will inevitably give a one-sided perspective.’

3.3. After 2004 – Picking up the Pieces and Socialising the Losses

The 2004 reforms sought to address the sources of the problem, to reduce the likelihood of leaky building–type situations arising in future, but innovation would continue to be permitted. Thus, the performance-based regulatory approach was retained but the Building Act 2004 had many more checks and balances, and the central regulator was given more funding. This left open the question as to who would bear the losses. For many of the individuals affected, the damage to their residences and investment properties was a major financial and emotional blow. Liability for the damage lay jointly and severally with the builders, architects, and building consent authorities (and, potentially, building material suppliers).¹⁶ However, because the builders and architects traded as limited liability companies, many of which had disappeared in the intervening decade or could not be located, legal attention turned to the role of the regulators.

¹⁶ Building material suppliers appear to have been able to shelter behind the demanding requirements set for installation. Although some settlements occurred, they largely appear to have escaped additional liability.

In 2005, the High Court had found the Crown not liable for defective work; but attention also focused on the building consent authorities, most of which were territorial authorities, which had deep pockets because of their ability to tax through the rates base. The government stepped in and implemented a scheme by which the central government subsidised repair work in return for the homeowner giving up their legal claim against the Crown or territorial authority. In 2006, legislation was passed establishing the Weathertight Homes Resolution Service. The Crown and territorial local authorities participating in the scheme each provided a 25 percent direct payment to the building owners to cover agreed repair costs.

3.4. 2009 Review of the Building Act – Retreat into Rules

The team reviewing the Building Act initiated in August 2009 worked with representatives of the building and construction industry, local authorities, and homeowners, on improving the operation of the new regime. This review found that, although there had been improvements in the quality of building work since 2004, the system was more costly and less effective than it could be. A court case during the review (2010) in the Court of Appeals clarified that territorial local authorities owed a duty of care to owners, whether occupants or not, to make sure that buildings were habitable. This meant that territorial local authorities faced considerable liabilities, as in many cases they were the only party left for homeowners to sue, as others had either been liquidated or could not be located.

A key finding of the review was poor assignment of risk and responsibility due to an excessive reliance on building consent authorities, which had limited control over the quality of buildings, and a lack of effective recourse for owners whose buildings had failed to perform. The review (DBH, 2010, p.1) highlighted:

- a 'negative dynamic ... whereby those best placed to manage risk (that is, building practitioners) are less likely to actively manage it'
- the perverse incentive facing consent authorities to take a risk-averse 'retreat in rules' approach because they faced high risk in consenting alternative approaches and they do not receive any benefits from risk taking.

In response to the review, a two-part policy response was proposed (DBH, 2010, p.1): 'provision of a more balanced accountability model with a supporting consumer package (the consumer package), and the introduction of a more efficient approach to consenting (a stepped system)'.

The results of the 2009 review were enacted in the Building Amendment Act 2012 and its associated regulations brought into force the risk-based consenting system.

The weathertightness failures in New Zealand were costly – if not in a net public benefit sense, then at least for the building owners who faced significant wealth losses. This raises the question of how regulatory regimes should be designed to be more durable and avoid breaking down in the face of concentrated losses. It suggests that the appraisal of reforms need to focus on detailed institutional design and the need to avoid large losses concentrated on those unable to manage the risks. In conclusion, we now turn to the role of the RMS in appraising the new building code regulatory regime.

4. Role of the Regulatory Management System

At the time the Building Act 1991 was introduced, New Zealand lacked a formal RMS. There were no formal requirements for appraising new regulatory regimes beyond the standard process applying to developing Cabinet papers and no requirements to manage or review the stock of existing regulations. Neither was there a requirement for additional policy scrutiny through a RIA. The design of the building control regime reflected the thinking of the times, which favoured a move towards performance-based regulatory regimes in this and a number of other domains. The new regime was designed to reduce the excessive administrative and compliance costs of the old regime and to enable the adoption of new designs and technologies.

The amendments introduced with the 2004 Building Act and the 2009 review were all subject to the RIA processes – but by then the 'rot had set in'. This raises the question, if a RIA requirement had been in place when the new regime was being adopted, would the problem have been averted?

Three features of this case are relevant to this question:

1. the problem of unpacking causation in the face of complexity,
2. the problem with granularity of information, and
3. the limitations of ex ante appraisal in assessing regulatory experiments.

The Problem of Unpacking Causation in the Face Of Complexity

The three major reviews in the early 2000s all placed different weights on the different factors (**Box 2**) that contributed to the problem. In this chapter we have followed Mumford's thesis that the way the legislative design was implemented meant that the adoption of experimental designs without adequate quality control led to the leaky buildings problem. But even with perfect hindsight, this causation is difficult to attribute.

The Granularity of Information

Detecting the defects in leaky buildings required detailed information about how specific technologies were performing on the ground in particular locations. This is different from the sort of information that would be gathered at the regime level on the overall performance on the new building code. This granular information was costly and difficult to obtain. Indeed, if the simultaneous move to use untreated framing timber had not occurred, the evidence of the leaky buildings problem may not have become evident for a number of years. Monitoring and review regimes focused on the organisation or regime level, do not require information at the level of granularity that looks at the ground performance of specific technologies.

The Limitations of Ex Ante Appraisal in Assessing Regulatory Experiments

All regulatory reform is something of an experiment,¹⁷ revealed in this case study (**Box 3**) as the changes unleashed complex dynamics in the behaviour of regulators, those being regulated, and physical systems. RIA systems attempt to appraise reforms before they are implemented. As Greenstone (2009, p.111) observed, this is 'the point when we know the least about them'.

¹⁷ See Mumford (2011, p.151) for a discussion of regulations as experiments.

In the case of 'leaky buildings', it seems implausible that a desk-based appraisal would have highlighted the risk of the complex dynamic interactions discussed in **Box 3** that led to the leaky buildings problem. If those closest to the action—builders, building owners, front-line regulators, and oversight regulators—did not detect what was going on, it hardly seems credible that a desk-based appraisal by a policy analyst would have been effective. To the extent something as complex as leaky buildings can be attributed to one cause, it reflects failings in the way the regime was implemented rather than flaws in how it was designed. In particular, the system as deployed assigned responsibility to territorial local authorities that lacked the expertise to approve new building technologies; further, there was no monitoring 'in the field' to see how these technologies were performing in practice. These problems arose from how the regulatory design was implemented and occurred after a RIA would have been undertaken. However, RMSs consist of more than RIA. It is to the potential impact of the overall RMS that this case now turns.

5. What Difference Could An Enhanced RMS Have Made?

In the final section, we pose a hypothetical question: 'What role could an enhanced RMS have played in the case of leaky buildings?' To be specific, if the regulatory regime proposed by the 1988 Building Industry Commission report had been subject to the current New Zealand RMS, would the outcome have been different? This is an exercise in counterfactual history for which there is no definitive answer. But it is worth reflecting on. In particular, it is important to reflect on which elements of the problem could have been foreseen and which could not have been.

Each country has a unique regulatory system to make laws, regulations, and rules and to review them. As discussed in Part 1, a range of OECD countries including New Zealand have introduced measures targeted at improving regulatory policy development and strengthening their institutions to make their regulatory systems more effective. A high-performing or requisite regulatory system needs to have three components:

- a quality policy cycle,
- supporting policy practices (such as consultation), and
- capable oversight institutions.

The Regulatory Policy Cycle

Looking at the regulatory policy cycle, there are two main regulatory management tools that are important to this case – the role of RIA in the review of new regulations and the role of stock management provisions, in particular, the stewardship responsibilities to keep regulatory regimes under review.

Regarding RIA, for the reasons outlined above, it seems implausible that a desk-based appraisal would have highlighted the specific risk of the complex dynamic interactions discussed in **Box 3** that led to the leaky buildings problem. In the unlikely event that it had, the 'mood of the times' was such that the regime would have been adopted in any case.

The Treasury's Regulatory Impact Analysis Handbook (2013) identified a range of generic problems identified in this case study (that is, risk with how regulations are administered and enforced, the need for monitoring, and the capability of regulators), but the guidance provides little support on how to manage these risks. These requirements are generally the weakest section of a RIA in New Zealand and are honoured more often in the breach than in the observance. In practice, the sorts of dynamic operational risks that actually arose are ones that are not well handled by the RIA process. It seems unlikely that a desk-based appraisal would have identified and highlighted the challenges and vulnerabilities in the implementation and operation of performance-based regulation.

However, a more robust ex ante risk-based appraisal of the reforms might have identified the generic risks posed by use of innovative new building technologies. In this chapter, we have identified the complex interaction of a range of factors that caused the leaky buildings problem. The introduction of a new regulatory regime usually involves a degree of experimentation. As the various parties respond to the changes in the constraints they face and the information they receive, there is the general risk of unintended consequences. Although a more rigorous risk appraisal would not have highlighted the potential specific risk of catastrophic failure, it may have highlighted that the existing mechanisms for allocating liability for long duration latent defects were not very effective.

There is a stronger case that stock management provisions would have an effect despite the difficulty of detecting latent defects. Regulatory management in New Zealand prior to 2008 could be loosely characterised as 'set and forget' followed

by 'management by crisis'. Now, however, there is an increased emphasis on stock management with performance monitoring of organisations and regimes by the lead department and best practice assessments of regimes by the Treasury. However, in the case of leaky buildings, extremely granular information was required to undertake monitoring of how the new building technologies performed 'on the ground'. Even if this information was available, a sophisticated judgment would have been required and that judgment was not in tune with the mood of the times. It is implausible that central departments would have identified the specific problem faster than Building Industry Authority did.

However, it may be possible that the dialogue triggered by more systematic scanning and monitoring would have identified the potential generic risk posed by use of new technologies and the need for more granular information. If action had been taken more promptly based on that information, the losses incurred could have been lower. Policy development and review do not occur in a vacuum, so the following sections discuss the role of supporting practices and institutions.

Supporting Practices

The policy cycle needs to be augmented by a number of supporting practices including consultation, communication and engagement, accountability and transparency, and learning.

The move to a performance-based building code was in response to pressure from the building industry and consultations had been held with many stakeholders. The building-related professional associations, building material producers, and industry representatives all supported the changes. There had been considerable communication and engagement on the design and subsequent roll out of the changes.

The key government institutions – the Building Industry Authority (the independent central oversight body) and the territorial local authorities (local regulators) – were subject to the standard range of accountability and transparency provisions for which the New Zealand government is highly regarded. The critical gap in terms of supporting practices was the lack of mechanisms for learning about the performance of these new building technologies and practices on the ground.

Oversight Institutions

Looking at the oversight institutions, New Zealand has two key players – the Treasury, which is the lead on regulatory policy issues, and the Parliamentary Counsel, which takes a leading role in the drafting of primary legislation. The mandates and oversight of these bodies do not extend to local government. There is only indirect influence through the oversight of the relevant central government department. In the case of leaky buildings, territorial authorities played a key role in authorising the adoption of new building technologies. In decentralised systems it is important that the lead institution also assumes a role in developing the regulatory management capability of subnational governments. Local regulation capability and coordination remain a problematic area in New Zealand (New Zealand Productivity Commission, 2013b).

6. Conclusion

All regulatory changes have the nature of an experiment, as it is uncertain how the patterns of actual behaviour will evolve over time. Thus, it is important to have the ability to learn both about whether the regulatory regime is necessary, efficient, and effective, and about how to implement and deploy the regime effectively.

The 'leaky buildings' case is salutary as it highlights the importance of how 'the devil is in the detail' in the way the regulatory design is deployed. The reforms were an example of how not to implement performance-based regulation and were a political failure as a result. Although effective in achieving their objective, they were not efficient in the sense of achieving the objective at lower cost than other feasible alternative options.

Part 1 of this chapter concluded that the main focus of the current New Zealand RMS was on policy coherence as opposed to the practices and capabilities of regulators or the effectiveness of regulations. This emphasis means that, even if the current stronger RMS had been in place, it would have been unlikely to have stopped the reforms from occurring or have altered how the reforms were implemented. The RMS is largely silent on matters relating to the capability of regulators and the implementation of regulations.

It is possible, however, that more systematic scanning and monitoring could have identified the generic risk more quickly, reducing the losses incurred, but this is speculative at best. A more robust ex ante risk appraisal of the reforms may also have identified the generic risk posed by new building technologies and the need for monitoring by the central regulator about how these technologies performed 'on the ground'. However, the granularity of the information was such that the problem on the ground was unlikely to emerge from monitoring or review at the overall regime level.

If regulations are by nature experimental, then monitoring and review are required to learn whether the regulatory regime is working as intended. The sorts of dynamic operational and implementation risks that actually arose are not well handled by the RIA process. Although there is a formal requirement for monitoring and review to be addressed as part of the regulatory impact assessment, in practice this is the weakest section of a RIA in New Zealand and is honoured more often in the breach than in the observance. But New Zealand is no exception in that regard. According to the OECD (2010, p.50), ex post evaluation of regulation 'is a near universal weakness' across OECD countries.

The following and last part of this chapter explores the role of the RMS in the case of the successful reform of vehicle licensing. The reforms were successful due to a combination of strong sponsorship from bureaucratic and political leaders, focused programme leadership from middle management, and effective use of CBA and financial and spatial modelling to provide rigour to the policy process. The RMS played a supportive, reinforcing, indirect role, but without significantly affecting the outcome directly.

Part 3: Vehicle Licensing – Unpacking the Role of the Regulatory Management System in Successful Regulatory Reform

1. Introduction – The Reform in a Nutshell

By contrast with leaky buildings, New Zealand's Vehicle Licensing Reform (VLR) is widely regarded as an example of successful regulatory reform. New Zealand used to have a stringent regime for inspection of the light vehicle fleet, with annual inspections for vehicles up to 6 years old, then 6-monthly thereafter. The

regime of regular testing had been in place since 1937. The cost–benefit analysis (CBA) for the Warrant of Fitness (WoF) option finally adopted estimated that annual savings were NZ\$150 million (US\$130 million) with an NPV over 30 years at an 8 percent discount rate of over NZ\$1.8 billion.

The CBA showed that reducing the frequency of inspections could make significant savings in the resource costs of inspections together with the value of time savings and the avoidance of unnecessary repairs. There were, however, costs. Although vehicle defects contribute to only a small proportion of crashes,¹⁸ when compared to human and other factors, there was a risk of a small increase in accidents and injuries. However, the savings from reduced inspections significantly outweighed the potential increased costs of death and injuries. What was more politically controversial was the effect on rural garages, which would lose a regular line of business inspecting vehicles.

At the time of writing (early 2016), the reforms to the WoF (and to the certificate of fitness applying to heavy vehicles) have been implemented, but the interim review scheduled to be undertaken 2 years after implementation and a full review 4 years have yet to be done. However, the reforms were subject to regular monitoring and interviewees did not highlight any problems with the changes since they have been rolled out.

2. Impetus for Change to the Vehicle Licensing System¹⁹

The system of regular inspections for light vehicles was introduced in 1937 with the intention of reducing road crashes that may result from vehicle defects, and

¹⁸ Vehicle faults contribute to about 2.5 percent of all fatal and injury crashes (or 0.4 percent where it is the sole cause). Of all New Zealand vehicle-fault crashes, approximately 15 percent of vehicles did not have a current Warrant of Fitness.

¹⁹ This part of the paper draws extensively on the interviews with staff at the Ministry of Transport (MoT), the New Zealand Transport Agency (NZTA), and the New Zealand Institute of Economic Research (NZIER) involved in the reforms. A number of staff from NZIER worked extensively on the vehicle licensing reforms, but the author was not directly involved in any way. The opinions expressed in this paper are the sole responsibility of the author and do not reflect the views of the Economic Research Institute for ASEAN and East Asia (ERIA), NZIER, or the New Zealand government. The research was supplemented by official papers published on the government website (<http://transport.govt.nz/land/vehiclicensingreformconsultation/overviewofvehiclicensingreformbackground/>).

any consequent deaths or injuries. Initially for most light vehicles, inspections had been 6-monthly but in the mid-1990s this was amended to annually, for vehicles up to 6 years old and 6-monthly after that. This was the most frequent light vehicle safety inspection regime in the OECD. The substantial improvements in light vehicle technology and durability since 1937 suggested review might be warranted. In particular, the improvements raised questions about whether a further relaxation of the regime could reduce regulatory burdens without undue costs from increased accidents triggered by vehicle defects.

The vehicle licensing reform programme had four elements: the WoF rules applying to light vehicles, the Certificate of Fitness rules applying to heavy vehicles, the annual vehicle licensing regime, and transport services licensing (**Table 5.1**). This case study will focus on the reform of the WoF applying to light vehicles. For completeness, it should be noted that the changes in the Certificate of Fitness proceeded (with large projected savings of about a quarter of those for WoF), the changes to transport services licensing did not eventuate, and changes to annual vehicle licensing were minimal.

Three forces acted together to create the impetus for change to the WoF inspection system:

- the public value proposition (the size of the prize),
- the internal organisational dynamics that created pressure for change, and
- an external authorising environment supportive of change.

The Public Value Proposition (the size of the prize)

The Ministry of Transport (MoT), as part of its regulatory reform review programme in 2011, had undertaken a comprehensive scan of the transport sector regulations and identified a dozen priority areas, one of which was vehicle licensing reform. A two-page note was created for VLR, along with other priority areas, which established the potential value proposition and the case for change. The scope for improvement in vehicle inspection had been well known to policymakers in the sector for some time. For example, in 1999 NZIER conducted a CBA for the Land Transport Safety Authority (now the New Zealand Transport Agency [NZTA]) of the WoF system, which suggested reform was warranted. In short, vehicle inspection was an obvious candidate for reform as 'the size of the prize was well worth going after'.

Table 5.1. Vehicle Licensing Reforms at a Glance

| Element | Status Quo Ante | What Changed |
|------------------------------|--|--|
| Light Vehicles | Annual Warrant of Fitness inspections for first 6 years and every 6 months thereafter | No annual inspections for the first 3 years. Annual inspections for vehicles 3 years and older and first registered on or after 1 January 2000. No change for older vehicles |
| Heavy Vehicles | Certificate of Fitness inspections conducted by a separate garage from vehicle repairs | Inspection and repairs could be undertaken at the same facility and greater choice was available of inspection provider was enabled. No change in the frequency |
| Transport Services Licensing | Licences issued so long as applicants meet basic criteria | No change |
| Vehicle Licensing | Annual licensing fee collected through a range of channels. | Minor technical changes to the payments system. |

Source: Compiled by the author.

Internal Organisational Dynamics within MoT and NZTA

The Chief Executive of the MoT was encouraging his organisation to stand back from the day-to-day management and look at the regulatory regimes afresh. He encouraged staff to respond to what was later termed the 'greatest imaginable challenge'. To respond to the challenge the ministry had been restructured into a matrix organisation, akin to a professional services firm. The VLR provided a programme that was suited to test the potential of the new structure. Within the NZTA, the leadership was emphasising a drive for results and a 'can do' culture about making this happen. Both organisations were conscious of the need to factor practical implementation issues into the policy design. As a result, in both organisations there was a willingness to look afresh and work together on reviewing the regulatory system that was in place.

An External Authorising Environment Supportive of Change

The combination of a potential public value proposition and an organisation's willingness are crucial but not sufficient to achieve change: what is also needed is political support from the external authorising environment.

At the start of the reform process, a national coalition government was beginning its second term with a continued agenda for 'better regulation, less regulation'.²⁰ Although vehicle licensing reform did not feature on any manifesto or explicit political agenda, it was in line with the philosophy of the government of the day. The new Minister of Transport and the Associate Minister consistently supported the changes being pursued, even in the face of a well-resourced lobbying campaign discussed below.

3. Sequence of Events

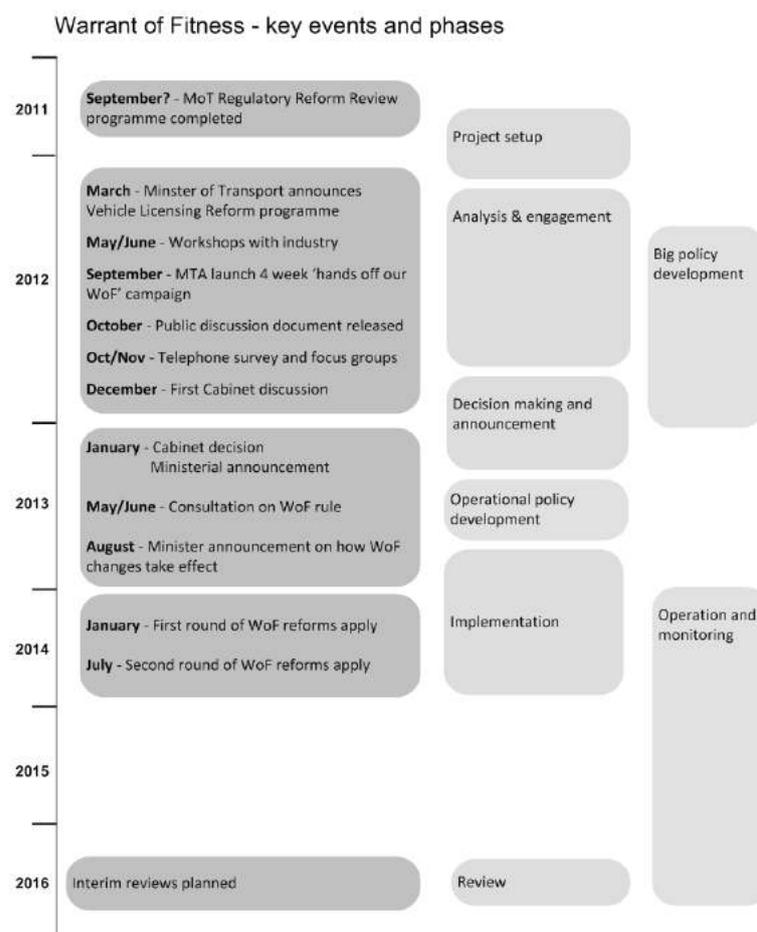
The programme has eight overlapping phases:

- project design and setup (late 2011–March 2012)
- analysis and policy engagement (early 2012–mid-2013)
- big policy development (mid-2012–December 2012)
- decision-making and announcement (December 2012–February 2013)
- operational policy development and engagement (March–August 2013)
- implementation (August 2013–July 2014)
- ongoing operation and monitoring (January 2014–present)
- review (scheduled for 2016 and 2018).

The key events and phases are shown in **Figure 5.5**.

²⁰ Measures supporting the delivery of the Government Statement on Regulation are:
 - 'Departments required to provide annual regulatory plans of all known and anticipated proposals to introduce, repeal or review legislation or regulation
 - Departments required to certify Regulatory Impact Statements and provide assurance that all policy options have been analysed and major risks and uncertainties identified
 - Departments required to put in place systems for continually and systematically scanning existing regulation to identify possible areas for reform or further review
 - Ministers required to certify that new regulation is consistent with the Government Statement on Regulation' (New Zealand Treasury, 2009).

Figure 5.5. Timeline for Light Vehicle Licensing Reform



MoT = Ministry of Transport; MTA = Motor Trade Association; WoF = warrant of fitness.
Source: Compiled by the author.

Project Design and Set-Up (late 2011–March 2012)

A number of features of the project design contributed to the ultimate success of the policy:

- The project was well resourced – both the MoT (enabled by the new matrix structure) and the NZTA devoted considerable staff resources to the project and financial resources were available to bring in external experts to lead the preparation and review of the CBA and undertake other technical analysis.
- The project was jointly led and managed by the MoT and the NZTA – the dedicated project team were collocated (in the MoT for the big policy and decision-making and in the NZTA for operational policy and implementation phases), with project management responsibility jointly shared between a staff member from the NZTA and the MoT staff and a

joint steering group that included both chief executives and key senior leaders.

- The project was well planned with detailed timelines.
- The project design included active communication and engagement with external stakeholders, but also organisational staff so that the policy design included consideration of implementation issues.
- The project design also factored in the formal requirements of the RMS including the RIS, allowing for interdepartmental consultation on the Cabinet paper, among others.

The project set-up phase culminated in March 2012 with the Minister of Transport publicly announcing the review and subsequently releasing the detailed review's terms of reference. The announcement emphasised public engagement with website pages and included an email address for questions and the shared leadership between the MoT and the NZTA.

Analysis and Engagement

To undertake the analysis, a multidisciplinary analysis team was set up separately from the policy team. A feature of the land transport sector is that it is relatively data rich with an extensive long running dataset (the Crash Analysis System). This team had the skills and resources required to undertake safety analysis, the economic analysis in the CBA, and subsequently the financial viability analysis that included the spatial impact of the proposed reforms on the automotive repair industry.

Stakeholder engagement was a feature of the initial analysis and subsequent big policy and operational policy development. There was extensive sector engagement through a Technical Advisory Group²¹ and wider public engagement through a website

(<http://www.transport.govt.nz/land/vehiclelicensingreformconsultation/#documents>). Engagement started with a series of workshops and a conversation paper for transport sector stakeholders to help promote discussion on the strengths and weaknesses of the existing systems. This was followed up with the release in September 2012 of a consultation document for public comment. The last stage

²¹ The Technical Advisory Group worked with the industry on the potential impacts to the industry. The group involves representatives from Vehicle Testing New Zealand, Vehicle Inspection New Zealand, Motor Trade Association, New Zealand Automobile Association, and Road Transport Forum.

of the public engagement was a telephone survey and series of focus groups to take the pulse of public sentiment on the issues.

This active outreach and engagement did not stop the industry from mounting a communications campaign on their own. Led by the industry lobby group, the Motor Trade Association, a large TV-based 'Hands off the WoF' campaign was launched at a cost of over \$NZ1 million. Engagement with the industry carried on in parallel with the lobbying campaign. However, overall the process of engagement was effective in getting most but not all stakeholders to be positive about the proposed reforms.

Big Policy Development

This was not a 'project design that started with writing the Cabinet paper'. Policy development was shaped by the analysis and at the core of the analysis was the CBA. The CBA identified a number of options and these options then shaped the advice in the Cabinet paper and the accompanying RIS (Ministry of Transport, 2013). The size of the NPV varied depending upon the option (Ministry of Transport, 2012):

- Option 1 – Annual inspections for all new vehicles, with 6-monthly inspections for vehicles after 12 years (NZ\$0.6 billion);
Option 2 – First inspection at 3 years of age, with annual inspections thereafter (NZ\$2.1 billion);
- Option 3 – Inspection based on distance travelled plus a default inspection for vehicles that have not had an inspection within 3 years (NZ\$2.1 billion);
- Option 4 – Inspection at sale with no periodic inspection (NZ\$2.8 billion);
- Option 5 (no WoF) had the highest NPV but all the options provided for significant saving compared to the status quo.

Decision-Making and Announcement

As might be expected with an active and well-funded publicity campaign, ministers engaged actively in the decision-making process. The initial paper considered by the Cabinet in late 2012 was not approved. Formally, Cabinet papers are never rejected; they are only deferred or withdrawn. As a result, officials worked with the Minister of Transport to develop a revised paper which included a new option 2A. Option 2A was similar to option 2, but with 6-monthly

inspections for vehicles manufactured before 1 January 2000. The NPV of this option (NZ\$1.8 billion) was lower than that of option 2 (\$2.1b) as light vehicles first registered before 1 January 2000 remained on 6-monthly inspections for their lifetime. This was the option that the Cabinet approved, leading to a public announcement on 27 January 2013.

One issue that attracted a lot of ministerial attention was the impact on the ability of garages to service remote locations. Officials were able to provide ministers a one A3 page diagram that drew on some sophisticated geospatial analysis to show that the impact on rural servicing was limited. This A3 proved very important in helping the reform over the line. Three factors contributed to this analysis being undertaken:

- MoT officials were acutely conscious of the importance of winners and losers.
- NZTA had a performance measure relating to the geographical coverage of ready access to land transport services.
- The requirement for the RIS to include an assessment of the impact of the reforms reflected in the RIS guidance that emphasised looking at a range of impacts on different groups.

The RIS requirement strengthened the hand of those that wanted to undertake detailed financial modelling of the impact on rural garages, which in turn was influential in helping get political commitment to the reforms.

Operational Policy Development

With the big policy phase over, the project entered a new phase. The project team was relocated to the NZTA (the agency that would oversee the ongoing operation of the changes), but the overall programme structure (including joint project manager and joint chief executive leadership) remained in place. The new option approved by the Cabinet had not emerged from a process of identifying what was politically feasible; rather, it came from pure rational policy analysis based on optimising the NPV. Detailed development of this option required careful design to implement the changes, so the load of inspection work was spread over the year. As a result, a transitional phase-in was developed. In April 2013, the government issued a consultation document on the proposed amendment to the rules. Finally, in August 2013 the government announced that the WoF initial changes would take effect from 1 January 2014 for some light vehicles and from 1 July 2014 for others.

Implementation

With the completion of the operational policy phase, the programme shifted into change implementation. This involved a significant change management task, with big changes in information technology systems and operating procedures, and most importantly getting enforcement staff and providers on board with the changes. NZTA lead a series of workshops all over the country to explain to the vehicle testing industry what the changes would entail. The success of the implementation was reflected in the successful transition to the new regime in 2014.

Ongoing Operation, Monitoring, and Review

This case study has been prepared at a time when the impact and outcome from the VLR has yet to be formally assessed. The programme plan includes provision for an interim review (formative evaluation) after 2 years and a full review (summative evaluation after 4 years' operation). In addition, in a data-rich sector such as land transport, there are a number of indicators that the NZTA intend to monitor, including WoF and CoF prices, access to WoF and CoF services, road safety statistics on the number of crashes, deaths, and injuries, and causal factors. WoF and CoF fail rates by nature and level of vehicle defects, performance ratings for WoF and CoF inspectors, and WoF and CoF related infringements. Until the results of the interim and full review emerge, the benefits remain projected, but to date there has been no information in the monitoring that suggests the benefits would not be realised or the costs any higher than anticipated.

Standing back from the individual stages, a number of features of this case help to explain the success of the programme to date:

- the leadership and mandate for change provided by the two chief executives and their senior leadership teams;
- the political support provided by the minister and the associate minister;
- the effective partnership between the MoT and NZTA in teaming up and driving change through the policy phase and into execution;
- the openness of the process with high transparency and stakeholder engagement built into the design from the onset;
- the rigorous analysis used to support the policy process including safety analysis of crash data, use of CBA, and financial modelling;
- project design and project management disciplines which ensured that the project was properly structured, planned, resourced, and supported.

Interestingly, this list does not include many of the elements of an RMS. It is to the role of an RMS that we now turn.

4. Role of a Regulatory Management System

The entire discussion of the case so far has proceeded almost without reference to the formal RMS. The programme was underpinned by a strong public value proposition, was well resourced and designed, well led, with strong political support, effective communication and engagement, and stakeholder management. On the face of it, the impact of the RMS was limited.

At the time the VLR programme was launched (March 2012), the main focus of the New Zealand RMS was on the flow of new regulations. There were no formal requirements to manage or review the stock of existing regulations, beyond the light-handed requirement for regulatory scanning and planning announced in the 1989 Government Statement on Regulation.²² The reforms that emerged for the programme were subject to the policy scrutiny through the usual departmental consultation process on Cabinet papers and a regulatory impact assessment, but that came at the end of the process.

There are no formal legal requirements in New Zealand that require a generic policy development process or public engagement, although Cabinet expectations for how new regulations are developed are embodied in the 2009 Cabinet Office Circular (New Zealand Government, 2015) and the guidance in the RIA Handbook (New Zealand, 2013). In the case of VLR, the project design included a detailed policy development and stakeholder engagement process. For example, there was extensive stakeholder engagement in the analysis phase, then formal consultation at the big policy phase with a discussion document, and another round of consultation on the details of the proposed rule-making. The

²² The Cabinet minute setting out the detail of the Government Regulatory Policy statement (Cabinet Minute (09)27/11) set out deadlines for departments to provide regulatory plans by mid-December 2009 and scans by 30 June 2010. The 2009 Cabinet Circular – CO(09)8 – Regulatory Impact Assessment Requirements: New Guidelines – has recently been withdrawn with the contents now included in Treasury guidance. In August 2012, as the VLR approached its crucial stage, the Treasury published Best Practice Regulation assessments of all departments including those of MoT. These assessments were at a higher level of granularity at the regime level, so they do not specifically mention the WoF/Certificate of Fitness project.
<http://www.treasury.govt.nz/economy/regulation/bestpractice/bpregmodel-jul12.pdf>

whole programme was transparent, with all the key papers being publicly available on the Internet. In addition, there was regular industry stakeholder engagement throughout the process.

Although the formal RMS had limited direct impact, it would be a mistake to conclude that it had no effect. The planning in the project design factored in the formal requirements of the RMS that had to be met, including the RIS and interdepartmental consultation on the development of the initial Cabinet paper (on the public consultation document) and the final decision paper. As a result, the 'disciplines' provided by the RMS provided a buttressing or scaffolding effect that helped the VLR programme stand on its own.

Two examples were made by interviewees to illustrate this. First, the government policy statement on 'Better Regulation, Less Regulation', although not directly important, strengthened the mandate of the two chief executives as they drove the reform through some internal resistance within their organisations.

Second, the RIA – although largely based on CBA and hence not onerous to produce – did play an indirect role in the success of the policy. This was because of its focus on regulatory impact. In a sense, the RIS was telling people to do what they already knew was required to run a robust policy process – but the formal requirement strengthened the hand of the programme team in securing commitment and resourcing. This analysis was influential in helping ministers decide to proceed with the reform.

5. What Difference Could An Enhanced RMS Have Made?

In the final section, we pose a hypothetical question 'What role could an enhanced RMS have played in the case of vehicle licensing?' To be specific, if the reform regime proposed by the development of the 2012 Cabinet paper had been subject to an enhanced RMS, would the outcome have been different? A high-performing or requisite regulatory system needs to have three components:

- a quality policy cycle (including good analysis and legal policy development);
- supporting policy practices (such as engagement, accountability, transparency, and consultation); and
- capable oversight institutions (for big policy, legal policy, and administration).

The WoF is a textbook case study of a high-quality policy process, supported by extensive consultation and engagement, high levels of transparency, and in an area where rich datasets make monitoring easy. In this case the role of the oversight institutions was limited. New Zealand has two key oversight institutions – the Treasury, which is the lead on ‘big regulatory policy’ issues, and the Parliamentary Counsel, which takes a leading role in the drafting of primary legislation and secondary regulations. The Treasury’s review role had a limited but supportive impact on the big policy development in this case and the legal issues raised by the rule-making were limited.

What is striking about this case is ‘the dog that didn’t bark’ (Doyle, 1892) – why did it take so long for the New Zealand vehicle inspection system to respond to improvements in vehicle technology and reliability? In part, this reflects the extent of the focus of the New Zealand RMS of the time on the flow of new regulations rather than the stock of existing regulations. An enhanced RMS, with an enhanced emphasis on active management of the stock, would have triggered an earlier review of the outdated WoF system.

This case study has been prepared at a time when the impact and outcome from the VLR has yet to be formally assessed. There is a formal requirement for monitoring and review to be addressed as part of the RIA. In the case of VLR, this includes details on the indicators that would be monitored as part of business as usual and provision for an interim review after 2 years and full review after 4 years.

6. Conclusion

The case of WoF reform makes a simple point – with a robust policy process the elements of the RMS are easy to comply with. That is not a criticism of the RMS as a piece of dull regulatory compliance. One of the objectives of the RMS is to provide insurance against the risk of a poor policy development process. Where the policy process is robust, the role of the formal RMS is more limited and indirect. That is not to say the RMS had no effect and adds no value, however. The RMS (at least in New Zealand) is designed to highlight poor process. The public value of the RMS comes from encouraging good policy processes to occur by stopping poor regulations being introduced and ensuring outdated ones are reviewed.

The RMS played a supportive but minor direct role in the outcome of this case. Consistent with good generic policy development, there was an active process of engagement with stakeholders and transparency about the options and the trade-offs. A RIS was prepared (based on the CBA) at the end of the policy process, which had a minor impact on the policy outcome. The oversight institutions, though supportive, were not extensively engaged in the reform. The main impact of an enhanced RMS would have been that it would have triggered an earlier review of the outdated and costly WoF system.

Summary Comment

This paper has explored the evolution of regulation in New Zealand from sector-based regulatory review, through the adoption of a RIA, to the current increased emphasis of stock management. It showed how the evolutionary journey went through a number of phases as the capability to develop and manage regulations matured over time. Parts 2 and 3 explore how the RMS was applied to two case studies of regulatory change – one regulatory failure (building controls) and one success (the reform of motor vehicle licensing). The case studies highlight that an RMS is not a ‘silver bullet’, as regulations are by nature ‘experiments’, some of which will fail regardless of the RMS system in place.

However, the New Zealand experience suggests enhancing the RMS is analogous to buying an insurance policy with a low deductible and low premium (Gill, 2013). One pays a regular but low premium to receive a sporadic series of small claims, but with the added potential for a very large payoff thereby averting some significant damage. This analogy suggested that the RMS imposes low costs and has the potential to pay its way by identifying more effective interventions. Occasionally, the RMS process may avoid significant harm.

References

- Ayto, J. (2011), *Regulatory Impact Statement: Regulating for Better Legislation – What is the Potential of a Regulatory Responsibility Act?*
<http://www.treasury.govt.nz/publications/informationreleases/ris/pdfs/ris-tsy-rbr-mar11.pdf>

- Conway, P. (2011), 'How to Move Product Market Regulation in New Zealand Back Towards the Frontier', *OECD Economics Department Working Papers*, No. 880, Paris: OECD Publishing.
- Department of Building and Housing (DBH) (2010), *Regulatory Impact Statement on the Building Act Review*. <http://www.dbh.govt.nz/ris-building-act-review#aid3>.
- Doyle, A.C. (1892), 'The Adventure of Silver Blaze' in *The Memoirs of Sherlock Holmes*.
- Gill, D. (2011), 'Regulatory Management in New Zealand: What, How and Why?', in S. Frankel (ed.), *Learning from the Past, Adapting for the Future. Regulatory Reform in New Zealand*. Wellington: LexisNexis NZ, pp.173–214.
- Gill, D. (2013), 'Applying the Logic of Regulatory Management to Regulatory Management in New Zealand', in S. Frankel and D. Ryder (eds.), *Recalibrating Behaviours: Smarter Regulation in a Global World*. Wellington: LexisNexis NZ, pp.559–99.
- Gill, D. and S. Frankel (2014), 'Learning the Way Forward? The Role of Monitoring, Evaluation and Review', in S. Frankel and J. Yeabsley (eds.), *Framing the Commons: Cross-Cutting Issues in Regulation*. Wellington: Victoria University Press.
- Greenstone, M. (2009), 'Toward a Culture of Persistent Regulatory Experimentation and Evaluation', in D. Moss and J. Cisternino (eds.), *New Perspectives on Regulation*. Cambridge, MA: The Tobin Project, pp.111–25.
- Hensen, M., J. Zuccollo, and J. Yeabsley (2013), 'Weathertight Buildings and Performance-based Regulation: What Lessons can be Drawn from a Complicated and Evolving Situation?', in S. Frankel and D. Ryder (eds.), *Recalcitrant Behaviour Smarter Regulation in the Globalised World*. Wellington: LexisNexis NZ, pp.449–95.
- James, C. (1986), *The Quiet Revolution: Turbulence and Transition in Contemporary New Zealand*. Wellington: Allen & Unwin.
- Layton, B. (2011), 'Regulating the Building Industry – A Case of Regulatory Failure', in S. Frankel (ed.), *Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand*. Wellington: LexisNexis NZ, pp.311–37.
- Manch, K., P. Mumford, S. Raj, and B. Wauchop (2015), 'Watching the Birth of the Regulatory Profession', *IPS Policy Quarterly*, 11(4), pp.71–6.

- McGee, D. (2005), *Parliamentary Practice in New Zealand*. Wellington: Dunmore Publishing Limited. http://www.parliament.nz/en-nz/about-parliament/how-parliament-works/ppnz/00HOOOCPNZ_271/chapter-27-the-legislative-process#_Toc267314
- Ministry of Transport (2012), *Vehicle Licensing Reform: Interim Cost Benefit Analysis Report. Warrant of Fitness Reform Options*. <http://transport.govt.nz/assets/Import/Documents/VLR-Cost-Benefit-Analysis-Report.pdf>
- Ministry of Transport (2013), *Vehicle Licensing Reform: Regulatory Impact Statement. Warrant of Fitness and Certificate of Fitness*. <http://transport.govt.nz/assets/Import/Documents/VLR-Regulatory-Impact-Statement.pdf>
- Mumford, P. (2011), *Enhancing Performance-Based Regulation: Lessons from New Zealand's Building Control System*. Wellington: Institute of Policy Studies. www.victoria.ac.nz/vbs/research-services/documents/PeterMumford.pdf
- New Zealand Government (2015), *Government Response to the New Zealand Productivity Commission Report on Regulatory Institutions and Practices*. <http://www.beehive.govt.nz/release/government-drive-lift-regulatory-quality>
- New Zealand Productivity Commission (2013a), *Local Regulation Final Report*. <http://www.productivity.govt.nz/inquiry-content/1510?stage=4>
- New Zealand Productivity Commission (2013b), *Towards Better Local Regulation*. www.productivity.govt.nz/sites/.../towards-better-local-regulation.pdf
- New Zealand Productivity Commission (2014), *Regulatory Institutions and Practices. Final Report*. <http://www.productivity.govt.nz/inquiry-content/1788?stage=4>
- New Zealand Treasury (2009), *Statement on Regulation: Better Regulation, Less Regulation*. <http://www.treasury.govt.nz/regulation/informationreleases/statement>
- New Zealand Treasury (2012a), *The Best Practice Regulatory Model: Principles and Assessments*. www.treasury.govt.nz/regulation/bpr/bpregmodel-jul12.pdf
- New Zealand Treasury (2012b), *A Revised Regulatory Standards Bill. A Treasury Discussion Document with Indicative Legislation*. <http://www.treasury.govt.nz/economy/regulation/inforeleases/pdfs/reg-2320508.pdf>

- New Zealand Treasury (2013), *Regulatory Impact Analysis Handbook*.
<http://www.treasury.govt.nz/regulation/regulatoryproposal/ria/handbook>
- New Zealand Treasury (2015), *The Best Practice Regulatory: Principles and Assessments*. <http://www.treasury.govt.nz/regulation/bpr/bpregpa-feb15.pdf>
- Organisation for Economic Co-operation and Development (OECD) (2011), *OECD Economic Surveys – New Zealand*. Paris: OECD Publishing.
- Palmer, G. (1979), *Unbridled Power*. Wellington: Oxford University Press.
- Palmer, G. and M. Palmer (1997), *Bridled Power: New Zealand Government under MMP*. Auckland, New Zealand: Oxford University Press.
- PricewaterhouseCoopers (PwC) (2009), *Weathertightness – Estimating the Cost*. Report prepared for the Department of Building and Housing.
www.dbh.govt.nz/UserFiles/File/News/WHRS/pdf/PWC-weathertightness-estimating-cost-full-report.pdf
- Sapere Research Group (2015), *Regulatory Impact Analysis Evaluation 2015. Report Prepared for the Treasury*.
<http://www.treasury.govt.nz/regulation/informationreleases/riareview>
- Scott, P. (2013), 'Competition Law and Policy: Can a Generalist Law be an Effective Regulator?'. In S. Frankel and D. Ryder (eds.), *Recalibrating Behaviours: Smarter Regulation in a Global World*. Wellington: LexisNexis NZ, pp.385–448.
- Social Progress Imperative (2014), *Social Progress Index*
<http://www.socialprogressimperative.org/data/spi>
- Transparency International New Zealand (2014), *Corruption Perceptions Index*.
<http://www.transparency.org.nz/Corruption-Perceptions-Index>
- United Nations Development Programme (UNDP) (2014), *Human Development Index Statistical Tables*. Table 1: Human Development Index and its Components. <http://hdr.undp.org/en/data>
- World Bank (2015), 'Country Data Report for New Zealand, 1996–2014', in *Worldwide Governance Indicators*.
<http://info.worldbank.org/governance/wgi/pdf/c168.pdf>
- World Justice Project (2015), *Rule of Law Index*.
<http://worldjusticeproject.org/rule-of-law-index>

PART THREE

REGULATORY COHERENCE: THE CASE OF THE PHILIPPINES

GILBERTO M. LLANTO

Philippine Institute for Development Studies

REGULATORY COHERENCE: THE CASE OF THAILAND

SUMET ONGKITTIKUL

Thailand Development Research Institute

NICHAMON THONGPHAT

Thailand Development Research Institute

REGULATORY COHERENCE: THE CASE OF VIET NAM

VO TRI THANH

Central Institute for Economic Management

CUONG VAN NGUYEN

Institute of Legal Science

REGULATORY COHERENCE: THE CONTRASTING CASES OF MALAYSIA AND SINGAPORE

DATO' ABDUL LATIF BIN HAJI ABU SEMAN

Malaysia Productivity Corporation

HANK LIM

Singapore Institute of International Affairs

SHAHRIZA BAHARI

Malaysia Productivity Corporation

Chapter VI

Regulatory Coherence: The Case of the Philippines

Gilberto M. Llanto^{#§}

Philippine Institute for Development Studies

Part 1: The Evolution of Regulatory Management in the Philippines

This chapter examines the case of a regulatory management system for the Philippines and recommends specific measures for its institutionalisation in the Philippine policy space. The chapter has three parts. Part 1 describes the overall experience of the country in regulatory reform, highlighting the challenges in its journey towards regulatory quality and coherence, and identifying the steps in constructing a responsive regulatory management system (RMS). It comprises four subsections: (i) introduction and country context, (ii) recent regulatory reform, (iii) the current state of the RMS, and (iv) an assessment of the regulatory management system. Parts 2 and 3 discuss two successful case studies of regulatory reform at the national and the local government levels. The first case study (Part 2) reviews the experience of the National Competitiveness Council (NCC), in a public–private partnership mode, in working with various national government agencies and local government units to establish policies and procedures to reduce the time and cost of doing business in the country in order to improve the overall business and investment climate. The second case study (Part 3) narrates the reforms undertaken by the Quezon City local government in business permit and licensing procedures to reduce the time and cost of doing business and attract more private sector investment to the city. The two case studies demonstrate that regulatory reform at the national and local levels can be effectively implemented through a formal, deliberative reform process.

[#] President, Philippine Institute for Development Studies.

[§] This research was conducted as part of the collaborative project of the Economic Research Institute for ASEAN and East Asia (ERIA) and New Zealand Institute of Economic Research (NZIER), ‘Towards Responsive Regulations and Regulatory Coherence in ASEAN and East Asia: Deconstructing Effective and Efficient Regulatory Management Systems’. The author is grateful to the following: Ponciano Intal, Jr., Ruy Moreno, and Derek Gill for very constructive comments; Ma. Kristina Ortiz and Cherry Ann Madriaga for research assistance; and Bill Luz and Faisah de la Rosa (NCC), and Garry Domingo (Quezon City Business Process and Licensing Office) for information on the case studies.

1. Introduction and Country Context

In the emerging Association of Southeast Asian Nations (ASEAN) Economic Community, regulatory quality and coherence will be critical in stimulating investments and improving the overall business and investment climate. The different countries in the region are concerned not only with aligning and harmonising regulatory frameworks but also, first and more fundamentally, in reducing the regulatory burden, and improving regulatory quality and coherence. To achieve these objectives, the literature suggests the establishment of an efficient and effective RMS, which will be a critical mechanism for 'reducing the costs of doing business, facilitating international trade and investment, and improving regulatory outcomes in areas such as health, safety and environmental protection'. The assessment of existing or proposed regulations may be effectively undertaken through a good RMS, which then identifies the best choice of policy options (OECD, 2009) to achieve a regulatory objective, while at the same time reducing the burden on consumers and firms. Thus, an efficient and effective RMS is of paramount importance to the Philippines to achieve higher societal welfare, greater efficiency and competitiveness of firms, and more efficient integration with the ASEAN Economic Community.

Modern societies need effective regulations to support growth, investment, innovation, and market openness. Governments use regulations as an instrument to influence or direct cognitive and behavioural changes in consumers (e.g. taxing tobacco and liquor) and firms (e.g. permitting and licensing regimes) in order to achieve certain policy goals (OECD, 2010). These policy goals range from economic to political to social policy objectives. Government use regulations to mediate diverse competing interests in complex, evolving societies. Effective regulation is necessary both at the macro level and at the level of firms and consumers. The ultimate objective of such government intervention is to uphold public interest and the general welfare. In many developing countries, where institutions tend to be weak and missing markets result in inefficiencies, regulation is one of several policy tools wielded by government to address failures of the market to produce desirable social outcomes. This view of regulation rests on standard public interest theory that in turn rests on two assumptions pointed out in Shleifer (2005): (i) unhindered markets often fail because of the problems of monopoly or externalities, and (ii) governments are benign and capable of correcting these market failures through regulation.

However, there are also concerns, especially among business firms, over the deleterious impact of poor and inefficient regulation. Poor regulatory environments undermine business confidence and competitiveness, erode public trust in government, and encourage corruption in public institutions and public processes (OECD, 2010). Cases of regulatory failure and capture, which could be very costly and detrimental to the affected parties and to the economy as a whole, are well documented in the literature. Several causes of regulatory failure have been cited: over-regulation that stifles business productivity and creativity to innovate; under-regulation that enables firms to produce shoddy products and services, thereby impairing consumer welfare; and poorly designed regulation and faulty implementation compounded by weak institutional capacities that create a regulatory burden on businesses. Regulatory capture contradicts the assumption of a benevolent and competent government (Stigler, 1971). With regulatory capture, firms can continue with monopoly pricing and, even in cases where the regulators try to promote social welfare, they are incompetent and rarely succeed (Peltzman, 1989). Thus, the scope for government regulation is minimal at best, and such intervention is futile and dangerous even in the rare cases where there is scope (Shleifer, 2005).

These two views of regulation indicate the desirability of having an efficient and effective RMS. According to the public interest theory of regulation, regulations should be continuously reviewed and improved, and a functional RMS will be a good instrument to achieve this objective. Under the regulatory failure and capture theory, a functional RMS could be a strategic instrument to avoid such capture in view of its deliberative and transparent process of reviewing proposed or existing regulation, consulting, and publication of the approved regulation.

Thus, recent literature has made a strong case of reviewing and improving RMSs. Improving regulatory frameworks has become a major interest of policymakers since the mid-1990s, with governments increasingly becoming concerned not only about specific regulations in certain sectors, such as telecommunications and railways, but also about the overall quality of institutions and processes where regulations are set and implemented (Jakobi, 2012). The regulatory reform agenda has been a work in progress since the 1970s, when it had spawned different waves of regulatory reform: de-regulation, re-regulation, and the creation of independent regulatory agencies (Radaelli and Fritsch, 2012). These reforms seem to be the response to over-regulation, poorly designed regulation, and faulty implementation of regulation. Thus, across Europe, where the impulse

to reform regulations has been strongest, regulatory reform 'has become considerably more complex' (De Francesco and others, 2011, p. 2) but at the same time, major innovations to reform regulations have emerged. A major innovation is regulatory impact assessment described by De Francesco and others (2011) as 'an administrative obligation to follow a set of rules for the definition of policy problems, the appraisal of the status quo, the identification of regulatory options, consultation of stakeholders and the economic analysis of feasible options'.

The emphasis of regulatory reform agendas has been on improving or ensuring the 'quality of regulation' (Radaelli and Fritsch, 2012), developing 'smart regulation' (Baldwin, 2005; Jensen et al., 2010) or installing 'regulatory oversight' (Alemanno, 2007; Weiner and Alemanno, 2010).¹ Regulatory reform includes both 'better quality' regulation through more effective alignment of regulatory means to achieve policy goals, and 'regulatory relief' through administrative simplification and deregulation to reduce the burden of regulation (Gill, 2011).

The Organisation for Economic Co-operation and Development (OECD) has pioneered reforming regulatory policies and practices. A good RMS helps identify the best choice of policy options and reduces unnecessary burdens on citizens and firms (OECD, 2009). Related to this, most OECD countries have introduced burden-reduction programmes to counteract the growing layers of red tape (OECD, 2009). Reform of RMSs looks critically at 'processes by which new rules are made and existing rules are reviewed and reformed. Such processes aim to produce effective and efficient regulations; that is regulations that achieve the stated policy objectives and optimise economic benefits' (OECD, 2009).

Gill (2014) points out that every country has a unique regulatory system to make laws, regulations, and rules and to review them. Countries are introducing changes in their respective RMS and strengthening institutions to make their regulatory systems more effective. The RMS is a system comprised of four elements: (i) regulatory quality tools, (ii) regulatory processes, (iii) regulatory institutions, and (iv) regulatory policies (OECD, 2007).² Gill (2014) makes a distinction between the *formal* RMS ('what is in place') and the *requisite* RMS ('what is required for an ideal or high-performing regulatory system'). The

¹ Cited in Radaelli and Fritsch (2012).

² Cited in Gill (2014).

requisite RMS is understood as having a 'full set of functionality that is needed in a high-performing or ideal system', with the following four elements: 'the policy cycle, supporting practices and institutions, and a regulatory strategy' (Gill, 2014).

This distinction is important for understanding what is needed to have an efficient and effective RMS. A formal RMS existing in a given country produces regulation aimed at influencing or directing firm or consumer behaviour, but that regulation could be inefficient or ineffective. Based on Gill's distinction, it is the requisite RMS with its full set of functionality that can offer the decision maker the best choice of several policy options.

This perspective informs the discussion in this chapter of the Philippines' experience with regulatory reforms, the current state of regulations in the Philippines, and the steps being taken to improve regulatory quality. At the outset, it is useful to point out that there is no formal, coherent RMS in the country, much less the requisite RMS, but the basic elements of such an RMS are already present. The challenge is to pull these together to form a formal RMS.³ This chapter identifies gaps and outstanding issues that policymakers and the private sector should address to develop a formal RMS in the Philippines.

A formal and requisite RMS will be an important policy tool to achieve the inclusive growth agenda of the Philippine Development Plan, currently covering the period 2011–2016. The Philippines has embarked on a number of policy, regulatory, and institutional reforms in recent decades and the hard work has paid off in terms of the economy's recent remarkable performance amid the lingering slowdown in the global economy, and the devastation brought about by natural disasters. The economy grew at 7.2 percent in 2013, and 6.1 percent in 2014. With gross domestic product (GDP) growth averaging 6.7 percent over the past 3 years, the Philippines is one of the better performers among developing economies.⁴ Strong macroeconomic fundamentals (low and stable inflation, moderate interest rates, a stable banking system, sustainable fiscal and external positions, political stability, and good governance) underpinned this performance

³ There is a need to establish first a formal RMS; making it requisite is a process over time.

⁴ The recent economic performance was a striking contrast to past chronicles of the Philippine boom-bust growth record. Some analysts observed that while Philippine growth record in the 1960s and 1970s was comparable to that of its ASEAN neighbours, a pronounced divergence from that growth path occurred in the 'lost decade' of the 1980s until the early 1990s (Balisacan and Hill, 2003).

(Llanto and Navarro, 2014). **Table 6.1** compares recent GDP growth performance across ASEAN members.

Table 6.1. GDP Growth Rates in ASEAN, 2010–2015

| | 2010 | 2011 | 2012 | 2013 | 2014 ^f | 2015 ^f |
|-------------------------|------|------|------|------|-------------------|-------------------|
| Brunei Darussalam | 2.6 | 3.4 | 0.9 | -1.8 | 1.1 | 1.2 |
| Cambodia | 6.0 | 7.1 | 7.3 | 7.5 | 7.0 | 7.3 |
| Indonesia | 6.2 | 6.5 | 6.2 | 5.8 | 5.3 | 5.8 |
| Lao PDR | 8.1 | 8. | 7.9 | 8.0 | 7.3 | 7.4 |
| Malaysia | 7.4 | 5.1 | 5.6 | 4.7 | 5.7 | 5.3 |
| Myanmar | 9.6 | 5.6 | 7.6 | 6.8 | 7.8 | 7.8 |
| Philippines | 7.6 | 3.7 | 6.8 | 7.2 | 6.2 | 6.4 |
| Singapore ^{a/} | 15.2 | 6.1 | 2.5 | 3.9 | 3.5 | 3.9 |
| Thailand ^{b/} | 7.4 | 0.6 | 7.1 | 2.9 | 1.6 | 4.5 |
| Viet Nam | 6.4 | 6.2 | 5.2 | 5.4 | 5.5 | 5.7 |

ASEAN = Association of Southeast Asian Nations.

Notes:

a The GDP estimates at constant prices are chain-linked at the base year to preserve the price structure. Additivity prior to the base year may be lost in the process.

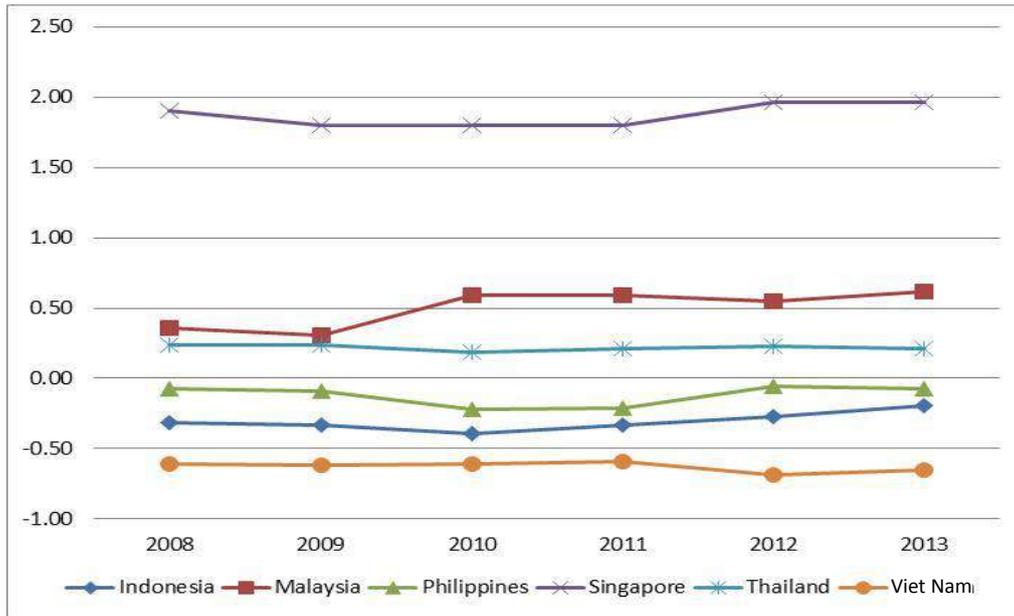
b In 2012, Thailand changed its concepts, methods, and practices for compiling its national accounts to comply with relevant international standards. The national accounts compiled on the revised basis are available only for 1990–2012. In the absence of the 2013 estimates, selected key national accounts aggregates were derived by ADB using growth rates from Thai National Accounts compiled based on the old series. Users should be cautious when using the ADB-derived estimates for 2013. The growth rate for 2013 is preliminary and is based on the old national accounts series.

f - forecast based on Asian Development Bank (ADB) (2014).

Sources: ADB (2014); ADB Statistical Database System.

The Philippines is a democratic republic with a vibrant market economy. The private sector and civil society have actively engaged and collaborated with government on economic policy and regulatory reforms. In the past, regulatory reform has largely been the effort of government, but now with ample democratic space, dialogues and consultations with private business and civil society have become an indispensable process in regulatory reform. The enormous challenges in regulatory reform are illustrated in **Figure 6.1**.

Figure 6.1. Regulatory Quality in the Philippines, 2008–2013



Note: Governance Score (-2.5 to +2.5).

Source: World Bank's Worldwide Governance Indicators (WGI) project.

2. Recent Regulatory Reforms

Regulatory reforms happen within the context of a country's political framework. To understand the evolution of regulatory reform initiatives in the country and focus on a strategy for developing an RMS, this section briefly explains the country's political framework and the relative roles of the executive and the legislature in regulatory reform,⁵ before providing the highlights of the regulatory reform experience in the country.

The Philippines follows a presidential system and has a tripartite democratic governance structure composed of the executive, a bicameral legislature, and judicial branches of government. The executive branch is headed by an elected President. A professional civil service (bureaucracy) mans the different departments (ministries) that implement government policy directives and programmes, and delivers public goods and services to a large population nearing 100 million as of 2014. Department secretaries (ministers) and their immediate subordinates (undersecretaries, assistant secretaries, and directors) are appointed by the President of the Philippines. Local governments at the

⁵ I thank Derek Gill for this idea.

provincial, municipal, and city levels enjoy local autonomy following the enactment of the 1991 Local Government Code that decentralised and devolved certain powers and responsibilities, such as the delivery of health care services, to local governments. Local officials – for example, provincial governor and city or municipal mayor – are elected at the local level.

The bicameral legislature or Congress is composed of the larger House of Representatives, where representatives are elected by congressional districts, and the (smaller, with fewer members) Senate, whose members are elected nationwide. An independent Supreme Court has jurisdiction over the judicial branch of government and supervises all types of courts, including regional trial courts, the Court of Appeals, etc. The country has an independent judicial infrastructure and independent constitutional bodies (Commission on Audit, Commission on Elections, and the Civil Service Commission) and a fairly well-developed civil society.

At the local level, municipal, city, and provincial governments enjoy autonomy but have remained partly dependent on the national government's fiscal transfers to finance local development expenditure. The 1991 Local Government Code devolved and decentralised taxing, borrowing, and service delivery powers to local governments. With respect to regulation, local governments impose tertiary rules or regulations such as licences and permits on firms through local ordinances presented and approved at local councils.

The form of government has a bearing on how a regulatory reform process can be implemented in a country. In the Philippines, the executive implements the laws enacted by Congress. It can broadly issue regulations in the form of executive orders (EOs), circulars, and presidential proclamations, which direct the behaviour of firms and individuals concerned, but these issuances may be revoked, amended, or changed by the succeeding President (Chief Executive). On the other hand, laws enacted by Congress have the full force of law and they are implemented by the Chief Executive, who neither can amend nor revoke them. Laws can only be changed, revoked, or amended by an act of Congress. In the Philippine context, 'regulations' are executive issuances to implement particular executive decisions or laws enacted by Congress. In the latter case, the government issues implementing rules and regulations (IRRs), which are the legal

instruments used to implement a law enacted by Congress.⁶ The IRRs seem analogous to the ‘secondary regulations to implement primary laws’ mentioned by OECD (2010) as a type of regulation under its comprehensive definition. As mentioned below, the other ‘types’ in the OECD’s list are primary laws and subordinate rules, administrative formalities, and decisions that give effect to higher-level regulations and standards. Gill (2014) lists the different types of regulations as primary laws, secondary regulations, and tertiary rules.

In contrast, in a parliamentary form of government, laws are essentially developed by the executive and ratified with some possible amendment by the legislature. Since the executive is represented in the parliament, it could be relatively easier to reform laws and regulations in this case.

Thus, in the Philippine context, certain regulations can be issued through executive fiat, which are implemented by the concerned government department (ministry). Local government regulation passes through an approval process at local councils. On the other hand, other regulations (laws) can only be issued by Congress but are implemented by the government. This is an important distinction because in the former case, the executive has a wide latitude for regulatory reform, whereas in the latter case the government has to work with and through Congress to change, amend, or revoke existing regulation (laws), or enact new regulation (laws).

It is important to have a clear definition of regulation and regulatory reform. Gill (2014) defines regulation as ‘a legal instrument to give effect to a government policy intervention. The term used for legal instrument varies by jurisdiction but includes all primary laws, secondary regulations or tertiary rules.’ An earlier definition by the OECD (2010) describes regulation more clearly as ‘any instrument by which governments, their subsidiary bodies, and supranational bodies (such as the European Union or the World Trade Organization) set requirements on citizens and businesses that have legal force. The term may, thus, encompass a wide range of instruments: from primary laws and secondary regulations to implement primary laws, subordinate rules, administrative formalities and decisions that give effect to higher-level regulations (for example,

⁶ Usually, through a committee composed of government departments, that is, ministries.

the allocation of permits), and standards'. The definition of regulation by the OECD and Gill are comprehensive and generic.

Applying this generic definition to the Philippine setting,⁷ regulation covers (i) laws enacted by the legislature, the 'primary laws'; (ii) regulations normally issued by the national government or a governmental regulatory body to implement a law enacted by Congress; and (iii) local government permits and licences, the 'tertiary rules' in Gill's (2014) taxonomy.

Regulations as commonly understood in the Philippine setting cover the following circulars, memorandum orders, or EOs issued by the national or local government to influence or direct private behaviour towards certain policy goals. This narrow definition of regulation is adopted for the simple reason that this is the type of regulation that is effectively controlled and implemented by the government. For example, the government can issue by executive fiat an EO to implement a particular policy. The EO can be modified, sustained, revoked, or amended by the incumbent Chief Executive without going through the tedious process of legislation. Under this narrow definition, regulations implemented by regulatory bodies as mandated by the laws and local government permits and licences are also included.

In tracing the country's journey in regulatory reform, this section highlights only some of the major regulatory changes or reforms of the recent past. The big policy changes occurred in the late 1980s until the decade of the 2000s. During at least 3 decades in the post-war period, trade and industrial policy supported an inward-looking import substitution strategy that was supported by an elaborate system of import controls, fixed exchange rates, licensing and permitting regimes.⁸ There were attempts to liberalise trade in the early 1980s, but the major effort in achieving greater openness of the economy and more vigorous trade liberalisation only started in the late 1980s under the administration of Corazon Aquino. From that time onwards, trade and industrial policies were geared towards trade liberalisation, privatisation, and deregulation (Medalla, 1986; Medalla, 1998; Llanto, 2014). The main driver of economic and regulatory reform

⁷ Judicial review/decisions of the Supreme Court and regulations issued by the Securities and Exchange Commission have the force of law.

⁸ This episode in Philippine economic history is well told by Bautista, Romeo, John Power, and Associates (1979) and Tecson (1996).

in the post-Marcos period, after 1986, was the desire to return to a growth trajectory and make this stable after years of patchy economic performance.

The foremost change following the demise of the Marcos regime in 1986 was the ratification of a New Constitution (1987) that returned the democratic framework of representative government and introduced a Bill of Rights that ensures the protection of the rights and welfare of the people. The Constitution called upon the State, among others, to promote industrialisation and full employment through industries that are competitive in domestic and foreign markets. Protection of Filipino enterprises against unfair foreign competition and trade practices was also incorporated in that basic law (Section 1, Article XII, 1987 Constitution). The 1987 Constitution provided democratic space for a rising dense network of various interest groups representing civil society, church groups, labour, and academia that competes with the traditional economic elite (supported by vested politicians) in influencing regulatory decisions and implementation, which was unthinkable under a restrictive governance framework of martial rule.⁹

The general tenor of post-Marcos reforms was reliance on private enterprise as the main engine of growth, with government providing the proper policy and regulatory framework. However, the irony was that certain economic provisions of the New Constitution restricted or limited foreign capital participation in the economy by explicitly favouring Filipino ownership and control of certain economic activities and resources. Later in the 2000s, the restrictive economic provisions of the 1987 Constitution, e.g. land ownership, were identified by some local commentators and foreign chambers of commerce as a constraint on attracting more foreign investment into the country.¹⁰

The Corazon Aquino administration pursued an aggressive regulatory reform programme by dismantling monopolies in certain industries such as sugar and coconut oil, and reducing tariffs on industrial products. In 1991, the Foreign

⁹ This is not to say that there were no such interest groups representing labour, church, and other stakeholders during the martial law regime. In fact, there were but they operated at great peril to life and property. The difference under a democratic framework is that dissent and protest can be more openly expressed and pursued without fear of retribution from an authoritarian state.

¹⁰ There was policy inconsistency in wanting greater openness of the economy and trade liberalisation and, at the same time, maintaining a studious effort to limit and, in some instances, shut out foreign capital.

Investment Act was enacted into law; it allowed foreign equity in Filipino enterprises to exceed 40 percent, provided the firm seeks no investment incentives and does not engage in activities appearing in the negative list of the Foreign Investment Act. The second phase of the Tariff Reform Program under EO No. 470, series of 1991, reduced the effective protection rates for industry. The third phase of the Tariff Reform Program implemented through EO No. 264 further reduced tariffs for industrial products to within the 3 percent and 10 percent range by 2000 (Medalla, 1996; Medalla, 1998; Llanto, 2014). The Ramos administration unilaterally put in place a profound tariff reduction and import liberalisation programme geared for long-term industrial restructuring (Canlas, 1996), but this happened mainly because of the support and cooperation of a political coalition hammered out in Congress. Other significant reforms in the 1990s covered central banking, energy, telecommunications, shipping, and water. Monetary policy, financial stability, and regulation of banks were strengthened through the creation of the *Bangko Sentral ng Pilipinas*, which replaced the debt-ridden Central Bank of the Philippines that had threatened to become a drag on the economy. The Public Telecommunications Policy Act enacted in 1995 provided a regulatory framework for the telecommunications industry, which had just emerged from a monopoly.¹¹ Water distribution in Metro Manila was privatised. This substantially improved coverage and delivery of water to millions of households and solved perennial problems of underinvestment and low quality service. A regulatory office was established to oversee the performance of the two private water concessionaires tasked with water distribution in Metro Manila. The regulatory reforms strengthened the market-oriented and outward-looking stance of the economy.

Several other important reforms took place in the 2000s – the General Banking Law of 2000 and the Retail Trade Liberalization Act, which opened retail trade to foreign investments, albeit with certain restrictions. The energy sector was reformed through the Electric Power Industry Reform Act of 2001 (EPIRA), which unbundled the electricity sector into generation, transmission, distribution, and retail supply, and introduced competition in the generation, distribution, and retail supply segments. Transmission was privatised through a grant of a concession agreement to a private operator. It is noted that the EPIRA took at least 10 years to pass and only under some political compromises covering

¹¹ President Ramos and his close advisor, General Almonte, were staunchly against monopolies in certain sectors.

generation and distribution, and condonation of debts of defaulting electric cooperatives.

At the local level, devolution and decentralisation under the 1991 Local Government Code shifted the responsibility of basic public service delivery to local government units (LGUs), such as (municipalities, cities, and provinces), and expanded the taxing and borrowing powers of local governments.¹² Those LGUs have a large role to play in simplifying local regulations and lightening the regulatory burden faced by firms that have located in their jurisdictions. Local governments are highly heterogeneous, with varying capacities for governance. Some local governments, such as those with better educated and reform-minded local chief executives, have managed to turn their localities into local growth centres by providing a local environment supportive of investments and business. Examples of this can be seen in Cebu City, Iloilo City, San Fernando City, Lipa City, and a few others. Others have lagged behind and have depended on fiscal transfers and financial assistance coming from legislators ('pork barrel' funds) to fund local development expenditures.

However, despite the raft of economic policy and regulatory reforms, poor governance weakens the impact of those reforms. The weaknesses and incompetence of some Philippine institutions have much to do with the overall poor quality of Philippine governance (Kauffman, Kraay, and Mastruzzi, 2007; Llanto and Gonzalez, 2010). **Figure 6.2** shows governance indicators for the Philippines, which were responsible for the relatively low ranking in investment climate assessments and global competitiveness reports. Indeed, the Asian Development Bank (ADB) (2007) opined that the regulatory burden was more acute in the Philippines than in its neighbours.

Political and institutional factors play a pivotal role in ensuring regulatory quality and coherence, or in waylaying good regulations. Alignment of political and institutional interests with regulatory objectives, and the expected benefits arising from the regulation almost ensure support for and implementation of those regulations. For example, the passage of excise taxes on 'sin' products¹³ and

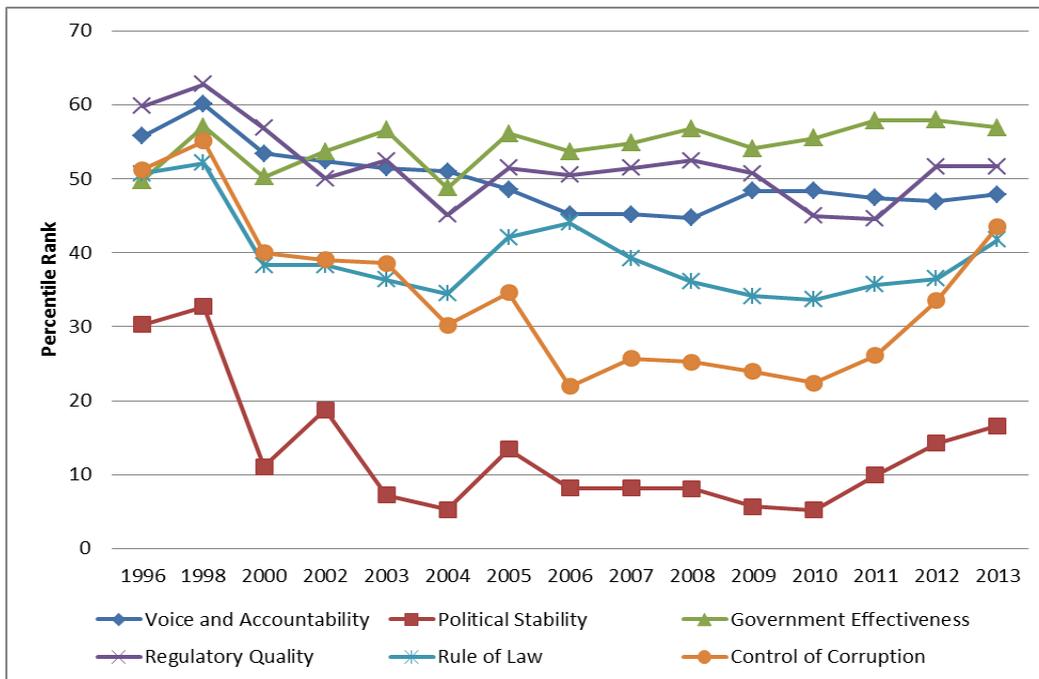
¹² The national government has retained major taxing powers (e.g. income taxation, value-added taxation) and shares national revenue collections with local governments through fiscal transfers, basically the internal revenue allotment.

¹³ The 'sin' products are demerit goods such as tobacco and liquor.

spending of proceeds in support of health sector projects. Political support to excise taxes on tobacco and liquor, and earmarking the proceeds from the excise taxes on those 'sin' products project a good image of supportive politicians in the electoral space.¹⁴

In other instances, satisfaction of personal political objectives collide with regulatory reform efforts.¹⁵ Tension exists between implementation of good regulations on the one hand, and weak capacity of Philippine institutions on the other, with the intervention of conflicted politicians who have no incentive to arbitrate among competing interests with the general welfare of society as ultimate objective.

Figure 6.2. Governance Indicators for the Philippines, 1996–2013



Source: World Bank's Worldwide Governance Indicators.

The short narrative of the experience with regulatory reform in the country highlights a few salient points that are necessary to understand the Philippine regulatory review process described in Section 3 below:

¹⁴ Lobby to dilute the sting of sin taxes is strong, nevertheless, the proposed taxation passed.

¹⁵ A good example is crony capitalism under the Marcos regime, which political allies of the reigning strong man used to accumulate wealth at the expense of the common weal.

- In the past, critical regulatory reforms were vigorously undertaken under a reform-minded government (Corazon Aquino, Fidel Ramos) and a regime of democratic governance where consultation and dialogue are important processes used to generate stakeholder support. Regulatory reform efforts can be attenuated by political events or phenomena that may distract or compromise the leadership (e.g. the Estrada and Arroyo administrations that faced political upheavals during their respective regimes).
- It was much easier to undertake regulatory reform that can be done through executive fiat rather than through reforms that need legislation. Certain regulatory reforms covering various sectors (water, telecommunications, banking, sugar, and coconut oil) were successfully undertaken by the executive branch of government, but not without strong opposition from vested interests.
- Regulatory reform passing through the legislative process was much harder to undertake, with reform efforts that could span several administrations, for example, energy reform under the Electric Power Industry Reform Act.
- The presence of committed reform champions¹⁶ as a significant factor in achieving those regulatory reforms despite opposition by vested interests has to be recognised.
- Despite the raft of good regulatory reforms, regulatory quality was poor. Weak institutional capacity for regulation and the absence of a more deliberative process of review, consultation, publication, and approval of proposed regulatory changes (new regulation or changes in existing regulation) had much to do with poor regulatory quality.
- Regulatory reform efforts happen at two levels: the national and local government levels. Local governments exhibited varying success in reforming local policies and ordinances.

¹⁶ For example, Corazon Aquino, Fidel Ramos, and Jose Almonte. General Jose Almonte was the most trusted advisor of President Ramos.

3. Brief Overview of Regulatory Management Systems in Two ASEAN Countries

The Philippines has no formal RMS in the country as commonly understood and implemented in countries such as New Zealand and Malaysia. To understand what the Philippines lacks in the area of RMS, it will be useful to compare the Philippine practice with that of Malaysia, a neighbouring ASEAN country that has developed a functional RMS. The brief comparison shows that the Philippines has some of the elements of a functional RMS but they are not effectively coordinated and woven into a coherent RMS.

4. Malaysia's Regulatory Management System¹⁷

The Malaysian government's New Economic Model that envisioned Malaysia as a developed economy by 2020 strongly indicated the need for good regulatory management to improve regulatory quality. Good regulatory quality helps fulfil several policy objectives of the New Economic Model that include:

- removal of barriers and reduction in the cost of doing business,
- improvement in decision-making for policy implementation, and
- improvement in economic efficiency through enabling fair competition.

According to the National Economic Advisory Council, as of 2010, there were over 3,000 regulatory procedures weighing heavily on businesses, administered by 896 agencies at the federal and state levels (Seman, 2014). To improve regulatory quality, the government established a formal RMS with four elements: regulatory policies, regulatory institutions, regulatory procedures, and regulatory tools. Malaysia adopted a regulatory impact statement (RIS) process. The government issued the National Policy on the Development and Implementation of Regulations (NPDIR) to address gaps in the management system for regulations.¹⁸ The NPDIR is implemented by distributing specific functions to the following institutions:

¹⁷ The discussion of the Malaysia RMS comes from Malaysia Productivity Corporation (2013), 'Best Practice Regulation Handbook', Petaling Jaya, Malaysia, and from Malaysia Productivity Corporation (2013), 'National Policy on the Development and Implementation of Regulations'.

¹⁸ Good regulatory policies help to enhance transparency and credibility of regulatory actions and create a climate for better quality of life and business environment (Tan Sri Dr. Ali Hamsa, Foreword, National Policy on the Development and Implementation of Regulations, 2013).

National Development Planning Committee (NDPC), responsible for overseeing the implementation of NPDIR, assessing its effectiveness and recommending improvements; and examining RIS for adequacy and making appropriate recommendations.

Malaysia Productivity Corporation (MPC), responsible to the National Development Planning Committee (NDPC); develops guidelines and programmes for the implementation of NPDIR; ensures capacity-building programmes for regulators; assists NDPC in assessing RIS; provides guidance and assistance to regulators in regulatory impact analysis (RIA) and preparation of RIS.

National Institute of Public Administration (INTAN), responsible for providing training on RIA.

Regulators, responsible for developing, maintaining, and enforcing regulatory programmes, and meeting the Regulatory Process Management Requirements. A regulator coordinator, a senior officer, is appointed by a ministry or a regulator to act as the focal point for communications with the MPC.

Stakeholders, responsible for inputs into the design and review of regulations.

Attorney General's Chambers, responsible for offering legal advice on regulatory solutions, drafting of resolutions, harmonisation of regulatory requirements, etc.

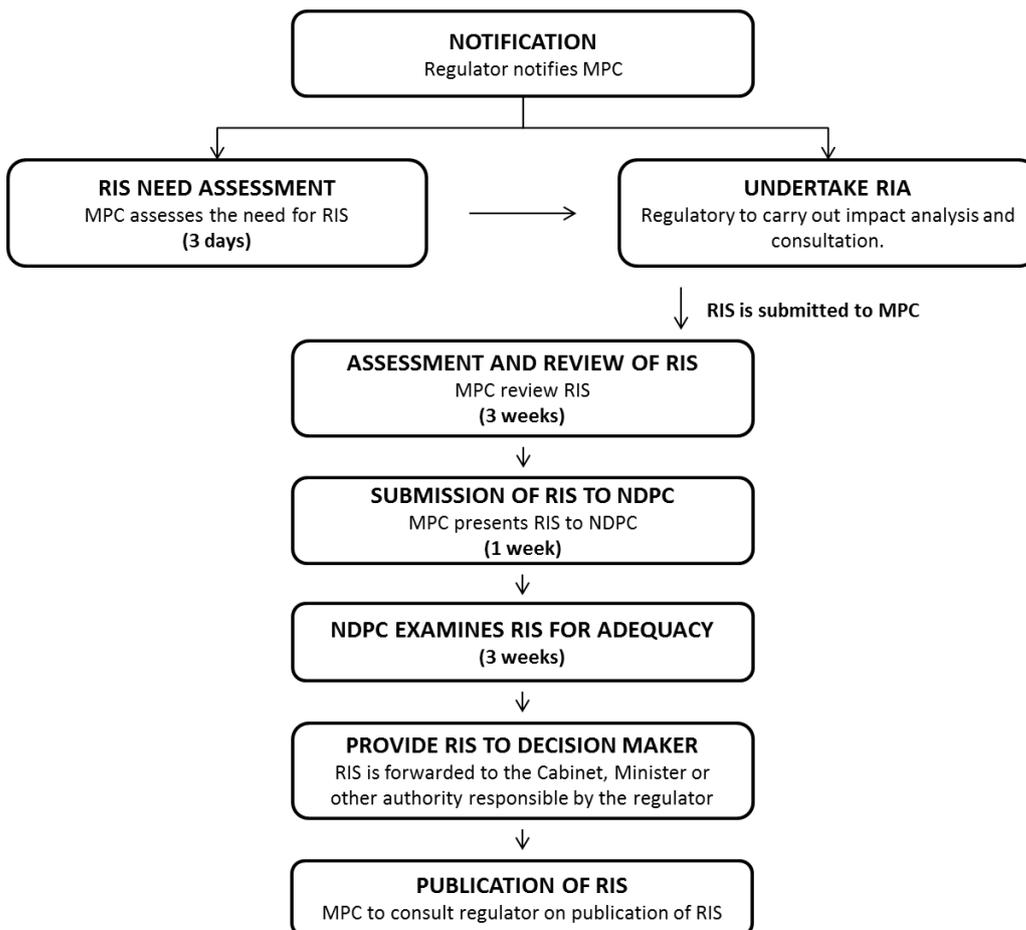
The MPC was tasked to: (i) review existing regulations with a view to removing unnecessary rules and reducing compliance costs; (ii) undertake cost–benefit analysis of new policies and regulations to assess the impact on the economy; and (iii) make recommendations to the Cabinet on policy and regulatory changes that will enhance national productivity. The Malaysian Government also created a Special Task Force to Facilitate Business (PEMUDAH) chaired by the Chief Secretary to the Government so that Malaysia may remain an attractive and competitive investment location. PEMUDAH addresses specific issues impacting on firms' decisions to invest, such as starting a business or establishing a factory. Its main task is to work on improving the quality of existing regulations. NDPC is tasked with ensuring the quality of new regulations.

Regulatory procedures apply to all federal regulators and are confined to regulations that impact on business, investment, and trade (MPC, 2013). The regulatory process requires regulators to notify the MPC on proposals to introduce or amend regulations. The MPC will assess whether the regulator is

required to submit a RIS for the proposed regulation. **Figure 6.3** shows the RIS process.

Under the RIS process, regulators proposing new regulations or regulatory changes must undertake a RIA with the following components: problem identification, objectives, instrument options (feasible means for achieving desired objectives), and assessment of impact, which demonstrates benefits and costs. Timely and thorough consultations with affected parties constitute an important component of the RIA. Notice of proposed regulations and amendments must be given so that there is time to make changes and to take comments from affected parties into account. An important item is coordination with other regulators to avoid duplications and possible inefficiencies in implementation.

Figure 6.3. Regulatory Impact Statement Process, Malaysia



MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee; RIA = regulatory impact analysis; RIS = regulatory impact statement.
Source: Malaysia Productivity Corporation (2013).

5. Philippine 'Regulatory Management System'

Figure 6.4 helps in understanding the country's 'RMS'. The RMS is enclosed in quotation marks to signify that there is still no formal RMS, as stated at the beginning of this chapter. **Figure 6.4** shows the Philippines has the four basic elements of an RMS (second row of boxes) as described in Gill (2014) and the OECD (2010). However, the elements in the third row of boxes do not necessarily represent integral parts of a coherent and coordinated RMS, nor are they always regularly undertaken, for example, CBA, and public consultations in preparing regulatory changes.¹⁹ The NCC is an outsider in the regulatory review process practised in the country. It is essentially an advocacy body peopled by government²⁰ and private sector,²¹ whose main concern is to promote key regulatory reforms, among others. The NCC could potentially be the equivalent of the Malaysian PEMUDAH, if properly structured and empowered to work on reviewing existing regulation and apply a 'regulatory guillotine'²² on those regulations that constitute an unnecessary regulatory burden on firms and consumers. A regulatory guillotine has been used in several countries as a basic tool for regulatory simplification (Jacobs, 2006). It is noted that the NCC has organised a 'repeal committee' that will work with a senator in reviewing laws and regulations.

A formal RMS requires the conduct of a regulatory impact analysis and a subsequent issuance of a RIS prior to any decision to impose the regulation. A formal body conducts a systematic analysis (RIA) of proposed new regulation, or of a proposal to revoke an existing regulation supported by formal empirical studies. A formal statement of the expected impact of the proposed change (RIS) is later issued by the regulator. It appears that the Philippines does not have a formal RMS but a mere semblance of one. A formal RMS also has a central oversight and coordinative body that will review proposed and existing regulations. The Philippines does not have one of these either.

As discussed in Section 2 above, the Philippines has undertaken a series of major macroeconomic and regulatory reforms since the post-martial rule regime, and

¹⁹ Supreme Court decisions and SEC regulations are included in the 'regulatory policies' box.

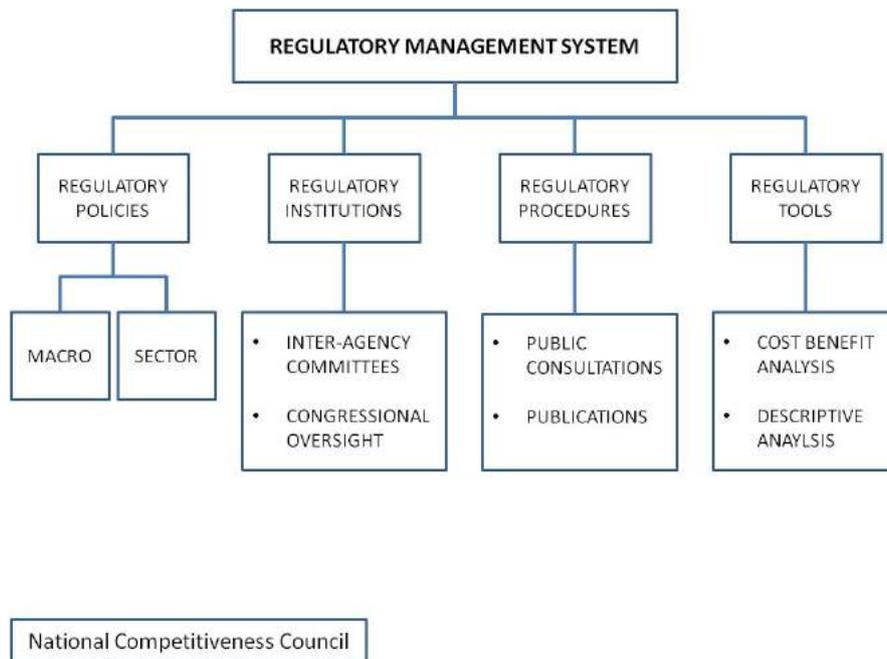
²⁰ Technical staff are from the public sector.

²¹ The private sector is composed of representatives from various associations in the business sector, e.g. exporters.

²² Trade Mark owned by Jacobs and Associates.

continues with an economic policy agenda detailed in the Philippine Development Plan. The first wave of economic reforms covered big-ticket, policy areas with cross-cutting, economy-wide application. Examples are reforms in fiscal policy, public financial management, including budgetary policy, trade policy and exchange rate policy, monetary policy. Several reforms covering particular sectors of the economy, including energy, banking, telecommunications, and agriculture, were also accomplished. These reforms have placed the economy on stronger footing and have been indispensable in economic recovery and, later, in contributing to a remarkable growth performance. At present, the next big wave of reforms covers barriers to investments, such as inadequate infrastructure, perceptions of instability in policy and contracts, and inefficient regulations.

Figure 6.4. Elements of a 'Regulatory Management System', Philippines



An important step to regulatory reforms was the government's declaration of national competitiveness as a goal in EO No. 571, series of 2006, which also created the Public-Private Task Force on Philippine Competitiveness to promote and develop national competitiveness. The mandate is to implement the Action Agenda for Competitiveness through a collaborative effort of the public and the private sectors. Particular key reform areas are business efficiency (reducing the costs of doing business), infrastructure, and governance. Regulatory reforms at the national and local levels are expected to bring down the costs of doing business. Administrative Order (AO) No. 38 created an inter-agency Task Force on

Ease of Doing Business to initiate, implement, and monitor Ease of Doing Business reforms.

There is no strong central oversight body that will systematically coordinate and review efforts on new regulations or amendments to existing regulations contemplated by different regulators, e.g. Metro Manila Development Authority, Energy Regulatory Commission, Toll Regulatory Board, Land Transportation Office, etc. There are as many as 60 different regulators but there is no central institutional mechanism that will review the consistency and coherence of regulations. The Department of Justice is tasked with reviewing regulatory interventions and other proposed measures only for consistency with international obligations and advises the Chief Executive or the department (ministry) concerned on these matters.

It seems that regulatory bodies function as regulatory silos that focus only on their respective sectors. Occasionally, the government (national or local) may create ad hoc task forces to tackle specific issues or problems that arise from time to time. An example is the Ad Hoc Task Force that was recently created by the national government to review and propose solutions to the problems brought about by a local ordinance (cargo truck ban) enacted by the City of Manila that regulated the movement of cargo trucks during particular hours of the day. The cargo truck ban triggered rising complaints from transport and logistics operators, importers and exporters, and domestic and foreign chambers of commerce about the economic costs of this local regulation. The creation of a temporary, short-lived 'after-the-fact' Ad Hoc Task Force as a solution to solve regulatory burdens is a common approach. However, this is a less optimal approach compared with having a formal central oversight body tasked with systematic review, consultation, and publication of proposed new regulation, or proposed revocation of an existing regulation, and approval. What works for the Philippines is a democratic environment of openness, debate, consultation, and dialogue, which will be important for a functional RMS.

Recently, EO No. 44, series of 2011²³ amended EO 571, series of 2006, and renamed the Public–Private Task Force on Philippine Competitiveness as the National Competitiveness Council (NCC). This indicates the government's resolve

²³ Amending EO No. 571 (s. 2006) renaming the Public–Private Sector Task Force on Philippine Competitiveness as the National Competitiveness Council (NCC) and expanding its membership

to have a relatively permanent institution to shepherd regulatory reforms. The impetus for the establishment of the NCC was the strong interest to combine public and private resources in finding solutions to barriers to investment and growth. However, it must be made clear that the NCC is not a central oversight body to review regulations for consistency, coherence, and coordination among concerned government agencies. It acts simply as an advocacy body for regulatory and other reforms that impact on business competitiveness.

This is not to say that ad hoc approaches are used all the time. There are standing governmental inter-agency committees, for example, the Infrastructure Committee of the National Economic and Development Authority, which can look into particular regulatory issues whenever such issues arise. However, they are not focused on regulatory reform but have a broader mandate that includes reviewing and approving sectorial plans, for example, the national road plan, and assessing proposed infrastructure projects seeking foreign or local funding, and other tasks. These inter-agency committees are not geared either for undertaking a systematic review of regulations because of a lack of mandate, a lack of proper staff, and a lack of capacity to undertake formal regulatory review processes.

There are also congressional oversight committees that theoretically can examine and assess regulations, for example, the Joint Congressional Power Commission and the Joint Congressional Oversight Committee on the Clean Air Act. However, these are legislative committees that merely exercise an oversight function to check executive compliance with a particular law, and often are more interested in promoting popular interest for political reasons. Similar to governmental inter-agency committees, those oversight committees neither have the technical capacity nor staff to undertake formal regulatory review processes.

Philippine regulators are neither required to undertake RIA nor issue RIS because these processes have never been required of them. The standard practice is to notify the public, affected parties, and various stakeholders about a proposed regulatory change and invite them to public hearings and consultations where those affected can express their opinion. Civil societies, business associations, and consumer groups attend and actively engage in dialogue with the regulators over particular regulatory issues. The approved regulation is published in newspapers of general circulation to inform the affected parties and the general public.

The most common tools used in assessing the effect of regulatory changes are the usual descriptive analysis and standard CBA. Regulators generally undertake a cost-benefit exercise to determine the efficiency and, perhaps, distributional effects of regulatory changes. However, the results of such exercises are neither published nor made available to the wider public, not even to academics or policy analysts, for scrutiny. The public and affected parties can only assume that such an exercise has been done prior to issuance of a regulation.

The Asian Development Bank is assisting the implementation of a RIA regime in the Tourism and of Labor and Employment departments, respectively (ADB 2012).²⁴ The RIA pilot projects focus on developing capacity to undertake RIA based on regulatory best practice principles that are adjusted to local circumstances. The goal is to have full implementation of RIA across the Philippines Government, including the establishment of a central Office for Best Regulatory Practice in 2015 (ADB, 2012). Progress to date includes

- establishment of RIA pilots in the Department of Labor and Employment and Department of Tourism,
- development of RIA Guidelines including templates,
- conduct of RIA training across participating departments, and
- various RIA awareness-raising activities among senior representatives from the Philippine government and business

Current challenges include the need to improve the level of skills and knowledge in analysing the impacts of regulations, weak coordination across ministries in the development and assessment of laws and regulations, and a weak interface between government and business in regulatory development and implementation, for example, poor consultation practices and access to regulatory information (ADB, 2012).

6. Assessment of the Regulatory Management System

The review of the Philippine experience with regulatory reform indicates that reforms can be divided into (i) macroeconomic reforms, e.g. trade liberalisation

²⁴ Through a technical assistance on 'Strengthening Institutions for an Improved Investment Climate' with the Philippine Government.

the cross-cutting impacts of which are felt economy-wide and across sectors; and (ii) sector-based regulatory reforms, e.g. telecommunications policy reform and electricity sector reform.

Economic policy has evolved from a highly protectionist regime (import substitution, etc.) and a highly control-oriented regulatory framework (import controls, etc.) to a market-oriented economic and regulatory policy framework. The overall policy stance is to rely more on 'the coordinative ability of competitive markets guided by a decentralised price system' (Canlas, 1996, p.29). Market orientation of economic and regulatory policies has created a better investment environment for private business and has brought favourable outcomes in terms of lower inflation and greater accessibility of lower-priced goods and services for the consumer. The recent creditable economic performance as mentioned above seems to show the power of this shift in orientation.

After regaining democracy from martial rule under Marcos in 1986, the Corazon Aquino administration (1986–1992) initiated major economic policy and regulatory reforms, which the succeeding Ramos administration (1992–1998) took to greater heights with the dismantling of monopolies in several sectors and the creation of a policy and regulatory environment favourable to investments and business activities. However, the regulatory reform momentum weakened amidst the charged political atmosphere during the respective regimes of Estrada (1998–2001) and Arroyo (2001–2010). The main factor behind the slowdown was the political uncertainty that clouded the administrations of Estrada and Arroyo, with the former being accused of corruption and other irregularities, and the latter with questions of the legitimacy of her election as president following revelations in 2005 of poll rigging.²⁵ It was as if the political and economic institutions seemed to have adopted a wait-and-see attitude, an accommodative position

²⁵ De Dios and Hutchcroft (2003) provide a graphic rendition of the events surrounding the fall of the Estrada presidency. Malaluan and Lumba (2010) chronicled the case of Arroyo as follows: 'Under President Macapagal-Arroyo's term, constitutional bodies have been damaged by serious breaches of independence in relation to the presidency. The Commission on Elections, the body mandated to safeguard the integrity of elections, has been racked with charges of election fraud involving the 2004 elections. In 2005, recorded conversations between President Macapagal-Arroyo and Commission on Elections Commissioner Virgilio Garcellano during the canvassing of the 2004 poll results surfaced. The conversations indicated voting and canvassing manipulation to ensure the victory of Macapagal-Arroyo. On 27 June 2005, Macapagal-Arroyo appeared on national television to admit having called a Commission on Election official before and during the canvassing of the results of the 2004 elections. She apologised for her 'lapse in judgment.' (See Malaluan, Nepomuceno and Solomon Lumba [2010], 'Checking the abuse of presidential powers,' in Sta. Ana III [ed.]).

favouring vested interests, fearful of pushing ahead with reforms because the political leadership was in conflict and had been compromised.²⁶

Sta. Ana III (2010, p.4) cited bad governance as the 'defining feature of the Gloria Macapagal-Arroyo administration'. Faced with massive protests questioning the legitimacy of her administration, 'Mrs. Macapagal-Arroyo used a broad range of instruments, including macroeconomic policy for her political survival. . . that meant undertaking bad policies...re-enacted budgets that increased funds for political patronage but decreased spending for programmed essential services, and revenue-eroding measures to placate specific political constituencies' (Sta. Ana III, 2010, p.4).

On balance, it is noted that the Arroyo administration also tried to improve regulatory quality and even to provide regulatory relief to business through passage of the Anti-Red Tape Act of 2007 (Republic Act No. 9485). The law requires government agencies to process applications for simple transactions, such as permits and licences within 5 days and other documentation for more complex transactions within 10 days. Moreover, each government agency is required under the law to put up a Citizens Charter, a document to be displayed prominently showing 'the range of specific services provided by that office, a step-by-step guide on how to avail of these services, and standards on quality and timeliness to be expected from the agency in rendering these services' (Primer on the Anti-Red Tape Act).²⁷ During Arroyo's administration, the Electric Power Industry Reform Act was passed 11 years after the first legislative bill seeking regulatory reforms in the electricity sector was filed. However, the problem was that political institutions, including the regulatory bodies and the bureaucracy, seemed to have been compromised by policies and programmes designed to ensure the political survival of the then incumbent leader.

The present Benigno Aquino²⁸ administration came to power in 2010 on a platform of improving good governance and a promise to root out corruption from the bureaucracy and reform weak institutions that had been identified as a development constraint (ADB, 2007; Llanto and Gonzalez, 2010; De Dios and

²⁶ See Laquian, A. and E. Laquian (2002) and Doronila, A. (2001).

²⁷ The Act aims to promote transparency in government transactions by requiring each agency to simplify front-line service procedures, formulate service standards to observe in every transaction, and make known these standards to the client [Primer on the Anti-Red Tape Act].

²⁸ President Benigno Aquino III, son of former President Corazon Aquino.

Hutchcroft, 2003). The major reform effort under the current Aquino administration centres on governance and institutional reforms (the Run After Tax Evaders programme and the Run After the Smugglers programme) and fiscal and budgetary reforms (Republic Act No. 10351 or the Sin Tax Reform Law of 2012, Budget Priorities Framework, Government Integrated Financial Management Information System, and Organizational Performance Indicator Framework).

Governance and fiscal reforms respond to the need to create fiscal space and improve regulatory frameworks. The Organizational Performance Indicator Framework requires government agencies to ensure the linkage among inputs, major final outputs, and desired societal outcomes; that is, inclusive growth and poverty reduction. Thus, goods and services produced (called major final outputs) by government agencies are aligned with desired societal outcomes.

A concrete step to improve governance is to reduce the regulatory burden, thereby reducing in effect the costs of doing business and improving regulatory quality. However, the process of regulatory reforms has never been an easy path for the Philippines. The country went through stages of regulatory reform²⁹ fraught with challenges (economic recovery from the aftermath of the Second World War, bad governance during the martial law regime and under recent administrations, the 1997 Asian financial crisis and the 2008 global economic crisis) that tended to dampen reform efforts but, somehow, it came out at the turn of the century with a positive outlook for sustained growth. The quick lesson at this point is that regulatory reforms matter for growth because they put the economy on surer footing and certainly on a stronger growth trajectory, as indicated by the country's own experience.

The short narrative in this chapter about the major regulatory reforms in the past decades provides a glimpse of the capacity of the economy to introduce reforms in critical areas and amid political challenges. Past administrations were all committed to reform and there were successful episodes of regulatory reforms. However, in some instances, political challenges hindered the reform momentum. The credibility and commitment of political leaders are critical elements in regulatory reform, but in a democratic setting coordination between the executive and legislative branches of government over reform efforts is equally indispensable. The current administration exploited its advantage of strong support from the leadership in both the Senate and the House of Representatives

²⁹ Regulatory reform in a broad sense.

to push for reforms, such as the Sin Tax Reform Law of 2012, which provided funds for an expanded conditional cash transfer programme for poor households. The government should continue to use the Legislative-Executive Development Advocacy Council (LEDAC),³⁰ a consultative and advocacy body for policy discussions and consensus building, as an instrument for regulatory reform.

Past experience with regulatory reform could be characterised more as idiosyncratic and episodic rather than deliberative and systematic. It was idiosyncratic (personal and unique) because successful regulatory reform depended to a great extent on the steadfast commitment and charisma of the reform champion.³¹ The experience could also be episodic (intermittent and discontinuous) because the reform momentum could not make any headway due to a compromised political leadership and had to wait for a political leader perceived as bereft of vested interests to pick up the mantle of reform. Regulatory changes may also be proposed and considered but only in response to a critical event or a crisis. For example, an impending shortage of rice, the staple food of the population, may trigger a review of import protocols and licensing regimes.

This characterisation of the regulatory reform process points to the need for a more deliberative and systematic approach, such as a formal RMS, which could be a more sustainable and politically acceptable mechanism for managing the regulatory reform process.

Regulatory policy is the first of the four elements of a formal RMS (**Figure 6.4**). Overall, the country's regulatory framework includes market-friendly regulations, rules, laws, and administrative and executive orders that try to provide the policy and regulatory environment, as well as incentives for increased private participation in the marketplace. The Philippines has the *first* element of a formal RMS, regulatory policies.

³⁰ The Legislative Executive Development Advisory Council (LEDAC) was created through Republic Act 7640 approved by then President Fidel V. Ramos on 9 December 1992. Republic Act No. 7640 states that LEDAC shall serve as a consultative and advisory body to the President as the head of the national economic and planning agency for further consultations and advice on certain programmes and policies essential to the realisation of the goals of the national economy. The LEDAC also serves as a venue to facilitate high-level policy discussions on vital issues and concerns affecting national development. Source: <http://www.neda.gov.ph/ledac-2/> (accessed 10 January 2016).

³¹ President Fidel Ramos and his political adviser, General Jose Almonte, introduced reforms in the telecommunications sector despite strong opposition from vested interests.

However, there are national and local regulations waiting for review, simplification, and improvement to reduce, if not eliminate, the regulatory burden on firms and consumers. A thorough and detailed review of all national and local regulations for simplification and improvement has never been undertaken in the country. It is critical to review existing and proposed regulations to avoid unnecessary regulatory burdens on firms and consumers. Cutting red tape and avoiding regulatory inflation are fundamental measures to cut the costs of doing business (OECD, 2010). Most OECD countries have burden-reduction programmes to counteract the growing layers of red tape (OECD, 2009).

The presence of regulatory institutions is the second critical element in a formal RMS. A principal issue in the country is the inefficient implementation of regulations or even failure to implement regulations due to the incompetence of regulatory institutions.³² Regulatory institutions that are tasked to implement regulation and arbitrate among competing interests could be weakened by the appointment of incompetent political supporters of an incumbent president, or even by regulatory capture by vested interests. The problematique in regulatory reform is not so much the unwillingness of the bureaucracy to reform regulations or the lack of good regulatory policies – although there certainly is a need to review the stock of regulations, but more an issue of ineffectual political leadership and weak institutional capacities.

A key point at this juncture is the critical importance of competent and credible institutions in a formal RMS. The absence of such credible institutions compromises the efficient implementation of regulations. The Philippine experience shows that bad governance and inefficiencies in institutions, including the bureaucracy and the judiciary, tend to blunt reform efforts and weaken the positive impact of regulatory reforms. To some extent weak institutions form a strong barrier to reforms. The country may have very good regulations (laws, regulations, rules) but these may not fully confer the expected outcomes if not properly implemented. There is a need for competent institutions to effectively implement those regulations. Implementing good regulation is not a disembodied phenomenon, but is nested in an effectively functioning institutional setting (Llanto and Gonzalez, 2010). Lim (2010) bluntly states that

³² For example, there are regulations disallowing buses without legal franchise to offer transport services but a major thoroughfare in Metro Manila is plagued by the presence of unlicensed buses.

bad governments not only increase government failures but also reduce the chances of urgently addressing market failures.

Thus, the Philippines has the *second* element of a formal RMS but there is a need to build or improve competencies in regulatory institutions. There also is no formal institutional framework such as that in Malaysia which clearly delineates the different roles of institutions, for example, MPC and PEMUDAH, in the review and assessment of regulatory policy changes. No central oversight body reviews the appropriateness and impact of existing or proposed regulations, and is accountable for promoting whole-of-government regulatory reform. Each regulator takes care of imposing regulation, and monitoring and evaluating regulatory changes. The OECD (2010) asserted that some regulations have sector-specific implications but many others have much broader effects. If this were true, then coordination among affected regulators should be a default feature in the Philippines' management of regulatory changes. Unfortunately, coordination across regulatory agencies or bodies is an exception rather than a default arrangement.

The Philippines has the *third* element of a formal RMS, regulatory procedures. Policy dialogues, notification or publication on proposed regulatory changes, consultations, and workshops are used in the process of changing or introducing new regulation.

The procedure for issuing regulation by regulatory bodies (the executive branch of government) is simpler and less laborious than that of the legislative branch. In the former case, public consultations or hearings are conducted to obtain reactions, comments, and suggestions on a proposed regulation. The comments and positions presented by stakeholders and interested parties serve as input into the internal decision-making process of regulatory bodies. There is no need to go to the legislature for changes or reforms that may be done through executive fiat. At the local level, proposed local ordinances have to obtain the approval of the local council.

In the latter case, the formal assessment of a proposed law is undertaken in the legislature initially through committee hearings, committee approval, and finally to a plenary session for debate and approval or rejection. The proposed legislation is subjected to at least three readings in a committee. A proposed

legislation may be stopped or disapproved during any of those three readings. Various stakeholders and interested parties are invited to committee hearings to present position papers on the proposed legislation. Approval at the plenary session through a vote of a quorum of legislators moves the process to a bicameral committee meeting where representatives from Congress and the Senate deliberate and agree on the final shape of the proposed legislation that has been approved earlier in their respective chambers. The consolidated version hammered out by the bicameral committee goes to the President for signature or veto.³³

There are no established protocols or procedures for review. Regulatory bodies can choose to internally review the regulations, but it is not known whether they actually conduct a regular review. The affected party and the public in general are not aware or familiar with the methodology used by regulators in the review and vetting of proposed regulations.

Neither is there a mechanism for national government–local government coordination on regulatory impositions, and local governments can sometimes be overzealous with their exercise of local autonomy, which can have unintended consequences. The example of the cargo truck ban (discussed above) imposed by the City of Manila without proper coordination and consultation with stakeholders, which produced a monstrous logjam in the main international port and impacted on the costs of doing business, is a case in point.

The *fourth* element of an RMS, RIA, is neither part of the country's procedures for regulatory change nor a default process among sectoral regulators. It is not standard practice in the country to subject existing or proposed regulation to RIA, although ex ante descriptive analysis of the effect of proposed regulatory changes is presumably done by sectoral regulators, and sometimes by researchers. It can be safely assumed that some CBA or comparison of advantages and disadvantages of proposed regulation is undertaken prior to issuance and implementation. The two RIA pilot projects mentioned above are important steps towards developing RIA in those departments and later in all departments (ministries).

³³ The government agency tasked with implementing a law passed by Congress is typically tasked to prepare the implementing rules and regulations (IRR). The quality of the IRR impacts on the quality of implementation of the law.

In sum, it is clear from the assessment that the country does not have a formal, much less a requisite, RMS. The elements of a formal RMS are present but they are not meshed into one coherent formal RMS with a central body performing oversight and coordinative functions. Instead, there are varying and uncoordinated efforts to improve regulatory quality with significant unevenness in the way proposed regulation is conceptualised, evaluated, consulted, approved, and implemented.

The establishment of a formal RMS will make it easier to have consistent and coherent regulations, and to improve regulatory quality. In developing a formal RMS for the country, it is important to heed the advice of the OECD (2010) that for regulatory policy to support economic and social renewal, its core institutions and processes need to be developed further. This includes (i) a strengthening of evidence-based impact assessment to support policy coherence; (ii) institutional capacities to identify and drive reform priorities; and not least (iii) paying more attention to the voice of users, who need to be part of the regulatory development process. Thus, what should be done to develop a formal RMS for the Philippines? The following are required:

- firm leadership and political support in establishing a formal RMS;
- identification of a central body or unit to oversee and coordinate the implementation of a formal RMS;
- review of the role of regulatory bodies to ensure coordination and avoid overlaps;
- more intensive involvement of the private sector, civil society, and other stakeholders in regulatory reform;
- a directive stipulating that RIA is a whole-of-government policy and not for sector regulators alone; and
- building capacities for undertaking RIA, using regulatory tools, and making RIS across departments.

In Parts 2 and 3 of this chapter present case studies of two regulatory changes: the establishment of the NCC and regulatory reforms in Quezon City's Business Permit and Licensing System (BPLS). The establishment of the NCC was intended to provide an effective mechanism for advocating and monitoring reforms that will help improve firm competitiveness and reduce the costs of doing business. As identified in Part 1, the Philippines needs to create an oversight body or a central institution to coordinate elements of the RMS. The case demonstrates that the

NCC's role could be tweaked to make it an oversight body similar to PEMUDAH in Malaysia to coordinate regulatory reform in the country.

The case study on the reforms introduced by the Quezon City local government demonstrates the importance of consultation of stakeholders and the critical role played by political leadership in reducing the regulatory burden (costs of doing business, in this case). A concrete measure to reduce the costs of doing business is the improvement of business and licensing procedures. The Quezon City local government did not make use of regulatory tools such as RIA to provide empirical evidence of the regulatory burden. It may be because it does not have the capacity for doing a regulatory impact assessment. The use of RIA would have strengthened the case for regulatory reform at the local level and would have provided a concrete demonstration to other local governments of a tool that will help regulatory reform efforts at the local level.

Both case studies confirm the conclusion reached in Part 1 of this chapter that the Philippines has the elements of a formal RMS but these are not meshed into a coherent mechanism for regulatory review. A formal RMS would have given greater strength to government's efforts on regulatory reform at the national and local levels.

Part 2: National Competitiveness Council

1. Introduction

Over the past decade, the Philippines has been enjoying relatively strong economic growth as GDP expanded by a compound annual average growth rate of 5.3 percent from 2004 to 2014. This was mainly driven by household consumption, which accounted for around 70 percent of total GDP. Considerable growth was experienced during the Aquino administration (**Table 6.1**). Although overall investment has recently started to become a significant driver of growth, foreign direct investment contributes a mere 2 percent share of GDP.

The weak inflow of foreign direct investment (FDI) is a major concern as the country struggles to boost manufacturing for higher growth and employment, and a bigger participation in regional production networks. The hollowing out of Philippine manufacturing has been a critical concern mainly because of its

strategic role in growing the economy and providing jobs to an expanding labour force. The government has recently announced a new industrial policy to oversee the revival and growth of Philippine manufacturing.³⁴ FDI has a big role in boosting manufacturing and the government has to pursue regulatory reform, among others, to establish an environment for investment, competitiveness, and productivity.

That there should be concern over firms' competitiveness and productivity is intuited by looking at the rank of the Philippines relative to other countries in terms of various comparative indicators. The Philippines' ranking in the World Competitiveness Yearbook declined from 40th in 2005 to 42nd place in 2006. In the 2007 Global Competitiveness Report the Philippines was in 77th place out of 117 countries. In other similar reports, the Philippines is ranked much lower than its ASEAN counterparts. Thus, the Philippine government created the NCC to lead efforts in identifying and advocating specific policy and regulatory reforms with a view to improving firms' competitiveness and reducing the costs of doing business in the country. This case study discusses the role of the NCC and its accomplishments in regulatory reform given certain limitations in its institutional structure and how it could be an important element in a putative formal RMS for the Philippines. It is currently a deliberative and recommendatory body, but in a formal RMS it could perform the role of a central or oversight body for regulatory reform and review, similar to the role of the PEMUDAH in the Malaysian RMS.

2. Mandate and Role

The government issued EO No. 571 (series of 2006) to create the Public–Private Task Force on Philippine Competitiveness. It was tasked to help improve competitiveness as envisaged in the Action Agenda for Competitiveness, which requires a strong public–private collaborative effort on regulatory reform.

The task force comprised of five government secretaries (cabinet ministers)³⁵ and three representatives from the business sector, the senior advisor on international

³⁴ Government and the private sector have joined forces in crafting so-called 'road maps' for particular sectors, e.g. automotive industry road map, that will provide appropriate incentives for manufacturers as well as help them meet specific regulatory requirements of various agencies.

³⁵ Departments of Trade and Industry, Finance, Transportation and Communication, Education, and National Economic Development Authority.

competitiveness, one representative from an academic institution, and another from civil society. The Trade and Investment Secretary and a private sector representative were co-chairpersons of the task force.

The Task Force targeted key reform areas, such as improving business efficiency, infrastructure, and governance, which are critical in developing a competitive environment for the Philippine business sector. From 2007 to late 2010, six technical working groups handled the following: (i) competitive human resources, (ii) efficient public and private sector management, (iii) efficient access to finance, (iv) improved transaction cost, (v) provision of seamless infrastructure network, and (vi) energy cost competitiveness and self-sufficiency. The technical working groups had members from the public sector, private business, domestic and foreign chambers of commerce, and several industry associations. The chambers and industry associations were included as members to make regulatory reform efforts more objective and to avoid catering to particular vested interests or individual corporate perspectives.

The task force conducted a series of workshops with stakeholders (business organisations, the government, the academic community, and non-government organisations) to delineate the strengths, weaknesses, opportunities, and threats affecting competitiveness. It also uses various reports to obtain information on specific issues and concerns.³⁶

However, the task force failed to address specific constraints affecting firms' productivity and competitiveness. The task force submitted recommendations based on information and data made available to it, but unfortunately the government failed to act on those recommendations.³⁷

After a review of the mandate, role, and membership of the task force, the current Aquino administration issued EO No. 442 (series of 2011), amending EO No. 571 (series of 2006), transforming the task force into a formal public-private council called the National Competitiveness Council (NCC). The co-chairperson (private

³⁶ Macaranas (2011) provides a description. The reports were as follows: Philippine Business Conference Report of the Philippine Chamber of Commerce and Industry, the Investment Climate Improvement Report of the American Chamber of Commerce, the 2006 National Manpower Summit, the National Export Congress Scorecards, and the 2006 Roadmap for Export Competitiveness of Services Sectors.

³⁷ According to key informants, the previous administration was not able to focus on addressing competitiveness issues because it was distracted by controversial governance/political issues.

sector representative) was given a term of 2 years, subject to reappointment by the President of the Philippines. The membership was expanded by adding to the existing members of the task force: representatives from the departments of Tourism, Energy, and five more from the private sector. The EO turned the task force into a formal institution with an expanded membership and a dedicated budget. A formal institution has definite advantages over an ad hoc body such as a task force. Under the current administration, the economic managers (basically the secretaries – or ministers – of the departments of Finance, Trade, and Industry and others) monitor through the NCC how national government agencies and local governments are supporting or implementing the reforms. The advocacy for reforms started by the task force was institutionalised in the NCC, which enjoys stronger public sector support.

A stronger emphasis was also given to the collaboration and partnership between the public and the private sectors in improving competitiveness. The NCC recognises the private sector as the driver of growth and the public sector as the enabler of growth, the body that has the capacity to create an environment conducive to private investments through market-friendly policies, regulations, and processes at the national and local government levels.

The NCC continued and improved on the earlier work of the task force in providing inputs and recommendations to the Philippine Development Plan, the Philippine Investments Priority Plan, and the Philippine Exports Priority Plan, and tracking progress in improving the country's ranking in competitiveness indices. It also provides a formal venue where the private business sector can air its concerns and give advice to the Office of the President and the Congress on policies and regulations to improve competitiveness. Moreover, the NCC tracks the competitiveness indices conducted by various international organisations in order to determine what particular areas require immediate action.

3. Working Structure

At present, there are 14 NCC Working Groups that work on specific policy and regulatory reforms (**Table 6.2**). Each working group has a champion (from the government) and a co-champion (from the private sector) who leads the reform efforts.

Table 6.2. NCC Working Groups

| Working Groups | Objectives |
|--|--|
| Anti-corruption | <ul style="list-style-type: none"> To have a system of tracking cases filed with the Ombudsman To improve transparency and accountability |
| Budget Transparency | <ul style="list-style-type: none"> To streamline and automate the processing, releasing, and tracking of Internal Revenue Allotment and congressional allocation to improve transparency, equity, and accountability in budget delivery |
| Business Permits and Licensing System (BPLS) | <ul style="list-style-type: none"> To reduce the costs of doing business by streamlining the BPLS through the adoption of one form and the reduction of steps, days, and number of signatories for new applications and business renewals |
| Education and Human Resources Development | <ul style="list-style-type: none"> To develop a globally competent workforce through collaborative efforts of the industry and education sector in matching the skills and knowledge of the workforce and the needs of the businesses catering to both domestic and international markets |
| ICT Governance | <ul style="list-style-type: none"> To recommend measures that will contribute to the improvement of the Philippine ranking in the Global Information Technology Report of the World Economic Forum and other ICT-related reports to recommend a framework for ICT governance in the Philippines, including the establishment of a central authority to coordinate and implement national ICT projects and other ICT-related initiatives |
| Infrastructure | <ul style="list-style-type: none"> To reform infrastructure policies and promote the development of an intermodal and seamless transport infrastructure system |
| Judicial System | <ul style="list-style-type: none"> To recommend reforms that will improve the quality of the Philippine Judicial System |
| National Single Window (NSW) | <ul style="list-style-type: none"> To identify strategies, activities, and steps that would facilitate the implementation of the NSW to that will facilitate customs and trade administration |
| Performance Governance System | <ul style="list-style-type: none"> To have a strategic and performance management tool for an objective and transparent assessment of the performance of government agencies |
| Philippine Business Registry | <ul style="list-style-type: none"> To facilitate business registration-related transactions by integrating all agencies involved in business registration To develop a more efficient process for business registration To develop a web-based one-stop shop for entrepreneurs who need to transact with government agencies on starting a business |
| Philippine Services Coalition | <ul style="list-style-type: none"> To develop a strategic plan for the services sector in regional and global markets |

ICT = information and communications technology.

Notes:

- (i) No available information on the Agri-trade Logistics and National Quality Infrastructure.
- (ii) Philippine Business Registry is a program of the DTI; it still does not have a private sector champion.
- (iii) The Power and Energy Technical Working Group (TWR) is dormant; it still does not have a private sector champion.

Source: National Competitiveness Council and the Philippine Business Registry.

Dialogues and consultations are staple processes in the NCC and, with greater interaction with the private sector, it is expected that it will be more effective in its regulatory reform efforts. The key difference between the old task force and the NCC is that in the present case the government is more willing to listen and take action on specific recommendations to improve firms' competitiveness and cut the costs of doing business.

4. Additional Measures and Positive Results

In response to the low ranking of the Philippines in various competitiveness reports and to show its full support for competitiveness, the Aquino administration issued AO No. 38, series of 2013, creating the Ease of Doing Business (EODB) inter-agency Task Force to be chaired by NCC to initiate, implement, and monitor EODB reforms. The reforms cover the 10 indicators identified under the Doing Business Survey administered by the International Finance Corporation (IFC). The survey ranks the participating countries across 10 indicators: (i) starting a business, (ii) dealing with construction permits, (iii) access to electricity, (iv) registering property, (v) getting credit, (vi) protecting investors, (vii) paying taxes, (viii) trading across borders, (ix) enforcing contracts, and (x) resolving insolvency. To enable the public to monitor the progress that different government agencies are making in simplifying business processes, the EODB Task Force created the Doing Business Dashboard.

Apart from improving the Philippine competitiveness rankings, the other major role of the EODB Task Force is to ensure the implementation of the Game Plan for Competitiveness which set reform targets for each concerned government agency. The Game Plan was crafted after comparing the country with its ASEAN counterparts in terms of the 10 indicators mentioned above, and looking at what processes have to be adopted or changes made to be at par with those countries. For example, in How To Start a Business, in Malaysia this takes 6 days to complete with only three steps, while in Singapore it requires three steps and 3 days maximum at most, whereas in the Philippines it takes 16 steps and 34 days. To address this, the EODB Task Force studied the number of steps, time needed, as well as the cost per transaction. The results were reported to the Economic Cluster of the Cabinet. After this, the NCC communicated with the government agencies tasked for the transactions – the Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), Social Security System (SSS),

Table 6.3. Existing Procedures and Suggested Reforms in Registering a Business

| Step | No. of Days | Step Description | Suggestions/Comments |
|----------|-------------|--|--|
| 1 | 1 | Verify and reserve the company name with SEC | Merged with steps 4, 14, 15, and 16. New Step 1 trimmed down to just 1 day. SEC and the Social Agencies (SSS, Pag-IBIG Fund, and PhilHealth) signed a MOA addressing the merging of steps; issued appropriate orders/circulars: |
| 2 | 1 | Deposit the paid-in minimum capital at the bank | Removed |
| 3 | 1 | Notarise articles of incorporation and treasurer's affidavit at the notary | Switched in order with Step 1. |
| 4 | 2 | Register the company with SEC and receive pre-registered Tax Identification Number (TIN) | Merged with Step 1 |
| 5 | 1 | Obtain Barangay Clearance | Retained as it is required by the Local Government Code of 1991. |
| 6 | 1 | Pay the annual community tax and obtain Community Tax Certificate (CTC) from City Treasurer's Office (CTO) | Steps 6 and 7 merged and trimmed down to 5 days as a nation-wide standard. DILG and QC LGU signed a MOA to trim down the number of days to 2 days in Quezon City (QC). |
| 7 | 6 | Obtain the business permit to operate from the BPLO | Commitment of QC to AO 38 Taskforce is 3 days. Implementing order/circular/ordinance in QC. |
| 8 | 1 | Buy special books of account at bookstore | Removed, as per BIR Circular. |
| 9 | 1 | Apply for Certificate of Registration (COR) and TIN at the BIR. | TIN application merged with Step 1. COR application retained as a separate step. |
| 10 | 1 | Pay the registration fee and documentary stamp taxes at authorised agent banks | Merged with Step 9. |
| 11 | 1 | Obtain authority to print receipt and invoices from the BIR | Removed |
| 12 | 7 | Print receipts and invoices at the print shop | Replaced by allowing company to buy cash register machine from BIR-accredited outlets |
| 13 | 1 | Have books of accounts and Printer's Certificate of Delivery stamped by the BIR | Removed |
| 14 | 7 | Register with SSS | Merged with steps 1 and 4. New Step 1 trimmed down to 1 day. |
| | | | SEC, SSS, Pag-IBIG Fund, and PhilHealth signed a MOA addressing this merging of steps. |
| 15 | 1 | Register with PhilHealth | |
| 16 | 1 | Register with Pag-IBIG | |
| 16 steps | 34 days | | |

Note: BIR = Bureau of Internal Revenue; BPLO = Business Permit and Licensing Office; LGU = local government unit; Pag-IBIG = Home Development Mutual Fund; PhilHealth = Philippine Health Insurance Corporation; SEC = Securities and Exchange Commission; SSS = Social Security System.
Source: National Competitiveness Council.

Bureau of Internal Revenue (BIR), Philippine Health Insurance Corporation (PhilHealth), and Pag-IBIG, as well as the local government units (LGUs). In addition, comments and suggestions from the respondents – such as auditing firms, law firms, consultants, and government agencies – on the IFC EODB survey were sought on how to further streamline the process (Luz, 2013). **Table 6.3** shows existing procedures and suggested reforms on starting a business, while **Table 6.4** indicates the new shortened requirements in business registration.

Table 6.4. New Procedure in Business Registration

| Step | No. of Days | Step Description |
|------|-------------|--|
| 1 | 1 | Notarise articles of incorporation and treasurer's affidavit at the notary. |
| 2 | 1 | Obtain and fill-out unified application form from SEC and pay necessary fee. |
| 3 | 1 | Obtain Barangay Clearance |
| 4 | 3 | Obtain Business Permit to Operate from the BPLO and pay necessary fees. |
| 5 | 1 | Apply for Certificate of Registration at the BIR and pay necessary fees |
| 6 | 1 | Buy cash register machine from BIR-accredited outlets. |
| 6 | 8 | |

BIR = Bureau of Internal Revenue; BPLO = Business Permit and Licensing Office; SEC = Securities and Exchange Commission.

Source: National Competitiveness Council.

One of the commendable features of AO No. 38 is that it promotes the participation of other relevant stakeholders, such as the concerned national government agencies (22), LGUs (535), business associations and chambers of commerce (150), bilateral and multilateral development agencies (15), and non-government organisations, both local and foreign, and even individuals, to have a more collaborative and effective implementation of the Game Plan (Moreno, 2015). Moreover, AO No. 38 mandates the EODB Task Force to monitor and evaluate the programmes and policies that will be implemented in achieving competitiveness. Another initiative of the national government in this regard is the establishment of the 'Contact Center ng Bayan', which serves as the main help desk to deal with complaints and suggestions of citizens regarding government agencies. It also serves as a means for citizens to access information on government services. The Contact Center ng Bayan acts as a feedback

mechanism, an essential tool to ensure that government frontline services are indeed facilitative and efficient.

Table 6.5 summarises the significant business reforms undertaken by the EODB Task Force in raising the Philippine competitiveness rankings and the reform issues requiring immediate attention.

Table 6.5. Progress in Business Reforms in Philippines, Doing Business, 2008–2015

| Doing Business Report | Indicator | Reform |
|-----------------------|------------------------------------|--|
| DB 2015 | Trading Across Borders | Truck ban in Manila created logjam in the ports [immediate reform issue] |
| DB 2014 | Dealing with Construction Permits | Eliminated the requirement to obtain a health certificate |
| | Getting Credit | Improved access to credit information by beginning to share positive and negative information and by enacting a data privacy act that guarantees borrowers' right to access their data |
| | Paying Taxes | Introduced an electronic filing and payment system for social security contributions |
| DB 2012 | Resolving Insolvency | Adopted a new insolvency law that provides a legal framework for liquidation and reorganisation of financially distressed companies |
| DB 2011 | Starting a Business | Eased business start-up by setting up a one-stop shop at the municipal level |
| | Dealing with Construction Permits* | Made construction permitting more cumbersome by requiring updated information on electricity connection costs [immediate reform issue] |
| DB 2010 | Trading Across Borders | Reduced the time and cost to trade by improving customs administration through such functions as electronic payments and online submission of declarations |
| | Getting Credit | Improved access to credit information through a new act regulating the operations and services of a credit information system |
| DB 2009 | Paying Taxes | Made paying taxes less costly for companies by reducing the corporate income tax rate |
| | Resolving Insolvency | Enhanced the insolvency process by promoting reorganisation procedures through the introduction of pre-packaged reorganisations and by establishing qualification requirements for receivers |
| | Trading Across Borders | Reduced the time for importing by upgrading the risk-based inspection and electronic data interchange systems |
| DB 2008 | Starting a Business* | Made starting a business more difficult by increasing the paid-in minimum capital requirement [immediate reform issue] |

* Policy reforms/changes that made it more cumbersome to do business in the Philippines.

Source: World Bank, 2014.

As seen in 7 out of 12 reports, from 2011 to 2014, the country's ranking has considerably improved (World Economic Forum Global Competitiveness Report [+33], Global Enabling Trade Report [+28], World Bank-IFC Doing Business Report [+53], Transparency International Corruption Perceptions Index [+49], and the Heritage Foundation Economic Freedom Index [+26]). The country has moved up in rank in these reports because of effective coordination and action from the sectors involved (**Table 6.6**). Challenges in infrastructure, education, research and development, and disaster response have remained, however (Luz, 2014).

Table 6.6. Philippines' Rank in Global Competitiveness Report Card

| | 2011 | 2012 | 2013 | 2014 |
|---|---------|---------|---------|---------|
| WEF Global Competitiveness Index ^a | 75/142 | 65/144 | 59/148 | 52/144 |
| IFC Ease of Doing Business ^b | 134/183 | 136/183 | 138/185 | 108/189 |
| IMD World Competitiveness Report ^c | 41/59 | 43/59 | 38/60 | 42/60 |
| TI Corruption Perception Index ^d | 94/177 | 105/176 | 129/183 | |
| Economic Freedom Index ^e | 115/179 | 107/179 | 97/177 | 89/178 |
| Global Information Technology ^a Report | 86/138 | 86/142 | 86/144 | 78/148 |
| Travel and Tourism Report ^a | 94/139 | n/a | 82/140 | |
| Global Innovation Index ^f | 91/125 | 95/141 | 90/142 | 100/143 |
| Logistics Performance Index ^g | n/a | 52/155 | n/a | 57/160 |
| Fragile States Index ^h | 50/177 | 56/177 | 59/178 | 52/178 |
| Global Enabling Trade Index ^a | n/a | 72/132 | n/a | 64/138 |
| Global Gender Gap Report ^a | 8/135 | 8/135 | 5/136 | |

Sources:

a World Economic Forum

b International Finance Corporation

c Institutional Institute for Management Development

d Transparency International

e Heritage Foundation

f World Intellectual Property Organization

g World Bank

h Fund for Peace

The improvement in rankings can be attributed to improvements in the following business processes: (i) resolving insolvency, (ii) access to electricity, (iii) registering property, (iv) starting a business, and (v) paying taxes. These improvements were mostly in line with efficiency-related measures, although there were also some

that are geared towards improving the quality of service being provided to the stakeholders (NCC, 2014b).

The projects and accomplishments of the NCC working groups as of 2014 are summarised in **Table 6.7**.

Table 6.7. Working Group Projects

| Working Groups | Projects/Accomplishments with other NGAs | Description |
|---------------------|--|--|
| Anti-Corruption | <ul style="list-style-type: none"> • Annual Enterprise Survey on Corruption (with Social Weather Station) | <ul style="list-style-type: none"> • Survey measures perception and experience of corruption in the bureaucracy |
| | <ul style="list-style-type: none"> • Bantay.ph | <ul style="list-style-type: none"> • Offers information on how the Anti-Red Tape Act can help fight corruption |
| | <ul style="list-style-type: none"> • Contact Center ng Bayan | <ul style="list-style-type: none"> • A help desk through which citizens and organisations can send their complaints and concerns on government services |
| Budget Transparency | <ul style="list-style-type: none"> • Integrity Initiative | <ul style="list-style-type: none"> • Encourages companies to sign an integrity pledge to abide by ethical business practices and support a national campaign against corruption |
| | <ul style="list-style-type: none"> • Electronic Transparency Accountability Initiatives for Lump Sum Appropriations System (eTAILS) | <ul style="list-style-type: none"> • Web-based application designed to streamline and automate the processing, releasing, and tracking of lump-sum funds, which comprise 20% of the total national government budget |
| | <ul style="list-style-type: none"> • Document Management System | <ul style="list-style-type: none"> • Logs requests, tracks documents, and prevents unnecessary delays in fund releases. |
| Budget Transparency | <ul style="list-style-type: none"> • Provides information on the national budget and allows people to provide feedback through the Citizen's Portal | <ul style="list-style-type: none"> • Provides information on the national budget and allows people to provide feedback through the Citizen's Portal |
| | <ul style="list-style-type: none"> • Budget ng Bayan | <ul style="list-style-type: none"> • Eliminates petty cash advances for small procurements, and records transactions in real-time and on a web-based platform |
| | <ul style="list-style-type: none"> • Cashless Purchase Card System • Kabantay ng Bayan | <ul style="list-style-type: none"> • In support of Open Data Philippines, the NCC contributes to the conduct of the Kabantay ng Bayan Hackathon, a competition to develop innovative mobile or web-based applications to strengthen budget transparency practices |

| Working Groups | Projects/Accomplishments with other NGAs | Description |
|--|---|--|
| Business Permits and Licensing System (BPLS) | • Streamlining BPLS Program | • The Local Government Academy trains local government units to streamline processes for business registration using the standards prescribed by the Department of the Interior and Local Government and the DTI in Joint Memorandum Circular No. 01, series of 2010. As of the second quarter of 2014, 1,221 out of 1,634 LGUs in the Philippines have already completed streamlining |
| | • BPLS Customer Experience Survey | • Measures the experience and satisfaction level of businessmen with the process of renewing mayor's permit |
| | • BPLS Monitoring and Evaluation/Validation Project | • Checks if LGUs have actually streamlined local requirements and procedures |
| Education and Human Resources Development | • Labour–Market Intelligence | |
| | • K-12 Implementation | |
| | • Industry–Academe Linkage | |
| | • Technical–Vocational | |
| | • Reintegration of Filipino Overseas into Philippine Society | |
| | • Benchmarking and compliance to International Accords/Mutual Recognition Agreements | |
| Infrastructure | • Addressing the issues affecting the competitiveness of the Philippine Aviation Industry | |
| | • Common Carriers Tax (CCT) and Gross Philippine Billings imposed on foreign carriers | |
| | • CIQ Overtime Fees on Government Account | |
| | • Decongestion of Manila Ports | |
| | • Implement Masterplans for Luzon logistics corridor and the ASEAN RoRo Network | |

| Working Groups | Projects/Accomplishments with other NGAs | Description |
|-------------------------------------|--|---|
| Performance Governance System (PGS) | • Performance Governance System | • Local adaptation of the Balanced Scorecard, which tracks performance using critical indicators; the PGS allows for multi-sector participation in translating the institutional visions and strategies into action |
| | • Public Governance Forum | • Provides a venue for public and private institutions to present their scorecards before a multi-sector panel tasked to evaluate performance and provide recommendations. |
| | • Islands of Good Governance | • Seeks to showcase performance of both public and private institutions, as certified by external auditors |

Note: No information is available on the other Working Groups.

Source: National Competitiveness Council.

5. Future Plans

The NCC, through the National Quality Infrastructure Working Group, has submitted to Congress a draft legislation on a National Quality Law. The proposed law will require compliance to international technical requirements, such as standardisation, metrology, testing, quality management, certification, and accreditation, to ensure more competitive products and services to guarantee the safety, health, and protection of consumers and to safeguard the environment. This will apply to all goods and services, including the production process, marketing, and distribution.³⁸

For 2015, the NCC aims to establish additional working groups to tackle other specific problems that hamper the country's development, such as those relating to science and technology research and development, and disaster response. The NCC will also encourage more LGUs to participate in its Cities and Municipalities

³⁸ The Working Group is headed by the National Economic and Development Authority Deputy and the Food and Drug Administration with the following members: Bureau of Product Standards and Philippine Accreditation Bureau of DTI, National Metrology Laboratory, Department of Public Works and Highway, Philippine Exporters Confederation, Inc., Philippine Chamber of Commerce and Industry, Federation of Philippine Industries, Philippine Metrology, Standards, Testing and Quality, and National Association of Consumers Inc. (NCC, 2014).

Competitiveness Index.³⁹ Participating cities and municipalities are ranked in terms of economic dynamism, infrastructure, and EODB. According to the NCC, the index will assist businessmen and investors in deciding where to set up their businesses (NCC, 2014).

For the 2013 round, the index covered 285 LGUs, comprising 122 cities and 163 municipalities. In 2014, there were 535 LGUs comprising 136 cities and 399 municipalities in the index; for 2015, the goal was to bring total coverage to more than 1,000 cities and municipalities.

Another project started in 2015 was Project Repeal. This project aims to revoke laws and regulations that increase the costs of doing business in the country and hinder competitiveness. It will eliminate onerous procedures that strain efficiency, lower the costs of doing business, reduce bureaucracy in the system, and get rid of red tape, among others. At present, the NCC is gathering information on what laws and regulations must be repealed. It will work with Congress in repealing such laws and regulations and establish an institutional structure to oversee the process by 2016 (Remo, 2015).

6. Assessment

The experience of the NCC in policy and regulatory reforms brought about important lessons that can inform the task of improving regulatory quality and competitiveness:

1. **Transparency matters.** In 2010 and 2011, public infrastructure spending declined as the new administration decided to review infrastructure projects and procurement procedures. Public infrastructure spending and investor confidence picked up in the subsequent periods in response to better governance and transparency.
2. **Work in progress is not good enough.** In competitiveness, the country is only ranked and scored when the job is completed and implemented.
3. **It is about execution and delivery.** In competitiveness rankings, reports on reform accomplishments must be in by 1 June of the current year for the IFC and World Bank to consider them in the ranking given by the end of the same year. The country's reform measures and strategies are built around this deadline.

³⁹ The Cities and Municipalities Competitive Index was launched in 2014 in cooperation with USAID Project INVEST and the 15 regional competitiveness committees (RCCs), which were created in 2012 with an initial task to design the index, collect, and analyse data.

4. **Teamwork is important. Avoid silos.** No one government agency can resolve interconnected problems affecting competitiveness and costs of doing business alone. Coordination and commitment to reform are crucial.
5. **Focus on multiple fronts and not just one single variable.** There is no single bullet or single solution to complex problems. Coordination is important to deal with multiple, complex issues.
6. **The competition never sleeps.** For instance, Singapore, one of the highest-ranking countries in the world, is always on a continuous improvement programme.
7. **The bar always rises.** A competitive world raises the bar and the Philippines should be ready for it.
8. **Speed-to-reform should be our new mantra.** Action plans more than feasibility studies are needed.
9. **Maintain momentum.** The Philippines cannot afford to slow down the pace of reform. In fact, it should accelerate the reform process.
10. **Embed and institutionalise change.** Executive orders, legislations, and laws should be institutionalised in government procedures and processes, and implemented.
11. **Public–private collaboration is an important and effective mechanism for reform.** The public and the private sectors have their respective strengths and it is important to harness these for regulatory reform.

As mentioned in Part 1 of this chapter, the Philippines does not have an RMS per se, but it has the basic elements of an RMS. This observation is illustrated through the experience of the NCC in advocating reforms focused on competitiveness and reduction of the cost of doing business. **Table 6.8** provides information on the experience in RMS as seen in the case of the NCC. The current administration institutionalised the ad hoc approach (through a task force) to the advocacy of reforms by converting the task force into the NCC. The brief experience of NCC shows that (i) it could be an effective central body for advocacy of reforms affecting competitiveness and costs of doing business; (ii) strong public–private sector collaboration is critical in addressing reforms on competitiveness and costs of doing business issues; and (iii) support by the highest political leadership (the presidency) is crucial in achieving reforms.

Table 6.8. Elements of RMS and NCC Case

| | National RMS tool | Impact – significance | Remarks |
|--|--|-----------------------|---|
| Policy Cycle Elements | | | |
| Big policy | Consultations and pressure from business groups to reform | Significant | <ul style="list-style-type: none"> • Creation of the NCC |
| Little & legal policy | Dialogues with business groups, and government agencies | Very Significant | <ul style="list-style-type: none"> • EO No. 44 amended EO 571 (2006) to establish a stronger advocacy body; ; issuance of AO No. 38 creating the EODB Task Force • Expansion of NCC membership |
| Decision-making support | Access to the President by the DTI Secretary and private sector business groups | Very Significant | <ul style="list-style-type: none"> • Issuance of EO No. 44, mandating the different national government agencies to be co-heads of the working groups |
| Change implementation | None | Not Very Significant | <ul style="list-style-type: none"> • No change management plans in place |
| Administration & enforcement | None | Significant | <ul style="list-style-type: none"> • Better coordination among national and local governments, and the private sector • Implementation of reforms is the main issue. |
| Monitoring & review | None | Not Very Significant | <ul style="list-style-type: none"> • Need for better monitoring, and evaluation of impact of reforms |
| Supporting Policy Practices | | | |
| Consultation communication & engagement | Dialogues, workshops, consultations | Significant | <ul style="list-style-type: none"> • Active discussions in consultations and workshops • Co-chairpersons working closely on advocacy • Technical working groups working closely with government agencies and private business groups |
| Learning | Analysis of indicators by NCC | Significant | <ul style="list-style-type: none"> • Start of data gathering, especially regarding regional competitiveness • Review of indicators where the country is improving its rank, or where it is lagging |
| Accountability & transparency | Establishment of website; various media [means of communications] are used to inform the public and stakeholders | Significant | <ul style="list-style-type: none"> • Reports and other information uploaded to the website; www.competitive.org.ph • Open data |
| Supporting Institutions | | | |
| Regulatory policy principles | EOs | Significant | <ul style="list-style-type: none"> • Issuance of necessary executive orders |
| Lead institutions | DTI, NCC | Significant | <ul style="list-style-type: none"> • NCC, co-chaired by the DTI and the private sector |
| Coordinating institutions & training providers | NCC | Significant | <ul style="list-style-type: none"> • Working groups are co-headed by private sector and national government agencies |

AO = administrative order; DTI = Department of Trade and Industry; EO = executive order; NCC = National Competitiveness Council; RMS = regulatory management system.

Source: Author's assessment.

Being an advocacy body, NCC does not have power to impose regulatory reforms. It is neither a regulatory institution nor an oversight or central body that coordinates regulatory reform efforts. The case study reports the processes undertaken by NCC in regulatory reform, including dialogues, consultations, working groups, construction of a competitiveness index, and others. It has done this through better public–private sector collaboration that solicits support for its advocacy efforts from concerned government agencies and affected businesses. Participation by stakeholders (those represented in the working groups) and a feedback mechanism on the reform efforts are important elements of the regulatory reform process in the country. Its regulatory reform efforts could have been stronger with the use of RIA, which would have been an effective tool for educating the public and the policymakers on the burden and cost of unnecessary regulations. It can benefit from using more systematic and empirical approaches, such as RIA, in identifying rules and regulations to be subjected to a ‘regulatory guillotine’. It is also crucial to map out a change implementation plan and install a monitoring and review mechanism for feedback on the impact of regulations and their fine-tuning or change, when necessary.

Part 3 discusses Quezon City local government’s effort to reduce the costs of doing business in the city. The government’s goal was to simplify the business permit and licensing processes to increase the flow of investment into the city. This case demonstrates the usefulness of political leadership and commitment to introduce reforms and the importance of stakeholder consultations in regulatory reform. Part 1 identifies regulatory procedures (**Figure 6.4**) as an important element of an RMS. In the case of the Quezon City local government, stakeholder consultations (a regulatory procedure) were instrumental in generating support for the regulatory reform. A full (formal) RMS would have helped the city manage local reforms more effectively.

Part 3: Regulatory Reforms in the Quezon City Business Permit and Licensing System

1. Local Autonomy and Local Responsibilities

The 1991 Local Government Code conferred local autonomy on local governments and decentralised local service delivery. It assigned greater taxing, spending, and borrowing powers to local governments, and entitled local governments to receive 40 percent of national government tax revenue as fiscal

transfer (called the Internal Revenue Allotment). Local governments take responsibility for local development expenditure and for creating an environment conducive to investment and the creation of businesses in local areas. Local governments regulate local business activities through various permits and licences that they grant to local businesses. However, it is common knowledge that securing permits and licences to operate a local business can be one of the significant hurdles faced by small businesses, especially start-ups. Local government units are very heterogeneous, with varying management, financial and technical capacities. In this regard, the national government's drive to improve firms' competitiveness and productivity through the NCC has sparked great interest among the more progressive local governments. They saw the need to reduce the costs of doing business and improve the local business environment to generate more local revenues and employment.

2. Need to Reduce the Cost of Doing Business

In 2010, Quezon City was selected by the Philippine government and the World Bank-IFC as the benchmark city in the country in the EODB report. It has the highest number of business registrations in the country, but there were problems with the ease of doing business in the city. According to the 2011 Doing Business Report of the WB-IFC, Quezon City ranked very low relative to 25 other cities worldwide in terms of obtaining construction permits (rank: 22nd) and registering a property (rank: 17th). Firms wanting to locate in the city had to secure numerous clearances such as mayor's permit, construction permit, occupation permit, and health permit, among others. Given these factors, the city ranked 12th overall in the ease of doing business. This galvanised the city government to do something about its low ranking.

The case study highlights Quezon City's efforts to reduce the cost of doing business and improve the business environment in the city. This is motivated by the belief that there is a positive relationship between a streamlined business registration and licensing system, and the flow of investment into a city (DTI, 2006). Hence, Quezon City decided to simplify its BPLS to increase the creation and registration of more local businesses, which will spur local employment and contribute to local revenue growth. A simplified BPLS is also expected to encourage informal businesses, mostly microenterprises and small enterprises, to register and operate in the formal economy.

3. Specific Steps Taken

In reforming BPLS, Quezon City did not have to start from scratch because it was able to build on past initiatives to improve business registration. In 2006, the Development Academy of the Philippines identified the good practices of local governments in streamlining business registration of 16 cities and found that Quezon City compared well with the other 15 cities (**Table 6.9**). The good practices cover the following: (i) process improvement; (ii) business one-stop shop; (iii) computerisation; (iv) partnerships and participation, (v) information, education, and communication; and (vi) customer satisfaction.

Reducing the number of steps, signatures, and requirements in obtaining a business permit is not something new to the city because in the past the mayor himself made it a major goal of his administration. In the period 2001–2010, the mayor issued executive orders reducing the processing time and procedures for securing a business (or mayor's) permit. The commitment of the highest political leader of the local government to improve local governance is another advantage for the city in introducing further reforms.

Table 6.9. Good Practices in Streamlining Business Registration in 16 Cities

| Island Group | LGUs | Process Improvement | BOSS | Computerisation | Partnership and Participation | IEC | Customer Satisfaction |
|--------------|----------------|---------------------|------|-----------------|-------------------------------|-----|-----------------------|
| Luzon | Cabuyao | | x | x | | x | |
| | La Trinidad | x | x | x | | | x |
| | Marikina | x | x | x | | x | x |
| | Muntinlupa | x | x | x | x | x | x |
| | Naga | x | x | x | x | x | x |
| | Quezon | x | x | x | x | x | x |
| Visayas | Bacolod | x | x | x | x | x | x |
| | Iloilo | x | | | x | | |
| | Kalibo | x | x | | x | x | x |
| | Ormoc | x | x | x | x | x | x |
| Mindanao | General Santos | x | x | x | x | x | x |
| | Iligan | x | x | x | x | x | x |
| | Ozamiz | x | x | x | x | x | x |
| | Surigao | x | x | x | x | x | x |
| | Malaybalay | x | x | | x | x | |
| | Zamboanga | x | x | x | x | x | x |

BOSS = Business One-Stop Shop; IEC = information, education, and communication; LGU = local government unit.

Source: DTI (2006).

A good practice of the Quezon City local government listed in **Table 6.1** is the Business One-Stop Shop (BOSS). EO No. 16 issued in November 2009 simplified the business registration procedure especially for new applicants, whether sole proprietorships, partnerships, and corporations, in accordance with the 1991 Local Government Code, from 12 steps to only 3, as shown in **Table 6.10**.

The DTI and the Department of the Interior and Local Government (DILG) issued Joint Memorandum Circular (JMC) No. 01, series of 2010, to provide the standards to be followed by local governments in streamlining the BPLS. The JMC was addressed to the regional directors of DILG, DTI, the Bureau of Fire Protection, members of the Sangguniang Panlungsod, and the Sangguniang Bayan (local government councils). The streamlining programme enjoined cities and municipalities to follow service standards in processing applications for new business registration and registration renewals. It prescribed a unified application form, reduced the number of steps, processing time, and number of signatories required for business applications. According to the JMC, the processing time for the business permit application should be at most 10 days for new applications and 5 days for renewals. In addition, the process must not exceed five steps and the signatories should be reduced to five or less.

Table 6.10. Old versus New Procedure, Applying for a Business Permit*

| For Minimally Regulated (Low Risk) Business Category | Old Process | New Process |
|---|--------------------|---|
| No. of steps (excluding national requirements) | 12 | 3 |
| Average time to receive the mayor's permit | Minimum of 18 days | Within 24 hours for low risk–type of business, not needing inspection; 9 days for low risk, requiring inspection |
| No. of forms for applicant to fill out | 8 | 1 |
| No. of visits to secure permit | 8 | 1 (in BPLO) |
| No. of offices to follow up | 6 | 1 (BPLO, SB Representative) |
| No. of face-to-face interactions between applicant and city employees | Minimum of 18 | 7 |

* Minimally regulated (low-risk) businesses include accounting services, administrative offices, building and building maintenance, *carinderia*, consultancy firms, deep-well drilling offices, engineering services, general building contractors, general engineering offices, graphic arts design firms, installation of wall coverings, landscaping, liaison offices, management consultancy, marketing consultancy, merchandise brokerage, messenger services, non-life insurance agencies, plumbing installation services, real estate brokers, real estate developers, retailers, retail peddlers, sari-sari stores, and watch repair shops.

Source: Business One-Stop Shop (BOSS), Quezon City.

Quezon City complied with the requirements of JMC No. 01 and established a Business One-Stop Shop (BOSS).⁴⁰ The Quezon City BOSS reduces the transaction costs of business registrants. **Table 6.11** shows the simplified business registration procedure for new businesses in Quezon City.

Computerisation is a notable intervention to streamline transactions in Quezon City. This has allowed businesses to do online and off-site transactions. Instead of going to the Quezon City hall to conduct transactions, local enterprises can go to five branches established in strategic spots in the city: Cubao, Galas, La Loma, Novaliches, and Talipapa, which are conveniently linked to the main server in city hall. The transactions are off-site because they are not carried out in the city hall but in those satellite offices.

Computerisation has lessened fraud and corruption in the business registration process.

In coordination with the IFC and the NCC, Quezon City introduced changes in the procedure for obtaining business permits. The requirements for the application of construction permits were reduced by about 50 percent and the number of steps from 78 to 14 through the utilisation of a computer-based monitoring system.

Numerous consultations were made and the NCC (with a large private sector membership) acted as the private sector representative during the consultations on improving the BPLS and recommending regulatory reforms to the city government. Quezon City and the NCC worked with the national government agencies in reducing, eliminating, or simplifying requirements and procedures. National government agencies have their own requirements imposed on businesses seeking permit to operate. A local task force on EODB was established to work on the necessary reforms. The city government's BOSS was also strengthened, which resulted in an increase in new business registrations by 32 percent. There was no private sector opposition to the local regulatory reforms because consultations were carried out properly.

⁴⁰ Depending on its corporate organisational form, a business firm has to first register either with the DTI, the SEC, or the Cooperative Development Agency before registering with a local government.

Table 6.11. Simplified Business Registration Process for New Businesses

| Main Activity | Detailed Steps |
|---|---|
| 1. Applicant visits Business One-Stop Shop (BOSS) | <ul style="list-style-type: none"> • An employee from the BPLO, (the 'SBRP Representative' or 'SB Rep', informs applicants of the following <ul style="list-style-type: none"> ○ Process flow ○ Documents needed • SB Rep assists/interviews the applicant in filling out the unified new business application form/SB e-form in the computer • SB Rep checks/verifies information in the completed form with the applicant • Applicant confirms the completeness, accuracy, and truthfulness of the information declared • SB Rep presents applicant actual amount of taxes and fees due • SB Rep asks applicant if he/she will pay today • If yes, prints application form and gives to the applicant • Applicant signs the forms and proceeds to step two (2) • SB Rep informs applicant when he/she will get licence plate and registration document but not more than 9 days from payment of the relevant taxes and fees (to be delivered by courier or registered mail) |
| 2. Applicant goes to the payment counter within the BOSS to pay | <ul style="list-style-type: none"> • Applicant pays total taxes and fees to assigned/detailed city treasurer's office collector and gets official receipt (OR) • Applicant returns to SB Rep who notes the OR number for recording • For low-risk establishments, business permits can be obtained as soon as proof of payment is shown. |
| 3. Applicant receives licence certificate and registration document | <ul style="list-style-type: none"> • Regulatory departments, offices, or units conduct inspection within the prescribed time • Private delivery service delivers licence plate and documents to applicant |

BPLO = Business Permit and Licensing Office; SB = Sangguniang Bayan.

Source: EO No. 16, Series of 2009.

Quezon City EO No. 17 (series of 2011) trimmed down the requirements for obtaining a business permit from nine to four, and limited face-to-face contact between applicant and local government staff, which reduced opportunities for bribery and corruption. With the change in procedures, an applicant can secure the business permit within an hour of lodging the application.

Other requirements are not immediately necessary for the issuance of a business permit. The goal of the local government is to make it easier for applicants to obtain a permit. However, the business permit that has been granted will be revoked if the business does not comply with the other requirements within a specific number of days. The national government also requires certain permits, e.g. fire permit to satisfy the National Building Code, and sometimes obtaining those nationally imposed permits could be problematic especially for small businesses.

To help improve the BPLS process, the NCC monitors the reports coming from the BPLS Field Monitoring and Evaluation Survey. The NCC helps the Quezon City local government to continuously improve the business permitting process and to develop a database of local businesses that will enable the city government to further enhance the business climate in the city. In this regard, a database of local businesses has been created in cooperation with the Quezon City Chamber of Commerce and Industry (QCCCI) and the QCCCI Foundation. This is instrumental in creating a strong partnership between the local government and the private sector. The NCC, along with the private sector, also acts as a mediator between government agencies, both national and local. The NCC also recommends improvements on business-related processes based on international standards to improve the ranking of Quezon City relative to other benchmark cities abroad.

Another innovation in business processes undertaken by the city was to link up with the DTI's Philippine Business Registry (PBR) in 2012. Quezon City was the first local government to be connected to the PBR, which allows new applicants to list their businesses and acquire business permits in a faster and more convenient manner from 2 weeks to a mere 30 minutes. This was done by linking the registration processes of six national government agencies: DTI, SEC, BIR, Pag-IBIG, PhilHealth, and Social Security System.

Table 6.12 rates the different elements of the regulatory policy cycle according to their significance or lack of significance in influencing the overall outcome of reforming the city's BPLS. The ratings indicate how significant a particular element has been in improving the Quezon City government's BPLS.

Table 6.12. Elements Table, Case of the Quezon City Local Government

| | National RMS tool | Impact - significance | Remarks |
|--------------------------------|--|-----------------------|--|
| Policy Cycle Elements | | | |
| Big policy | Assistance by NCC, IFC, and discussions with local legislative council | Very Significant | <ul style="list-style-type: none"> □ Necessary to streamline the business permits and licensing system to encourage more investment and business registrations |
| Little and legal policy | Local executive orders | Very significant | <ul style="list-style-type: none"> □ Release of the JMC No. 01, series of 2010, as well as EO No. 17, series of 2011 to further simplify the process for doing business □ The JMC, for all the LGUs and the regional government agencies while the EO is specific for Quezon City |
| Decision-making support | Commitment by city mayor | Very significant | <ul style="list-style-type: none"> □ Mayor initiated the changes and ensured changes were installed |
| Change implementation | None | None | <ul style="list-style-type: none"> □ No information on change implementation plan on BPLS |
| Administration and enforcement | Establishment of one-stop business centre | Very significant | <ul style="list-style-type: none"> □ Local business permits and licences are given once local requirements are complete. □ National government requirements, e.g. fire permit, must be satisfied within a few days of grant of local business permit; otherwise, the local permit will be revoked. |

| | National RMS tool | Impact - significance | Remarks |
|---|--|-----------------------|--|
| Monitoring and review | Business Permit and Licensing Office (BPLO) and NCC monitoring | Significant | <ul style="list-style-type: none"> □ The BPLO monitors and cancels permits in case business does not comply with the other requirements; □ NCC monitors reports of local governments |
| Supporting Policy Practices | | | |
| Consultation, communication, and engagement | Consultations with NCC representing private sector | Significant | <ul style="list-style-type: none"> □ NCC was the private sector representative □ National government agencies are aware that their requirements must still be complied with but Quezon City can already grant the business permit after businesses submit the initial requirements |
| Learning | Database | Significant | <ul style="list-style-type: none"> □ Database on number of businesses and on revenues generated are tracked by BPLO. □ Advice from the NCC on international standards |
| Accountability and transparency | Audit by Commission on Audit (COA) | Significant | <ul style="list-style-type: none"> □ COA audits all local government transactions. □ There is a need for greater transparency of results to the public. |
| Supporting Institutions | | | |
| Regulatory policy principles | Joint Memorandum Circular No. 01 | Significant | <ul style="list-style-type: none"> □ In compliance with the JMC, the EO, and the government's goal of easing doing business in the country |

| | National RMS tool | Impact - significance | Remarks |
|--|---------------------------------|-----------------------|---|
| Lead institutions | City government, DILG, DTI, NCC | Very Significant | <ul style="list-style-type: none"> □ DILG and DTI are the main overseers of the Quezon City LGU and the BPLO; □ NCC provides support. |
| Coordinating institutions and training providers | DTI, NCC | Significant | <ul style="list-style-type: none"> □ DTI and NCC conduct assessment of procedures and provides recommendations |

DILG = Department of Interior and Local Government; DTI = Department of Trade and Industry; EO = executive order; IFC = International Finance Corporation; JMC = joint memorandum circular; NCC = National Competitiveness Council.

Summary Comment

The Philippines has extensive experience in regulatory reform. This chapter has tracked the macroeconomic and regulatory reforms, and the political and economic history in the Philippines since the post-martial law regime. Economic policy has evolved from a highly protectionist regime with a highly control-oriented regulatory framework to a market-oriented economic and regulatory policy that sees private enterprise as the locomotive of growth. Past reform efforts have started to pay off in terms of a remarkable economic growth performance in recent years.

While regulatory reform is not something new to the country, a formal requisite RMS has yet to be established. It has found that a de facto RMS has been created through the country's political and economic context. The paper has identified that the Philippines does not have a coherent formal RMS, but has some of the parts of an RMS. Overall, the Philippines' experience suggests that political leadership, and economic policy and capacity are very important factors in the reality of regulatory reform and the development of a requisite RMS.

The chapter explored the role of some of the elements of an RMS in regulatory reform in the case of the NCC and a local government, that of Quezon City. These cases demonstrate the importance of specific elements in a formal RMS and how the NCC and Quezon City local government have successfully used them to improve regulatory quality.

In the case of NCC, successful collaboration between government and the private sector was instrumental in implementing measures that have resulted in improved rankings of the country in various competitiveness and EODB indices. Political leadership and the presence of a dedicated central or oversight body with access to the highest political leadership are essential elements in implementing regulatory reforms.

On the other hand, the Quezon City government has long recognised the need to reduce the costs of doing business in the city to attract new businesses, support existing businesses, and encourage the registration of thousands of informal businesses in the city. Through a series of executive orders, the establishment of a one-stop shop business centre, consultations to generate support for new and simplified procedures in BPLS, and the link to the Philippine Business Registry, the city government has reduced the number of steps and requirements for business permits and licensing; thus, a big regulatory burden on business firms has been lifted effectively. This has been made possible by the excellent cooperation between the city chief executive (mayor) and the local legislative council to work towards simplifying the BPLS. Based on the experience of Quezon City, it is not impossible for other local governments to streamline their business permit and licensing systems.

These experiences provide critical inputs to the institutionalisation of a formal and requisite RMS. This experience highlights the importance of the deliberate and systematic development of regulation to deliver envisaged development outcomes. This is an important finding because in the Philippines it can be argued that the absence of a well-coordinated RMS is a key factor in the low quality of regulation.

References

- Aldaba, R. (2013), 'Twenty years after Philippine trade liberalization and industrialization: what has happened and where do we go from here.' *Philippine Institute for Development Studies (PIDS) Discussion Paper Series No. 2013-21*, Makati City: PIDS, <http://dirp3.pids.gov.ph/ris/dps/pidsdps1321.pdf> 5 December 2014 (accessed 1 December 2014).

- Asian Development Bank (2007), *Philippines: critical development constraints*. Asian Development Bank Country Diagnostics Studies. Mandaluyong City: ADB.
<http://afirm.org.ph/IDLS/files/original/f0a55f813d5e913a2ab981dddd6bee3d.pdf> (accessed 5 December 2014).
- Asian Development Bank (2012), 'Regulatory impact assessment (RIA) pilot project'. Briefing for Provincial RIA Seminars – Davao and Cebu – July 2012,
http://www.tourism.gov.ph/Downloadable%20Files/Briefing_Paper_for_Provincial_Seminars_FINAL_July_2012.pdf (accessed 5 December 2014)
- Asia-Pacific Economic Cooperation (2009), *APEC economic policy report*. APEC Economic Committee. Singapore: APEC Secretariat.
<http://www10.iadb.org/intal/intalcdi/PE/2009/04457.pdf> (accessed 5 December 2014).
- Balisacan, A. and H. Hill (eds.) (2003), *The Philippine economy: development, policies, and challenges*. Quezon City: Ateneo de Manila University Press.
- Bautista, R., J. Power, and Associates (1979), 'Industrial promotion policies in the Philippines'. Makati City: Philippine Institute for Development Studies.
- Canlas, D. (1996), 'Institutional challenges of global market reform'. In C. Paderanga (ed.), *The Philippines in the emerging world environment: globalization at a glance*. Quezon City: University of the Philippines Press.
- de Dios, E. and P. Hutchcroft (2003), 'Political economy', Chapter 2. In A. Balisacan and H. Hill (eds.), *The Philippine economy: development, policies, and challenges*. New York: Oxford University Press.
- de Francesco, F., C.M. Radaelli, and V. Troeger (2011), 'Implementing regulatory innovations in Europe: the case of impact assessment', *Journal of European Public Policy*, DOI:1080/13501763.2011.607342
- Department of Trade and Industry, Philippines (2006), *Streamlining business registration in LGUs, good practices*. Metro Manila: Bureau of Small and Medium Enterprise Development, German Technical Cooperation – Small and Medium Enterprise Development for Sustainable Employment Program, and The Asia Foundation.
- Doronila, A. (2001), *The fall of Joseph Estrada: the inside story*. Pasig City: Anvil Publishing.
- Gill, D. (2011), 'Chapter 7 - regulatory management in New Zealand: what, how and why?'. In S. Frankel (ed.), *Learning from the Past, Adapting for the*

- Future: Regulatory Reform in New Zealand*. Auckland: LexisNexis NZ Ltd.
<http://www.regulatorytoolkit.ac.nz/resources/papers/book-1/regulatory-management-in-new-zealand-what,-how-and-why> (accessed 5 December 2014).
- Gill, D. (2014). 'Defining regulatory management systems', *Regulatory coherence technical paper, ERIA-NZIER Project*.
- Jacobs, S. (2006), 'The regulatory guillotine™: a tool for rapid regulatory simplification', Workshop on Accelerating Economic Regulatory Reform: Indonesia and International Experience, 10–11 April, Jakarta.
- Jakobi, T. (2012), 'Regulating regulation? The regulatory policy of the OECD', Paper presented at the 4th Biennial Conference of the ECPR Standing Group on Regulation and Governance, 27–29 June 2012, Exeter.
- Kauffman, D., A. Kraay, and M. Mastruzzi (2007), *Governance matters IV: new data, new challenges*. Washington, DC: World Bank.
- Laquian, A. and E. Laquian (2002), *The Erap tragedy: tales from the snake pit*. Pasig City: Anvil Publishing.
- Lim, J. (2010), 'Why the Philippines is a laggard in East Asia'. In F. Sta. Ana III (ed.), *Philippine institutions: growth and prosperity for all*. Quezon City: Action for Economic Reforms, Inc.
- Llanto, G. (2014), 'Growth, productivity and economic policies in the Philippines in the last 50 years', A study submitted to the Development Academy of the Philippines, 5 July.
- Llanto, G. and A. Navarro (2014), 'Development finance and aid in the Philippines: policy, institutional arrangements and flows: country report', Paper submitted to the National Economic and Development Authority and United Nations Development Programme.
- Llanto, G. and E. Gonzalez (2007), 'Policy reforms and institutional weaknesses: closing the gap', *Philippine Institute for Development Studies Discussion Paper Series* No. 2007-07, Makati City: PIDS,
http://www.eaber.org/sites/default/files/documents/PIDS_Llanto_07_2.pdf
 (accessed 5 December 2014).
- Llanto, G. and E. Gonzalez (2010), 'Regulatory policy reforms and institutional weaknesses: closing the gap'. In F. Sta. Ana III (ed.), *Philippine institutions: growth and Prosperity for All*. Quezon City: Anvil Publishing, Inc.
- Local Government of Quezon City website, <http://www.quezoncity.gov.ph/>
 (accessed 5 December 2014).

- Luz, G. (2013), 'Game plan for competitiveness', *Philippine Daily Inquirer*, <http://opinion.inquirer.net/47441/game-plan-for-competitiveness> (accessed 9 March 2015).
- Luz, G. (2014), 'A year-end message from the National Competitiveness Council', <http://www.competitive.org.ph/stories/1063> (accessed 2 February 2015).
- Macaranas, F. (2011), 'The National Competitiveness Council of the Philippines: the human resource development focus of a Public-Private Partnership.' In A. Lall (ed.), *Facets of competitiveness: narratives from ASEAN*, World Scientific Publishing Company.
- Malaluan, N. and S. Lumba (2010), 'Checking the abuse of presidential powers'. In F. Sta. Ana III (ed.), *Philippine institutions: growth and prosperity for all*. Quezon City: Anvil Publishing, Inc.
- Malaysia Productivity Corporation (2013), *National policy on the development and implementation of regulations*. Regulatory Review Department, Malaysia Productivity Corporation (MPC). Selangor Darul Ehsan: MPC.
- Medalla, E. (1996), 'Assessment of the tariff reform program and trade liberalization', *Tariff Commission-PIDS Staff Paper Series* No. 86-03, Makati City: Philippine Institute for Development Studies.
- Medalla, E. (1998), 'Trade and industrial policy beyond 2000: an assessment of the Philippine economy' *Discussion Paper Series* No. 98-05. Makati City: Philippine Institute for Development Studies.
- Moreno, R. (2014), 'Towards a responsive regulatory regime and good regulatory management', A presentation during the ERIA First Technical Workshop on 'Towards Responsive Regime and Good Regulatory Management Practices in ASEAN and East Asia: Experiences, Challenges, and Way Forward', 12 September 2014, Kuala Lumpur.
- Moreno, R. (2015), 'Competitiveness of PH, cities', *Philippine Daily Inquirer*, <http://opinion.inquirer.net/83155/competitiveness-of-ph-cities> (accessed 9 March 2015).
- National Competitiveness Council (2014a), 'About us', <http://www.competitive.org.ph/about-us/about-ncc> (accessed 8 December 2014).
- National Competitiveness Council (2014b), 'Philippine climbs 13 notches in Doing Business report', <http://www.competitive.org.ph/stories/1013> (accessed 8 December 2014).

- National Competitiveness Council (2014c), The final draft of the National Quality Law (for your comment), <http://www.competitive.org.ph/stories/1032> (accessed 2 February 2015).
- National Competitiveness Council (2014d), 'The cities and municipalities competitiveness Index 2014', <http://www.competitive.org.ph/node/941> (accessed 16 February 2015).
- National Competitiveness Council website, <http://www.competitive.org.ph/> (accessed 5 December 2014).
- Navarro, A. and G. Llanto (2014), Chapter 1: 'Macroeconomic trends in 2013', Chapter 1, *2013 Economic Policy Monitor*, Makati City: PIDS.
- Organisation for Economic Co-operation and Development (2009), 'Improving the quality of regulations', *OECD Policy Brief*, <http://www.oecd.org/gov/regulatory-policy/Policy%20Brief%20-%20Improving%20the%20Quality%20of%20Regulations.pdf> (accessed 5 December 2014).
- Organisation for Economic Co-operation and Development (2009), 'Improving quality of regulations', *Policy Brief*, November.
- Organisation for Economic Co-operation and Development (2010), 'Regulatory policy and the road to sustainable growth: A Draft Report', <http://www.oecd.org/regreform/policyconference/46270065.pdf> (accessed 5 December 2014).
- Organisation for Economic Co-operation and Development (2010), 'Regulatory policy and the road to sustainable growth. An OECD Draft Report, Paris: OECD, <http://www.oecd.org/regreform/policyconference/46270065.pdf> (accessed 5 December 2014).
- Peltzman, S. (1989). 'The economic theory of regulation after a decade of deregulation', *Brookings Papers on Economic Activity, Special Issue*, pp. 1–41.
- Radaelli, C. and O. Fritsch (2012), 'Evaluating regulatory management tools and programmes', *Expert Paper No. 2*, July, Paris: OECD.
- Remo, A. (2015), 'NCC pushes for "Project Repeal" to help PH firms', *Philippine Daily Inquirer*, <http://business.inquirer.net/183549/ncc-pushes-for-project-repeal-to-help-ph-firms> (accessed 16 February 2015).
- Seman, D. (2014), 'Implementation of good regulatory practice in Malaysia', A presentation during the ERIA Regulatory Management Workshop, Pacific Regency Hotel, 12 September 2014, Kuala Lumpur, Malaysia.

- Sta. Ana III, F. (ed.), (2010). *Philippine institutions: growth and prosperity for all*. Quezon City: Anvil Publishing, Inc.
- Stigler, G. J. (1971), 'The theory of economic regulation', *Bell Journal of Economics*, Vol. 2, 1971, pp. 3–21.
- Tecson, G. (1996), 'Philippine manufacturing industries and the effects of trade policy reforms on structures and efficiency.' In E. Medalla et al. (eds.), *Philippine trade and industrial policies: catching up with Asia's tigers*, Vol. 2. Makati City: Philippine Institute for Development Studies.
- World Bank (2014), 'Business reforms in Philippines', <http://www.doingbusiness.org/reforms/overview/economy/philippines> (accessed 8 December 2014).

Chapter VII

Regulatory Coherence: The Case of Thailand

Sumet Ongkittikul^{#§}

Thailand Development Research Institute (TDRI)

Nichamon Thongphat

Thailand Development Research Institute (TDRI)

Part 1: Evolution of Regulatory Management in Thailand

1. Introduction

Thailand is a middle-income country in Southeast Asia, which is ranked 89th and 80th place in the world in terms of the Human Development Index (HDI) and income per capita, respectively. It is also in the fourth place for these two indices, after Malaysia, in Southeast Asia. **Table 7.1** shows the social performance of Thailand in 2012 and 2013.

Thailand has been ranked in the medium range of quality of government and regulatory quality. According to the Worldwide Governance Indicators (World Bank, 2013), the percentile ranks for quality of government measured by the aggregate governance indicators show that more than 50 percent of countries

[#] Lead author. Sumet Ongkittikul sumet@tdri.or.th; Thailand Development Research Institute (TDRI), 565 Ramkhamhaeng 39 (Thepleela) Wangthonglang Bangkok, 10310 Thailand

[§] This research was conducted as part of the project of the Economic Research Institute for ASEAN and East Asia (ERIA) and New Zealand Institute of Economic Research (NZIER) 'Towards Responsive Regulations and Regulatory Coherence in ASEAN and East Asia: Deconstructing Effective and Efficient Regulatory Management Systems'. The authors are deeply indebted to the members of this project for their invaluable suggestions. The opinions expressed in this paper are the sole responsibility of the authors and do not reflect the views of ERIA or NZIER.

worldwide are ranked lower than Thailand for government effectiveness (61 percent), regulatory quality (58 percent), rule of law (52 percent), and control of corruption (49 percent). The percentile ranks for accountability and political stability are 34 percent and 9 percent, respectively, which indicate the lower rank of Thailand compared to 215 countries around the world. According to the Rule of Law Index (World Justice Project, 2014), Thailand is ranked 47th overall and earns high marks on the effectiveness of the criminal justice system (ranking 35th globally and 7th among its income peers). The country's performance in order and security has improved, while political violence remains a major problem. Corruption still remains, despite the significant improvement during the past years. The difficulties in enforcing court decisions are impediments to civil justice.

Table 7.1. Thailand's Human Development Index and Components, 2012 and 2013

| Items | Human Development Index (HDI) in 2013 | Life Expectancy at Birth in 2013 | Mean Years of Schooling in 2012 | Expected Years of Schooling in 2012 | GNI per Capita in 2013 |
|-----------------------------|---------------------------------------|----------------------------------|---------------------------------|-------------------------------------|------------------------|
| Thailand (Ranking) | 0.722 (89) | 74.4 (76) | 7.3 (116) | 13.1 (91) | 13,364 (80) |
| HDI Groups | | | | | |
| Very high human development | 0.890 | 80.2 | 11.7 | 16.3 | 40,046 |
| High human development | 0.735 | 74.5 | 8.1 | 13.4 | 13,231 |
| Medium human development | 0.614 | 67.9 | 5.5 | 11.7 | 5,960 |
| Low human development | 0.493 | 59.4 | 4.2 | 9.0 | 2,904 |
| Regions | | | | | |
| East Asia and the Pacific | 0.703 | 74.0 | 7.4 | 12.5 | 10,499 |
| World | 0.702 | 70.8 | 7.7 | 12.2 | 13,723 |

GNI = gross national income; HDI = Human Development Index.
Source: World Bank, 2014.

Overall, the Thai economy experienced gross domestic product (GDP) growth of around 3 percent in 2009–2013 despite political tension in 2010–2013; GDP growth in 2014 was 2.3 percent. According to the *Asian Development Outlook*

2014 (ADB, 2014), the Thai economy slowed sharply in 2013 due to the weakening of domestic demand and the sluggishness of exports. Political disruption was another significant impediment for the economy since 2010. Further, growth was forecast to remain subdued until it rebound to 3.6 in 2015 and was expected to rebound to 4.1 percent 2016, respectively (ADB 2015). According to the *Asian Development Outlook 2015* (ADB, 2015), the need for stronger public sector investment to help revive Thailand's economy and to improve its infrastructure depends on state-owned enterprises (SOEs), which need reform.

The regulatory system of Thailand is mostly related to the traditional institution of public administration: the bureaucracy, the system of administrative law, and political patronage are the key influences of state institution and economic policy instruments (Christensen et al. [1993], in Poapongsakorn and Nikomborirak, 2003). The patronage system is attached to the administrative system in Thailand. For example, Thailand's code of administrative law relies mostly on subordinate laws, which are issued by permanent officials and ministers. Since they are able to introduce whichever regulations they see fit, the system is criticised about the transparency from business lobbying, particularly before the 1997 Constitution.

Further, Poapongsakorn and Nikomborirak (2003) point out other key characteristics of the Thai regulatory system. Public participation traditionally has not occurred in the system; as a result, many agencies did not have proper measures to inform the public despite the requirement to do so. Besides, the legal authority to issue, change, or amend a regulation is always vested with a committee consisting of senior officials from the core agency, relevant ministries, academicians, business people, and representatives from business associations; some members might have conflicts of interest. Conflict resolutions are taken to court, which is costly and leads to weak enforcement and non-transparent procedures since many businesses try to avoid harsh penalties with a bribe. Finally, simultaneous functions of some state enterprises, i.e., policymaking, regulators, and operators, especially in transport and waterworks, result in serious conflict of interest problems.

According to the World Bank report *Doing Business 2014*, Thailand is ranked 18th out of 189 countries and 6th in Asia behind Singapore, Hong Kong, Malaysia, South Korea, and Taiwan. However, Thailand's performance with ease of doing

business (EODB) has remained the same as in 2006, unlike the marked improvement of Malaysia, South Korea, and Taiwan. This reflects the existence of the red tape problem in redundant processes and procedures required to gain bureaucratic approval, such as licensing and registration, without explicit regulation.

There are many regulations from approximately 8,000 laws in Thailand that most people do not know exist until unintentional violations occur; many of these regulations are rarely enforced. Therefore, it is time for Thailand to undertake a comprehensive law and regulations review (Nikomborirak 2016).

Part 1, Section 2 discusses the evolution of the regulatory system in Thailand since it was reformed to democracy, and Part 1, Section 3 analyses the current state of the regulatory management system (RMS) and the significant initiatives for regulatory reform in Thailand. After that, Section 5 assesses the role of RMS in Thailand. Finally, Parts 2 and 3 analyse, respectively, two studies on the role of RMS in regulatory failure and in successful regulatory reform.

2. Evolution of the Regulatory System in Thailand

RMS in Thailand has been formed by economic and political factors that have changed dynamically for more than 20 years. The impact reforms in 1992 are a relevant factor in driving the regulatory system in Thailand today.

To understand Thailand's regulatory system, this study describes the development of economic and political situations in Section 2.1. Section 2.2 mentions the impetus and the political drivers for the regulatory reforms and how they have changed over time.

2.1. Development of Economic and Political Situations in Thailand

The regulatory system in Thailand has improved throughout four periods of social and economic development (**Table 7.2**).

Before 1992

The reformation of the political regime in Thailand from absolute monarchy to democracy in 1932 led to a structural change of the administrative system, which was divided into central, provincial, and local administration under the State Administration Act (1933).

Table 7.2. Significant Situations of the Regulatory System in Thailand, 1992–present

| Period | Significant Situation |
|------------------------|--|
| Pre-1992 | <ul style="list-style-type: none"> • Political democratic reform in Thailand • Economic boom and the 1991 coup d'état |
| 1992–1997 | <ul style="list-style-type: none"> • Political crisis in 1992 with interim government • Regulatory reform for PPP project • Enactment of the 1997 Constitution • Pre-Asian economic crisis in 1997 |
| 1998–2006 | <ul style="list-style-type: none"> • Privatisation of state-owned enterprises • Economic recovery since 1997 • RIA was required in 2001 • 2006 coup d'état |
| 2007–2013 | <ul style="list-style-type: none"> • Minor regulatory revision, especially with the regulator-related laws • Enactment of the 2007 Constitution • World economic crisis in 2008 • Flooding in 2011 • Political tension during 2011–2013 |
| 2014–2016 (Present) | <ul style="list-style-type: none"> • 2014 coup d'état • National peacekeeping or reconciliation is priority agenda • Drafting of new constitution • Counter corruption • Increasing Thailand competitiveness |

PPP = public–private partnership; RIA = regulatory impact assessment.
Source: Authors.

The administrative system experienced great development in 1932–1979. This was during the industrialisation period of the country under the third and the fourth national economic and social development plans that aimed to create economic growth. However, this structural development focused more on increasing the number of organisations rather than providing other benefits.

Since 1933, the bureaucratic regime has had a strong impact on the social and political system, decentralisation has not been implemented, and the regulatory system has not been effective. Thus, this period was so-called 'red tape' from the large expansion of the bureaucratic system. The reform of the administrative system, therefore, became a significant policy since the bureaucratic polity impeded administrative efficiency.

The major reform started in 1980. Red tape reduction called for ease of doing business, especially in the early 1990s, when previous governments had been trying to reduce the bureaucratic size by decentralisation to improve the efficiency of the administration.

Regulatory impact assessment (RIA) was introduced in 1988 under the Regulation of the Office of the Prime Minister to reduce the submission of regulations that caused red tape and duplication in public governance, which was a complaint of the 'deregulation concept' in that time. However, only Cabinet members and some officials knew of the existing RIA requirement and the reason and benefit of its implementation. Thus, the RIA in this period did not succeed.

1992–1997

The relevant development of the RMS was clearly seen in 1992 when the state allowed private participation in public service investment to downsize the bureaucracy and make operations more efficient. Due to the rapid growth in the pre-Asian crisis period, public infrastructure and services provided by SOEs were not adequate. Then, private participation in state enterprises was called upon. The state allowed private participation in public services through privatisation, concessions, and public–private partnerships.

Many important regulations were legislated and concessions were effective during that time. Examples are the Private Participant in State Undertaking (1992), the concession for landline telephones and mobile phones with the Telephone Organization of Thailand¹, and the concession for independent power producers, among others, which affected key sectors of the country. Further, the 1997 Constitution was legislated. The economic policy provided in this Constitution clearly emphasises market mechanisms through the enforcement of the anti-monopoly and consumer protection provisions. Therefore, government is called on to support a competitive market by protecting the market from all anti-competitive practices.

However, the reforms, especially the establishment of regulatory bodies and the implementation process, did not go smoothly because of delays caused by political factors. This delay was considered a positive sign though because of the increasing public awareness of and people's participation in the reform process (Poapongsakorn and Nikomborirak 2003).

1998–2006

The economic downturn after the 1997 crisis was another factor for the government's call for aid from the International Monetary Fund (IMF). This led to the state's privatisation of state utility enterprises in order to generate credibility, reliability, and efficiency of services, per conditions in the IMF agreement.

Hence, the Cabinet approved the Master Plan for State Enterprise Sector Reform in 1998 to initiate regulatory reforms of SOEs and other policy reforms. The Master Plan dealt with the four infrastructure sectors: telecommunications, energy, transport, and water. Thus, the Telephone Organization of Thailand, the Communication Authority of Thailand, Airports of Thailand Public Co., Ltd., Thai Airways, and PTT Public Co., Ltd. were privatised.

After the Asian crisis in 1997, the government realised that the deregulation policy was among the factors that de-escalated the crisis, especially deregulation

¹ Telephone Organization of Thailand was corporatised as TOT Public Co., Ltd. on 31 July 2002.

in the financial sector. The government then set the new course of RIA – from a mechanism for deregulation to a tool to help strengthen the economic and social resilience process. The Legal Reform Committee for the Development of the Country (LRCDC) proposed to the Cabinet in 2003 the mandatory requirement of RIA, being in line with the Organisation for Economic Co-operation and Development (OECD). It was then approved by the Council of Ministers in 2004. Since then, government agencies have to comply with the RIA checklists in order to propose any regulation to be considered by the Cabinet.

Due to political conflicts since 2005, a faction of Thailand's military led by General Sonthi Boonyaratglin staged a bloodless coup, suspended the Constitution, and declared martial law on 19 September 2006. This resulted in Thailand's short-term economic uncertainty, and impacted on investors and developed country governments (Schmidt, 2007).

2007–2013

After the 2006 coup d'état, the 2007 Constitution was legislated. This Constitution preserves the concept of the state's policy directive on the economy by encouraging a free and fair economic system through market forces, ensuring free and fair competition, and protecting consumers. Further, through its basic public utilities provision, the Constitution prohibited the monopoly by private investment that could be a detriment to the state; it provided that the ownership of private investment in basic public utilities should not be more than 49 percent.

2014–2016 (Present)

After the political tension in 2011–2013, General Prayut Chan-o-cha, Commander of the Royal Thai Army, launched the 12th coup d'état since the country's first coup in 1932. The military established a junta called the National Council for Peace and Order (NCPO) to govern the nation. The NCPO issued an interim constitution granting itself amnesty and sweeping power. It then established a military-dominated National Assembly which later unanimously elected General Prayut as Prime Minister of the country.

The top priority agendas of the current government are not only national peacekeeping, constitution drafting, and counter corruption but also improvement of national competitiveness. Therefore, the current government

starts directly with the problem of ease of doing business and aims to override this issue in the road map of the government as declared to the public. The Law Reform Commission (LRC) of the Office of the Council of State (OCS), entrusted to do the tough research, found that about 90 percent of Thai legislation, even the bills proposed at that time, was based on the closed government control system, or licensing, which is not compatible with the trade liberalisation environment of the world today. Another issue is dated legislation, particularly subordinate laws, which have not been continually reviewed for regulatory impacts.

Based on the findings, the LRC proposed the optimal solution for those problems to the Council of Ministers for further action: (i) enactment of the Licensing Facilitation Act (2015) for ease of doing business and enhancement of transparency; (2) enactment of the Royal Decree on Revision of Law (2015) or the Thai Sunset Law to make all Thai laws and regulations dynamic; and (3) drafting of a law on RIA, which is now under consideration of the LRC, and adopt the scientific method in the policymaking process to attain sustainable development and better the lives of people.

2.2. The Impetus and Political Drivers for Regulatory Reform in Thailand

Akin to the mainstream concept of regulatory reform, Thailand has exercised techniques for reform in accordance with international best practices. However, many existing regulations are evidence that Thai regulations are not in line with current global conditions or with the current needs of the public. These let the country down in boosting competitiveness ranking, particularly the legal mechanism, based on the strict control system used in existing regulations (Nilprapunt, 2015a). This section explores the impetus and political drivers for the regulatory reforms, including the political agenda behind the reforms.

The continuation of government policy is the relevant factor for regulatory reform in Thailand (as evidenced in the period before 1932 and after the economic crisis in 1997 until 2006). Regulatory reform policy was driven strongly and continually and the output and outcome of this effort produced a satisfactory effect to the country as a whole.

Strong policy leadership from the King led to the establishment of the Penal Code, the Civil and Commercial Code, the Civil Procedure Code, and the Criminal Procedure Code along the same lines as the laws of European countries in 1897–1925; it also drove the country from absolute monarchy to democracy in 1932. Moreover, a benefit from this reform is the establishment of the Office of the Council of State (OCS), a central legal agency of the government and the successor of the Laws Drafting Commission of 1897, which had been responsible for regulatory drafting and which dealt with regulatory reform for a long period.

Even though RIA implementation in 1988 failed, academics and progressive politicians stimulated the idea of regulatory reform. The country realised the need for regulatory reform in order to compete in world trade as protectionism has relaxed. According to Nilprapunt (2015a), in 1992 the government therefore decided to establish the LRC to ensure the continuity of regulatory reform work and established the Law Reform Revolving Fund, especially for regulatory reform work. With strong government backing and financial support, the LRC initiated many regulatory reform projects; and the first priority was to bring the regulations in line with current conditions and ensure that these meet current needs.

Unfortunately, long political turbulence in Thailand that began in mid-1992, in conjunction with the economic crisis in 1997, had frozen the LRC initiative. After recovery from the economic crisis in 2002, regulatory reform became a dominant policy of the government once again until 2006. During that period, the government invested much effort and resources for regulatory reform work, particularly in the public sector, and the RIA had been reincarnated, upon the OECD checklist. The Office of Cabinet Secretariat was entrusted the RIA, and the OCS prepared its manual. This period could be called the golden period for regulatory reform in Thailand when its national competitiveness received a satisfactory ranking, as assessed by many international institutions in 2003–2005.

However, Thai politics had again become unstable from late 2006 until 2013; this has always been a key obstacle to regulatory reform in Thailand. Poapongsakorn and Nikomborirak (2003) point out that Thailand's reform process usually lacks a consistent policy framework. The sectoral policy is fragmented at the department level. Political officials come from a government consisting of a number of coalition parties that would not interpose in the other parties' line of duties.

Therefore, policy planning is done inconsistently. Even so, the government could actively consolidate its power and was capable of carrying out its policies without any resistance from the bureaucrats in the period of the first Thaksin government.

Thailand's experience with the 1999 Trade Competition Law shows the helplessness of the Thai bureaucratic system, which is influenced by politicians and the business community. Consequently, Thai laws cannot be the panacea without proper institutional design and political will that will not intervene in the market.

Evidence from Poapongsakorn and Nikomborirak (2003) likewise found that the elected popular governments of developing countries can legitimately choose to carry out policies promised during election campaigns, thus, reflecting the fact that governments of developing countries always put development objectives in front of other targets.

Therefore, the achievement of the regulatory reform to improve Thailand's competitiveness since 2014 could not depend only on the 'arm's-length' of the LRC or the OCS, but also the continuation of government policy that depends on political stability. If the government can overcome this hurdle, it is possible for Thailand to move forward dramatically (Nilprapunt 2015a).

3. Current State of Regulatory System in Thailand

This section attempts to study the current state of Thailand's regulatory system through the legal system and legislative process. Finally, the study focuses on examining the gap of regulatory reform development in Thailand.

3.1. Legal System in Thailand

Thailand is a constitutional monarchy with a parliamentary form of government. Its legal system follows the pattern of civil law countries of Europe. All laws derive from two major sources: the legislative and executive branches of both central

and local governments. **Box 1** provides the details of sovereign power under the constitutional monarchy system of Thailand.

Box 1. The Constitutional Monarchy System

Under the constitutional monarchy system of the Thai democratic administration, sovereign power is divided into judicial, legislative, and executive branches. Each of these branches is headed by the President of the Supreme Court, the President of the National Assembly, and the Prime Minister.

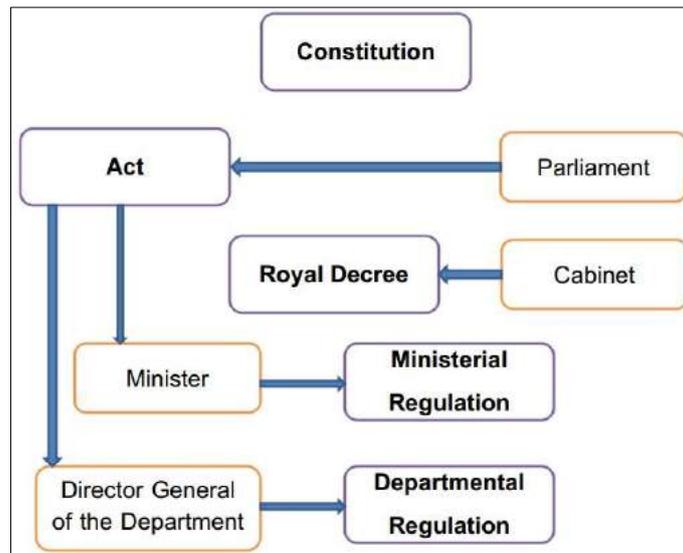
For the judicial branch, the courts of justice are classified into three levels consisting of the Courts of First Instance, the Courts of Appeal, and the Supreme Court. For the legislative branch, the National Assembly consists of the Senate and the House of Representatives. The President and the Vice-President of the National Assembly are the Speaker of the House of Representatives and the President of the Senate, respectively. For the executive branch, there are three levels of the Royal Thai government administration: central, provincial, and local administration.

Sources: Prepared by the authors; www.ThaiLaws.com (2014).

Thailand's primary laws are embodied in Acts of Parliament. The Acts, made by Parliament, are supported by various administrative laws and regulations, issued by the Thai Cabinet, minister, and director general of the department. These regulations include royal decrees, ministerial regulations, notifications of directors general, as well as less formal policies and procedures adopted by departments in the Thai government or departmental regulations. The policies have not gone through formal legal processes but can be as important as an Act of Parliament for one doing business in Thailand.

Figure 7.1 illustrates Thailand's legal system.

Figure 7.1. Legal System in Thailand



Source: Prepared by the authors.

3.2. Legislative Process in Thailand

Since the primary laws or enactments are produced by Parliament, this section explains the legislative procedure. The primary reason for enactment in Thailand is to resolve a problem through a new law or amending an old one. The policy agenda that the Cabinet declared to the Parliament is also another driver for the legislative plan or legislative development plan.

According to the 2007 Constitution, a bill or legislation can be proposed through the following channels: the Council of Ministers, composed of no fewer than 20 members of the House of Representatives, courts or statutory agencies, and eligible voters. Nevertheless, the courts or the statutory agencies can be involved in the proposal process only for laws that are linked with the establishment of those agencies and laws under the concern of these representations. The eligible voters of no fewer than 10,000 who sign a petition can propose new legislation under Part 3 of the Constitution (Rights and Properties of the Individual) and Part 5 (Property Rights). Further, the Prime Minister is required to endorse a bill connected with money that the Council of Ministers does not propose.

Legislation Processed by the Executive Branch (drafting and consideration)

Both the legislative plan and the legislative development plan need to start with the recognition of the problem. The policy analysis or legal inquiry is directed in parliamentary procedure to determine the problem and then the potential answer. If the legislation is projected by the executive branch, the ministerial office has to respond to the draft making and initiate the process of its section and puts forward the draft to Cabinet through the Office of Secretariat of Cabinet.

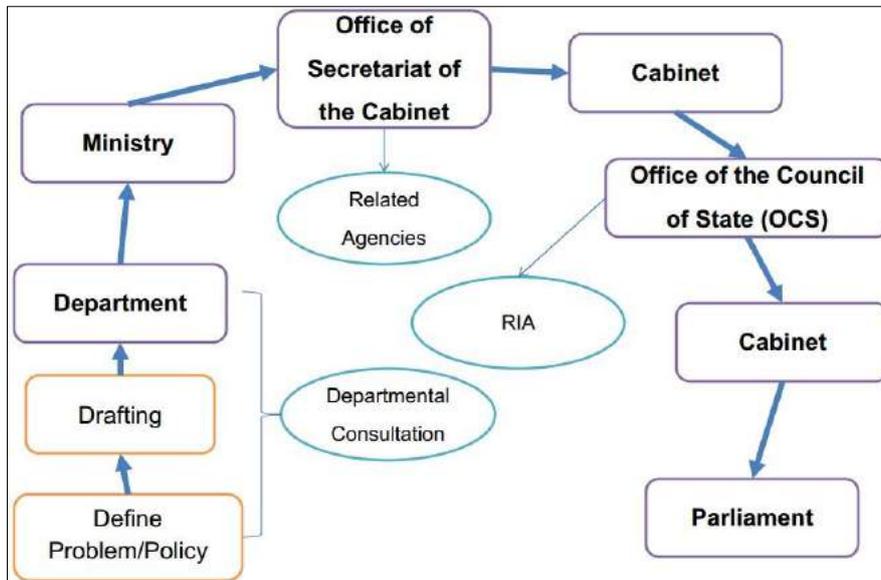
The law submitted to Cabinet will be scrutinised for approval on the need for legislation and the principle of legislation. Particularly, a law that is compatible with the Cabinet's policy, political suitability, or legal issue will be considered by the Scrutiny Committee, the Cabinet Subcommittee, before submission to the Cabinet. Consequently, consultations are done during the process. The first is departmental consultation for appropriate answers from both related agencies and other stakeholders after the policy analysis or legal research, and the other is the formal consultation with concerned agencies on the precept of the draft with responsible agencies before the Cabinet's consideration.

The law approved by the Cabinet will be transmitted to the OCS, the government body tasked with drafting national laws. However, for a law related to the policy that the government declared to Parliament, the legislative branch or the Cabinet can propose said law to the OCS.

The law approved by the OCS will be presented again to the Office of Secretariat of Cabinet for reconsideration before handing in the approved bill to the Parliament through the Whip. The Whip will consider the draft for political suitability and submit the bill to the legislative plan of the House.

Figure 7.2 illustrates the legislative process of the executive branch in Thailand.

Figure 7.2. Legislative Process of the Executive Branch in Thailand



Source: Prepared by the authors.

Legislation Processed by the Legislative Branch (consideration)

The period for consideration depends on the rule of the House of Representatives. There are normally three readings that the House of Representatives and the Senate need to consider. The first reading is for the approval of the bill in principle; the second one scrutinises it by section; and the last reading is to pass the bill.

During the first reading, the principle of the legislation will be explained to the House by the proposed body. The House will discuss the merits of the bill, and approve its principle (if the House is satisfied).

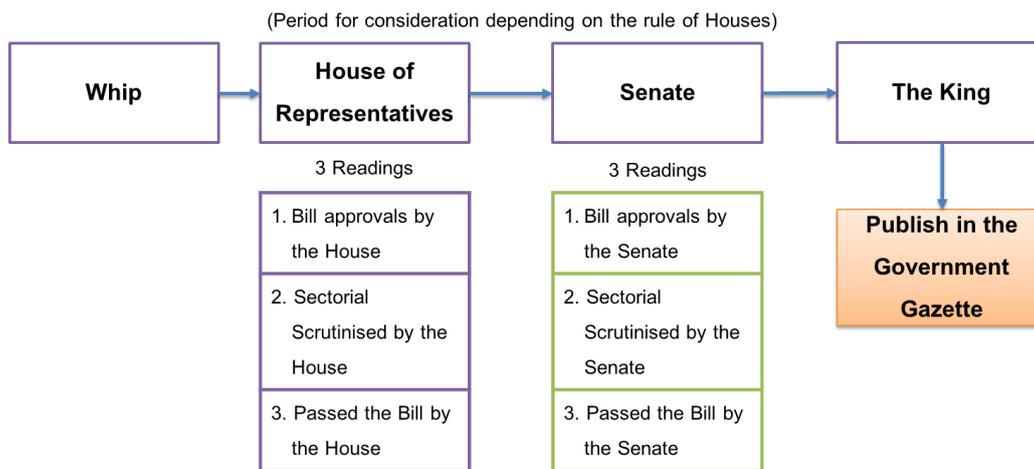
During the second reading, the commissioner will consider the bill, and the House of Representatives will reconsider it by each section and the whole content.

During the third reading, the bill is passed and submitted to the Senate to be scrutinised also during three readings: approval, sectoral scrutiny, and passing of the bill. Nevertheless, the Senate needs to consider the bill within 60 days (and within 30 days for the extended period of some cases). A bill that was not passed will be returned to the House of Representatives and reconsidered after 180 days.

The Prime Minister will present the bill to the King to obtain the royal signature within 20 days after the submission of the National Assembly. Then the Act will be published in the Government Gazette and become effective, if not vetoed.

Figure 7.3 illustrates the legislative process of the legislative branch in Thailand.

Figure 7.3. Legislative Process of the Legislative Branch in Thailand



Source: Prepared by the authors.

Legislation Processed by Eligible Voters

The 2007 Constitution is concerned about people’s direct political participation. According to Section 163, eligible voters of no fewer than 10,000 shall have the right to sign a petition to the President of the Senate to cause the National Assembly to study the legislation under Sections 3 and 5 of this Constitution. The request must be accompanied by the bill being proposed, and the rules, including procedures for the petition and scrutiny, shall conform with jurisprudence.

Eligible voters can sign a petition to cause the consideration of the National Assembly or sign it through the Election Commission.

In adopting the petition, the House of Representatives and the Senate shall permit the eligible voters to explain each petition. The extraordinary committee shall be composed of not less than one-third of the eligible electors of the extraordinary committee.

3.3. Regulatory Reform Initiatives in Thailand

Soft infrastructure such as laws and regulations, normal day-to-day working procedures of government officials, and dated bureaucratic process are real impediments to improving the national competitiveness of the current government.

The LRC of the OCS, which was entrusted to research on this matter, found three main problems of the regulatory management system (RMS) in Thailand:

- (1) The legal mechanism of most of Thai's laws and regulations is still based on the close government control system, which was fit for the trade protectionism regime but is a hurdle for the market-oriented economy of the world today. The close control system requires permissions for and licensing of all activities, where voluminous documents are submitted to authorities for consideration with no standard rules on licensing procedures. This system burdens businesses and people who need to apply for such licences, particularly those with compliance costs, and may lead to corruption if the licensing has no standard procedures and depends only on the discretion of dishonest authorities.
- (2) Thai legislation in the past mostly depended on the order of the portfolio minister who had authority to legislate subordinate law. As a consequence, as the research revealed, almost all subordinate legislation was made to ease the performance of their power and duties rather than facilitate public service. Subordinate laws may not be responsive to the current world situation since they have not changed much after enactment.
- (3) Most politicians, officials, and the public are not aware of the impact caused by the outcomes of legislation. Further, the RIA that portfolio ministers have to submit for Cabinet approval since 1988 is just a form to be filled with short 'yes' and 'no' answers (details of the RIA in Thailand are described in **Box 2**).

Box 2. Regulatory Impact Assessment in Thailand

In 1988, there was the first effort to measure the impacts of regulation when the Council of Ministers passed the Regulation of the Office of the Prime Minister on Rules and Procedure for Submission of Any Matter to the Council of Ministers for Consideration. The objective of the 1988 Regulation was to deregulate by reducing the submission of red-tape regulations that was popular at that time.

However, the RIA procedure under the 1988 law did not succeed since its concept did not fit the situation at that time. No government, other than Cabinet, knew the existence of the RIA requirements and no specific agency had been entrusted to let the public and government officials recognise the reason and benefit of RIA implementation.

After reviewing the failed RIA, the Council of Ministers added more details into the 1988 Regulation on specific impacts to be considered by the agency. Nonetheless, the government did nothing to equip government officials with the correct and appropriate understanding of the RIA, and that this measure aimed to make RIA easy for the government agency. Since 1992, the RIA statement measure was cleared on the 'yes and no' answer basis.

The deregulation policy was considered to be important after the 1997 Asian economic crisis. The government changed the RIA from a mechanism for deregulation to a tool for fashioning better regulations to strengthen the economic and social resilience process. The Legal Reform Committee for the Development of the Country (LRCDC) was set up as an ad hoc commission to conduct legal reform for better regulations. After learning from the failures of past governments, the LRCDC agreed that RIA should be a mandatory procedure for the submission of any regulation to the Council of Ministers for policy approval. Any submission of regulation without a detailed RIA cannot be presented to the Cabinet for consideration. As a result, the LRCDC proposed the mandatory requirement of RIA to the Cabinet in 2003, which set of RIA is in line with that of OECD.

The Office of the Council of State (OCS), as legal advisor, is the central unit that equips government officials with knowledge and know-how in conducting the RIA and prepares the RIA statement for Cabinet consideration. The explanatory note and manual for RIA was approved by the Council of Ministers in 2004. As a consequence, government agencies have to follow the RIA manual and checklists when proposing any ordinance to the Cabinet for consideration.

Due to the attempt to use RIA as the main tool management, the Thailand Development Research Institute (TDRI) (2014a) found that some impediments still exist as follows.

- Although the OECD guideline was indicated at the beginning, no dedicated agency examined the report thoroughly.
- Most RIA reports consist of only 3–4 pages; thus, the RIA reports were not useful in the lawmaking process.
- The RIA process will be initiated when the conscription bill was settled. Thus, the RIA seems to be an obstacle rather than an advanced mechanism.
- RIA is required only with an Act that will bear on the Parliament, but not with the lower level of legislation, e.g., royal decree or ministerial regulations.
- There is no RIA guideline, or any template to comply with.
- There is no stakeholder consultation and/or public participation in the RIA process.
- No dedicated agency scrutinises the RIA report.

Source: Prepared by the authors.

The LRC, thus, proposed three regulatory reform initiatives to the current government to cope with the above-mentioned problems.

- (1) To ease doing business and enhance transparency in the Thai administrative procedures by enacting the Licensing Facilitation Act (2015). This aims to narrow discretionary power of government officials and make the licensing process, workflow, and duration of the process known to the public, thus establishing a transparent and accountable environment for the licensing process.
- (2) To establish a mandatory review of all legislation, especially subordinate laws, through the enactment of the Royal Decree on Revision of Law (2015) or the Thai Sunset Law. By this law, ministers are responsible for the review of laws and regulations every 5 years or earlier and to control the execution of outdated ones, in close consultation with stakeholders. The results of the review need to be disclosed to the public; thus, these should be translated into English for foreigners as the way forward. Further, the results should also be tabled to Cabinet and the Parliament in order to follow the open government doctrine. This ex post evaluation of legislation should make Thai laws and regulations become dynamic and fit for the current world situation.

The RIA must undergo the same legal process for any regulation submission to the Cabinet for approval. Nevertheless, the draft law on the RIA is now under consideration by the LRC, with plans to get approval from Cabinet by August 2016. This initiative will make the policy decision-making be based on scientific methods, which is more sustainable than making decisions to gain political popularity. These three reform initiatives shall be evaluated by using Thailand's ranking in both the Global Competitiveness Index (World Economic Forum) and the IMD World Competitiveness Ranking (IMD World Competitiveness Center,) as the key performance indicators for achievement. The LRC target is to move two levels up from the existing rank in the first 2 years after the completion of all three initiatives (Nilprapunt, 2015b).

4. Analysis of the Current State of Thailand's Regulatory Management System

Despite performing well in the ease of doing business indicators, Thailand's performance in 2014 does not show a marked improvement from previous years as neighbouring states in Asia such as South Korea, Taiwan, and Malaysia. This result shows that domestic rules and regulations in Thailand do not accommodate businesses or there is no effective regulatory system reform in Thailand to remove burdens and improve national competitiveness before the enactment of two landmark laws: the Licensing Facilitation Act (2015) and the Royal Decree on Revision of Law (2015). However, the achievement of these reform initiatives, as described in Section 1.3.3, needs to be evaluated continuously.

This section attempts to map the details explained in Section 1.2 on the elements of Thailand's RMS.

Flow Management

Regulatory impact assessment is the 'flow' policy tool that the government has attempted to develop. However, gaps include the fact that stakeholders in the Thai regulatory system are not aware of a regulation's impact and the RIA policy has not been implemented on subordinate laws.

Further, the RIA process in Thailand does not comply with the principles of good regulatory practice. Consultation with stakeholders, or the public hearing process, has not been conducted efficiently; the assembly could not create an environment of constructive comments between policymakers and stakeholders, and define explicit topics to discuss with empirical evidence. Moreover, the RIA report publicised as a regulatory impact statement needs to be supervised and appraised by a central body to ensure that quality complies with international standards. Finally, the cost-benefit and cost-effectiveness relationship in the regulatory impact statement should be assessed scientifically and systematically.

Nonetheless, the present government will improve the RIA to ensure it complies with the Good Regulatory Practice of ASEAN and APEC to improve the quality of

legislation, to ease of doing business, and to create a business-friendly environment in Thailand.

Stock Management

Reducing red tape has been the 'stock management' tool to improve efficiency in the bureaucratic system and to realise benefits from not only facilitating people but also attracting domestic and foreign investors through deregulation.

According to Nikomborirak (2016), cutting red tape and burdensome administrative procedures is considered to be less costly and a more effective means to attract foreign investors than the conventional incentive tax that costs the country dearly each year. Since administrative burdens bombard foreign investors, Thailand has put much effort to attract investors by using an incentive tax. Removing the administrative difficulties has been the 'policy focus' of the government.

Nonetheless, policy implementation still has some impediments. An initiative on this topic is the enactment of the Licensing Facilitation Act (2015) to prevent the burdensome processes. Examples of this are the cumbersome paper work required in menial procedures like producing and signing a photocopy of an identification card or house registration. However, it does not tackle the root of the problem. On the other hand, 'how necessary these licences or steps are' should be promoted and reviewed for the Thai regulatory system since most involved people do not know these existed.

Therefore, the enactment of the Thailand Sunset Law or the Royal Decree on Revision of Law (2015) is another initiative to ensure that this ex post evaluation shall make legislation compliant with the dynamic world. Under the Sunset Law, the review shall be conducted with close consultation with stakeholders and the report of such a review shall be disclosed to the public. It shall also be tabled to both the Council of Ministers and both Houses for consideration in accordance with public participation and the open government doctrine. A minister who fails to comply with the duties under the Sunset Law shall be regarded as causing wilful omission of the performance of his official duty. It shall be grounds for recall from office under the Organic Law of the Counter Corruption Commission and for criminal liability under Section 157 of the Penal Code. Moreover, the

Sunset Law requires all government agencies to take and publish English translations of all laws and regulations under their responsibility to create an investor-friendly and transparent environment (Nilprapunt 2015a).

Policy Coherence

Before the reform initiatives described in Section 1.3.3, Thailand had never taken a stock of regulations and laws under each line ministry's purview for reviewing and proposing those needing to be eliminated or amended. The incoherence of regulations and laws is likely to occur, even in the same line ministry since the less formal legislation of ancillary laws, such as administrative regulations of ministries and departments, is set independently.

Despite the OCS being responsible for the drafting of an Act, some decision-making problems remain. For instance, the government creates a policy decision without knowing what problem needs to be removed or what deregulations need to be prioritised in order to create policy consistency. To promote 'digital economy' policies, there should be executive action plans to remove cumbersome paper work required in menial procedures.

Since almost all authorities do their work without collaborating with others, even within the same agency, working with others in a concerted manner is something strange in Thailand's bureaucracy. Consequently, people and investors have to do hard work with their own cost, which is high and may not be estimated if they want to run their activities or businesses legally. This might also be a stairway to corruption and bribery of the corrupt officials (Nilprapunt, 2015a).

Therefore, according to Nilprapunt (2015a), the LRC research proposed that each government agency shall, in facilitating licensing procedures for the public, establish a service link centre to accept all applications for licences, and to provide licence-related information as prescribed by the laws related to licensing, under its responsibilities to the public in accordance with the guideline laid down by the Public Sector Development Commission. Additionally, the one-stop service centre shall also be established as the centre for receiving all applications under the laws related to licensing.

Consultation

Since consultation is not common in Thailand, many agencies did not have proper measures to inform the public even with the requirement under the 2007 Constitution. After policy analysis and legal research, consultations with stakeholders should be conducted before and after drafting.

However, before the reform initiatives described in Section 1.3.3, there was no regulation or procedures requiring public consultation. As a result, most public hearings do not reach the objective of the procedure, for example, the topics are too broad or have no evidence data support.

Fortunately, the Thailand Sunset Law requires that the review be conducted in close consultation with stakeholders and that the report of such review shall be disclosed.

'Big Policy' Focus

The 'big policy' of Thailand focuses on what improves national competitiveness and promotes better life for the people. The LRC is the relevant body for doing the regulatory research and found that soft infrastructure, such as laws and regulations and public administrative procedures, are the real impediment.

Therefore, the LRC proposed optimal solutions to generate transparency in permits and licensing, make Thai laws and regulations dynamic, and improve policy decision-making to be more scientific or systematic. These are significant initiatives for regulatory reform in Thailand.

Before these initiatives, in order to develop policy, intervention analysis by each ministry tasked with and responsible for regulating is, de facto, used as a tool in the RMS. Nonetheless, most interventions are considered to be reckless for process design and legal analysis since there is no cost-benefit analysis to make new regulations or amend existing ones. The RIA or an ex ante evaluation has not been well adopted in the decision-making process, and all government agencies responsible for changing regulations do not have to account for the failure of any change. Fortunately, the draft law on RIA, now being considered by the LRC,

should lift the quality of conducting it and make it the legal procedure for relevant authorities to follow.

Further, these initiatives target to move up national competitiveness in the first 2 years with an action plan.

Governance and Coordination

Good governance is in progress in Thailand. Because it is time for regulatory review and strong political will and commitment are necessary, the Cabinet has considered a legislation development plan. Consequently, the Thailand Sunset Law was enacted. Despite the fact that a current RIA criterion of Thailand complies with OECD guidelines, the quality of the regulatory impact statement does not.

The OCS is supporting institutions with national legal consultants who can provide impact evaluations on both existing and new regulations if the protocol is created. Further, the protocol should support the government and each ministry will develop policy for assessment and capacity building.

5. Assessment of the Regulatory Management System

The RMS in Thailand is involved mainly with the legislative process, summarised as follows. First, Thailand is under a parliamentary democratic system with a bicameral Parliament, composed of the House of Representatives and the Senate. However, in exceptional circumstances, after the 2006 and 2014 coups d'état, the National Legislative Assembly represents the vote of the House of Representatives and the Senate. Second, the political party with the majority vote usually forms a coalition government, which is not stable; hence, the negotiation process of Thailand's RMS more frequently occurred between the coalition government parties than between the government and the opposition parties in the House of Representatives. Finally, under the 2007 Constitution, the Council of Ministers, Members of the House of Representatives with no fewer than 20 people, courts or statutory agencies, and eligible voters signing a petition can propose legislation. Two types of a bill draft have to be proposed for

consideration; one involving money needs to be endorsed by the Prime Minister before submitting.

From the legislative process, the regulatory system is evaluated to have no coherence among the relevant authorities and does not focus on policy development. All stakeholders have their own interests when proposing a law that mostly does not focus on policy development. Despite the fact that legal research is conducted in the drafting process, a law is proposed separately by each authority, and has no link with the policy agenda within their categories; for example, the laws engaging in promoting competition policy should be improved under the same political agenda. Hence, this leads to the legislative process being ineffective. Further, the incoherence between stakeholders' objective of proposing a law and the conflict of interest among them are described below.

Objective of Government Agencies

Permanent government officers prefer to propose laws to improve their convenience and discretionary power of their enforcement. Besides, government agencies sometimes use legislation as a tool to boost their resources (Tangkitvanich et al., 2012).

The Council of Ministers and Government Agencies

The Council of Ministers often has no incentive to legislate a new law since the administrative process could be handled by the executive branch. Further, the legislative process takes longer, thus, proposing a new Act is not the priority. Most legislative processes from the Cabinet will occur only for 'de-restriction' of existing laws in order to facilitate policy implementation by the government (Tangkitvanich et al., 2012).

National Assembly and the Cabinet versus the Senate

Since the objective of Members of the House of Representatives is to be re-elected, the representatives always focus on the legislative process involving the rights and participation of people, including the impact on their voters (Tangkitvanich et al., 2012).

Meanwhile, the House of Representatives and the Council of Ministers usually have similar interests since the Cabinet needs to have the majority vote in Parliament. Tangkitvanich et al. (2012) show that sometimes the Cabinet did not amend the draft of a bill approved by the OCS, if its content did not fit with the Cabinet's interest, but the House amended that draft according to what Cabinet wanted even it was approved by the OCS. On the contrary, the Senate intended to amend the draft to be more concise and to stabilise the power of the government.

Fortunately, there are initiatives to improve the regulatory system in Thailand with the enactment of the Licensing Facilitation Act (2015) for ease of doing business and enhancing transparency, and the Royal Decree on Revision of Law (2015) or Thai Sunset Law to make all Thai laws and regulations dynamic. However, in-house communication and capacity building are required to make government officials understand and comply with the laws.

In Parts 2 and 3 of this chapter, we explore the details of regulatory changes to (i) the protection of car accident victims (a success), and (ii) the licensing of passenger vans (a failure). In particular, we explore the drivers of the regulatory changes and the extent of the role played by RMS elements and institutions.

Part 2: The Case of the Protection of Car Accident Victims Act

1. Introduction

The legislative amendments to the Protection of Car Accident Victims (1992) implemented the first financial risk protection assurance for motor victims, particularly third party passengers. This case demonstrates the usefulness of RMS in decision-making support that was an important driver for legislation to protect car accident victims, and the benefit of monitoring and reviewing the regulations under the Act. The next section discusses how this legislation was effective through the successful combination of process design, legal analysis, organisational analysis, political backing, and a clear definition of the problem. A stronger RMS would have enhanced the effectiveness of the legislation process:

the implementation of the RIA would have contributed a more efficient consultation process and strategic planning for implementation and monitoring.

Because the life and property of victims lost and/or damaged by road accidents are invaluable, the idea of protecting and helping car accident victims is necessary to compensate for such loss.

Before 1992, the regulatory system for road accident victims in Thailand was not well organised. Few measures from the Land Traffic Act (1979) and the Motor Vehicle Act (1979) were used to handle road accidents, but only 10 percent of all cars in Thailand were restricted under these Acts. After proposing a draft of the Third Party Motor Insurance Act in 1963, the Protection of Car Accident Victims Act (1992) was legally approved in 1992.

The objective of the Act is to ensure that all car accident victims – drivers, passengers, and pedestrians – would be compensated for health, including medical care costs, other costs for physical injuries, disabilities, or death, and other costs such as loss of earnings and lawsuit expenses. Further, the sanatorium will also be guaranteed for medical expenses incurred. Therefore, this legislation is beneficial not only for the quality of life of Thai people but also for the development of connectivity within the ASEAN region.

This case study discusses the development of the overall regulatory system of the insurance sector in Thailand. Sections 2.3 and 2.4 analyse the drivers for the legislation and describe the sequence of the events, respectively. The role of the RMS is explained in Section 2.5 and the study attempts to analyse how the enhanced RMS could make this reform different in Section 2.6.

2. Development of the Regulatory System of the Insurance Sector

Insurance is a method of transferring risks on one's life and property, which is an important financial tool for strengthening society and the economy; it also improves the quality of life of the population as a whole. There are three main

insurance sectors in Thailand: life, non-life, and motor insurance, which are the responsibility of the Office of Insurance Commission (OIC). As all sectors are concerned with creating an impact on people's welfare, then they need to be regulated by the government.

The insurance business originated in the reign of King Rama V, initiated by foreign investors who operated through Thai agents, even though the records of marine insurance were discovered in the King Rama V era. With rapid growth during the reign of King Rama VI, insurance became strictly regulated and required registration of an insurance business licence.

Regulation of the insurance business had been taken care of by the state since 1927 with the Act on Control of Trade Possibly Caused Impact to Public Security or Peace (1928), and a specific government unit controlled and supervised the insurance business, which was later developed into the Insurance Commission and the Office of Insurance Commission. In 1929, the Insurance Division was established to take on the role of registering insurance businesses and was subject to the Office of Permanent Secretary of the Ministry of Commerce and Transport (which was later changed to the Ministry of Economic Affairs) after the political regime became a democracy.

After the Second World War, the number of life insurance and casualty insurance companies in Thailand multiplied, and the Insurance Division came under the Department of Commerce Registration. In 1968 it was transferred to the Office of Permanent Secretary of the Ministry of Economic Affairs for the expediency of official services and the expansion of insurance work.

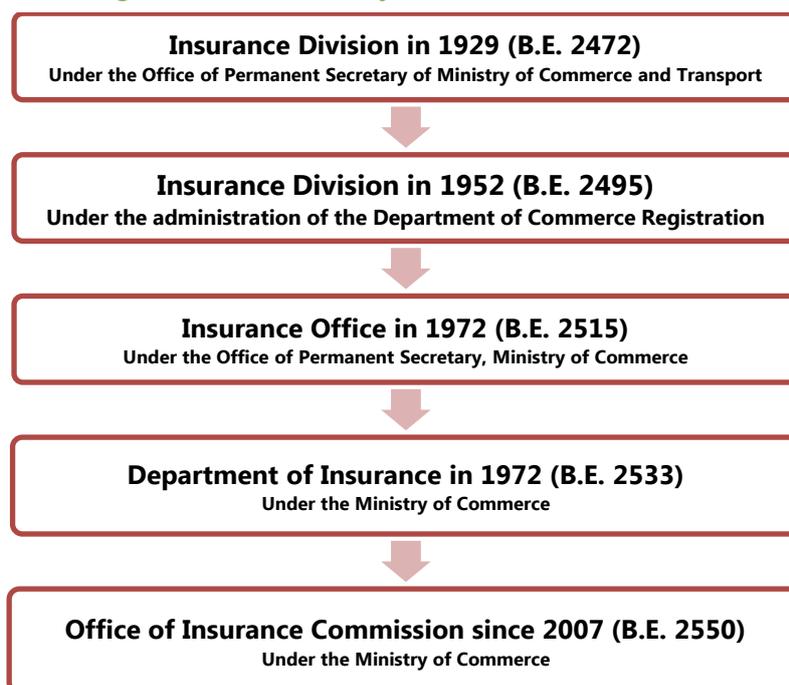
Many necessary regulations were launched to prevent future problems caused by the cancellation of licences of leading companies in 1965 and specific measures were imposed to reinforce the financial conditions and administration of the insurance business in Thailand in 1967. In 1972, the Insurance Division was changed to the Insurance Office, but still maintained its status as a division under the Office of the Permanent Secretary of Ministry of Commerce. The office was changed again to the Department of Insurance under the administration of the Director General of the Department of Insurance, Ministry of Commerce, in 1980.

Fortunately, the insurance business felt less impact from the Asian financial crisis in 1997, compared to other business sectors, since the investments and operations of insurance companies were closely supervised and controlled by the government.

Since the role of the Department of Insurance is to encourage the environment fostering the insurance business in Thailand to become more competitive, the Department of Insurance had to improve businesses in response to environmental changes and avoid the red tape, being under government supervision.

Consequently, the transformation of the structure and role of the Department of Insurance to the Office of Insurance Commission (OIC) took place under the Insurance Commission Act (2007) with competent personnel and public hearings. The OIC's responsibilities include amendments to three major insurance Acts: the Life Insurance Act (1992), the Non-Life Insurance Act (1992), and the Protection of Car Accident Victims Act (1992). The OIC is successful in its role and operations in several areas, such as the cooperation with insurance companies to develop skills of insurance personnel, the supervision of all types of insurance services, and the development of insurance policies that satisfy people's needs. **Figure 7.4** displays the evolution of the Insurance Commission from 1929 to the present.

The OIC achieves its goal by implementing policies to relieve the burden of the insured and aimed at the long-term goal of insurance excellence on an international level by setting out the Insurance Business Development Plan. The Insurance Development Plan is a national plan resulting from the public and private sectors' determination to set measures to develop the insurance system in Thailand. The first plan was done in 2006–2011 with three strategies: reducing insurance cost, promoting competition and a variety of insurance services, and promoting the insurance system's potential. The second plan was acknowledged by the Cabinet in 2010 and has four strategies: (i) strengthening the confidence and access to the insurance system, (ii) strengthening the stability of the insurance system, (iii) upgrading service quality and policyholder's interest, and (iv) promoting the infrastructure of the insurance business.

Figure 7.4. Brief History of Insurance Commission

Source: Office of Insurance Commission (2014).

3. Drivers for the Protection of Car Accident Victims Act (1992)

The Third Party Motor Insurance Law was initiated in 1963 and aimed to set mandatory insurance for the owner of a motor vehicle who uses or possesses a motor vehicle – including one registered abroad and imported into Thailand – against loss for motor vehicle victims with the company in the country to protect a third party from the consequence of a road accident.

After that, the Third Party Motor Insurance law was drafted and changed to the Protection of Car Accident Victims Act B.E., after adding principles consisting of (i) the compensation of preliminary damage fees with no-fault system, (ii) the punishment for the owner of a motor vehicle who violates this law, (iii) the establishment of the Protection for Motor Vehicle Victims Committee, and (iv) the establishment of the car accident victim's guarantee fund.

In the 1990s, two tragedies influenced the awareness of having a system to take care of victims' medical costs from road accidents: a tank truck carrying liquefied petroleum gas crashed and exploded in downtown Bangkok and a trailer truck carrying dynamite exploded after it crashed at Thung Maphrao in Phang Nga province. Meanwhile, the legislative system in 1992 was under the National

Legislative Assembly after the 1992 coup d'état. Therefore, the Protection of Car Accident Victims Act (1992) was enacted on 9 April 1992.

4. Sequence of Events

This section describes the historical background involving the legislation of the Protection of Car Accident Victims Act (1992), and the development of relevant measures and their impact for social welfare.

4.1. Historical Background of the Protection of Car Accident Victims Act (1992)

Before 1992, Thai people did not have universal health coverage. Approximately 30 percent of the Thai population was uninsured despite the consistent coverage extension of (i) the medical welfare scheme to the poor, the elderly, and children under 12 years; (ii) the social health insurance scheme for private sector employees; (iii) the civil servant medical benefit scheme for government employees, retirees, and dependents; and (iv) publicly subsidised voluntary health insurance for the informal sector (WHO, 2010). As a consequence, some people, especially the poor, could not afford medical costs and were rejected to receive treatment.

Meanwhile, the number of road accidents in Thailand kept increasing, resulting in a higher number of death and injuries. Without the effective financial risk protection scheme, motor vehicle victims were not usually cured on time; some of them were even rejected by some sanatoriums. Further, all victims received an inequitable compensation for their loss at that time.

Relevant situations involving the legislation of the Protection of Car Accident Victims Act (1992) are summarised in **Table 7.3**.

Table 7.3. Relevant Situations to the Legislation of the Protection of Car Accident Victims Act (1992)

| Period | Relevant Situations |
|---------------|---|
| 1954 | <ul style="list-style-type: none"> • The first regulation on automobile insurance under the Land Transportation Act concerns only the owners of a commercial truck and damages to the health and life of third parties. |
| 1963 | <ul style="list-style-type: none"> • The initiation of insurance scheme for all types of motor vehicles as the Motor Vehicle Insurance for the Third Party Act. • Disapproved by the ministry |
| 1968 | <ul style="list-style-type: none"> • The second draft of a traffic accident insurance, proposed by the MOC, focuses on third party coverage and employed private insurance as the primary provider of insurance benefits. • Disapproved by the ministry |
| 1977 | <ul style="list-style-type: none"> • The third draft of a traffic accident insurance improved two additional features: (i) the preliminary coverage under the no-fault system and (ii) the development of the Guarantee Fund with financial contribution from insurance companies. • Disapproved by the ministry |
| 1983 | <ul style="list-style-type: none"> • The proposed third draft was revised. |
| 1984 | <ul style="list-style-type: none"> • Related transportation and traffic laws mandated some kind of insurance for public transport such as buses, taxis, and trucks. |
| Before 1992 | <ul style="list-style-type: none"> • The fourth draft was revised for clarity and practicality such as (i) elaborating a legal measure dealing with vehicle liable for accident damage, (ii) designation of a committee overseeing the traffic accident law, and (iii) establishment of the Office of the Guarantee Fund. • The title of the proposed legislation was changed to the 'Protection for Motor Vehicle Accident Victims Act'. |
| 1992 | <ul style="list-style-type: none"> • Two mass casualties from road accident tragedies fast-tracked the fifth draft. • The proposal was terminated when the military took control of the government. • The current version of the law was legally approved by the National Legislative Assembly to become the Protection of Car Accident Victims Act (1992) on 9 April 1992. |

Source: Prepared by the authors.

There were few traffic accident insurance regulations before 1992. The first regulation on automobile insurance was enacted in 1954 under the Land Transportation Act, which was enforced by the Ministry of Transportation. This

policy mandates only owners of commercial trucks, and the benefit under this insurance scheme is coverage compensation of at least B5,000 for damages to health and life of a third party. Later, in 1963, the Department of Police, Ministry of Interior initiated and proposed the first insurance scheme for all types of motor vehicles, the Motor Vehicle Insurance for the Third Party Act. This proposed Act would require the owner of a motor vehicle to have the vehicle insured for traffic injury and death. The scheme would totally rely on private insurance businesses to provide the benefits to road accident victims who are the third party. However, this proposed act was not legally approved. Nine years later, in 1968 and 1977, the Ministry of Commerce proposed two drafts of similar traffic accident insurance Acts. The scheme still focused on third party coverage and employed private insurance as the primary provider of insurance benefits. Two additional features were improved in the latest draft: (i) preliminary coverage under the no-fault system and (ii) the development of the Guarantee Fund with financial contributions from insurance companies. Nevertheless, none of the three drafts were approved by the ministry since the public found it difficult to accept the drafts.

In 1983, the third draft, which was proposed earlier, was considered by the National Committee on Accident Protection. The reason for the revision was that road accident victims had to bear substantial losses from accidents; some of them had to pay out of their own pockets for medical expenses, without adequate financial compensation, or the government had to bear the financial costs.

At the same time, there were related transportation and traffic laws which mandated some kind of insurance for certain motor vehicles such as buses, taxis, and trucks. However, these kinds of public transportation represented only about 10 percent of all registered vehicles.

After that, the fourth draft was revised for clarity and practicality to contain several provisions (i) elaborating a legal measure dealing with vehicles liable for accident damage; (ii) designating a committee to oversee the traffic accident law; and (iii) establishing the Office of the Guarantee Fund, which took almost 2 years to finish. Then the title of the proposed legislation was changed to the 'Protection for Motor Vehicle Accident Victims Act'. Because of administrative delays, the government completed its administrative term before the proposal was approved by Parliament.

Before the approval of the fourth draft, there were massive casualties as a consequence of two road accident tragedies in Bangkok and Phang Nga province. Therefore, Prime Minister Chatchai Chunhawan fast-tracked the fifth draft of the Act. Even though the proposal was terminated when the military took control of the government, the current version of the law was proposed by the Ministry of Commerce and was legally approved on 9 April 1992 by the National Legislative Assembly to become the Protection of Car Accident Victims Act (1992).

The Protection of Car Accident Victims Act (1992) have been amended five times to ensure that the content of the Act is in line with the social and economic situations and to maximise its benefit to society.

4.2. Development of Motor Insurance in Thailand

Motor insurance in Thailand is divided into two types: compulsory motor insurance and voluntary motor insurance. Compulsory insurance in Thailand, as the name implies, is mandatory for all cars. It covers not only third party liability but also other motor vehicle victims, drivers who are not the owner of the car, and heirs of dead victims.

Under this Act, the violators will need to pay the maximum of B10,000 penalty. The following types of cars must have compulsory car insurance:

- All types of cars under the law on land transport, under the law on military cars which are used by the owners
- Cars that could be controlled by any type of machinery like engines and electricity. These include cars, motorcycles, motorised tricycles, public vehicles, trucks, tow trucks, trailers, road rollers, and motorised carts.
- Cars which are not required by the Department of Land Transport to be registered but use engines, electricity, or other types of machinery
- Rented cars and imported cars that are used in Thailand.

As previously mentioned, the law on Protection of Car Accident Victims protects car accident victims, including all people who are in car accidents such as drivers, passengers, or pedestrians. If they are affected by car accidents, they are

protected under the Act (1992). The car accident victims will receive preliminary damage fees when accidents occur for them to use the money for medical care in case of injuries and for funeral expenses in case of death with no-fault system.

For more than 20 years, there were few adjustments of measures for the coverage of claiming compensation for compulsory motor insurance (**Tables 7.4 and 7.5**).

Table 7.4. Adjustment of Preliminary Compensation, 1992–present

| Year | Amount of Compensation for Each Criteria (US\$*) | | |
|------|--|----------------------------|---|
| | Medical Cost | Permanent Disability/Death | Medical Cost and Permanent Disability/Death |
| 1992 | 308 | 308 | 616 |
| 1997 | 462 | 462 | 924 |
| 2004 | - | 1,078 | 1,539 |
| 2014 | 924 | 1,078 | 2,001 |

Note: * Exchange rate in 2014 for US\$1 was around B32.48.

Source: Calculated by the authors from data of the Office of Insurance Commission (OIC) and Bank of Thailand.

Table 7.5. Adjustment of Compensation Coverage, 1992–present

| Year | Amount of Compensation for Each Criteria (US\$*) | | | | | |
|-------------|--|----------------------|-------|-----------------------|----------------|----------------|
| | Per Person | | | | Per Case | |
| | Injured | Permanent Disability | Death | Daily Compensation ** | ≤ 7 Passengers | > 7 Passengers |
| Sept 1992 | 1,539 | 1,539 | 1,539 | | 153,941 | 307,882 |
| Dec 1997 | | 2,463 | 2,463 | | | |
| Apr 2004 | | 3,079 | 3,079 | | | |
| Dec 2009 | | 6,158 | 6,158 | | | |
| Jan 2010*** | | | | 6 | | |

Notes: * Exchange rate in 2014 for US\$1 was around B32.48.

** Daily compensation must be paid for having inpatient service for not more than 20 days.

*** The maximum coverage including daily compensation must not exceed US\$6,164/person.

Sources: Authors, based on data from the Office of Insurance Commission (OIC) and Bank of Thailand, 2014.

Therefore, the victims will receive damage fees and compensation based on the insurance coverage of the compulsory car insurance which has been adjusted a number of times since 1992. The amount of the damage fees and the compensation are presented in **Table 7.6**.

Table 7.6. Preliminary Damage Fees and Car Accident Victims Insurance Coverage

| Items | Injuries | Disabilities | Death | Injuries-Disabilities or Injuries-Death |
|--|---|--------------------------------|-------|---|
| Preliminary damage fees | US\$924 (B30,000) | US\$1,078 (B35,000) | | Maximum of US\$1,539 (B50, 000) |
| Preliminary car accident victim insurance coverage | Under US\$1,078 (B50, 000) | Under US\$6,158 (B200, 000) | | |
| | Car accident victims who are not guilty have the right to a daily compensation of US\$6/day (B200/day) when admitted in a hospital (maximum of 20 days) | | | |

Note: Exchange rate in 2014 for US\$1 was around B32.48.

Source: Ongkittikul et al., 2013.

In general, filing an insurance claim under the current compulsory motor insurance regulation has to be done by the injured patient. This reimbursement process is the traditional indemnity insurance system. The patient has to pay out-of-pocket healthcare expenses, and then submit the claim to an insurance company. The claim has to be initiated within 180 days after the accident occurs.

For preliminary coverage, the reimbursement is intended to be fast-tracked. It is based on the no-fault system in which the claim process does not require final agreement on which party caused the accident and is consequently liable for the damages. According to Section 25 of the Protection of Car Accident Victims Act (1992), payment has to be made by the insurance company or the Guarantee Fund to the injured patient within 7 days after receiving the claim. The hospital that provides healthcare to the patient may be authorised as the patient's agent in providing a direct bill to the insurance company or the Guarantee Fund. Documents needed for reimbursement are minimal. These include a hospital bill and patient identification. An additional police record is needed for claims to the Guarantee Fund and a police record and death certificate are required for death cases.

For additional coverage, reimbursement relies on tort liability. Under the fault system, an insurance company of the insured party who is proven guilty in causing the accident is responsible for the additional compensation. The process of patient authorisation to the hospital has to be approved by the insurance company prior to filing the insurance claim.

Therefore, benefit coverage and reimbursement process under the Protection of Car Accident Victims Act (1992) are conditioned on characteristics of the second party and the third party involved in the accident. **Table 7.7** summarises the

compulsory insurance feature by type of traffic-injured patients and insurance status of the vehicles involved in the accident.

The compulsory insurance premium is a fixed rate under the Protection of Car Accident Victims Act (1992) but it was adjusted every year in 2001–2005 and readjusted again in 2008. The premium rate is divided by the types and forms of vehicles. However, the premium rate of compulsory insurance in Thailand could not reflect the real risk of each vehicle type since the premium rate of motorcycles is the lowest, while the number of policies is the highest compared to the others.

Table 7.7. Summary of Insurance Coverage and Payment Source by Type of Status

| Cases | Preliminary Compensation* | Right Side from Fault-Based System | Accountability |
|-----------------------------------|---|------------------------------------|-------------------|
| Personal Injury | | | |
| Insured cases | US\$924 (B30,000) | US\$1,539 (B50,000) | Insurance Company |
| Uninsured cases | US\$924 (B30,000) The owner has to pay additional 20% | - | Guarantee Fund |
| Hit and Run | US\$924 (B30,000) | - | |
| Death/Permanent Disability | | | |
| Insured cases | US\$1,078 (B35,000) | US\$6,158 (B200,000) | Insurance Company |
| Uninsured cases | US\$1,078 (B35,000) The owner has to pay additional 20% | - | Guarantee Fund |
| Hit and Run | US\$1,078 (B35,000) | - | |

Note: Exchange rate in 2014 for US\$1 was around B32.48.

Sources: Calculated by the authors from data of the Office of Insurance Commission (OIC) and Bank of Thailand (BOT), 2014.

The compulsory motor insurance is a public policy that relies on private insurance businesses in carrying risk agreement on health and life damages due to traffic accidents. The number of insurance companies has increased over time.

Currently, 54 domestic and international insurance companies administer over 27 million policies for compulsory motor insurance in Thailand. The number of insurance policies of compulsory motor insurance increased significantly from the

first year of the law enforcement in 1993 until 1998, with an average growth per year at 37 percent (**Table 7.8**). This table also presents the loss ratio of insurance business which is computed as the ratio between the insurance payment amounts for incurred loss and the insurance premium earned from the owners of vehicles carrying the policies. The ratio tells that the payment amounts are less than the earned premium.

Table 7.8. Earned Premium and Incurred Loss of Insurance Business, 1993–2013

| Year | Number of Policies | | Earned Premium (US\$ thousand) | Incurred Loss (US\$ thousand) | Loss Ratio, % |
|------|--------------------|--------------|-----------------------------------|-------------------------------------|------------------|
| | Total | Growth, % | | | |
| 1993 | 3,227,084 | | 33,436 | 15,283 | 45.71 |
| 1994 | 4,410,236 | 36.66 | 152,678 | 60,035 | 39.32 |
| 1995 | 7,851,708 | 78.03 | 174,087 | 70,520 | 40.51 |
| 1996 | 9,536,287 | 21.45 | 235,557 | 87,915 | 37.32 |
| 1997 | 9,212,921 | -3.39 | 221,580 | 83,731 | 37.79 |
| 1998 | 8,567,042 | -7.01 | 209,047 | 79,856 | 38.20 |
| 1999 | 9,606,453 | 12.13 | 199,054 | N/A | N/A |
| 2000 | 10,131,286 | 5.46 | 208,720 | 88,094 | 42.21 |
| 2001 | 11,227,657 | 10.82 | 225,721 | 97,893 | 43.37 |
| 2002 | 11,699,529 | 4.20 | 215,600 | 98,945 | 45.89 |
| 2003 | 13,665,718 | 16.81 | 225,703 | 115,266 | 51.07 |
| 2004 | 15,435,522 | 12.95 | 251,736 | 120,348 | 47.81 |
| 2005 | 16,096,323 | 4.28 | 254,071 | 123,537 | 48.62 |
| 2006 | 18,801,237 | 16.80 | 318,653 | 122,425 | 38.42 |
| 2007 | 19,314,472 | 2.73 | 322,150 | 120,649 | 37.45 |
| 2008 | 19,577,811 | 1.36 | 323,665 | 126,906 | 39.21 |
| 2009 | 20,587,443 | 5.16 | 333,455 | 136,792 | 41.02 |
| 2010 | 21,237,927 | 3.16 | 339,483 | 184,084 | 54.22 |
| 2011 | 22,511,750 | 6.00 | 359,800 | 191,605 | 53.25 |
| 2012 | 25,273,932 | 12.27 | 375,696 | 191,471 | 50.96 |
| 2013 | 27,284,804 | 7.96 | 426,535 | 210,742 | 49.41 |

N/A = not available.

Note: Exchange rate in 2014 for US\$1 was around B32.

Source: Collected from the Office of Insurance Commission (OIC) by the authors, 2014.

Comparing the number of policies with the total number of registered motor vehicles shows the coverage of compulsory motor insurance. According to TDRI (2013), calculating the ratio of vehicles with insurance is different based on the operating life and the coverage of motor insurance in 2011 for motorcycles, pick-up cars, and passenger cars are 60 percent, 86 percent, and 89 percent, respectively (**Table 7.9**).

Therefore, increasing the number of insured vehicles would be the next agenda for the compulsory motor insurance sector since the victim of an uninsured vehicle is limited to preliminary compensation. Under Section 23 of the Protection of Car Accident Victims Act (1992), preliminary compensation is provided by the Guarantee Fund. The patients may not be aware of this special provision if healthcare expenses are not that high. Other patients who are inside an uninsured vehicle may hesitate to file a compulsory motor insurance claim to the Guarantee Fund, especially if they are the owners of an uninsured vehicle.

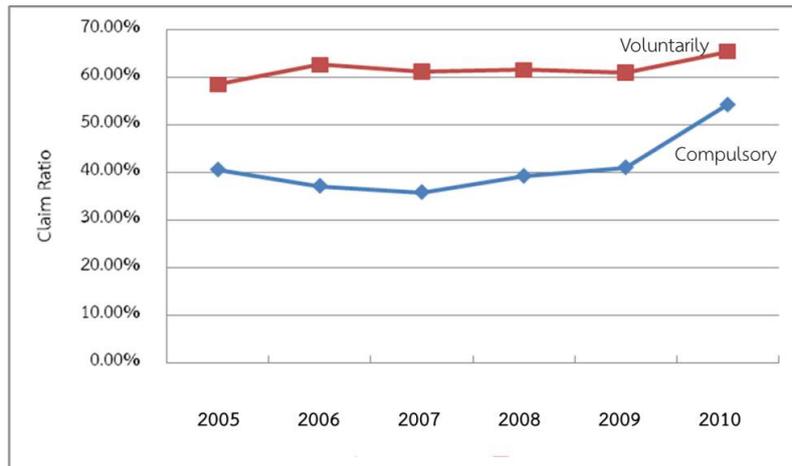
Table 7.9. Ratio of Insured Vehicles, 2011

| 2011 | Passenger Cars | Pick-up Cars | Motorcycles |
|--|----------------|--------------|-------------|
| Number of accumulative registered vehicles | 5,001,442 | 5,137,564 | 18,018,066 |
| Number of non-accumulative registered vehicles (out of system) | Very few | Very few | 3,098,505 |
| All vehicles | 5,001,442 | 5,137,564 | 21,116,571 |
| Number of insured vehicles | 4,452,947 | 4,400,440 | 12,723,070 |
| Ratio of insured vehicles | 89% | 86% | 60% |

Source: TDRI, 2014b.

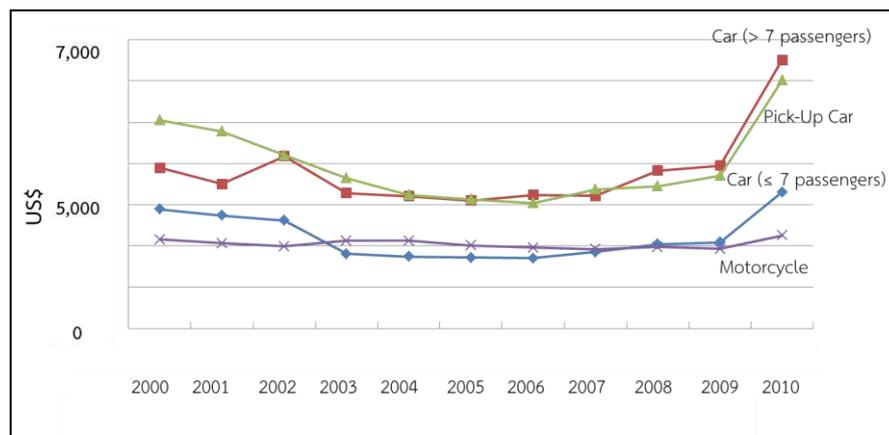
As a result of the adjustment of maximum coverage, from US\$3,079 to US\$6,158 in 2009, the impact of the claim ratio and average claim per case of compulsory motor insurance is shown in **Figures 7.5 and 7.6**. The amount of claim payment is higher, which means that the victims obtain better compensation.

Figure 7.5. Claim Ratio of Compulsory Motor Insurance, 2000–2010



Source: Calculated from Thai Reinsurance Public Co., Ltd. and Bank of Thailand by the Authors, 2014.

Figure 7.6. Average Claim per Case of Compulsory Motor Insurance, 2000–2010



Source: Calculated from Thai Reinsurance Public Co., Ltd. and Bank of Thailand by the authors, 2014.

5. Role of the Regulatory Management System

At the time of legislation of the Protection of Car Accident Victims Act (1992), the RIA was not required intensively as nowadays. Only the Regulation of the Office of the Prime Minister on Rules and Procedure for Submission of Any Matter to the Council of Ministers for Consideration was passed by the Council of Ministers in 1988. As a result, any agency that submitted any regulation, particularly a bill, needed to include an analytical statement on the social, economic, and international relations' perspectives of such regulation, together with the draft of

the regulation, to the Cabinet for policy approval (Nilprapunt, 2012). Therefore, the legislative process on the Protection of Car Accident Victims Act (1992) has gone through the process of justification for regulatory action and the search for alternatives representing a logical first step.

Considering the RMS elements, the 'big policy' development is relevant for this reform. The problem is clearly defined since at that time the number of road accidents in Thailand kept increasing, which resulted in a higher number of deaths and injuries. Besides, since there was no effective financial risk protection scheme, motor vehicle victims were not usually cured on time; some were rejected treatment by some sanatoriums. Therefore, the intervention was necessary during that time.

However, apart from the Protection of Car Accident Victims Act (1992), there was traffic accident insurance in Thailand, which regulates automobile insurance under the Land Transportation Act. It mandates only owners of commercial trucks and is concerned with damages to the health and life of third parties. Legislation of the Protection of Car Accident Victims Act (1992) is the most effective intervention. Since road traffic accidents are a major threat to public health, life, and the Thai economy, the limited healthcare resources make the consequences of accidents more drastic. Insurance is thus an appropriate mechanism to transfer the risk of financial loss from an individual to an insurance pool.

Under the Act, compulsory insurance in Thailand is mandatory for all cars, including rented cars and imported cars. However, the difference of insurance coverage among countries is the issue for cross-border transportation nowadays.

Since it was difficult for the public to accept the drafts, the combination of process design, legal analysis, and organisational analysis helped move the legislative process to be more suitable for social benefit. As a result, the dynamic process of evaluation and clause revisions has been applied.

The enactment of the Protection of Car Accident Victims Act (1992) is practical for the social and economic environment since the legislative process combined process design, legal analysis, and organisational analysis.

Monitoring, consultation, communication, and engagement were not significant at the beginning of the legislation; however, these elements became more relevant for later amendments, especially those in 2007.

The regulator of the overall insurance sector is the OIC, the statutory independence changed from the Department of Insurance. Therefore, compulsory motor insurance sector is also under the OIC authority. As a result, establishing the OIC could avoid the red tape resulting from government supervision and ensures the compliance with the policy regime by citizens and businesses.

Since the OIC is the lead institution that regulates the Protection of Car Accident Victims Act (1992), learning from the current market and the effect of compulsory motor insurance is usually done by analysing the insurance database. Consultation with the relevant stakeholders from the Protection for Motor Vehicle Victims Committee is another tool to learn and make appropriate regulations.

6. What Difference Could An Enhanced RMS Have Made?

Implementing the RIA for new legislation or law amendments is what an enhanced RMS could have made different. Since Thailand has yet to review laws and regulations in a wide scope, it is recommended to improve the RIA process first.

According to TDRI (2014a), the recommendations for improving the RIA process involve three most important factors: (i) implementing the RIA at the right timing, (ii) influencing stakeholder participation, and (iii) influencing public–private cooperation. Moreover, to apply the RIA to new legislation or law amendments, the following process should be implemented:

- There should be three public hearings to assess the impact of the proposed law. The first time must be done before its drafting in order to evaluate the necessity of such law and its alternatives. Then two public hearings should be held to compare the costs and benefits of the law.

- Stakeholder participation should be arranged in a public hearing, following OECD procedure. The public hearing process should be according to international standards to increase transparency in law issuance.
- In order to have a report with a comprehensive assessment, a committee or agency responsible for monitoring the RIA should have an equal share of representatives from both the public and the private sectors.

The next section explores the failure of passenger van licensing in Thailand. This case study typifies some of the recurring problems in Thailand's legislative process: the lack of an effective RMS, including the absence of a RIA, clear problem definitions, clear policy process, consultation, public hearing, scrutiny and analysis of the implications of legislative amendment. A stronger RMS would have included impact assessment, cost–benefit analysis, and an action plan for effective implementation. These requirements would likely have stopped or significantly altered the passenger van licensing policies because of the foreseeable creation of negative externalities.

Part 3: The Case of Passenger Van Licensing (Failure)

1. Introduction

Since the issue of population growth became a concern in Thailand, especially Bangkok, the development of road transport policies has faced many challenges. Public passenger buses and vans are modes of passenger road transport in Thailand. However, the urbanisation of the city has resulted in inadequate public transport provisions, particularly public buses in suburban areas.

The policy to allow illegal vans to be registered was an example of implementing new policy without theoretical consideration since the policymaker applied an ad hoc approach. It was based on actual situations and political considerations instead of conducting a market study on passenger vans and economic efficiency of urban public transport. On the one hand, the result of this reform has induced more public vans into the market, which might bridge the gap between public air-conditioned buses and demand for faster and more comfortable vehicles,

especially from commuters travelling from the outer areas into the city of Bangkok. On the other hand, licensing public vans without studying the cost structure of public bus operations owing to the previous failed licensing system influenced new entry into the profit-making routes. Illegal vans also get into the market, signalling profit, and van owners choose to pay bribes instead of being legalised. As a consequence, this intervention is inefficient and not necessary. Further, it creates a negative externality – an unsafe service, which becomes a problem for road safety management.

This case study discusses the characteristics of public road transport in Thailand. It describes the impetus for change to public van services in Section 3. Meanwhile, Section 4 summarises the process and effects of licensing passenger van services. Finally, the study aims to analyse the role of the RMS for this case study and attempts to analyse in Sections 3.5 and 3.6, respectively, the changes that an enhanced RMS will provide.

2. Characteristics of Public Road Transport in Thailand

Since the Thai government has been investing heavily in a road network system for more than 20 years, the Thai transport sector of passengers and freight is dominated by road nowadays (APEC, 2011). According to the Land Transport Act (1979), the Department of Land Transport (DLT), under the Ministry of Transport (MOT), is the main regulator of road transport. The DLT is responsible for the designation and regulation of land transport by monitoring and inspection, which ensure the smooth running of and conformity with the relevant land transport rules and regulations (APEC, 2011). This study focuses only on passengers' land transport and will discuss the role of the DLT's regulation of public passenger buses and vans. The passenger transport market is regulated through licensing conditions and pricing.

2.1. Route Licensing and Its Problem

Public and private bus operators must obtain a licence to operate from the DLT under one licence per route and one operator per licence basis. Each licence has a lifespan of 7 years. Fixed routes under operations are classified into four

categories and their licences to operate are provided to the SOEs: the Bangkok Mass Transit Authority (BMTA) and the Transport Company Limited, and private entities (**Table 7.10**). Therefore, according to Cabinet Resolution No. 45/1959, the Transport Co. Ltd. is permitted to operate the routes of Categories 2 and 3. Meanwhile under Cabinet Resolution of 11 January 1983, the routes of Categories 1 and 4 in Bangkok are operated by the BMTA. Private companies are entitled to operate the routes of Categories 1 and 4 in the provinces, Categories 1 and 4 in Bangkok, and Category 3.

Table 7.10. Licensing Routes of Public Bus Services

| Bus Route Category | Government or Private Operations |
|---|--|
| Category 1: Routes within city or town areas | |
| <u>Category 1 in Bangkok</u> has contiguous routes in the perimeter area by running on main roads in community areas which are crowded with people, business centres, schools and universities, government agencies, etc. | The BMTA has been exclusively granted licences to operate and has sublicensed to private operators: <ul style="list-style-type: none"> – The Premier Metro Bus Company – The Thonburi Bus Service Company Ltd. |
| <u>Category 1 in provincial areas</u> | Services are provided by private companies. |
| Category 2: Long distance routes between Bangkok and regional provinces | |
| Category 2 has routes link Bangkok and the provinces. | The state enterprise, Transport Co. Ltd., has been exclusively granted the licence to operate buses under this category. However, Transport Co. Ltd has delegated services to private operators under the joint service scheme. |
| Category 3: Interprovincial long-distance routes | |
| Category 3 has interprovincial routes which link one province to another and may pass through other provinces. | |
| Category 4: Intercity or town routes within a province | |
| <u>Category 4 in Bangkok</u> has routes mainly on subordinate roads and the feeder roads to the main road to link with Category 1 in Bangkok. | Services are mainly provided by private operators. Routes under this category have the highest number of licences granted, operators, and number of passengers. |
| <u>Category 4 in provincial areas</u> | |

BMTA = Bangkok Mass Transit Authority.
Sources: APEC (2011) and authors.

Boxes 3 and **4** provide a brief overview of two SOEs: BMTA that was granted the licences to operate in Category 1 in Bangkok metropolitan region, and the Transport Co. Ltd. which has operated in Categories 2 and 3 throughout Thailand.

**Box 3. BMTA and its Operations under Category 1
in the Bangkok Metropolitan Region**

Before 1975, in Bangkok, the competitive nature of the market for fixed-route land transportation service resulted in problems such as aggressive competition and oversupply of operating vehicles, which led to traffic congestion and road accidents, among others. Furthermore, higher operating costs resulting from the sudden hike in oil price left a number of operators in financial difficulties. As a response to these problems, the government intervened by merging the existing operators into one state enterprise which became the Bangkok Mass Transit Authority (BMTA) formally established by the Royal Decree in 1976. Licences to operate in the Bangkok metropolitan region are exclusively granted to BMTA. The aim of enforcing such market arrangements was to ensure a stable and reliable urban transport scheme for the general public while allowing for supervision and regulatory procedure to be carried out with minimal complication (one dominant operator instead of multiple disjointed operators to be investigated). As of September 2008, BMTA employed 17,534 personnel with a fleet of 3,526 vehicles operating over 118 routes and serving around 3 million passengers daily in the Bangkok metropolitan region. While maintaining its statutory monopoly position, BMTA's role as an operator has diminished over the years as the result of extensive sublicensing with private operators supplying up to 17,372 vehicles operating over 463 routes.

However, BMTA has never been financially successful. In order to consider the positive externalities associated with an effective public transport system by facilitating transport for employees or agents to carry out economic transactions, fares are kept low at a perceivably affordable level for the general public at the expense of operations' cost effectiveness. Nevertheless, cases have been made regarding the inefficiency of BMTA's operations, which is claimed to be the primary reason for BMTA's debt accumulation and losses. Further criticisms are directed towards the quality of BMTA's service. A significant portion of the BMTA's fleet is seemingly worn down after years of operation not to mention being perceived as out of date. Particular attention is also given to the exhaust emissions of older buses and the conduct of BMTA's personnel – dangerous driving by bus drivers and poor general manner have been reported over the years.

Source: Leeahtam, 2010.

**Box 4. Transport Co. Ltd. and its Operations
throughout Thailand under Categories 2 and 3**

The origin of Transport Co. Ltd. traces back to July 1930 when a group of businessmen set up Aerial Transport of Siam Co. Ltd. to service both land and air transportation on both international and domestic routes. After World War II, the company became a state enterprise under the name Transport Company Ltd., and experienced heavy losses over the years. Fleets of vehicles were worn down alongside the accumulation of debts as loans were acquired from the public sector to finance daily operations and repairs of equipment and vehicles. The company terminated its air transportation service and had short-lived success for its venture into water transportation. In 1958, a state intervention took place which involved an upheaval of the company's board of directors. Around the same time, private operators gradually entered the market for fixed-route long-distance bus services, hence, an increase in competition. Operators competed aggressively for passengers, resulting in reckless driving, which put the general public at risk. As a response, the government exclusively granted Transport Co. Ltd. the licence to operate routes under Categories 2 and 3, with the company being able to sublicense route operations under joint service schemes. By establishing Transport Co. Ltd. as the central operating body for long-distance land transportation service instead of having a vast number of disjointed operators, regulatory function was expected to be carried out with much less complication. Such market arrangements remain more or less unchanged to date. As of September 2008, the company had a fleet of 808 vehicles serving around 12 million passengers annually.

Source: Leeahtam, 2010.

According to the Royal Decree for Land Transport (1979), the Minister of Transport, the Minister of Interior, and the Land Transport Policy Committee are responsible for the policy design of fixed-route public bus services, which involves short-term and long-term planning of the schemes' direction and structure. The regulatory functions were designated by the Central Land Transport Control Board, the Provincial Land Transport Control Board, and the Department of Land Transport. Functions include route designs, capping of fees, granting of licences effectively controlling the quality and number of operators on designated routes, and enforcement of general rules.

The Central Land Transport Control Board is authorised to do the following:

- Stipulate the category of fixed-route bus.
- Set the routes, the number of bus operators and vehicles for fixed routes in Bangkok, between provinces, and between economies.
- Set the rates of transport charges and other service charges.

- Designate the sites, arrange for or set up and regulate the bus terminals; specify the types or conditions of vehicles not acceptable for registration.
- Prescribe the classes or categories of vehicles which must stop or park to pick up and set down passengers or to load and unload goods at the bus terminal.
- Stipulate places for bus stops.
- Lay down measures for prescribing, permitting, and controlling the transport business.
- Carry on other actions as provided in the Act and according to the regulations of the Land Transport Policy Committee.

The Provincial Land Transport Control Board is authorised to:

- Set bus routes, the number of transport operators, and the number of vehicles in the provincial area.
- Set the rates of transport charge in the provincial area (the same criteria prescribed by the Central Land Transport Control Board).
- Carry out other actions as provided in the land transport regulation, according to the Land Transport Policy Committee and the Central Land Transport Control Board.

For route licensing, generally, the licence for a fixed route is B7,000 (US\$217) and is valid for 7 years.² Since there is a 'one licence per one route' policy, each route is monopolised in the sense that the operator can renew the licence as long as the firm complies with the DLT even if its licence is terminated after operating a route for 7 years. However, the operator is able to apply for a licence to provide services for a fixed term usually; the firm that received a fixed-term licence will not operate the whole fleet but subcontract some of its operations to other operators without competitive tendering. Further, one operator can apply for a licence for more than one route. As a consequence, monopolistic licensing from the 'one licence per one route' policy can lead to too many sublicensing operators in one route, thus creating competition. Therefore, this problem

² A non-fixed route bus is a 'for hire' vehicle like a taxi. The DLT regulates only the licences of drivers and vehicle standards. There is no regulation on entry to the taxi market.

reduces the incentive for dynamic efficiency, for introducing new technology, or for improving services to increase profit.

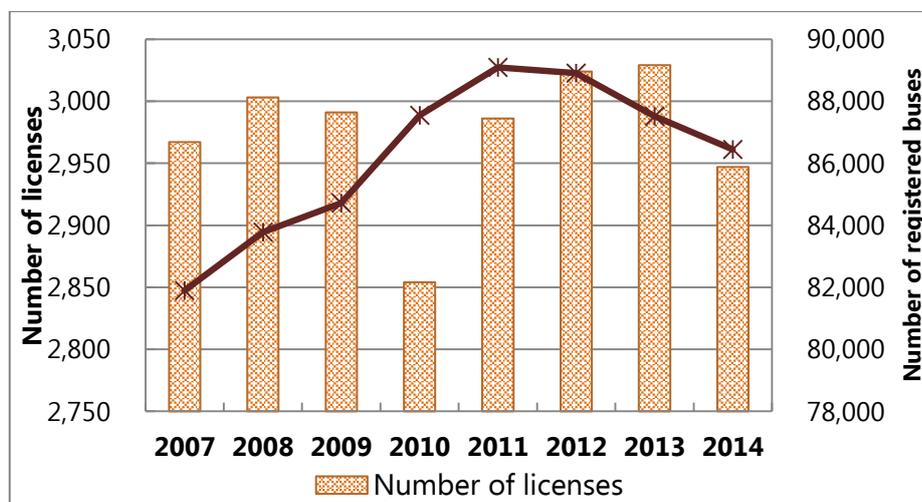
Table 7.11 shows the number of licences for operating public passenger transport service from 2007 to 2014 while **Figure 7.7** illustrates the imbalance between the number of licences and registered fixed route buses. From the average of licence numbers in 2007–2014, the highest number of licensing belongs to Category 4 (54 percent), followed by Category 1 (22 percent), Category 3 (17 percent), and Category 2 (7 percent). However, the average growth rate of licence numbers (0.3 percent per year) is lower than the average growth rate of registered bus numbers (0.98 percent per year) in 2007–2013. As a result, the rate of registered buses per route has also increased.

Table 7.11. Number of Licences for Operating Public Passenger Transport Service, 2007–2014

| Category | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | Average 2007–2014 |
|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|-------------------|
| 1 | 667 | 658 | 658 | 594 | 646 | 653 | 621 | 602 | 637 |
| 2 | 199 | 207 | 190 | 200 | 202 | 206 | 206 | 204 | 202 |
| 3 | 522 | 505 | 503 | 514 | 514 | 524 | 528 | 526 | 517 |
| 4 | 1,579 | 1,633 | 1,640 | 1,546 | 1,624 | 1,641 | 1,674 | 1,615 | 1,619 |
| Total | 2,967 | 3,003 | 2,991 | 2,854 | 2,986 | 3,024 | 3,029 | 2,947 | 2,975 |

Source: Data obtained from the Department of Land Transport (DLT) (2015) by the authors.

Figure 7.7. Comparative Figures between Licences of Public Passenger Transport Service and Registered Fixed Route Bus



Source: Prepared by the authors.

2.2. Price Regulation and Its Problem

According to Pisarnporn and Polpanich (2008), price regulation, cost calculation, and fare rate of public transport are prescribed by similar factors in each route category. For Categories 1 and 4, cost calculation of non-air-conditioned buses is used to estimate operating costs per head in one trip, while the price rate of air-conditioned buses is based on distance. For Categories 2 and 3, cost calculation would be different for three distances (0–40 kilometres [km], 41–150 km, and more than 150 km). Further, the price rate is based not only on a cost-plus formula; it is also adjusted according to the type of roads, a target rate of return, an allowance for an expected load factor, and a change in diesel prices (with 25 steps ranging between B10.07 and B40.57). The Cabinet will make the final decision of increasing bus fares; however, this decision is often a sensitive political issue. The authorities who regulate public bus fares are the Land Transport Committee, the Land Transport Policy Committee, the Central Land Transport Control Board, and the Provincial Land Transport Control Board.

Although the bus fare calculation is based on the assumption of a maximum use of 7 years and 70–90 percent load factor depending on the bus standard, this cost plus pricing does not take into account the addition to capacity and changes in load factor caused by the issuing of new licences and the entry of passenger vans which have been popular from the mid-1980s to 1996, especially among middle-income passengers.

As a consequence, this policy on pricing caused the operation of standard public buses to become unprofitable since the actual load factor and profit margin are lower than the DLT's assumption. Thus, the operators have less incentive to invest in their services and the fare regulation process contributes to the falling quality of service, inappropriate maintenance and replacement. Further, the impact of higher demand to the price change and the wide gap between quantity supplies and demand at the regulated price lead to the growth of an illegal service.

2.3. Other Problems of Public Bus Provision

There are many concerns related to public bus provision. First, coordination between public bus services and other modes of public transportation, specifically

rail stations and airport linkages, are inadequate. Furthermore, facilities and infrastructure such as bus stops and stations should be improved since the location of a number of stops and stations can be deemed as unsuitable, while information on bus routes and schedules are either unreliable or difficult to access.

In terms of bureaucratic structure, the existing arrangements and logistics are regarded as overly complicated and inefficient, resulting in delayed decision-making and implementation of reform. The DLT also lacks the resources, particularly personnel, to optimally carry out its regulatory functions. Specifically, the issue of unlicensed operators remains to be tackled. The current network of designated routes possesses a number of overlaps of routes from different categories, resulting in the oversupply of services hindering operational efficiency.

Finally, private operators are generally small, disjointed firms and are thus unable to take advantage of economies of scale. These operators tend to be primitive and lacking in terms of vision and resources. The current sublicensing scheme put in place by BMTA and Transport Company Ltd. also does not promote a high enough level of competition, hence, limiting the incentives for private operators to innovate.

3. Impetus for Change in Public Van Services

Since public bus provision was unable to meet the demand for bus services in suburban residential areas, investors who saw the benefits in responding to the needs of commuters in suburban Bangkok started the business of passenger van services (Leopairojana and Hanaoka, 2006). The popularity of vans grew steadily from the mid-1980s to 1996; however, these vans operated outside the regulatory system and were technically illegal. Later in 1984, the DLT declared that operating vans as bus-like services was illegal, and the MOT had a policy to eliminate the van services in 1986.

The advantages of vans over bus services are shown in **Table 7.12** (APEC, 2011). Passenger vans also offer a different service quality. They offer shorter, faster

routes with guaranteed seats and a door-to-door service. They are supposed to operate in passenger van terminals which are in housing estates, markets, or community centres. However, they are not supposed to pick up passengers at bus stops (although in practice they do so). Leopairojana and Hanaoka (2006) found that van passengers value shorter travel times and the comfort of a guaranteed seat. However, the drawbacks of vans are the narrow space and the higher fares.

Table 7.12. Advantages of Vans over Buses by Category

| Bus Route Category | Advantages of Vans over Buses |
|---|---|
| <p>Category 1 in Bangkok has contiguous routes in the perimeter area by running along the main roads in the community areas which are crowded with people, business centres, schools and universities, government agencies, etc.</p> | <ul style="list-style-type: none"> – Passenger vans have to pick up passengers only at the origin and drop them off at bus stops along routes or at destinations. – They undercut the bus operators since they operate on the more profitable route (cutting routes), pick up and drop off of passengers at bus stops, residential areas, markets, community (more like a door-to-door service). |
| <p>Category 2 routes link Bangkok and the provinces. Category 3 are interprovincial routes which link one province to another and may pass through other provinces.</p> | <ul style="list-style-type: none"> – Buses of the Transport Co. Ltd and its subcontractors are required to pick up passengers at official bus terminals (only one or few terminals in a province). – However, passenger van terminals are usually located in residential areas (in housing estates, markets, or community centres) which are not proclaimed officially. They also provide door-to-door service by charging extra, which is actually prohibited. |

Source: APEC, 2011.

Van operators can charge fares that cover their costs; these fares are usually higher for the non-regulated companies. Further, illegal vans provide alternative services on the profit-making routes. Vans generate less average trip length than buses and the gap between van fares and bus fares increased with trip length. Since most low-income passengers live farther from the city and bus fares tend to be flatter over long distances, competition from vans on shorter routes undermine the ability to cross-subsidise on the longer routes of buses (Leopairojana and Hanaoka, 2006).

Although passenger van operations cause lower revenues for the normal bus services and the drivers are often criticised as reckless and undisciplined, they can bridge the gap between the lack of public air-conditioned buses and the increasing demands of Bangkok-vicinity commuters (APEC, 2011).

4. The Sequence of Events

This section describes the process of licensing passenger van transport and its impact on the road safety problem.

4.1. Process of Licensing Passenger Van Services

Passenger van services were initiated by investors who saw the benefits in responding to the demands of commuters in the suburbs of Bangkok (Leopairojana and Hanaoka, 2005). With the simple entry to the market of drivers and operators, the number of vans grew steadily from the mid-1980s to 1996.

Table 7.13 shows the relevant situations of licensing passenger van services.

Table 7.13. Relevant Situations of Licensing Passenger Van Services

| Period | Relevant Situations |
|-----------|---|
| Pre-1984 | <ul style="list-style-type: none"> Considered increase of passenger van services from the mid-1980s to 1996 DLT declared that operating vans as bus-like services were illegal in 1984. |
| 1985–1996 | <ul style="list-style-type: none"> MOT had a policy to eliminate the van services in 1986. The services of passenger vans kept expanding, despite the MOT policy of eliminating van services in 1986–1996. |
| 1997–1999 | <ul style="list-style-type: none"> MOT assigned DLT and BMTA to regulate the entry and operation of van services as well as their price in Bangkok in 1999. |
| 2002 | <ul style="list-style-type: none"> A deputy minister of MOT aimed to complete the van-regulating task to support the campaign 'Bangkok Traffic Order' and solve the problems of corruption and influential figures. |
| 2009 | <ul style="list-style-type: none"> The DLT licensed another 6,400 passenger vans to provide services on 60 routes in category 2. |
| 2010 | <ul style="list-style-type: none"> MOT promulgated the policy '1 passenger bus for 3 licensed vans' since the operator requested to operate passenger vans instead of the passenger buses of the Transport Co., Ltd. |

BMTA = Bangkok Mass Transit Authority; DLT = Department of Land Transport; MOT = Ministry of Transport.

Source: Prepared by the authors.

Despite the popularity of passenger van services, these vans operated outside the regulatory system and were technically illegal.

- According to the Land Transport Act (1979), operating public transport services requires official permission from the DLT.

- Only BMTA is authorised to provide bus transport in Bangkok and its vicinities under the Royal Decree Establishing BMTA (1976).
- The Motor Vehicle Act (1979) provides that drivers are not allowed to operate private vehicles as public vehicles; passenger van services are considered private vehicles.

Therefore, the DLT declared that operating vans as bus-like services was illegal in 1984. However, the number of van services continued to increase despite the elimination policy of MOT in 1986. The rapid growth of the population and development of residential areas in the suburbs of Bangkok were a consequence, from the demand side, of the high popularity of van services. Because of the insufficient provisions from BMTA, the commuters chose to travel by van, which charged similar fares to BMTA buses but offered more convenient and faster services. For the supply side, both drivers and operators could enter the market easily. The drivers could operate van services and earn higher incomes than previous jobs in the formal sector, their working hours were flexible, and it was easy to transfer the business to new drivers. The operators or the investors could establish van terminals by renting space and using public spaces or curbs, and determined routes between city centres and suburbs (Leopairojana and Hanaoka, 2005).

Therefore, in 1999, there was a policy to regulate passenger vans by licensing them. **Figure 7.8** presents the process of passenger vans regulated by the DLT and BMTA. Only BMTA was granted the licence to operate passenger van services. However, it was able to subcontract this work to van drivers. Even if the licensed van drivers were under BMTA authority, the DLT monitored the service and had authority to withdraw the licences of passenger van routes which were below DLT standards. Further, van drivers had to pay an entry fee, contact fee, deposit money, and monthly concession fee to BMTA. Motor vehicle victim insurance or compulsory motor insurance for passengers is also required. After receiving the sublicense contracts, obtaining the DLT standards and paying the public transport vehicle taxes were required in applying for a fixed route public transportation vehicle licence from the DLT. After getting approval from the DLT, the van drivers received black/yellow licence plates, decorated with the BMTA symbol and dark blue and yellow stripes, to display their licensed and legal services.

The DLT had a quota for allocating the licensed vans on the routes. However, van companies or drivers could request for additional vans and routes if they were able to gather 500 signatures from passengers and propose the request through district councils. BMTA submitted the request to the DLT for approval.

Per DLT's regulation, the passenger vans had to maintain a minimum number of trips per day to ensure adequate services even though van companies and drivers set their own particular progress and dispatched on their routes.

The price regulation for van services were as follows:

- Fares were regulated at not more than B1 per kilometre (km) for the first 10 km.
- The fare charged was not more than B0.60/km for the excess distance.
- Additional fare was restricted to not more than B5/passenger/trip and was allowed for routes on expressways or tollways.
- Minimum fare was not regulated.

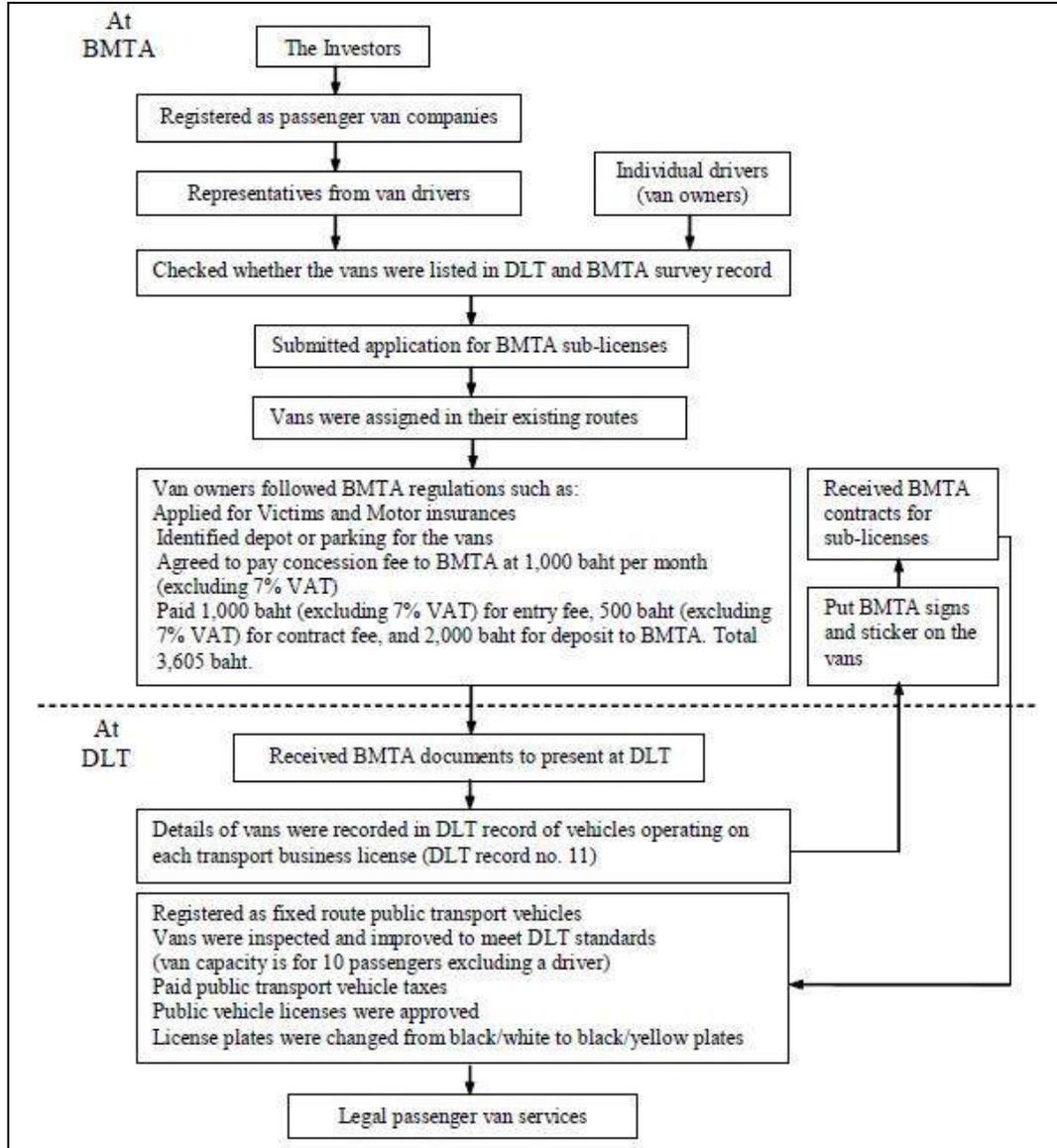
Despite the simple process of regulating passenger vans, many illegal vans still existed since many van drivers, including illegal van owners, benefited from operating on profitable routes. Further, illegal vans did not have to comply with DLT conditions and could operate on profit-making routes in peak hours. Besides, they could offer more convenient services to the commuters, such as door-to-door transport, even though these violated the law.

Even the quota of licensing vans was set according to the number of van drivers who applied for a BMTA subcontract and then was adjusted according to passenger demand. The given passenger vans quota was lower than the actual number of vans. Therefore, policymakers could not collect the true numbers and usually implemented the policy with the wrong quota.

In 2009, another 6,400 passenger vans were licensed to provide services on 60 routes from Bangkok to other provinces which were the routes in Category 2. Meanwhile, van fares offered the same as normal air-conditioned buses for routes on Category 2 but the passengers were willing to pay more for more convenient services (APEC, 2011). After gaining some requests to operate passenger vans from bus operators, MOT declared the policy 'one passenger bus for three

licensed vans' without considering market structure and theoretical support. The number of passenger vans continued to increase as a result.

Figure 7.8. Process of Registering Passenger Vans in Bangkok



BMTA = Bangkok Mass Transit Authority; DLT = Department of Land Transport; VAT = value added tax.

Source: Leopairojana and Hanaoka, 2005.

4.2. Impact of Licensing

The licensing of passenger vans resulted in two consequences: the ongoing corrupt system of passenger van management and the problematic enforcement of quality and safety services.

The Ongoing Corrupt System of Passenger Van Management

From the study of Leopairojana and Hanaoka (2006), after the van licensing policy was introduced in 1999, only BMTA was granted the licence to operate passenger van services; but it was able to subcontract this operation to the van drivers. Therefore, the licences were allocated to the existing routes between important locations in the city and suburbs with distances of 8–56 km.

Before the regulation, investors or operators required support to pay bribes and paid huge kickbacks in return to establish the passenger van routes and terminals. Van drivers had to pay the operators entry and monthly membership fees for drivers to be allowed to operate van services under a van route. After the regulation, the operators still operated the licensed van routes and played a role as route associations. The fee system remained but the entry and monthly membership fees were increased. However, illegal van drivers were able to pay these fees to get protection from some bribes. Because there were only 2-year contract licensed drivers with the BMTA, some did not renew their contracts. As a result, the illegal van drivers had a chance to get contracts and become legal. Thus, the problem of passenger van operators or the former investors and corruption remained in van management.

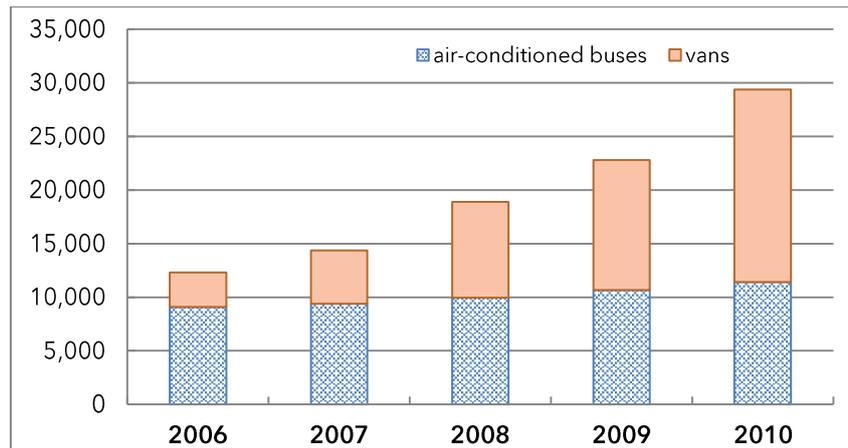
Enforcement of Quality and Safety Services

Although the legitimacy of passenger vans is a good regulatory reform based on the market-driven demand principle, the existing regulations cannot bridge the gap between the demand and supply of legal van services. The gap in the market has been filled by the entry of illegal vans. As a result, the DLT legalised the illegal van operation. However, a large number of passenger vans kept operating illegally. This affected the demand of public passenger vehicles on legal routes, especially air-conditioned buses, which affected the ability to meet the service obligation of good safety and service quality.

According to Ongkittikul (2013), the unclear and inefficient licensing system of public buses and vans results in accountability of the operators and drivers. The research separates this accountability into two aspects: responsibility for liability from an accident and responsibility for good quality service provision.

The number of newly registered public buses and vans had a positive trend in 2006–2010 while the proportion of the accumulative number of registered public vans had been significantly higher than public buses (**Figure 7.9**). Therefore, an increase in registered public vans became more significant because some operators or drivers requested to operate passenger vans instead of passenger buses, with a ratio of 3:1 (Ongkittikul et al., 2013).

Figure 7.9. Accumulative Number of Registered Public Vans and Buses in Thailand



Sources: Ongkittikul et al., 2013 and the authors.

Further, Ongkittikul et al. (2013) also found that 1,256 companies are under the licensing and subcontracting system. The majority of bus companies are small and owned by families: only 0.1 percent of the private companies have more than 50 buses, around 8 percent have between 2 and 48 buses, and around 92 percent own only 1 bus. This means that most operators are licensed but decide to subcontract to other drivers and earn the revenue from the entry and membership fees of drivers. As a result, many operators are able to get a licence without owning a van until now, which leads to the impetus for regulating the public van services. Moreover, if there is an accident, claiming compensation for victims and relatives, the real third party, is difficult. In this context, the drivers who cause the accidents and the operator who subcontracts them should share the liability and account for the co-payment of compensation to the victims. Unfortunately, there are many accidents without this co-accountability.

The result of the Foundation for Consumers in 2013 survey shows the number of accidents caused by public vans was around 32 percent of all accidents from October 2014 to November 2015; this was the highest number among all vehicles. Further, there was a positive trend of public van accidents in Thailand, 81

times in January 2012 (Road Safety Thai Organization), 76 times per month in 2014 (Royal Police), and 5 deaths per month in 2014 (DLT). This related problem is due to the poor policy design process and the research before intervention was reckless.

5. Role of the Regulatory Management System

The licensing of passenger vans is another situation showing that policymakers implement new policies without analysing the true problem and formulating the policy decision from alternative assessments. They applied an ad hoc approach, based on actual situations and political considerations instead of conducting a market study on passenger vans and the economic efficiency of urban public transport. As a result, the reform only filled a gap in the public vehicle services market, but did not eliminate illegal vans in the market.

Two relevant issues arise from the real problems of passenger van operation: operating as an individual, which leads to an unsafe service. The small private operators are unable to exploit economies of scale and have a lack of vision and resources to innovate their operation. Further, a number of individual operations would result in lower revenue and more complicated regulations for better safety standards such as speed limit, load limit, and use of seat belts, since individual operators do not have to respond to any operational risks. Therefore, licensing passenger vans cannot solve all these relevant problems, but can create more externalities.

The reasons behind the ineffectiveness of licensing passenger vans are:

- The problem of pricing policy is setting a standard price for all, making standard buses unprofitable to operate. The pricing structure has not been adjusted to comply with economic development, inflation changes, and oil price fluctuations. Furthermore, route licensing for public buses is unsystematic; there is a mix of regulations between allowing competition on profitable routes and subsidising and controlling competition on unprofitable routes. Therefore, pricing without proper subsidies leads to bad public transport.

- The competition between standard buses and illegal vans on high-demand routes results in many operators entering the market. Since passenger vans entered the market and gained more popularity because of convenience, standard buses cannot compete with illegal vans without proper licensing and non-tendering regulation.

Since illegal vans were able to enter the market as a result of bad policy and regulation, therefore, licensing passenger vans was just a temporary solution; yet it created a long-term effect of more complicated regulations on quality and safety standards of public transport services.

Nevertheless, reform was done by focusing only on the problem of market imperfection; an inadequate public bus provision, which was actually reasonable. However, there has never been an intensive study to understand the issue of poor pricing policy without studying the cost concept of creating a low-cost operation for public bus services. Therefore, this intervention is inefficient and not necessary since it creates the negative externality of an unsafe service, which then becomes a problem for road safety management.

Further, this reform seems not to be involved in 'Little and Legal Policy' development since the policy should be declared as a ministerial regulation from the DLT, under the MOT. According to the Thai legal system, the policymaker, the Minister of Transport, has the right to submit that regulation to Cabinet; after the Cabinet grants approval, the policymaker would publish it in the Government Gazette. Moreover, the policy was implemented by announcing the Notification of the Land Transport Control Board. Unfortunately, there was no evidence—that is, a Cabinet resolution—for this policy. There was no check and balance system when this policy was introduced because other stakeholders—including consumer representatives, van drivers, and investors—were not considered; also, no public hearing was conducted for this intervention. Moreover, without appropriate scrutiny, this new unnecessary regulation is inconsistent with the superior laws such as the Land Transport Act (1979), the Motor Vehicle Act (1979), and the Royal Decree Establishing BMTA (1976).

For the capability of reform management, this regulation can bridge the gap between public bus provisions and the demand of commuters in suburban areas.

However, it cannot regulate more efficient, better quality, and safe public vehicle services. Besides, the issue of illegal vans remains.

After receiving many complaints regarding disciplining public van service operators, the DLT has been trying to improve the safety standard of services despite the licensing reform. Since the DLT cannot cancel the licensing, many regulations and measures have been implemented instead, such as installation of a speeding detection system with an RFID device and the mandatory use of seat belts.

6. What Difference Could An Enhanced RMS Have Made?

After public vans were licensed, the number of passengers had been growing, resulting in the impetus for quality and safety control. Public van accidents have become more serious; therefore, the DLT mostly attempts to improve safety and quality.

The case study points out that the regulatory framework for public transport in Thailand needs a radical change. According to Ongkittikul (2007), it is necessary to reorganise the public transport services in a way that will improve efficiency and quality as in many European countries. The public transport sector should be organised so that it can compete with cars; this requires service integration between modes, and integration between transport policy, transport pricing, and public transport policy.

However, this reform in the case study could have been more effective if the problems were clearly defined at the beginning. Conducting intensive research and consultation with stakeholders, particularly those who are not in the system, would have been beneficial to legalise the system. Further, in order to assess the impact of the regulation, cooperation between the public and the private sectors is important for driving the regulatory system to correctly respond to the needs of business and improve social welfare. Cost–benefit analysis should be applied when considering alternative regulations in order to obtain the most appropriate intervention, while considering the context of social and economic constraints.

Since road transport has been the most essential mode for passenger traffic for all time, an action plan that covers both shortcoming and potential developments is needed for effective implementation. An example is the effect on cross-border traffic since Thailand is working with other ASEAN economies to liberalise cross-border transport and to improve the transportation corridors which link markets in ASEAN (APEC, 2011).

Even if this reform was promulgated by the DLT, the check and balance system is necessary for building the accountability system for the regulator and service providers. Moreover, apart from the check and balance system, there should be a clear strategic action for practical implementation to guarantee that the regulation is clear, consistent with superior laws and other requirements, comprehensive, and proportional to the nature of the problem. Again, there should be an official forum for stakeholders to exchange views on the proposed regulation.

Although this legislative process reform does not require a RIA in Thailand, impact assessment, especially public hearings, is still essential, both before and after the proposals. Further, the impact assessment should be promoted as a tool to counter corruption since the problem has received broad attention (TDRI, 2014a). Therefore, this would comply with the objective of eliminating corruption in the public van system.

Finally, there should be a central agency, independent from both executive branch and government bodies, that monitors and regulates assessment of the regulations.

Summary Comment

This chapter has explored the evolution of regulation in Thailand since it became a democracy in 1932. It showed how Thailand is in a catch-22 situation: the current system is not adequate to develop a robust RMS for legislation and regulatory reform. For example, the Thai government has been unable to effectively implement the RIA. The authors identify two key issues: (i) the conflicting interests of different authorities, which hinder effective collaboration;

and (ii) the lack of focus on policy development. Overall, the authors conclude that there is no coherence among relevant authorities. Parts 2 and 3 explore how regulatory reform is conducted in Thailand. The cases of the protection of car accident victims and passenger van licensing demonstrate the difficulty of regulatory reform in the absence of a robust RMS.

References

- Asia-Pacific Economic Cooperation (APEC) (2011), APEC Economic Policy Report. Singapore: APEC Secretariat.
- Asian Development Bank (ADB) (2014), *Asian Development Outlook 2014. Fiscal Policy for Inclusive Growth*. Manila: ADB.
- Asian Development Bank (ADB) (2015), Asian Development Outlook 2015. Financing Asia's Future Growth. Manila: ADB.
- Greancen, C. S., and C. Greancen (2004), 'Thailand Electricity Reform: Privatization of Benefits and Socialization of Costs and Risks'. *Pacific Affairs* 77(3): 517–541.
- Leeahtam, N. (2010), 'A Brief Overview of Fixed-route Public Bus Schemes in Thailand'. Unpublished working paper.
- Leopairojana, S. K., and S. Hanaoka (2005), 'Market Structure of Passenger Vans in Bangkok'. *Journal of the Eastern Asia Society for Transportation Studies* 6: 4192–4207.
- Nikomborirak, D. (2016), 'Thailand's Excess Laws and Red Tape'. *Bangkok Post* 13 January: 1–2.
- Nilrapunt, P. (2012), *Thailand's RIA: A Brief History*. Bangkok: Office of the Council of the State, Thailand.
- Nilrapunt, P. (2015a), 'Thailand's Licensing Facilitation Act'. Document for Executive Dinner Talk hosted by European Association for Business and Commerce, June 2015.
- Nilrapunt, P. (2015b), 'Thailand's Facilitation Act: An Overview'. Document for Luncheon Talk hosted by The American Chamber of Commerce's Legal Committee, 20 July 2015, Plaza Athenee Hotel, Bangkok.
- Ongkittikul, S. 2007. 'Regulatory Reform in European Public Transport: What Can We Learn?' *TDRI Quarterly Review* 22 (2): 10–15.

- Ongkittikul, S. et al. (2013), 'Bus Accident Victims: Impact, Insurance, and Compensation', April, Thailand Development Research Institute (in Thai).
- Pisarnporn, N. and R. Polpanich (2008), 'Cost of Operation: Bus VS Truck Service in Thailand'. *TDRI Newsletter* 84, July 2010 (in Thai).
- Poapongsakorn, N. and D. Nikomborirak (2003), 'Reviewing the Regulatory Reform Process in Thailand', in APEC–OECD Co-operative Initiative on Regulatory Reform, Proceedings of the Fourth Workshop, October 2003, Vancouver, Canada.
- Tangkitvanich, S. et al. (2012), 'The Legislation Process Development Project of Thailand for Promoting the Participation of People', July, Thai Universities for Healthy Public Policy, Thailand (Thai version).
- Thailand Development Research Institute (TDRI) (2014a), 'Regulatory Impact Analysis', Bangkok: TDRI (Thai version).
- Thailand Development Research Institute (TDRI) (2014b), 'Policy Study on the Development of Motor Insurance Industry under the Protection of Car Accident Victims Act A.D. 1992', Bangkok: TDRI (Thai version).
- Viroj, T., L. Supon, P. Walaiporn, T. Jadej, J. Pongpisut, and S. Supakit (2014), *Achieving Universal Health Coverage Goals in Thailand: The Vital Role of Strategic Purchasing' in Health Policy and Planning*. Oxford University Press in association with The London School of Hygiene and Tropical Medicine.
- World Bank (2013), *Worldwide Governance Indicators 2013*. Washington, DC: World Bank.
- World Bank (2014), *Doing Business 2014*. Washington, DC: World Bank.
- World Justice Project (2014), *Rule of Law Index 2014*. Washington, DC: World Justice Project.
- World Health Organization (WHO) (2010), *Health Systems Financing: The Path to Universal Coverage*. World Health Report 2010. Geneva: WHO.

Chapter VIII

Regulatory Coherence: The Case of Viet Nam

Vo Tri Thanh

Central Institute for Economic Management

Cuong Van Nguyen

Institute of Legal Science

1. Introduction

Viet Nam has embarked on comprehensive reforms since 1986. Among them, market-oriented reforms covered the wide range of institutional changes, seeking to enhance the freedom of doing business and to strengthen market competition, among others. Regulatory reforms accordingly played a crucial role. The functions of the government and public administration agencies at all levels shifted progressively from direct interventions into indirect management, using legal and economic instruments. Alongside efforts for macroeconomic stabilisation and economic integration, these reforms enhanced the microeconomic foundations for more rapid economic growth in different periods. Meanwhile, only in 1997–1999 and 2009–2011 was the momentum for reforms weakened due to difficulties in the external and domestic macroeconomic environment (**Table 8.1**).¹

Since 2011, the room for manipulating macroeconomic policies (including monetary and fiscal policies) to achieve high economic growth deteriorated as Viet Nam suffered from prolonged budget deficits and high inflation. Focusing on reforms of microeconomic foundations then emerged as an increasingly important priority to promote aggregate economic activity. Among such reforms was the enhancement of regulatory instruments, including public administrative procedures. In light of this, however, one should recall that the enhancement was not new in 2011–2015; in fact, the work resembled continuity from Viet Nam's

¹ For further details, see Dinh et al. (2009); Central Institute for Economic Management (2010, 2013).

master plan for public administrative reforms since 2007 (i.e. under Project 30). The different outcomes from those reforms during 2007–2010 and 2011–2015 still indicate room for learning from the related experiences and issues for further improvement.

Table 8.1. Major Contextual Changes in Viet Nam, 1986–2014

| Period | Major Events and Changes |
|---------------|--|
| 1986–1988 | <ul style="list-style-type: none"> - Abolition of central planning regime - Reforms towards multi-sector economy, with more participation of private and foreign enterprises - Set up legal frameworks for foreign trade, foreign direct investment in Viet Nam |
| 1989–1996 | <ul style="list-style-type: none"> - Amendment of the Constitution in 1992 - No more aid from the Soviet Union since 1992 - Reforms on agriculture, trade, exchange rate, financial system, state-owned enterprises (SOEs), etc. - Expansion of trade relations with all countries and territories - Joined ASEAN in 1995 |
| 1997–1999 | <ul style="list-style-type: none"> - Asian financial crisis - Reforms and international economic integration were slowed down |
| 2000–2008 | <ul style="list-style-type: none"> - Comprehensive reforms of SOEs, budget, competition, markets for factors of production, etc. - Regulatory changes for more equal treatment between domestic and foreign entities - Accession to World Trade Organization in 2007 - Deeper economic integration under ASEAN-plus framework - Public administrative reforms |
| 2009–2014 | <ul style="list-style-type: none"> - Slower growth due to impacts of global financial crisis and macroeconomic stabilisation policies - Amendment of the Constitution in 2013 - Regulatory changes for further trade and investment liberalisation, reforms of business environment (including public administrative procedures), etc. |

ASEAN = Association of Southeast Asian Nations.

Source: Authors' compilation.

This chapter reviews the experiences of Viet Nam in improving its approach to regulatory management. The remainder of the chapter is structured in four sections. Section 2 summarises the major changes in Viet Nam's regulatory management system (RMS). Section 3 then assesses the current state of the RMS. Section 4 presents some case studies in improving regulatory management in Viet Nam. Section 5 draws out some conclusions from the chapter.

2. Evolution of Viet Nam's Regulatory Management System

2.1. Overview of Regulatory Reforms

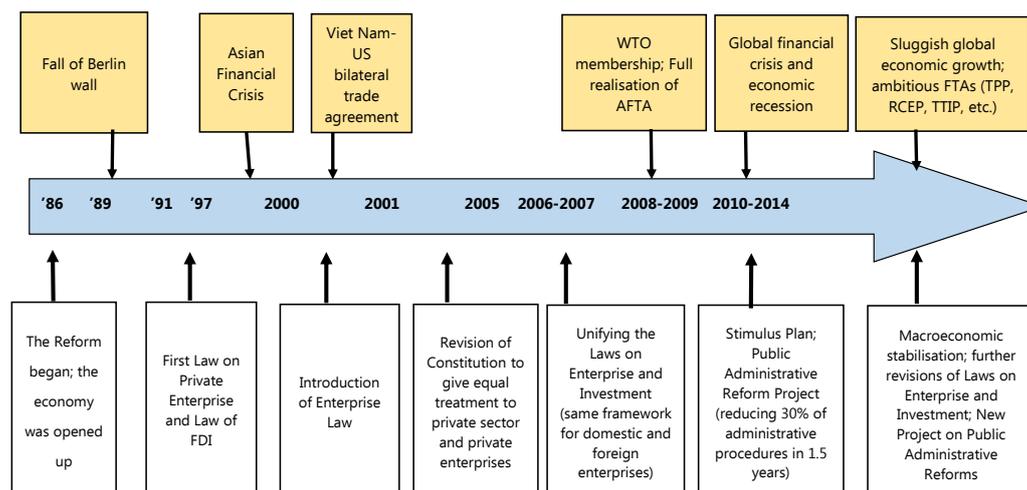
Since 1986, as previously mentioned, Viet Nam has promulgated a number of laws and regulations to regulate economic activities in line with market-oriented reforms. However, it was only in 1994 that the government, in Resolution No. 38/CP, officially recognised the need to simplify administrative procedures in granting various licences to citizens and private enterprises.

In 1996, the National Assembly issued the first Law on Legal Normative Documents (also known as the Law on Laws). This law specifies the authorities of different bodies in promulgating different types of regulations, including laws, ordinances, decisions, and circulars. Importantly, the law also sets out the official procedures for public consultation, though the wording was still mild. The second Law on Legal Normative Documents in 2008 then elaborated further on the principles and procedures for drafting regulations, which includes detailed requirement on public consultation and regulatory impact analysis (RIA).

Besides, Viet Nam also embarked on simplifying administrative procedures. This direction of work has been initiated since the 1990s. Nonetheless, substance of the work only materialised during the 2000s, especially since 2007, with Project 30 (this project will be discussed in Section 4). When the momentum of work under Project 30 appeared to deteriorate in 2010–2013, the government then issued Resolution No. 19 in 2014 with a new and broader framework to simplifying administrative procedures, acknowledging this as a core priority to support the business community and enhance competitiveness.

As another direction of work, Viet Nam has made numerous efforts to better harmonise the domestic laws in line with international norms and practices. Such efforts already became evident since the early 2000s, as Viet Nam prepared to join the World Trade Organization (WTO, **Figure 8.1**). Various legal documents (such as Enterprise Law, Investment Law, and guiding documents) were issued and amended, with a view to create a more level playing field for enterprises of all ownership forms.

Figure 8.1. Important Milestones and Implications for Regulatory Reforms in Viet Nam, 1986–2014



AFTA = ASEAN Free Trade Area; FDI = foreign direct investment; FTA = free trade agreement; RCEP = Regional Comprehensive Economic Partnership; TPP = Trans-Pacific Partnership; TTIP = Transatlantic Trade and Investment Partnership; US = United States; WTO = World Trade Organization.

Source: Updated and extracted from Le, 2009.

To facilitate the movement of goods and labour, Viet Nam also worked with partner countries (especially in the Association of Southeast Asian Nations [ASEAN]) to enhance mutual recognition of standards and skill qualifications.

More laws and regulations, nonetheless, somehow led to increasing compliance costs with regulations. The provincial minimum of firms having to spend over 10 percent of their time dealing with bureaucratic procedures rose from 3.6 percent in 2005 to 8.1 percent in 2010. The maximum figure went up even faster, from 30.4 percent to 44.4 percent in the same period (**Table 8.2**). In particular, the correlation with the previous year climbed in 2007 and 2008, implying that the change in each province of Viet Nam seemed to become less significant over time. The time burden only eased during 2011–2013 as institutional improvement, including regulatory reforms, was targeted more specifically to support business activities. The minimum percentage of firms spending over 10 percent of their time for bureaucracy reached 2.7 percent in 2011 and 7.9 percent in 2013, though these figures were well below the level in 2005–2010. Still, 2014 then saw the time costs increase again, with higher minimum, median, and maximum figures across all provinces. In addition, the improvement was almost non-evident in the group of poor performers (provinces), as the maximum figure fluctuated widely in 2005–2014.

Table 8.2. Time Costs of Regulatory Compliance Across Viet Nam's Provinces, 2005–2014

| Indicator | Measure | 2005 | 2006 | 2007 | 2008 | 2010 | 2011 | 2013 | 2014 |
|---|--------------------------------|-------|-------|-------|-------|-------|-------|-------|-------|
| Percentage of firms spending over 10 percent of their time dealing with bureaucracy or bureaucratic regulations | Minimum | 3.64 | 6.52 | 10.94 | 13.83 | 8.14 | 2.74 | 7.88 | 18.56 |
| | Median | 13.67 | 21.24 | 21.87 | 22.99 | 19.00 | 11.27 | 20.95 | 35.62 |
| | Maximum | 30.43 | 39.39 | 43.75 | 42.55 | 35.37 | 31.58 | 44.44 | 51.09 |
| | Correlation with previous year | NA | 0.44 | 0.62 | 0.67 | NA | NA | NA | NA |

NA = not available.

Note: Correlation figures are calculated based on data at the provincial levels.

Source: Viet Nam Competitiveness Initiative Project, 2015.

Another problem lies in the use of province-specific regulations, which caused unofficial costs for enterprises. As depicted in **Table 8.3**, both minimum and median percentages of firms, noting that the local officials promulgate specific regulations for own benefits, increased in 2007–2010, before falling in 2011. The improvement was again negligible in the group of worst performers: the maximum figure only declined from 79.4 percent in 2007 to over 73.1 percent in both 2010 and 2011.

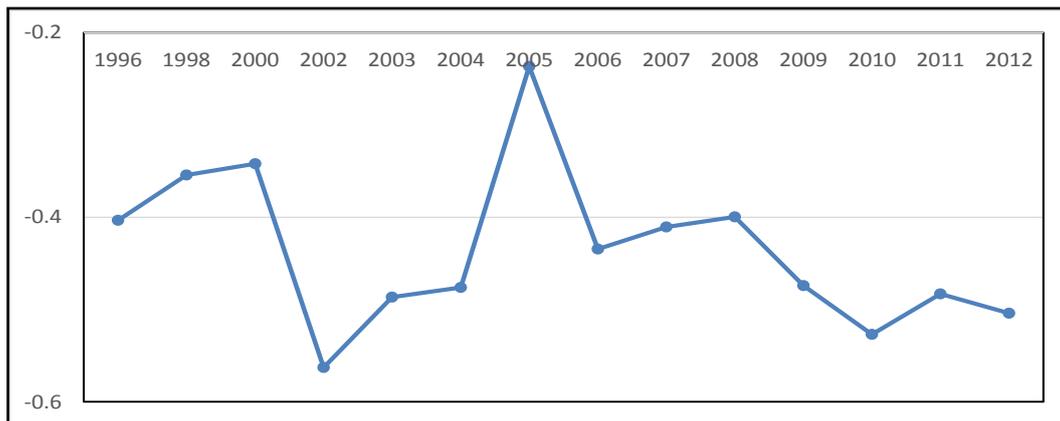
Table 8.3. Unofficial Costs Induced by Province-Specific Regulations 2007–2011

| Indicator | Measure | 2007 | 2010 | 2011 |
|--|---------|-------|-------|-------|
| Percentage of firms arguing that the local governments issue new regulations for own benefits (unofficial costs for firms) | Minimum | 17.44 | 22.00 | 18.06 |
| | Median | 38.21 | 50.00 | 40.28 |
| | Maximum | 79.41 | 73.11 | 73.13 |

Source: Viet Nam Competitiveness Initiative Project, 2014.

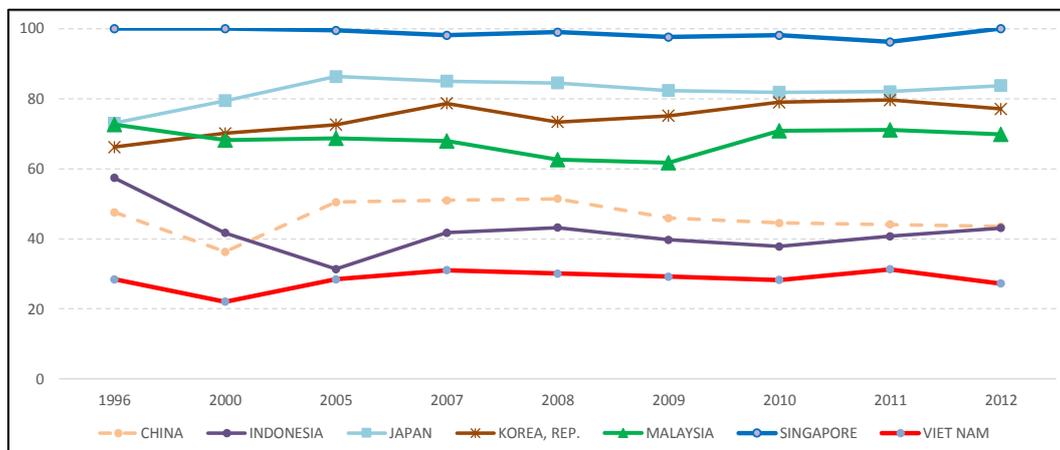
Furthermore, Viet Nam has to do a lot to improve its regulatory system as per international standards. The rule of law index generally fell in 2005–2012 despite some modest improvement in 2011–2012 (**Figure 8.2**). According to the *Worldwide Governance Indicators* (2014) on regulatory quality, in Southeast Asia, Viet Nam only outperformed Lao PDR and Myanmar (**Figure 8.3**). Meanwhile, the country ranked far below others, such as Singapore, Malaysia, and Thailand. Compared with other 'extended' East Asian partners, Viet Nam's governance indicator was only closer to that of China, while lagging far behind Japan, Korea, Australia, and New Zealand.

Figure 8.2. Rule of Law Index for Viet Nam, 1996–2012



Source: World Bank, 2014a.

Figure 8.3. Worldwide Governance Indicators on Regulatory Quality, 1996–2012 (percentile ranking)



Source: World Bank, 2014b.

2.2. Strategy and Programme for Improving Regulatory Practices

On 18 March 2014, the government adopted Resolution 19/ND-CP on main tasks and key measures to improve the business environment and competitiveness of the nation. This was initiated based on an analysis of the actual weaknesses and shortcomings of the economy in the context of deeper integration. The resolution points out five general objectives and obligations: (i) to pursue economic restructuring and shift economic growth model; (ii) to continue to formulate, revise, amend legal regulations and policies aimed at creating a level and favourable playing field for all entities, protecting investors, ensuring effective allocation of resources for development; (iii) to develop adequate infrastructure to serve modernisation, industrialisation, and international integration; (iv) to implement

comprehensive measures towards human resource development; and (v) to improve institutions and policies to encourage investment on science and technology.

In the short run of 2014–2015, the main focus of the resolution include (i) improving competitiveness, (ii) promoting administrative reform, and (iii) enhancing transparency and accountability. Specifically, measures under the resolution are expected to (i) simplify business registration procedures and shorten the process to 6 days or less; (ii) reform the tax payment procedures, in which the target is to reduce the time needed to pay tax to the average level of the ASEAN-6 countries² (171 hours each year); (iii) improve regulations on ownership and protect investors in compliance with international standards; (iv) increase the ease, equality, and transparency in accessing capital; (v) simplify import–export and customs requirements and procedures, trying to reach the average level of ASEAN-6 (14 days to export, 13 days to import); (vi) speed up bankruptcy process to the maximum of 30 days; and (vii) implement information on operations and financial situation of enterprises in compliance with legal regulations and international practices as well as promote transparency.

Depending on mandates and functions, line ministries, local governments and authorities, relevant government ministries, provincial people’s committees, the Vietnam Chamber of Commerce and Industry and associations should consider, initiate, and implement appropriate actions to fulfil the stated objectives of the resolution.

2.3. Single Online Locations for Regulatory Information

Viet Nam already has a single website for draft legal documents and related information. The website (<http://duthaonline.quochoi.vn>) is maintained by the National Assembly, the highest people-represented law-making body in Viet Nam. The website covers a wide range of information on regulations, including proposals for new regulations, executive summaries, and relevant justifying reports of the drafting agencies. Under the authority of the National Assembly, the types of published regulations only comprise laws, ordinances, and resolutions.

² ASEAN-6 countries are Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, and Thailand.

**Box 1. Application of Good Regulatory Practices
During the Enterprise Law Process, 2005**

The drafting, implementing, and reviewing processes of the unified Enterprise Law 2005 present one of the key successes of good regulatory practices in Viet Nam. The law was promulgated in 2005 but the drafting process before that involved a series of consultations with the business community, experts, and government agencies. In particular, since the law was aimed towards establishing a more level playing field for enterprises of all ownership forms, the consultation with the business community played a pivotal role. Via this consultation process, the drafting team got to know the practical needs and difficulties for the enterprises in the anticipated implementation process. Comments and feedbacks on the draft law were carefully considered so as to subsequently incorporate relevant changes. Notably, this consultation process was adopted even before the Law on Laws, which formalised the need for consultation since 2008.

Even after the Enterprise Law came into effect, the Task Force for Implementing Enterprise Law still maintained an active role in reviewing the actual issues. For instance, government noted and intervened, if possible, on issues related to governance of big state business groups, transformation of state-owned enterprises, conditional business areas, among others. Administrative reforms over business registration were also accelerated, thereby saving time for new businesses in making registrations and acquiring seals and tax numbers. The public consultation process was still promoted, helping identify practical issues in reviewing implementation of the Enterprise Law. On this basis, the National Assembly decided to amend the Enterprise Law; the revised draft version was finalised in the Plenary Meeting of the National Assembly in May 2014. The revised Enterprise Law was issued in November 2014.

The development process of the Enterprise Law in Viet Nam showcased some important lessons: (i) continuous consultation generally played a crucial role not only in the drafting process but also during implementation of the law to reduce compliance costs for the business community and; (ii) responsible bodies need to be established to facilitate the monitoring and review of actual implementation process, at least for important laws.

Source: Authors' compilation from various sources.

Specifically, the website also lists the agenda for promulgating laws and regulations of the National Assembly in its 5-year term. Also, the relevant Commission of the National Assembly may publish reports of its official review on draft laws and other regulations, focusing on the rationale, scope, and contents, as well as procedures and enforcement. In particular, the website is interactive, as the public can access full text of the draft regulations and upload comments on the text, after which the drafting agencies provide comments and feedback, including acceptance of changes.

Other types of regulations, such as circulars and decisions, appear to be less accessible. The Viet Nam Chamber of Commerce and Industry has its own online platform for regulations of these types that are relevant to the business community

(<http://www.vibonline.com.vn/>). At the local levels, however, the documents are mostly unavailable online due to limited costs to develop local regulatory databases, notwithstanding the high level of Internet popularisation. Thus, the only way to access contents of these documents is via hard copies publicly available at the relevant offices of local agencies.

2.4. Regulatory Planning

Depending on the needs and available proposals, the National Assembly may decide at its plenary session whether an adjustment of the agenda is necessary.

Based on the promulgated laws, ordinances, and resolutions, government agencies may be required to develop relevant sub-law documents to guide the legal implementation process. The government work agenda is then modified to incorporate relevant responsibilities to develop sub-law documents, especially on the name of documents, leading agencies, cooperating agencies, and deadlines for completion. Depending on the actual progress and remaining issues to be addressed under each document, the leading government agency may propose to the government an extension of the deadline, or other necessary adjustments. During preparation, the leading government agency has to undertake relevant consultation with other agencies, business associations, and the people. Depending on their levels, the regulations may need to be published online for a certain period. For instance, the draft circulars have to be published online for consultation for at least 60 days before submission. The agendas for developing sub-law documents are generally accessible to all government agencies. However, public stakeholders can access parts of the agenda that are incorporated in various government resolutions.

2.5. Review of Existing Regulations

In principle, the relevant commissions of the National Assembly are responsible for reviewing regulations. For important laws (such as the Enterprise Law), the dedicated task forces will have to monitor the actual implementation and produce (both periodic and ad hoc) review reports. For sub-law documents, government agencies have to assume the role of producing reviews. The framework for such reviews has been established with the Law on Laws in 2008 and with the follow-up Decrees No. 2009/ND-CP in 2009 and No. 16/2013/ND-CP in 2013.

Viet Nam is still in a process of continuous institutional and legal reforms. Accordingly, government agencies have been involved in various dialogues and consultations among themselves as well as with business associations and the people about practical issues in implementing regulations. The most notable attempt has been the periodic dialogues between customs and tax authorities with the business communities, which usually focused on the current policy choke points. On that basis, the need for adapting regulations or promulgating new ones is then identified.

3. Current State of the Regulatory System

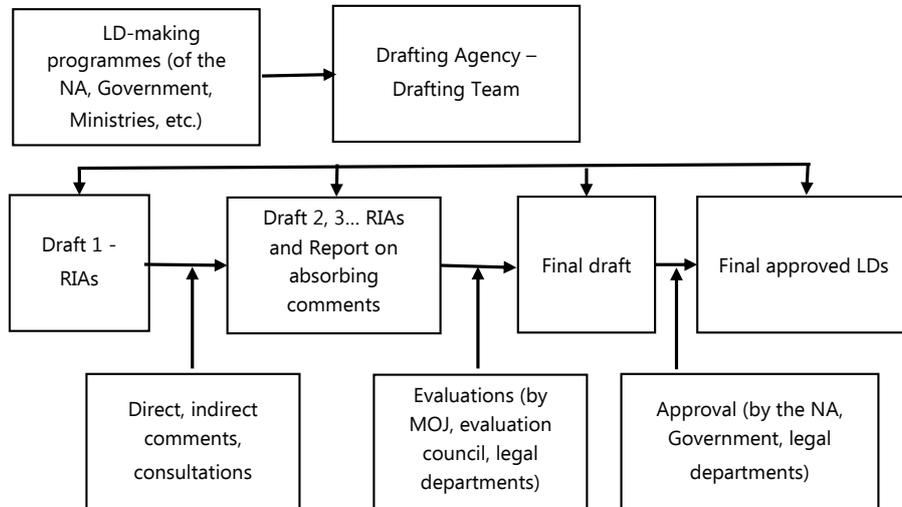
3.1. Existence of 'Flow' Policy Tools

The current Law on Laws of 2008 and its guiding decree (Decree 24/2009/ND-CP, dated 5 March 2009) require that all draft laws (adopted by the National Assembly) and decrees (adopted by the government) have to go through a RIA procedure before being officially submitted to the final decision makers. As for drafting a law, the RIA report has to focus on the following aspects: (i) policy problems to be solved; (ii) goals of proposed policy; (iii) alternatives to solve policy problems, a cost–benefit analysis of each alternative, and good or bad impacts of each alternative; and (iv) the best option to solve policy problems.

Figure 8.4 illustrates the general process for legal documents in Viet Nam. Transparency is one of the most important aspects of effective regulation. To increase consultation, legislative proposals (programmes), including their pre-RIA are required to be posted on government websites to get comments from the public for 30 days and will be posted on the Internet as soon as the legislative agenda is finalised and submitted to the National Assembly for consideration. A draft legal document is to be posted for comments online by the drafting agency for at least 60 days in parallel with the consultation with relevant entities (both from the private and the government sectors). Any changes to that draft as well as related comments and reports on incorporating comments will also be posted. The final draft then will be under the appraisal by the Ministry of Justice or legal departments in charge, depending on the levels of the legal documents. At the drafting stage, the agency in charge is required to prepare a RIA, which examines likely impacts of proposed legal documents, as well as any proposals for compliance. The lead agency may utilise research institutes, academics,

professionals, scientists, and other experts to conduct research and assist its preparation process.

Figure 8.4. General Process for Legal Documents in Viet Nam



LD = legal document; MOJ = Ministry of Justice; NA = National Assembly; RIA = regulatory impact analysis.

Source: APEC, 2014.

The implementation of a RIA, however, still poses a challenge in Viet Nam. The quality of a RIA normally fails to meet expectations, while the capacity to review and access RIAs is also limited. In particular, the lack of data and rigorous approach are often the major weaknesses in RIAs. In this context, Viet Nam has exerted various efforts to promote regulatory reform with support from international donors (namely, the United Nations Development Programme, German Technical Cooperation Agency (GTZ), and United States Agency for International Development/Viet Nam Competitiveness Initiative (USAID/VNCI), as well as domestic agencies (the Ministry of Justice, the Viet Nam Chamber of Commerce and Industry, and the Central Institute for Economic Management). A RIA task force was established in the Ministry of Justice to act as a central body to coordinate the implementation of Decree 24/2009/ND-CP at the beginning stage. Many capacity building workshops for ministries and non-government stakeholders had been conducted, the majority of which were held regularly, in order to improve the quality of, and the capacity to, review RIAs.

In addition, the Law on Laws of 2008 and its guiding decree (i.e. Decree 24/2009/ND-CP) require the sponsoring ministry of laws and decrees to prepare a

RIA report after 3 years of implementation of laws and decrees. This report has to cover: (i) actual cost/benefit and other impacts of the law or decree; (ii) observers' level of compliance; and (iii) recommendations for amending, supplementing, or repealing the law or decree. The draft of this report also has to be published on the government's website and the sponsoring ministry's website for at least 30 days to solicit public comments. The final report has to be sent to the Ministry of Justice to report to the government.

In Viet Nam, the preparation of a law or a decree does not require a separation between the phases of policy development and of detailed legal design. Therefore, the RIA is applied for draft laws and draft decrees before these drafts are sent to the Ministry of Justice for evaluation of their legitimacy and enforceability. The RIA is not applied for the phase of deliberation or debate in the National Assembly.

3.2. Adoption of 'Stock' Tools

From 2007, with Project 30 (under Decision 30/QĐ-TTg, dated 10 January 2007), the regulatory guillotine was introduced into Viet Nam's current RMS. This project set out several key goals for 2007–2010: (i) to simplify at least 30 percent of administrative procedures and reduce administrative costs by at least 30 percent; (ii) to reduce the implementation gaps in the domestic regulatory system with international commitments (especially the WTO); (iii) to set up the first unified national database for administrative procedures; and (iv) to improve Viet Nam's competitiveness, boosting investment and increasing productivity.

Project 30³ also conducted a comprehensive review of all administrative procedures. Accordingly, all administrative procedures including forms and related dossiers had to be inventoried and reviewed in terms of (i) necessity, (ii) legality, and (iii) user friendliness (three-question test). Based on this review, the competent authorities made proposals for simplification (for administrative procedures failing the three-question test). Reasonable administrative procedures were then standardised and published through the National Database for administrative procedures. The review was undertaken in four phases:

³ More details in Section 4.

1. Inventory: All ministries and provincial local governments prepared lists of administrative procedures under their authority and published these for public comments.
2. Self-review based on the three-question test.
3. Follow-up review by Special Task Force and the Advisory Council.
4. Recommendations.

To sustain the results of Project 30, the government adopted Decree 63/2010/ND-CP (dated 8 June 2010) on the control of administrative procedures, which was later amended by Decree 48/2013/ND-CP (dated 14 May 2013). The decree sets up the agency for administrative procedure control at the central level, and offices for administrative procedure control in ministries and provincial offices. The decree also requires that (i) district and communal local governments do not have authority to issue administrative procedures; and (ii) an administrative procedure must have all necessary details, including name, order to proceed, manner to proceed, dossiers, time limit for handling, parties to proceed, authorities, and outcomes. The decree also requires the sponsoring bodies of draft laws, decrees, or circulars to conduct impact analysis of administrative procedures stipulated in these laws, decrees, or circulars. The impact analysis focuses on the necessity, reasonableness, legality, and compliance costs of administrative procedures.

In addition, on 6 February 2013, the government issued Decree No. 16/2013/ND-CP on reviewing and systematising legal normative documents. The review system is applied to find out and remove illegal, conflicting, or overlapping legal provisions to ensure the legitimacy and coherence of legal normative documents. The systematisation is undertaken to improve the transparency and accessibility of legal normative documents. The review and systematisation firstly targeted all legal normative documents issued before 31 December 2013. According to the Ministry of Justice, by 30 July 2014, of all legal normative documents issued by the central government, 7,981 documents were still in effect, 5,996 documents already expired, and 1,313 others needed amendment or supplements.⁴ Regarding other 'stock' tools, the current RMS in Viet Nam has no 'sunset provisions'.

⁴ For further details, see <http://ktvb.moj.gov.vn/qt/tintuc/Pages/phap-dien.aspx?ItemID=5>

3.3. Key Stakeholders

All laws in Viet Nam are under the authority of the National Assembly, whereas ordinances are issued by the National Assembly Standing Committee. However, the implementation and guidance of laws rely heavily on government agencies (**Table 8.4**). In Viet Nam, about 90 percent of draft laws originated from the government (executive branch). Other types of sub-law documents such as decisions, decrees, and circulars are mostly issued by the government or members of the government.

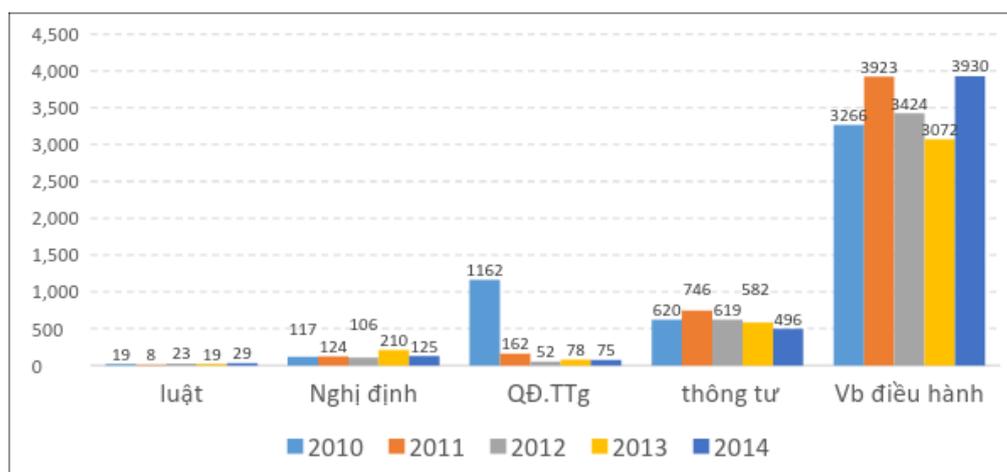
Table 8.4. Components of Viet Nam's National Legal Framework

| Priority | English Title | Description | Issued by |
|----------|---------------|---|---|
| 1 | Constitution | Supreme law of the land | National Assembly |
| 2 | Law | Rules established in line with the Constitution | National Assembly |
| | Ordinance | Issues implemented under the National Assembly's assignment (after some time will be approved into law) | National Assembly Standing Committee |
| 3 | Resolution | Orders established by the National Assembly that set out activities to implement the laws and policies | National Assembly, National Assembly Standing Committee |
| 4 | Order | An order to fulfil a certain task | President |
| 5 | Decision | A decision which sets out the objectives, tasks, activities, and implementation mechanisms for certain activities | President, Prime Minister |
| 6 | Decree | A document with detailed instructions for implementation of certain laws, resolutions of the National Assembly and its Standing Committee | Government |
| 7 | Circular | A document with detailed instructions for implementation of certain laws, decrees | Minister |

Source: Authors' compilation.

The enforcement of laws and policies depends heavily on circulars and guiding policy documents issued by ministries and other authorities. However, the number of circulars and other policy documents is large relative to the numbers of laws and decrees each year (**Figure 8.5**). The large number of guiding documents may imply (i) lack of details in the laws, (ii) uncertainty in implementation of the laws and impacts on the stakeholders, and (iii) material compliance costs.

Figure 8.5. Number of Issued Documents, 2010–2014



PM = Prime Minister.

Source: Socialist Republic of Viet Nam. Government Portal. <http://chinhphu.vn>

The involvement of the business sector and social organisations in law-making is also made compulsory. Article 27 of Decree 24/2009/ND-CP (dated 5 March 2009) stipulates that:

As for draft laws, decrees or Prime Minister's decisions which have provisions relevant to rights and obligations of enterprises, the sponsor ministry has to send these drafts to Viet Nam Chamber of Commerce and Industry to solicit comments from business community. Within 20 working days from the day of receiving the drafts, Viet Nam Chamber of Commerce and Industry has to organize the forum to solicit opinions or comments from enterprises and reports these opinions or comments to the Ministry of Justice, the Government's Office and the sponsor ministry.

In fact, the online database of the Vietnam Chamber of Commerce and Industry⁵ also include all draft laws, draft decrees, and draft circulars. At the same time, this database allows for direct submission of comments on the related documents.

⁵ <http://vibonline.com.vn/Home/default.aspx>

3.4. Coordination in Regulatory Management

Since the end of 2012 when the Agency for Administrative Procedure Control was transferred from the Government Office to the Ministry of Justice, the burden of ensuring the quality of the regulatory system is further placed on the Ministry of Justice.

As of 2015, the Ministry of Justice is responsible for checking the quality of draft laws, draft decrees, and drafts of the Prime Minister's decisions in terms of their necessity, legality, and enforceability. It is also responsible for checking the necessity, legitimacy, reasonability, and compliance costs of administrative procedures in draft laws, draft decrees, and drafts of the Prime Minister's decisions. In addition, it is in charge of checking the legitimacy of circulars issued by other ministries and legal normative documents issued by provincial local governments. Finally, the Ministry of Justice guides ministerial and provincial departments on legal affairs regarding the skills and capacity of formulating and drafting legal normative documents as well as administrative procedures.

4. Case Studies on Regulatory Management in Viet Nam

4.1. Project 30

The first Master Plan for Administrative Reform for 2001–2010 (issued by Decision No. 136/2001/QĐ-TTg, dated 17/9/2001) noted that in 2001, administrative procedures in many sectors 'are cumbersome and complicate[d]'. Yet the master plan lacked momentum for implementation and, thus, the progress of simplification was not comprehensive. Even after Viet Nam joined the WTO, administrative procedures remained cumbersome and complicated. In 2007, Prime Minister Nguyen Tan Dung declared that 'if administrative procedures remain complex, incomprehensible and difficult to implement, they will become barriers to economic and social development' (Schwarz 2010). Accordingly, the four critical obstacles to a democratic, clean, strong, professional, effective, and efficient administration were outlined: (i) administrative procedures 'remain cumbersome, overlapping, contradictory and unreasonable'; (ii) the business environment contains several 'hindrances and obstacles to production'; (iii) administrative forms and application dossiers 'lack consistency' and contain 'many irrational provisions, causing trouble to individuals, organisations and enterprises'; and (iv) the central

government lacks a mechanism to monitor and control new administrative procedures, and to ensure their consistency with existing regulations (Schwarz 2010).

With technical assistance from a number of foreign experts (especially from the United State Agency for International Development/Vietnam Competitiveness Initiative and drawing from international experience on best methods and institutional reforms (especially the experiences of Organisation for Economic Co-operation and Development [OECD] countries), the Prime Minister decided to issue Decision 30/QĐ-TTg, dated 10 January 2007, to approve the project to 'Simplify Administrative Procedures in all Sectors of State Management for the Period of 2007–2010', with the target to reduce compliance costs for businesses and citizens by 30 percent (known as Project 30).

Project 30 aspires to create a simpler, more efficient, and more transparent administrative system. Concretely, the project aims to (i) simplify at least 30 percent of administrative procedures and reduce administrative costs by at least 30 percent; (ii) reduce the implementation gap in the domestic regulatory system with WTO and international trade agreements through the establishment of a modern and better regulatory system; (iii) enhance systematic transparency in compliance with WTO principles; (iv) create the first unified database of all regulations at the central level in Viet Nam with quality control and consultation mechanisms for simplifying administrative procedures; (v) stimulate investment and productivity gains across the economy by reducing costs and risks for large and small businesses; (vi) improve Viet Nam's competitive position among WTO economies; (vii) and help fulfil the economic commitments of job creation under the 5-year plan (for 2006–2010) (see OECD 2011).

Given its popular use in a number of countries to produce rapid results by cutting and simplifying unneeded regulations, the regulatory guillotine method was then adopted in Project 30. This method consisted of four steps. First, in the 'Inventory' step, all ministries and provincial governments were obliged to prepare lists of administrative procedures in their competence, including their description based on a standardised form. This standardised form included information on the name and nature of the procedure and on whether the procedure involves a licence or forms to be attached, or requires fees. The form also included information on the contact person or the position name of the person in charge of settling the procedure and the time period for settling the procedure. This inventory was

published for soliciting public comments. After that, the inventory was revised based on such comments. The inventory was then turned into a central electronic register of administrative procedures accessible via the Internet.

During the first phase (which took place between January 2008 and June 2009), hundreds of civil servants representing every level of the government created the first-ever comprehensive inventory of administrative procedures, which was made into a searchable electronic database and posted on the government website. More than 5,000 administrative procedures (stipulated in 9,000 legal normative documents) were added to the database, which allowed users to locate every administrative procedure and to download printable versions of every administrative form.

Second, in 'self-review', ministries and provincial governments had to review and assess each administrative procedure inventoried by answering three questions: (i) Is the administrative procedure legitimate? (ii) Is the administrative procedure necessary? (iii) Is it suitable or reasonable from the perspective of citizens and businesses? This self-review was conducted by trained task forces set up by ministers and provincial governments.⁶

Third, the Special Task Force, in consultation with its Advisory Council (a group of independent experts, business community, etc.), reviewed and assessed again problematic administrative procedures.

During the second phase (which took place between June 2009 and May 2010), the Special Task Force, consisting of government officials appointed by the Prime Minister, engaged government officials, citizens, non-government organisations, and business associations in a sweeping review of the entire administrative procedure database. The Special Task Force welcomed the assistance from the business community and civil society to identify problematic administrative procedures. To this end, the government created dossiers designed to enable business associations, citizens, and individual enterprises to (i) identify problematic administrative procedures; (ii) explain why those procedures were unnecessary, unreasonable, overly expensive, or inconsistent with existing regulations; and (iii)

⁶ All 63 provincial governments and 21 ministries and set up their own task forces for simplification of administrative procedures.

recommend solutions – typically, abolition, or revision – which would make the process simpler and more efficient.

In fact, though some business leaders were sceptical of the government's commitment to the reform process, most harnessed the opportunity to voice their criticisms. The American Chamber of Commerce, the European Chamber of Commerce, the Korea Trade Investment Promotion Agency, the International Finance Corporation, and 13 domestic Vietnamese business associations participated in the review process, gathering and synthesising perspectives on the business environment, developing recommendations to simplify troublesome administrative procedures, and discussing solutions with their government counterparts. They divided themselves into 11 working groups (one for each sector of the domestic economy), and organised weekly meetings to develop satisfactory solutions to the administrative challenges that companies in their sector faced.

After several months of working group meetings, the Special Task Force collected all the review dossiers and began meeting with officials from ministries and other state agencies to transform the feedback into a package of administrative reforms. The idea was to take the practical problems identified by citizens, business leaders, and individual companies, consider the solutions proposed by the working groups, and see whether the resultant reforms were consistent with the underlying principles that Vietnamese regulators wanted to protect. Reviewers were frequently summoned to meetings with government counterparts to defend their recommendations and discuss potential solutions. Based on these discussions and its own independent analysis, the Special Task Force created a package of administrative reforms, which it presented to the Prime Minister for approval.

Fourth, based on the output of the third step, the Special Task Force developed recommendations for each reviewed administrative procedure by suggesting either to keep it intact, or simplify it, or even abolish it. These recommendations were discussed with the responsible ministries in charge of the procedures before officially submitted to the government for final decision.

The regulatory guillotine method used in Project 30 specially attached the importance of the Special Task Force. This task force reported directly to the Prime Minister and was assigned necessary competence. To start with, the task force had to make an inventory of administrative procedures, including (i) compiling an

inventory of all administrative procedures currently applied by state authorities (ministerial and provincial, district, and commune levels) to deal with citizens and businesses, including accompanying forms, requirements, or conditions for implementing administrative procedures; (ii) preparing and creating a comprehensive electronic database of administrative procedures; (iii) entering and managing data in the e-guillotine software; and (iv) publishing regulations and information on the Internet. Besides, the task force conducted reviews of administrative procedures, including (i) making an independent review of administrative procedures and their accompanying forms, requirements, or conditions for implementing administrative procedures based on the review of ministries and provincial governments; (ii) recommending to the government administrative procedures which ministries and provincial governments in charge of these administrative procedures failed to prove their legality, necessity, or reasonableness to be amended, annulled, or simplified. Apart from those mandates, the task force (i) coordinated and cooperated with ministries and provincial governments to simplify administrative procedures, including instructing ministries and provincial governments on methods to reform administrative procedures; and (ii) consulted and cooperated with stakeholders, especially professional associations, business communities, citizens, businesses, and foreign experts.

Implementation of the final phase of Project 30 began on 2 June 2010, when the Prime Minister approved a pilot package consisting of the reform of 258 administrative procedures under Resolution No. 25/NQ-CP. These administrative procedures were mainly relevant to business matters on activities such as taxes, customs, construction, and real estate. To implement the simplification of these 258 administrative procedures, 14 laws, 3 ordinances, 44 decrees, 8 Prime Minister's decisions, 67 ministerial circulars, and 33 ministerial decisions have to be amended.

In addition, under the instruction of the Special Task Force and with the active cooperation of relevant ministries, in late 2010, the government issued 25 special resolutions to request all ministries to simplify 4,723 existing administrative procedures. Each special resolution clearly indicated the direction of simplification and the relevant legal normative documents to be amended or nullified. As reported by the Ministry of Justice, by December 2014, among 4,723 existing

administrative procedures to be simplified, 4,383 procedures had been simplified, equal to 92.8 percent.⁷

Project 30 brought about remarkable results. First, for the first time in Viet Nam's governance history, an electronic database consisting of more than 5,000 existing administrative procedures was created and made available to all interested parties. This result alone sufficed to make the project a huge accomplishment. The availability of this searchable electronic database of all 5,000 administrative procedures on the Internet⁸ itself made the regulatory environment in Viet Nam much more transparent and more favourable for entrepreneurship. The existence of said database helped prevent the proliferation of administrative regulations.

Second, Project 30 contributed to the reduction of administrative burdens on businesses and citizens. For example, on invoicing procedures, businesses in Viet Nam are allowed to print and circulate their own invoices from 1 January 2011; they are required to merely notify the Ministry of Finance of their invoice forms. This move is expected to save businesses around 400 billion dong (D) (US\$20 million) a year. Similarly, regarding tax declarations and collections, a smarter classification of tax declarers also helps businesses cut costs by D1 trillion (US\$50 million) a year. As far as customs procedures are concerned, a raft of administrative procedure simplification moves, such as widespread introduction of e-customs and implementation of a one-stop customs shop, among others, have seen businesses cut costs by D600 billion (US\$30 million) a year. In the construction sector, as a result of the removal of construction fees and removal of construction permit extensions, individuals and businesses can save D1.4 trillion (US\$70 million) in the construction permit application process. In a related success, an estimated amount of D1 trillion (US\$50 million) could be saved by the business community a year after absurd procedures were pared off in such sectors as labour, social insurance, and public security' (Viet Nam Investment Review, 2011). The United State Agency for International Development/Vietnam Competitiveness Initiative also claimed that the savings in compliance costs for business and citizens could amount to as much as US\$1.5 billion per year if all of the recommended measures are implemented by the Government of Viet Nam.⁹

⁷ Report No. 5/BC-BTP dated 12 January 2015.

⁸ This database is currently available at <http://csdl.thutuchanhchinh.vn/>

⁹ Vietnam Competitiveness Initiative, <http://dai.com/stories/project-helps-vietnam-cut-red-tape-hone-competitiveness-and-boost-economic-growth>

Third, the implementation of Project 30 enhanced investors' confidence in the reform process. In 2007–2010, the government consulted the business community, including both domestic and foreign enterprises, to solicit their suggestions for improving the regulatory environment. The voices from the business community fed important inputs to the government's decision to simplify existing administrative procedures. According to the OECD, stakeholders, including domestic and foreign businesses, welcomed Project 30 as a first step in the right direction. It could be considered as the pilot for future governance of regulatory reform in Viet Nam (OECD, 2011).

The experience of Viet Nam with Project 30 can bring about several important lessons for regulatory reforms. First, even developing countries with limited resources can carry out regulatory reforms. As a note, when Project 30 was launched, Viet Nam was still a low-income country with a gross domestic product (GDP) per capita of less than US\$1,000 per year. Second, political commitment is essential to the success of an administrative procedure reform project. In the case of Project 30, the Prime Minister showed clear and strong commitment to administrative reform. The Special Task Force could directly report to the Prime Minister. Ultimately, the high political determination had been a key factor to overcome potential reluctance among ministerial and local officials, while strengthening confidence among stakeholders. Third, the reform needs a sound institutional structure with sufficient capacity. For Project 30, a coordinating body, the Special Task Force, with competent staff was set up at the centre of government. This Special Task Force was assigned sufficient power to deal with and directly instruct other ministries and local governments. Fourth, active involvement of stakeholders, especially the business community and citizens, is a must for the success of the reform project. These stakeholders provided valuable information on problematic administrative procedures and suggestions for their simplification. Finally, effective administrative reforms need an appropriate communication strategy, which helped to timely inform stakeholders of the successes and obstacles, and to gather greater public consensus on the reforms themselves.

4.2. Resolution 19

Resolution 19 aims to make the domestic business environment more enabling and to strengthen national competitiveness. Accordingly, the resolution sets out a number of tasks. Many of the tasks are not new; tasks – such as the improvement of institutions for a market economy, development of infrastructure, upgrading of

education and training, among others – were already emphasised in previous documents such as the Socio-Economic Development Strategy for 2011–2020 and the Socio-Economic Development Plan for 2011–2015. The new features of Resolution 19 is that it also incorporates the specific tasks related to improving the business environment in 2014–2015:

1. Simplify procedures and reduce the time required to start a business to 6 days or shorter; make necessary improvements to shorten the time from business registration to actual business activity by enterprises.
2. Improve the routines, documents, and procedures related to paying taxes, so that the time for enterprises to pay taxes is equivalent to or below the average level of ASEAN-6 (i.e. 171 hours per annum).
3. Reduce the time for enterprises and investment projects to get electricity to 70 days or shorter (the average figure of ASEAN-6 is 50.3 days).
4. Improve the regulations on property rights and investor protection under the Investment Law and Enterprise Law in line with international standards.
5. Simplify the routines, documents, and procedures for import and export activities, customs clearance, and reduce the time for customs clearance to the average level of ASEAN-6 (i.e. 14 days for export and 13 days for imports).
6. Reduce the time for resolving insolvency to 30 months at the maximum.
7. Publicise and make transparent the business and financial situation of enterprises under the current regulations and in line with international standards.

Resolution 19 reflects important changes in regulatory reform in Viet Nam. In fact, the target of improving the business environment is not new; yet Resolution 19 marks the first time that specific targets are designated to ensure the improvement of the business environment. Such specific targets include the areas that need improvement and the minimum requirement of improvement. Besides, Resolution 19 officially internalises the specific areas of the business environment that are consistent with the World Bank's Doing Business surveys in 2014 and 2015. This internalisation rests on a fundamental change in perception, as the survey results on Doing Business were not considered seriously before 2014. This is also the difference between Resolution 19 and Project 30 (as per the first case study), since the latter did not rely on specific indicators for monitoring compliance. Finally, Resolution 19 sets out various reference targets in line with the average level of ASEAN-6, which may also imply bolder and more serious attempts by Viet Nam to

get itself closer to the standard of ASEAN before the regional economic community comes into play.

Unlike Project 30, Resolution 19 is not a stand-alone process, despite the same approach. In fact, the first stage saw a mixture of own 'inventory' and building on the 'inventory' progress of Project 30; that is, since Project 30 had its own efforts to take stock of burdensome administrative procedures, such procedures would also be considered for elimination or simplification under Resolution 19. At the same time, Resolution 19 explicitly requires the line ministries to review administrative procedures, especially those related to the indicators of business competitiveness under the Doing Business surveys. In this aspect, Resolution 19 is more targeted to facilitate production and business activities by enterprises.

Based on the above review, Resolution 19 also incorporated a substance of 'self-assessment' of the legitimacy of administrative procedures. Nonetheless, the self-assessment here focused more on how the administrative procedures affected Viet Nam's performance in terms of various competitiveness indicators. In doing so, Viet Nam dedicated intensive efforts to understand the methodology of computing the Doing Business indicators, and sought potential areas where changes could be done that could quickly improve the indicators. The self-assessment then became more objective as it relied on the predetermined measure of improvement and the calculation of indicators by an international organisation (i.e. with more independence). In other words, if the changes were deemed insufficient, they would be reflected in the subsequent publication of Doing Business indicators.

Finally, Resolution 19 focuses explicitly on inducing changes of the regulations and/or administrative procedures related to doing business in Viet Nam. The ministries are requested to simplify regulations and administrative procedures, which may even require proposals to amend the law. In this regard, therefore, Resolution 19 is more action-oriented than Project 30. In total, Resolution 19 sets out seven broad measures and 49 specific measures for different ministries, agencies, and localities. Specifically, some notable measures are:

1. The Ministry of Planning and Investment has to incorporate changes in the draft (amended) Investment Law and Enterprise Law that help simplify investment licensing, and increase protection of investors and minority shareholders. The ministry has to make more efforts to simplify procedures for starting a business, simplify and reduce the costs of registering changes

or additions to business licences, and aim to reduce the time to start up a business to 6 days at the maximum.

2. The Ministry of Finance has to review routines, documents, and procedures of exports and imports, so that the time for export and time for imports can be reduced to the ASEAN-6 average level (of 14 days and 13 days, respectively). Similarly, the documents and procedures related to paying taxes must also be simplified so that the enterprises only need to spend 171 hours per year (i.e. average level for ASEAN-6) for such payment.
3. The Ministry of Justice has to review and make proposals on improving Viet Nam's performance in terms of contract enforcement and registering property. The targets for these indicators are, however, more ambiguous than the previous ones. This implies less priority given to these indicators, which might be explained by the involvement of other non-government agencies (such as the People's Court).
4. The Ministry of Industry and Trade has to instruct the Electricity Corporation of Viet Nam to reduce procedures, time, and related costs for enterprises and projects to get electricity. The specific target for time to get electricity is 70 days or shorter (while the average level for ASEAN-6 is 50.3 days).
5. The Ministry of Construction has to publicise and make transparent the procedures related to construction permits. Resolution 19 stipulates no specific target for this indicator.

By mid-December 2014, the number of specific measures that had been implemented with outcomes were modest. Among the 49 specific measures set out in Resolution 19, only 8 were implemented with outcomes (accounting for a share of 16.3 percent), 16 had been implemented without clear outcomes yet (32.7 percent), while 25 measures were not yet implemented (32.7 percent). By the end of 2014, line ministries and agencies had implemented 30 of these measures, of which 10 had produced significant improvements (**Table 8.5**).

**Table 8.5. Implementation Status of Different Ministries
(as of mid-December 2014)**

| No. | Ministry/Agency/ Locality | Number of Measures | Implemented with Outcomes | Implemented, But No Clear Outcomes | Not Yet Implemented |
|------------------|--|--------------------------|---------------------------------|--|------------------------|
| 1 | Ministry of Planning and Investment | 4 | 3 | | 1 |
| 2 | Ministry of Finance | 4 | 1 | 1 | 2 |
| 3 | Ministry of Education and Training | 2 | | | 2 |
| 4 | Ministry of Labour, the Invalids and Social Affairs | 4 | 1 | 1 | 2 |
| 5 | Ministry of Justice | 4 | 1 | 2 | 1 |
| 6 | Ministry of Home Affairs | 1 | | 1 | |
| 7 | Ministry of Natural Resources and Environment | 3 | | | 3 |
| 8 | Ministry of Agriculture and Rural Development | 4 | | 2 | 2 |
| 9 | Ministry of Industry and Trade | 4 | 1 | 3 | |
| 10 | Ministry of Transport | 1 | | | 1 |
| 11 | Ministry of Science and Technology | 3 | | | 3 |
| 12 | Ministry of Construction | 2 | | 1 | 1 |
| 13 | Ministry of Information and Communication | 4 | | | 4 |
| 14 | State Bank of Vietnam | 1 | | 1 | |
| 15 | People's committees of provinces, cities | 1 | | | 1 |
| 16 | Vietnam Chamber of Commerce and Industry, business associations | 4 | | 3 | 1 |
| 17 | Other ministries and agencies | 3 | 1 | 1 | 1 |
| Total | | 49 | 8 | 16 | 25 |
| Share (%) | | 100 | 16.3 | 32.7 | 51.0 |

Source: Ministry of Planning and Investment, 2014.

There are some gaps in implementing Resolution 19. In particular, regarding the review of administrative measures, especially those related to indicators of competitiveness, only four agencies – Ministry of Planning and Investment, Ministry of Finance, Ministry of Industry and Trade, and Vietnam Social Insurance – made efforts for such reviews. Meanwhile, almost all action plans of line ministries, agencies, and localities failed to closely follow international standards. Many action

plans did not specify the timing and methodology of implementing the assigned tasks.

Notwithstanding the failure to accomplish all assigned tasks, the early results of Resolution 19 were remarkable. According to the World Bank's Doing Business ranking, the amended Enterprise Law in November 2014 abolished five procedures (compared with 10 procedures before) and business registration was shortened from 34 days to 6 days. These improvements may be equivalent to an increase of 60 ranks in terms of starting-a-business indicator compared to 2013 (ranking 109th). Together with abolishing the need to list all business activities in business licences, all previous requirements, procedures, and costs for supplementing or adjusting business activities would be nullified. This should reduce the workload of business registration agencies in Ha Noi and Ho Chi Minh City by up to two thirds (Central Institute for Economic Management, 2015).

Besides, the amended Investment Law in November 2014 abolishes requirements for investment certificates for all domestic investment projects irrespective of the scale and area of business. It also narrows the scope of foreign-invested projects that require investment certificates. Foreign-invested projects and foreign direct investment (FDI) enterprises are required to apply for investment certificates if the foreign invested share in chartered capital is at least 51 percent, or if the total share of foreign investor(s) and FDI enterprise in chartered capital reaches 51 percent or more. The maximum time for granting an investment certificate is shortened to 15 days, instead of 45 days.

The freedom to do business has been widened and better secured. The amended Investment Law stipulates six areas and sectors where business activities are prohibited. As a result, enterprises have secured rights to undertake all business activities that are not prohibited by laws, instead of doing the registered business activities. All legal risks related to 'doing unregistered business activities', 'doing business activities which are unlisted in business registration certificate', among others, have now been eliminated. The trap of 'doing illegal business' has been basically removed for enterprises, their owners, and managers.

The amended Investment Law stipulates a list of 267 conditional business activities. The new law considers conditional business and respective business conditions as forms of restraining people's rights in doing business. The regulations on conditional business and appropriate business conditions must be compliant with

Clause 2, Article 14 of Constitution 2013: 'Human rights and citizens' rights may not be limited unless prescribed by a law solely in case of necessity for reasons of national defence, national security, social order and safety, social morality and community well-being'. The policy implications of the aforementioned changes of thought should pave the way for a breakthrough to reform current regulations on business conditions.

The new regulations aim at better and more effectively protecting investors' rights in line with the core features of a modern market economy. Specific changes include (i) facilitating small shareholders to sue managers by reducing the costs of such actions; (ii) broadening the definition of stakeholders in a company in accordance with international practices, increasing the authority of general meetings of shareholders in considering and approving transactions between the company and its stakeholders, publishing information widely and transparently and increasing supervision over transactions between the company and its related people; and (iii) enhancing and disciplining responsibilities of managers and stakeholders in publishing information widely and transparently, and in compensating for the losses from the transactions mentioned in point (ii).

More achievements are also observed in the prescribed indicators of competitiveness. By the end of 2014, the time required to pay taxes and insurance was reduced from 872 hours per year to 170 hours per year. Enterprises now be able to pay taxes quarterly rather than monthly per earlier practice. Tax declaration documents have been simplified considerably to reduce compliance costs and to limit the risk of errors. The maximum time for accessing electricity from medium voltage stations is to be reduced to only 18 days, from 42 days.

Time and customs procedures for export and import have been reduced sharply. The remaining issues related to the 'Trading Across Border' indicator lie mainly in the stages before, or after, customs clearance. In fact, about 200 types of licences and specialised certificates are currently regulated in various legal documents. Some shortcomings still prevail in terms of capacity; division of function and time in testing and checking quality of imported goods, sanitary and phytosanitary measures; and food safety and sanitation, among others. Therefore, further reductions in the time and procedures for customs clearance across borders will require cooperation among ministries and agencies to improve specific technical regulations and their enforcement.

The practical implementation of Resolution 19 in 2014, with key early progress, has showcased important lessons. First, adherence to international standards is critical. For a long time, Viet Nam failed to officially recognise the results and rankings of the *Doing Business* survey. Instead, it focuses more on self-assessment by the line ministries rather than the perceptions of the business community, which implies a certain lack of independence. Besides, the international standards and indicators, such as those under the *Doing Business* survey, are measurable and comparable across countries. In this regard, they can show how Viet Nam has moved forward or backward compared with other countries (for example, ASEAN-6), so that areas for improvement can be identified.

Second, reducing excessive administrative procedures that are burdensome to business activities requires strong political will. There always will be some available justification for the presence of administrative procedures. In some cases, such presence tends to prioritise the convenience of line ministries and agencies in management tasks, rather than enabling business activities. As such, reducing excessive administrative procedures may support business activities, but at the management costs for line ministries and agencies. In another aspect, since the administrative procedures are often cross-cutting, coordination of involved ministries plays a significant role. To ensure effective regulatory measures in facilitating business and production activities, strong political will emerges as an essential requirement.

Another key lesson is to ensure effective sharing of information across ministries on the implementation of Resolution 19. This is critical since many of the measures are cross-cutting and often involve more than one measure. On the one hand, this may help align progress among the ministries. On the other hand, sharing information serves as a source of external pressure for the line ministries and agencies to simplify the regulations.

In addition, building awareness of officials responsible for handling administrative procedures remains critical. For instance, Viet Nam should still deepen training for staffs in customs departments and relevant departments and/or bodies of the Ministry of Industry and Trade, Ministry of Agriculture and Rural Development, and Ministry of Health on using modern facilities to support trade activities. Meanwhile, staffs of government agencies must acknowledge and engage in effective coordination among themselves to minimise delay in settling procedures and requests of enterprises. The model of the public administrative centre in Quang

Ninh province serves as a good example, since it extends beyond a single window; it locates all local agencies in the same place, thus, reducing the time of circulating documents across these agencies.

Finally, reducing administrative procedures in particular and regulatory management in general requires effective supporting infrastructure. On the one hand, there needs to be enforcement of substantial consultation between management agencies (responsible for developing regulations and administrative procedures) and the community (being adjusted by the regulations). This will ensure timely identification of regulations and/or administrative procedures that should be amended or nullified. On the other hand, technical infrastructure, such as information and communications technology, and risk assessment are essential to help coordinate government agencies during the regulatory management process.

Conclusions

To conclude, Viet Nam has paid attention to improving its RMS in recent years. The country introduced the regulatory guillotine in 2007, the RIA in 2008, and some other tools. These developments have contributed to the enhancement of the quality of laws, decrees, and circulars and the simplification of administrative procedures.

Among thousands of laws, decrees, circulars, and local governments' legal normative documents, the policy coherence is basically ensured in Viet Nam. However, Viet Nam still witnessed scattered evidence of conflicts among laws or the deviation of provisions in sub-laws from the provisions in laws. Some conflicts of provisions regarding the authority of ministries or between different levels of local governments were also reported. The most notable examples are perhaps the conflicts over authority of ministries in charge of environmental protection, food safety, advertising, and consumer protection.

In another aspect, numerous efforts have sought to internalise international commitments into domestic laws: to create a business environment with fair competition and transparency; develop various markets; reduce government intervention in markets through price control, resource allocation, ownership, protection measures, subsidies and monopoly; and create a socio-economic environment satisfying relevant criteria for Viet Nam to be recognised as a market

economy (Central Institute for Economic Management, 2013). Viet Nam is also embarking on international regulatory cooperation, particularly in the areas of mutual recognition of standards and quality for product and services flows. A number of mutual recognition agreements have been signed, for example, for selected professional services, and electrical and electronic equipment. The responsible government ministries also worked to provide justification for Viet Nam's products once required by foreign counterparts. Viet Nam is considering international conventions to further facilitate flows of trade and investment. For instance, it acceded to the Inter-country Adoption Convention in 2011 and became a member of the Hague Conference in 2013. The Prime Minister also approved the plan of accession to the Hague Service Convention with an official letter (No. 1606/VPCP-QHQT, dated 12 March 2014). This was driven by both external requirements (specifically the promotion of international economic integration in terms of mutual legal assistance in civil and commercial matters) and internal requirements (the facilitation of trade and investment activities for the local community).

Regulatory coherence presents another area with important progress. The RIA is applied in the preparation of laws and decrees. The regulatory guillotine applicable to control and reduce administrative procedures has been in place. At present, all ministries and provinces have their own bodies to control administrative procedures. Yet the quality of RIA reports remains a problem, possibly due to the lack of resources, lack of data, and insufficient skills of the regulating agencies.

The room for improving the regulatory system further prevails in the presence of overlapping and conflicts among laws, as well as of the material compliance costs to the business community. The motivation for improving the regulatory system is also justified, as Viet Nam has been diverting more attention to reforms of microeconomic foundations and the space for manipulating macroeconomic policies to achieve high growth becomes scarcer. The progress with regulatory management so far has been hard earned, and can readily be leveraged. Being a low-middle-income country, Viet Nam can seek technical assistance in terms of improving good regulatory practices, simplifying administrative procedures, assessment methods, among others. The gist lies in whether the country can build up sufficient confidence of stakeholders in its administrative reforms. As the key lessons from the case studies of Project 30 and Resolution 19, further improvement of regulatory management requires strong political will, involvement of relevant stakeholders, and enactment of separate bodies with a clear mandate and sufficient capacity.

References

- Asia-Pacific Economic Cooperation (APEC) (2014), *APEC Economic Policy Report 2014*. Singapore: APEC.
- Central Institute for Economic Management (2010), *Assessment of Vietnam's Socio-Economic Situation After 3 Years of WTO Membership, Report to the Government of Viet Nam*. Ha Noi: Finance Publishing House (in Vietnamese).
- Central Institute for Economic Management (2013), *Comprehensive Evaluation of Vietnam's Socio-Economic Performance 5 Years after the Accession to the World Trade Organization*. Ha Noi: Finance Publishing House.
- Central Institute for Economic Management (2015), *Macroeconomic Policy Report for Q4 and 2014*. Ha Noi: Finance Publishing House.
- Dinh, H.M., Q.L. Trinh, and A.D. Nguyen (2009), 'Trade, Growth, Employment, and Wages in Vietnam', in *Globalization, Adjustment and the Challenge of Inclusive Growth: Furthering Inclusive Growth and Industrial Upgrading in Indonesia, the Philippines and Vietnam*. Manila: De La Salle University–Angelo King Institute.
- Le, D.B. (2009), 'Regulatory Reforms: Experiences from Vietnam', Presented at the Workshop 'Creating and Enabling Business Environment', 20–23 October, Windhoek, Namibia.
- Ministry of Planning and Investment (2014), *Report on the Implementation of the Resolution 19/NQ-CP*. Report for the Government of Viet Nam (in Vietnamese).
- Organisation for Economic Co-operation and Development (OECD) (2011), *Cutting Red Tape: Administrative Simplification in Vietnam – Supporting the Competitiveness of the Vietnamese Economy*. Paris: OECD Publishing. <http://browse.oecdbookshop.org/oecd/pdfs/product/4210301e.pdf>
- Schwarz, M.G. (2010), *Project 30: A Revolution in Vietnamese Governance?* Washington, DC: Brookings Institution. <http://www.brookings.edu/research/papers/2010/09/vietnam-schwarz> (accessed 15 November 2011).
- Vietnam Competitiveness Initiative (2014), Provincial Competitiveness Index, <http://eng.pcivietnam.org/> (accessed 9 September 2014).
- Vietnam Competitiveness Initiative (2015), Provincial Competitiveness Index for 2015, <http://eng.pcivietnam.org/> (accessed 12 December 2015).

Vietnam Investment Review (2011), 'Project 30 Releases Businesses from Complex Tangle of Red Tape', 1 February, <http://www.vir.com.vn/project-30-releases-businesses-from-complex-tangle-of-red-tape.html>

World Bank (2014a), Rule of Law Index, <http://databank.worldbank.org/data/databases/rule-of-law> (accessed 9 September 2014)

World Bank (2014b), Worldwide Governance Indicators, www.govindicators.org (accessed 9 September 2014).

World Bank (2014c), Doing Business 2015: Going Beyond Efficiency, <http://www.doingbusiness.org/reports/global-reports/doing-business-2015> (accessed 21 December 2015).

World Bank (2015), Doing Business 2016: Measuring Regulatory Quality and Efficiency, <http://www.doingbusiness.org/reports/global-reports/doing-business-2016> (accessed 1 November 2015).

Chapter IX

Regulatory Coherence: The Contrasting Cases of Malaysia and Singapore

Dato' Abdul Latif Bin Haji Abu Seman

Malaysia Productivity Corporation

Hank Lim

Singapore Institute of International Affairs

Shahriza Bahari

Malaysia Productivity Corporation

1. Singapore and Malaysia: A Study in Contrast

1.1. Introduction

Singapore and Malaysia share a colonial history, but have taken very different paths with respect to regulatory reform, demonstrating that every country needs to find its own way. The impressive gains in regulatory quality in both countries lend strong support to the notion of equifinality, which suggests that a goal can be reached by various paths involving rather different journeys.

All countries have their own unique systems for developing and deploying regulations. Moreover, countries have developed distinctive strategies for improving regulatory quality. Singapore, for example, has not adopted the range of special measures seen in other developed countries' formal regulatory management systems (RMSs). Instead, its approach relies on using a high-performing public sector to undertake regulatory management and reform as part of business as usual. Its public sector is technocratic, merit-based, focused, and driven by clear targets. Although Singapore does not apply special measures to regulatory proposals, it has nonetheless been assessed as being in the top rank. Malaysia, in contrast, relies on centralised institutions to drive the reform process, with the Malaysia Productivity Corporation (MPC) taking a lead role. Both

countries adopt a corporate approach in setting their strategy and planning process, and Malaysia has incorporated successive waves of regulatory reform into its planning process.

Both countries are acutely aware of the connection between good regulatory practices (GRPs) and international competitiveness. Malaysia's approach to regulatory reform is centralised, with its origins in an ambitious process of privatisation in the 1980s. The MPC is driving a process called Reducing Unnecessary Regulatory Burdens that aims to modernise business regulations and reduce compliance costs to create a more favourable business climate. Malaysia is well aware of the importance of public consultation, and engages with the private sector via a public–private task force to facilitate business – PEMUDAH, which operates working groups and focus groups aimed at eliciting feedback from the public, especially businesses in key sectors. The focus groups span topics from trading across borders to registering property and enforcing contracts. Malaysia's aim to become a high-income economy by 2020 is a key driver of the regulatory reform process.

The detail of these different paths to robust regulatory management follows.

2. Malaysia

2.1. Country Context

Malaysia is an upper-middle income country with a highly open economy and a track record of sustained economic growth. According to a World Bank Report, Malaysia was one of the 13 countries identified by the Commission on Growth and Development in its *2008 Growth Report* to have recorded an average growth of more than 7 percent per year for 25 years or more. In 2010, Malaysia launched the New Economic Model (NEM). Its aim is to reach high-income status by the year 2020, while ensuring that its growth is sustainable and inclusive. The NEM includes a number of reforms to achieve economic growth that is primarily driven by the private sector to move the Malaysian economy into higher value-added activities in both industry and services. The NEM is expected to revitalise growth by promoting private sector investment, liberalising and deregulating the economy, and modernising the country's social protection mechanisms.

Malaysia consists of 11 states in the Peninsula (West Malaysia), two states on the northern part of Borneo (East Malaysia), and one federal territory with three components: the city of Kuala Lumpur, Labuan, and Putrajaya. All peninsular Malaysian states have hereditary rulers, except Malacca and Penang. These two states, along with Sabah and Sarawak in East Malaysia, have governors appointed by the government. Each state has a constitution and a legislature elected by the people. The head of government is Prime Minister Mohd Najib Razak (since 3 April 2009). The Prime Minister is usually the leader of the political party with the most representatives in Parliament. The Malaysian legislature is a bicameral Parliament with the Senate (Dewan Negara) and the House of Representatives (Dewan Rakyat).

Malaysia practises parliamentary democracy with a constitutional monarchy in which His Majesty the King (*Yang di-Pertuan Agong*) is the Supreme Head of Malaysia. Parliament is the most important institution in the country as it is the place where laws are enacted. The Parliament of Malaysia consists of His Majesty the King, the Senate, and the House of Representatives. The 12th Parliament has increased to 70 Senators and 222 Members in the House of Representatives.

Since independence in 1957, the rule-making process in Malaysia has evolved without the advantages of defined policy or central coordination. It is based largely on practices that have not been consolidated into laws or officially issued guidelines. The current system does not ensure that the best possible regulatory options are selected on the basis of systematic investigation, analysis, and public consultation. This has on occasion resulted in ineffective regulations and unnecessary regulatory burdens being imposed on industry and businesses. The need for a review of the process has been noted in the national 5-year development plans and in 'Vision 2020'. Nonetheless, in the latest World Bank *Doing Business Report* (2016), under the new methodological approach, Malaysia was ranked 18th out of 189 economies, placing it among the top 20 economies with the most business-friendly regulations.

2.2. Regulatory Reform

The ambitious privatisation programme that the Malaysian government embarked on in the mid-1980s included regulatory reform. Since the early 1970s, regulation had been fairly extensive, but undertaken chiefly to deal with poverty

and wealth distribution issues. Sectoral regulation in the pre-privatisation period was purely a matter of self-regulation by the government. With privatisation, new regulatory institutions and mechanisms were established to regulate the privatised entities. Competition became an important regulatory concern. In the absence of a national competition policy or law, a sectoral approach to competition regulation was adopted. In 1991, the Malaysian government articulated its vision for the future in 'Vision 2020'. The vision statement focused on deregulation, noting that 'Wisdom lies...in the ability to distinguish between those laws and regulations which are productive of our societal objectives and those that are not.' In the aftermath of the financial crisis of 1997–1998, the process of regulatory reform became more challenging due to industry consolidation and, in some cases, re-nationalisation (Lee, 2002).

The implementation of the privatisation programme during the Sixth Malaysia Plan (2006–2010) was enhanced by the adoption of new administrative procedures governing privatisation. This involved streamlining implementation procedures through centralised planning and decentralised implementation, with standardisation of the terms and conditions of privatisation. Under the Seventh Malaysia Plan, the privatisation programme was accelerated. Project identification was strengthened, the legal and regulatory framework improved, and the forms of government support were reviewed (Source: Seventh Malaysia Plan, Chapter 7). The intent was to facilitate the country's economic growth, reduce the financial and administration burden of the government, reduce the government's presence in the economy, lower the level and scope of public spending, and allow market forces to govern economic activities and improve efficiency and productivity in line with the national policy.

The need for regulatory reform was further recognised during the Ninth Plan (2006–2010), which aimed in part to reduce the cost of doing business. Steps were taken to enhance public sector delivery by, inter alia, reviewing and simplifying rules, regulations, and work procedures; expediting the issuance of licences, permits, and approvals for trade, investment, and commercial activities; and promoting greater transparency. At the same time, penalties for wrongful disclosure and noncompliance would be stringently enforced.

Before GRP was implemented, there was no standard quality control system for regulations and no government institution was responsible for ensuring quality

and transparency. Regulations were usually developed as subsidiary legislation under laws approved by the elected Members of the National Parliament that authorise government to issue regulations for the purpose of implementation. The processes that government uses to develop regulations are determined by elected political leaders. Some Malaysian regulations from the pre-independence period (before 1957) are still in force in some sectors, whereas many other regulations have been developed in reaction to emerging concerns.

The process of updating regulations often lags behind changing needs. Economic planners have increasingly recognised the need for updating, for fear that inappropriate regulation will become a barrier to attracting investment and making productivity improvements. Effective regulation has been hampered by technology changes, growth in trade, and gaps and overlaps between the country's legal and administrative systems. As in Singapore, maintaining global competition in investment and trade has been the principal driver of regulatory reform and deregulation in Malaysia (Raj, 2008). Yet, although the regulatory process has evolved over time, it is still based on practice and administrative decisions, and has not been codified into laws. Responsibility for decision-making is distributed between individual ministries. A system for intergovernmental consultation has been introduced, and Cabinet's approval is generally sought, but the legal authority rests with ministers. Public and stakeholder consultation process is decided by agencies responsible, but is not mandated by law (Raj, 2008).

2.3. Stock Tools (Institutions)

The Government Transformation Programme (GTP) and the Economic Transformation Programme (ETP) are monitored by the Performance Management and Delivery Unit (PEMANDU). PEMANDU was formally established in September 2009 and is under the Prime Minister's Department. Its objective is to oversee the implementation, assess the progress, facilitate as well as support the delivery, and drive the progress of the GTP and the ETP.

GRP is aimed at transforming the rule-making process within the government and modernising business regulations, thus ensuring the quality of new regulations. In the 11th Malaysia Plan, regulatory reforms will be accelerated to ensure new and existing regulations, as well as their administration and enforcement, are aligned with GRP. This will be done by expanding the adoption

of the National Policy on Development and Implementation of Regulations (NDPIR), and conducting a regular regulatory review of ministries and agencies (Strategy Paper 1: Unlocking the Potential of Productivity). Although Malaysia has put significant effort into modernising its business regulations, it still lags behind many developed countries in regulatory quality and environment. The regulatory framework for the services sector, which spans various government ministries and agencies, has led to some difficulty in navigating and streamlining regulations. In addition, industry players often find regulations and practices to be outdated or cumbersome. Moreover, there is insufficient stakeholder consultation when new regulations are formulated or existing ones are changed (Source: Eleventh Malaysia Plan: Strategy Paper 18 Transforming Services Sector).

According to the National Economic Advisory Council, as of 2010, over 3,000 regulatory procedures weighing heavily on businesses were administered by 896 agencies at the federal and state levels (Seman, 2014). To improve regulatory quality, the government established a formal RMS with four elements: regulatory policies, regulatory institutions, regulatory procedures, and regulatory tools. Malaysia adopted a regulatory impact statement (RIS) process. The government issued the NPDIR to address gaps in the management system for regulations. 'Good regulatory policies help to enhance transparency and credibility of regulatory actions and create a climate for better quality of life and business environment' (Hamsa, 2013).

The 10th Malaysia Plan (2011–2015) focused on improving Malaysia's productivity, and included several regulatory initiatives, including modernising business regulation, liberalising the services sector, removing market distortions by rationalising subsidies, introducing competition legislation, and improving the interface between government and business. 'The current regulatory system will be improved through the adoption of the best practices in the field of regulatory management that have been implemented in the Organisation for Economic Co-operation and Development (OECD) countries and now increasingly adopted by regional and global competing economies' (NPDIR, July 2013).

The MPC was tasked with modernising business regulation:

- Review existing regulations with a view to removing unnecessary rules and compliance costs,

- Undertake a cost–benefit analysis of new policies and regulations to assess the impact on the economy,
- Provide detailed productivity statistics, at sector level, and benchmark against other relevant countries,
- Undertake relevant productivity research (e.g. the impact of regulations on the growth of small and medium-sized enterprises).
- Make recommendations to the Cabinet on policy and regulatory changes that will enhance productivity,
- Oversee the implementation of recommendations.

To begin, the MPC team did a fact-finding study of what Malaysia already has and what to benchmark from other countries' GRP. The intention was to help ministries and agencies implement GRP in making and administering regulations. To date, significant progress has been made in a number of areas. Existing licences have been comprehensively scanned to find out which licences pose problems in terms of productivity, including their administrative burden. Existing regulations in the oil, gas, and energy sectors, and the electrical and electronics sector have been reviewed. In addition, a one-stop-centre for business start-ups has been established, and communication programmes put in place to raise awareness in both the public and the private sectors on the importance to national competitiveness of a business-friendly environment.

In addition to developing policies and guidelines to ensure the quality of new regulations via the NPDIR, the MPC's Modernising Business Regulations initiatives include:

- Improving Initiatives in Ease of Doing Business;
- Comprehensive Scanning of Business Licensing;
- Reducing Unnecessary Regulatory Burden (RURB);
- Business Enabling Framework.

The NPDIR is overseen by the National Development Planning Committee (NDPC). The NDPC has been entrusted to assume the role of a gatekeeper for improving the process and quality of developing new business regulation. It

oversees the regulatory process with the support of the MPC and administers the government's regulatory impact assessment (RIA) requirements.

The MPC is responsible for the implementation of the NPDIR. It develops guidelines and programmes for the implementation of the NPDIR; ensures that capacity building programmes for regulators are available; provides guidance to regulators in RIA and the preparation of RIS; promotes the transparency of RIS; and assists the National Development Planning Committee (NDPC) in assessing RIS. It will also conduct periodic reviews of progress, reporting to the NDPC.

The National Institute of Public Administration (INTAN) is responsible for providing training on RIA.

The Attorney-General's Chambers offers legal advice to the Cabinet or any minister. This advice includes matters relating to the regulatory quality of the proposal, specifically its legal compliance with constitutional matters, which should be detailed in the RIS.

The MPC's Initiatives on Modernising Business Regulation have been strongly supported by the Special Task Force to Facilitate Business (PEMUDAH), a public-private innovative advocacy body that provides guidance and leadership in driving the reforms forward in a collaborative way. PEMUDAH will drive the efforts of all working groups, task forces, and focus groups established since its inception, through the secretariat, MPC, which coordinates all focus group activities. The objective is to enhance transparency and accountability of the public and the private sectors and monitor the efficiency of improvements implemented. The focus groups comprise:

- enforcing contracts,
- trading across borders,
- dealing construction permits,
- getting electricity,
- resolving insolvency,
- paying taxes,
- protecting investors,

- getting credit,
- registering property, and
- starting a business.

To reduce compliance costs with business, existing regulations are scrutinised from a vertical (ministry) perspective and a horizontal (business) perspective. This is complemented by a thematic perspective, based on issues identified in the World Bank's *Doing Business* report. In 2012, the PEMUDAH Focus Group on Business Process Re-engineering (FGBPR) undertook an initiative to review business licences using the 'guillotine approach'. It covered 22 federal ministries. This initiative is currently being extended to the states.

Public and private sector collaboration, where as many as 20 agencies are engaged in consultation with key players, such as architects, principal submitting persons, and engineers, has resulted in improved efficiency in getting construction permits. The number of procedures was reduced from 37 to 10, and the time it takes to obtain a permit was reduced from 140 days to 100 days. Another project undertaken is the development of a business enabling framework to support expediting the 100 percent foreign equity participation. Out of 18 service sub-sectors announced for liberalisation, 9 sectors have been liberalised to date.

2.4. Flow Tools (Regulatory Impact Assessment)

To improve the quality of new regulations, the government (via the MPC) is introducing a national policy (the NPDIR) to transform the rule-making process in Malaysia. Its aim is to ensure that regulations are effective; address the desired public policy objectives; and are balanced, equitable, and implemented in a transparent manner. It is the government's intention to avoid creating cumbersome, burdensome regulations that discourage competition and business innovation. A quality regulation is one that has the characteristics of good governance and fulfils 'adequacy' and 'gatekeeping' requirements. New business regulations must minimise unnecessary compliance costs. The policy follows the model of good regulatory systems practised in Australia, Canada, and other OECD countries.

The Circular on NPDIR issued by the Chief Secretary to the Government of Malaysia on 15 July 2013 formalised the requirement that all ministries and agencies must undertake RIA. The policy requires that all federal government regulators must undertake regulatory impact assessment (RIA) and present a RIS to MPC for assessment for all new regulations (or review of existing regulations) relating to businesses, investments, and trade. 'The implementation of Good Regulatory Practice (GRP) is systemic, involving both top-down and bottom-up engagement. The emphasis is on transparency and accountability through public consultation and engagement with stakeholders and parties that will be affected by the changes, or introduction, of regulations and policies' (Mohamed, 2015).

To ensure the quality of new and existing regulations, ministries and agencies must comply with GRP and fulfil the adequacy criteria, emphasising transparency, openness, and accountability. GRP will transform the rule-making process within the government and ultimately modernise business regulations, thus ensuring the quality of new regulations.

The need to maintain a system to manage the regulatory process is important. This can be done by reviewing and recommending changes to existing regulations and policy with a view to removing unnecessary rules and compliance costs and improving delivery. The Quality Regulatory Management System was reviewed to give attention to both ex ante impact assessment and ex post evaluation of regulations as part of an evidence-based approach to decision-making, in line with the OECD's 2012 Recommendation on Regulatory Policy and Governance.

Along with the NPDIR, the MPC also developed a Best Practice Regulation Handbook, using a cross-government consultative process. Governance and organisational structures were reviewed to meet the requirements of international best practice. Also, the capacity and capability of all parties involved in the management, development, and implementation of regulations would be upgraded.

The government is committed to a more open and transparent process in regulatory development and implementation. As Malaysia approaches 2020 and its goal of being a high-income, developed nation, public engagement in policymaking and regulatory development becomes important. The 2014

'Guideline on Public Consultation Procedures' laid out the guiding principles for ministries and agencies in implementing effective consultation. Draft regulations will be published, along with feedback from rule-makers. Engagement with industry is a prerequisite. Consultation should begin as early as possible. Where a proposed regulation has a direct bearing on export trade, a trade impact assessment should be done.

Regulatory Impact Assessment (RIA) is the process of examining the likely impacts of a proposed regulation and considering alternative options that could meet the government's policy objectives. It is a tool to improve the quality of regulatory and administrative decision-making. In Malaysia, it is applicable to all decisions made by the government and its agencies that are likely to have a regulatory impact on businesses, unless the impact is minor and does not substantially alter existing arrangements. (This includes amendments to existing regulations and regulatory initiatives implemented by way of administrative circulars by any part of the government that requires mandatory compliance. Minor changes are ones that do not substantially alter the existing regulatory arrangements for businesses or for the non-government sector, such as where there would be a very small initial one-off cost to businesses with no ongoing costs.) MPC should be notified when the regulation is issued even in cases where no RIA is required. In such cases, the regulator may proceed to develop and implement the regulation after approval by the relevant authorities in accordance with the law.

A key feature of RIA is its consideration of the potential economic impacts of regulatory proposals. The seven steps of the RIA process are as follows:

1. Identify the problem the regulation seeks to address.
2. Outline the objectives of government action.
3. Identify a range of feasible options for addressing the problem.
4. Assess the costs and benefits of the feasible options.
5. Document community consultation.
6. Propose a recommended option.
7. Outline the implementation and review mechanisms.

A Regulatory Impact Statement (RIS) is a document prepared by the regulator in support of proposals for new regulations, after consultation with affected parties. It formalises and provides evidence on the steps taken during the development of the proposal, and includes an assessment of the costs and benefits of each option considered. The RIS must be presented to decision makers, so that their decision is based on a balanced assessment of the best available information. After a decision has been officially announced, MPC will publish the RIS in consultation with the regulator; that is, it is posted on the publicly accessible RIS register maintained by MPC. Ministries, departments, statutory bodies, and regulatory commissions that are responsible for developing, maintaining, and enforcing regulatory programmes must meet the regulatory process management requirements. These requirements include producing RIS, conducting consultation, and submitting the RIS in accordance with the guidelines provided by MPC.

The Best Practice Regulation in Malaysia requires that every ministry or regulator:

- Appoint regulatory coordinator(s) and notify the gatekeeper of the appointment.
- Develop and maintain a system to manage the regulatory process that meets the requirements.
- Ensure new regulations are in accordance with the defined process.
- Ensure regulations serve defined objectives. Regulatory authorities proposing new regulatory requirements or regulatory changes must have clear objectives, evidence that a problem has arisen, that government intervention is required, and that new regulatory requirements are necessary.
- Examine alternatives, assess impact, hold consultations, and define implementation strategy.
- Explain proposals to stakeholders, maintain process records, and train personnel.

In MPC, the custodian of the RIA process is a unit called Quality Regulatory Management System. Efforts to promote RIA among ministries and agencies are done through pilot projects. The three ministries or agencies that participated in a pilot project are the Ministry of International Trade and Industry, the National Water Services Commission (SPAN), and the Federal Agricultural Marketing

Authority. They were given specific training and guidance to carry out the RIA process. The OECD also provides support, advice, and technical assistance in implementing GRP.

Pilot project agencies have undertaken public consultation, and online surveys are done through their webpage. The results from these RIA pilot projects are used as best practice case studies for the Best Practice Regulation Handbook and to improve the application of RIA.

The GRP portal (<http://grp.mpc.gov.my/>) will be used as a repository and reference for all regulators, stakeholders, and interested parties. Regulators will publish their draft RIS on their website and on the GRP portal for comment before adoption. As of January 2016, 95 regulatory notification forms had been received from 15 ministries and agencies. Regulatory notification is a standard form filled out by regulators when they notify MPC on regulatory changes they wish to undertake. A total of 12 completed RISs have been received by MPC.

2.5. Evaluation

In its 2015 report, *Regulatory Practice in Malaysia*, the OECD identified a number of challenges and priorities for reform. First is the need to institutionalise GRP. The OECD recommended that Malaysia develop indicators on the implementation of GRP across government, including key performance indicators for top management, and use them in periodic reporting to meetings of the Secretaries General of governments. Further, it should proactively engage the key actors such as the Attorney-General's Chambers, EPU, and the Malaysia Competition Commission (MyCC) in implementing NPDIR and developing a medium-term strategy. Malaysia also needs to strengthen its regulatory oversight, including a challenge function of RIA, to complement its advocacy and capacity building activities. The implementation of NPDIR should be phased, encouraging compliance for all regulatory proposals while improving regulatory quality on carefully selected strategic proposals, and an effective communication strategy for stakeholders put in place. The government should also build regulatory literacy and capability by putting better-quality training programmes in place. Finally, the OECD recommended that the government connect GRP to the national strategic plans, by embedding it into Malaysia's 11th Plan, and prioritising GRP regionally and in the post-2015 agenda (OECD, 2015).

In response, a second regulatory review of acts, regulations, and licences has started in 10 ministries. The first step is to gather detailed information, prior to reviewing all the irrelevant acts or regulations, with the aim of continuous monitoring. This exercise will result in ministry profiling and a stocktake of acts and regulations towards an annual regulatory plan. Progress in the adoption of NPDIR will be monitored by the MPC, which will review the annual regulatory plan.

At the end of the year, an annual regulatory report on the regulatory activities undertaken by federal government regulators will be published. This report will provide an assessment of the progress made in the implementation of the NPDIR.

The MPC will increase the take-up rate of NPDIR to improve the regulatory environment by accelerating the roll-out to the remaining ministries and agencies. All ministries and agencies are required to develop their annual regulatory proposal plan and to undertake a review of their regulations every 5 years.

3. Singapore

3.1. Introduction

Singapore has recognised the importance given to a well-performing regulatory system to improve or maintain the country's international competitiveness and investment attractiveness. Given its limited policy space in view of its small size and lack of natural resources, Singapore has had to proactively adopt and adapt its governance and regulatory system ahead of or at least parallel with changes in the external economic environment. The quality and adaptability of its regulatory regimes and RMS are an important component of Singapore's competitiveness.

Singapore's regulatory system is anchored on the country's post-independence reforms: administrative, institutional, and attitudinal. Of particular interest in the development of the country's approach to regulation are the initiatives since 2000, starting with the 'Cut Red Tape' campaign, a regulatory guillotine initiative

to remove regulations that were no longer needed. The setting up of the Pro-Enterprise Panel (PEP) and the Rules Review Panel (RRP) that was later reconstituted into the Smart Regulation Committee (SRC) during the 2000s marked the emergence of the country's strategy for improving regulatory quality. Singapore relies primarily on committees or commissions that represent various important stakeholders as its core institutions. This is vastly different from most countries whose RMS is anchored on government agencies and ministries. This distinctive institutional innovation appears to be well suited to the country.

3.2. Country Context

Despite its lack of natural resources and small domestic market, in 50 years Singapore has managed to move from Third World to First World state of development. When the present ruling party, the People's Action Party, assumed power in June 1959, Singapore was a poor developing country with a population of 1.58 million. While the population was growing rapidly (4 percent annually), unemployment was high, there was a serious housing shortage, and corruption was widespread. In addition, the government had inherited a corrupt and ineffective civil service from the British colonial government. What is the underlying reason for this remarkable economic and social transformation within a half century? To a great extent, Singapore's success in nation building can be attributed not only to a strong political leadership but also to effective conceptualisation, implementation, and monitoring of public policies by an efficient public administration using a pragmatic approach to regulatory management.

According to the World Bank's Governance Indicators (WBI), Singapore has consistently been ranked highly for both its government and regulatory quality. In 2013, Singapore was in the range of 95.71 to 100 on both the regulatory quality index and the government effectiveness index. These measures are linked to other WBI indices such as Voice and Accountability, Political Stability and the Absence of Violence, Rule of Law, and Control of Corruption. A 2013 report by the Political and Economic Risk Consultancy showed that Singapore had the second-best regulatory environment in Asia after Hong Kong, with Japan, Taiwan, and the Republic of Korea in third, fourth, and fifth places, respectively.

When the government of the People's Action Party assumed power in 1959, it was determined to transform the old colonial bureaucracy to ensure that the government's socio-economic development programmes could be implemented. This necessitated a comprehensive reform of both the civil service and the statutory boards. The civil service was reorganised to deal with nation-building and economic development. Ineffective statutory boards created during the colonial period were replaced (Quah, 1996).

New statutory boards were established for three reasons. First, it was perceived that the civil service was handicapped by rigid regulations and inflexibility, and its role in national development was restricted to regulatory and routine matters. Statutory boards, on the other hand, could efficiently undertake the tasks of development without facing the constraints encountered by civil servants. Secondly, they could shoulder the task of implementing socio-economic development programmes, reducing the load on the civil service. Thirdly, their existence served to reduce the movement of talented civil servants to the private sector. The Economic Development Board, Port Singapore Authority, Housing Development Board, and Jurong Town Corporation have all contributed to the remarkable economic and social transformation of Singapore.

Reform of the civil service was focused in part on changing the mindset of officials towards national economic development; to that end, the Political Study Centre was set up in 1959. Henceforth, the focus was on efficiency, with promotion based on merit, not tenure. Right from the start of self-government in 1959, and especially after full independence in 1965, a strong, effective, and dominant political leadership has shaped the structure and characteristics of managing public policy. The role of senior civil servants is to support and implement effectively the agreed broad national policy decided by the political leaders, based on good governance and the goals for economic and social development.

The Public Service Commission (PSC) is constituted under Part IX of the Constitution and its constitutional role is to appoint, confirm, promote, transfer, dismiss, and exercise disciplinary control over public officers in Singapore. The PSC also retains two key non-constitutional roles. It considers the suitability of candidates for appointment as chief executive officers of statutory boards. It is also responsible for the planning and administration of scholarships provided by

the Government of Singapore. The recipients of the scholarships are known as PSC scholars who are highly considered and often become high-ranking senior officials as civil servants in ministries or senior management in statutory boards, such as the Port Authority of Singapore or the Housing and Development Board.

Even for a small city-state, conceptualising, implementing, and monitoring public policy have not been easy. This is where the process of regulatory management and reform has become a distinctive feature of Singapore's management of public policy.

3.3. The Regulatory Reform Process

Unlike many other countries, the legal framework of regulation in Singapore is not embedded in the Constitution or contained in a major piece of legislation. Rather, the regulatory reform process starts with a government decree or an Act of Parliament. The government has a pragmatic, results-oriented approach to public policy, since the political legitimacy of the ruling party rests on delivering better economic and social conditions that can be sustained over time. The regulatory system is not based on the political ideology of the ruling political party. Singapore must, therefore, constantly fine-tune its regulatory policies to better serve the market and to remain competitive and relevant to the regional and global economies.

Over the years, the responsibility for sectoral regulation has been shifted from a government ministry to a specially established committee or commission that represents various important stakeholders and is responsive to market dynamics and rapid changes in the external economic environment.

In 2000, the government initiated the Cut Red Tape Campaign to remove regulations that were no longer needed to make public services more convenient and effective. The Pro-Enterprise Panel (PEP) was set up to solicit feedback and suggestions from the public on rules and regulations that hinder businesses and entrepreneurship. In 2002, the Rules Review Panel (RRP) was established to oversee the rules review process in the public sector. It stipulated that all existing rules enforced by the public sector agencies were to be reviewed every 3 to 5 years. With a mandate to establish an effective and responsive regulatory system

throughout the public service, the RRP adopted a proactive approach to reviewing rules, examining the rationale that lay behind them. By 2007, the RRP had reviewed a total of 19,400 rules.

In 2005, the RRP was reconstituted as the Smart Regulation Committee (SRC) with a broader mandate. It was to shift the mindset of the public service from being merely a regulator to that of a facilitator, and develop a regulatory system that is friendly to business and investment. Globalisation has brought about intense competition, including competition for investment. How friendly a regulatory system is to businesses and investment has become a key competitive factor. For Singapore, a key consideration in conceptualising, implementing, and revising rules and regulations is how well the rules and regulations serve the interests of the businesses and the economy. Regulations are introduced and revised for national economic survival.

What does it take to ensure that Singapore has a first-rate regulatory system? At heart, it entails becoming more customer-centric. Under the old approach, the tendency was to draw up rules that were convenient to the regulator, with little regard for the regulatory costs and administrative burden to be borne by the regulated. By adopting a customer-centric or citizen-centric approach, the regulatory agencies must be mindful of the implications of the rules. The impetus to change and improve rules and regulations is driven by the internal dynamics of public administrators and facilitated by institutional feedback mechanism from businesses and the public to achieve well defined policy objectives.

Globalisation and technological change have also resulted in regulators having to grapple with far more complexity than before. There are many more new products and services, new companies and industries, and new ways of doing business. The electronic medium has revolutionised how certain transactions are carried out. All these throw up new issues that regulators are struggling to keep up with. Regulators have no choice but to consult experts from the industry and the community.

In the past, there seemed to be a great suspicion of the private sector. When agencies formulated their regulation, they did not want the regulated to know what they were doing because they thought the regulated would always be trying to outwit them and get around their rules and systems. There was a mindset among regulators that they know better and saw less need to consult the

stakeholders. Increasingly, regulators are more consultative now not only in Singapore but all over the world. A more consultative approach also reflects a greater sense of confidence on the part of the government. Regulators must be confident that their regulations will be effective even when industry is consulted. From Singapore's experience, regulations are more effective if they have taken into account input from the stakeholders.

3.4. Stock Tools (Institutions)

Singapore's SRC was formed in 2005 to improve the knowledge, awareness, and practice of regulation across the public service. Comprising senior government officials from various regulatory agencies, the SRC oversees the regulatory review process through a sustained and effective approach that ensures that rules and regulations remain relevant in a changing environment. Its terms of reference are:

1. To promote good and responsive regulatory practices of regulation,
2. To oversee sustainable systems to proactively review rules and regulations,
3. To catalyse a change in regulatory mindset from control to facilitation,
4. To build competencies and capabilities in smart regulation.

The SRC is set up to promote good regulation practice within the government and proactively review rules and regulations. It is chaired by the Permanent Secretary of the Ministry of Social and Family Development and the Second Permanent Secretary of the Ministry of Trade and Industry. Its work is shaped by the following principles:

1. Agencies should foster self-regulation and market discipline as far as possible.
2. New regulations should take into account the views of relevant stakeholders and potential implications for existing regulations.
3. The cost of regulation should not exceed the intended benefit.
4. Regulations should adopt a risk management approach instead of a zero tolerance approach.
5. Regulations should facilitate a competitive and innovative climate.

The Zero-In-Process addresses issues raised by members of the public that cut across multiple agencies or have no clear ownership by any government department. Through this process and the awareness and support mechanism, regulatory institutions strive to achieve top-level commitment, and build a network of partners both inside and outside the public sector, to achieve transparency and predictability in the regulatory system.

Agencies also seek to prevent red tape from accumulating into unmanageable regulatory stock in the first place by setting sunset clauses by which rules automatically lapse after a certain date, or by spelling out a negative list, rather than allowing a small positive list. This regulatory approach is based on the premise that too many rules can cause confusion to both the regulatory enforcers and the public.

3.5. Flow Tools (RIA)

The PEP was formed in 2000 with the objective of soliciting feedback on rules and regulations that hinder business and impede entrepreneurship. It is part of the Public Service 21 movement, meant to ensure that the government's rules and regulations remain relevant and supportive of a pro-business environment.

The PEP is chaired by the head of the civil service, and is mainly composed of representatives from the private sector. Acting on public feedback, the PEP engages agencies to review rules and regulations so that businesses spend less time, effort, and expense in meeting regulatory requirements for their operations. The PEP also carries out the annual Pro-Enterprise Ranking survey across 26 regulatory agencies. The survey benchmarks government agencies on their business-friendliness by analysing the perceptions and expectations of more than 4,000 businesses that have interacted with them.

This means that flow management tools are used instead of a formal RIA, as practised in other countries. Continual feedback from businesses provide the feedback loops and learning mechanisms to the SRC and the PEP. In addition, there are sectoral institutions – such as Infocomm on information and communications technology; the Standards, Productivity and Innovation Board (SPRING Singapore) on manufacturing; and the Monetary Authority of Singapore

on financial and banking services – that, together with other statutory boards, focus on regulatory implementation and administration. To maintain the quality of public administration, Singapore’s Public Service Commission and the Civil Service College select and nurture competent public administrators and regulators through a meticulous staff selection process and continual training and upgrading process.

3.6. Singapore’s Risk Management Approach

Risk management is basically the control of bad things. The term ‘risk management’ has been used in other areas, for example, financial risk management and protection against litigation from private citizens. The control of bad things, which is different from the promotion of good things, is central to the role of government in regulatory governance.

The use of a risk management approach in regulatory management is not new. Making trade-offs in policymaking has all along required an assessment of risks. In fact, many in public management have argued that government is the ultimate risk manager. How should a regulator go about designing an effective regulatory programme and what are the critical principles and fundamentals that the regulator should know?

First of all, regulators have to be seriously invested in analysis to pick apart the risks, so they can find the vital components. That is a data-driven process. It requires analytics, versatility, and open-mindedness to try new forms of analysis, look at other sources of information, and get multiple perspectives on a problem until one sees it clearly. Once a regulator sees the individual pieces, the process then is to understand the discretion that goes into the design of tailor-made intervention.

A regulator needs to undertake an honest and rigorous evaluation-focused approach with a view to having a system that can show whether the problem has improved. In setting any standards and specifications, the regulatory agencies are taking some risks, as there are always risks involved. The government as a whole regularly takes decisions about acceptable levels of risk. The tendency of any regulator is to minimise risks itself. This implies having very tight rules and leaving

as few loopholes as possible. But it also means having little regard for the costs to be borne by the regulated.

In many countries, risks are managed in ways that are stacked in favour of the regulator, with industry bearing most of the regulatory burden. Since the establishment of the SRC in 2002, regulators have been urged to look beyond their own perspective and the process is directed to the Zero-In-Process. If a particular regulatory agency adopts a national viewpoint to start with, rather than the regulator's own interest, and carries out the cost-benefit analysis from that perspective, the outcome would be different. Adopting a broader perspective makes regulators more likely to weigh the risks and options differently. To measure the change in regulatory effectiveness is to recognise that they are different kinds of work and they have different kinds of key indicators. If a regulator is concerned with functional expertise, the key indicators are about the quality of that function. Singapore's SRC guidelines are meant to make the right regulatory decisions.

Whether a regulator needs to accommodate flexibility and discretion depends largely on how blunt the regulations are to begin with. If the regulation is very general and applies to everyone, there will likely be exceptional circumstances and a need to show discretion. The more customised and fine-tuned the policies are, the less need there is to make exceptions.

Even with fine-tuned regulation, there may still be an exceptional circumstance. The criterion for the regulator to judge is whether it is a one-off occurrence, or whether it reflects a particular cluster of issues that so far regulation has not been able to accommodate and capture. If it is a legitimate case, the regulatory agency has to devise a subcategory of rule to deal with it. Such a case requires specialised consultation with the designated overall agency, the SRC, as the decision requires a high level of expertise and specialisation. Generally, when it comes to discretion and flexibility, the problem is in deciding what level of staff ought to make this kind of decision. There is a need to have a mechanism in place whereby senior management staff check to find out what complaints and exceptions regularly arise, so that the regulation can be improved.

What is a good indicator of an effective regulatory agency? It is important to recognise that there are different kinds of work with different kinds of key indicators. If the regulation is concerned with the functional expertise, the key indicators are about the quality of that function. The second function of work is processes. The key performance indicators around the core high-volume processes are about timeliness, efficiency, productivity, customer satisfaction, and a low rate of data error. On the other hand, the key performance indicators on the risk control front are about risks reduced. The SRC must have a balanced scorecard in a regulatory environment to recognise the different kinds of work with different indicators. For example, the risk reduction objective should not be measured on customer satisfaction. Singapore adopts a risk management approach in designing regulation, which entails focusing resources on high-risk areas while reducing the administrative burden for business stakeholders in lower-risk areas.

3.7. Regulatory Impact Analysis

Singapore does not undertake formal regulatory impact analysis (RIA), except for major projects. This is in sharp contrast with Australia and New Zealand, for whom RIA is one of the critical pillars of the RMS, with an agency tasked to review the RIAs/RISs of government departments and agencies. The reason offered is that Singapore is a small economy with a well-connected government, which makes it relatively easy to evaluate policy impact and to get feedback from stakeholders. The SRC, which includes major stakeholders, is tasked to undertake continuous refinement of regulations.

Having a small economy with a well-connected government makes it easier to evaluate policy impact and to connect with stakeholders to gather feedback (APEC, 2014). However, ex ante RIA, which is used in the development phase of new regulations, is encouraged but not mandatory in Singapore. For major projects, a careful cost–benefit analysis, evaluation of impact on stakeholders, and thorough public consultation are carried out. The main purpose is to reduce the cost and burden of regulation on stakeholders while safeguarding and maximising public interest. For businesses, this means creating a competitive and innovative business environment and allowing market forces to operate. To achieve this goal, regulatory reform aims to improve the quality of government regulations and remove unnecessary restrictions, rules, and regulations.

There is no explicit requirement to include trade and competition principles into regulatory reviews and analysis, but inter-agency coordination is meant to take into account the views of trade agencies in Singapore. For example, in 2008, the Competition Commission of Singapore (CCS) issued guidelines on 'Competition Impact Assessment for Government Agencies' to help government agencies focus on important competition issues when formulating their policies (CCS, 2008). In the same manner, external legal agreements under free trade agreements must pass through a legal 'scrubbing' process by the special committee of the Ministry of Law or Attorney-General Chamber to ensure consistency and coherence with existing rules and regulations. Major new rules and regulations initiated by public agencies must be vetted for their legal consistency by the legal office of the Ministry of Law.

3.8. Open Market Policies

Infocomm: The mission of the Infocomm Development Authority of Singapore (IDA) is to develop information technology and telecommunication in Singapore to serve citizens of all companies of all sizes. IDA does this by actively supporting the growth of innovative technology companies and start-ups in Singapore, working with leading global information technology (IT) companies in developing excellent IT and telecommunications infrastructure **policies and capabilities in Singapore.**

SPRING (Standard, Productivity and Innovation): SPRING Singapore is an agency under the Ministry of Trade and Industry responsible for helping Singapore enterprises grow, and building trust in Singaporean products and services. As an enterprise development agency, SPRING works with partners to help enterprises in financing, capability, and management development; technology and innovation; and access to markets. As the national standards and accreditation body, SPRING develops and promotes internationally recognised standards and quality assurance infrastructure. SPRING also oversees the safety of general consumer goods in Singapore. Among other functions, it oversees quality and standards indicators, including standards, accreditation, consumer product safety, weights and measures, organisational excellence, reach and assistance.

4. Conclusions

The contrasting paths to regulatory reform taken by Malaysia and Singapore show how every country needs to find its own way. The impressive gains in regulatory quality in both countries lend strong support to the notion of equifinality, which suggests that a goal can be reached by various paths, involving rather different journeys.

For Malaysia, the approach to a rigorous RMS is formal and centrally driven, with focus on measurement of progress against targets. Three institutions have been critical in the implementation of the regulatory approach. The first was PEMUDAH, the high-level public–private task force established in February 2007 to facilitate business. PEMUDAH used the World Bank’s Ease of Doing Business as a focus point for its activities. The second institution is the National Development Planning Committee, which includes the highest civil servants as members. This group examines the adequacy of the RISs on new or modified regulations that significantly impact on business, investment, and trade. The third institution is the MPC, which provides technical secretariat support to the PEMUDAH, and is the coordination and oversight body overseeing the implementation of the national plan. The MPC also provides advice and capability building to regulatory agencies on the preparation of RIA. The three institutions have combined in the continuing drive to improve regulatory quality.

Singapore is a world leader in rankings on regulatory quality and ease of doing business. Its RMS is also unique in the world in that it relies less on formal RMS measures and more on embedding the GRP principles in the whole public service. Particular emphasis has been placed on stakeholder-centric regulatory reform with active use of specially established committees or commissions to include various key stakeholders. The case of Singapore may be unique in that it is a small city-state that is heavily integrated into the regional and global economies and with barely any natural resource to rely on. Nonetheless, it suggests that a country’s RMS is ‘context-specific’ to the culture and institutions in the country.

Appendix: The Case of Dealing with Construction Permits in Malaysia

1. Background

Dealing with Construction Permits (DCP) is one of the World Bank's Ease of Doing Business indicators. It records the procedural requirements for a business in the construction industry to build a standardised warehouse. The country ranking is based on three indicators:

- Time (in days) to build a warehouse in a main city;
- Cost as a percentage of the warehouse's value;
- Procedures: regulatory submissions, obtainment of construction permits, receiving inspections, and utility connections.

The formalities before construction begins are the most time-consuming and costly part of dealing with construction permits. *Doing Business 2014* highlighted that over the past 5 years, the most common feature of reforms is streamlining project clearances. Building approvals tend to require technical oversight by multiple agencies, and one way to simplify this process is by establishing one-stop shops. However, the success of one-stop shops depends on good coordination on the part of all the agencies involved and often requires overarching legislation that ensures information sharing and established oversight mechanisms to minimise cases of noncompliance.

**Table 9.A1. Dealing with Construction Permits – Malaysia's Performance
2012–2015**

| Indicator | Malaysia DB 2015 | Malaysia DB 2014 | Malaysia DB 2013 | Malaysia DB 2012 | Top Performer |
|--|---------------------|---------------------|---------------------|---------------------|-------------------|
| Dealing with Construction Permits (rank) | 28 | 43 | 96 | 113 | Hong Kong |
| Procedures (number) | 13 | 15 | 37 | 22 | Hong Kong (5) |
| Time (days) | 74 | 130 | 140 | 260 | Singapore (26) |
| Cost (% of warehouse value) | 1.3 | 14.7 | 17.5 | 7.1 | Qatar (0.0) |

Source: Malaysia's Performance in Doing Business, 2015.

Table 9.A2. Dealing with Construction Permits (Revised Methodology) 2016

| Indicator | Malaysia DB 2016 | Malaysia DB 2015 | Best Performer Globally DB 2016 |
|--|---------------------|---------------------|---|
| Dealing with Construction Permits (rank) | 15 | 15 | Singapore |
| DTF score for dealing with construction permits (0–100) | 81.10 | 81.07 | Singapore (92.97) |
| Procedures (number) | 15 | 15 | Denmark, Georgia, Guyana, Marshall Islands, Sweden (7) |
| Time (days) | 79 | 79 | Singapore (26) |
| Cost (% of warehouse value) | 1.4 | 1.4 | Qatar (0.0) |
| Building quality control index (0–15) (new) | 13 | 13 | New Zealand (15) |

In 2016, Malaysia was ranked 15th out of 189 economies in terms of dealing with construction permits, with a DTF score of 81.10, maintaining its rank in 2015. The DTF score registered improvement over the score in *Doing Business 2015* (81.07). The measures in the sub-indicators of DCP are unchanged, but a new indicator was added in DB 2016, namely, the Building Quality Control Index, which expanded the coverage to encompass good practice in construction regulation. This index assesses the quality of building regulations; quality control before, during, and after construction; liability and insurance regimes; and professional certifications. This new measure is the sum of the above elements, which range from 0 to 15. Higher values indicate better quality control and safety mechanisms in the construction permitting system. Malaysia scored 13 out of a maximum possible score of 15.

Malaysia's high ranking in Dealing with Construction Permits was made possible by strengthening one-stop centres, and streamlining procedures and online systems. In particular, efficiency improvements resulting from various administrative reforms have shortened the processing time for obtaining development approval and conducting concurrent/joint final inspections for utility providers and fire safety at the final inspection stage.

The launching of the Kuala Lumpur Integrated Submission Be Efficient, Systematic, and Transparent (KLIS BEST) system, which provides another lane for complex and high-risk projects in Kuala Lumpur, has streamlined procedures and improved transparency on permit requirements. The Kuala Lumpur City Hall (KLCH) has fully implemented the KL TRAX System for the OSC1 Submission, and effort is being made to expand to OSC 3.0 and KLIS BEST approval lanes for high-risk or large developments. The KL TRAX System is an online system that enhances delivery and status update in the monitoring of construction permit applications from the date of submission until the issuance of the Certificate of Completion and Compliance (CCC), including updating and checking the application status for both parties (local authority/agencies and the private sector). It enhances productivity performance through reduction in time taken, and an integration of all agencies and businesses on a single transparent platform. All development requirements for OSC1 submission are now available in Bahasa Melayu and English on the KLCH website. A Construction Industry Transformation Plan (CITP) 2016–2020 is being mooted that will commit the various major stakeholders, public and private, within the industry ecosystem to support transformational initiatives.

The National Policy on the Development and Implementation of Regulations (NPDIR), which aims to include GRP elements, will be fully implemented during the 11th Malaysia Plan period to include states and local governments. This initiative encourages all regulators to engage affected stakeholders in designing and implementing future regulations, thereby forestalling any element of surprise when dealing with local government regulations. The construction industry in Malaysia can expect to see greater conducive improvements in the regulatory environment with the roll-out of more initiatives. PEMUDAH, through the Focus Group on Dealing with Construction Permits (FGDCP) and with the commitment of industry players and the regulatory authorities, will drive the various initiatives.

2. Malaysia's Approach to Dealing with Construction Permits

The idea for a high-powered task force to address bureaucracy in business–government dealings was first introduced in the Prime Minister's annual speech to the civil service on 11 January 2007. It was recognised that a concerted cross-ministerial initiative was needed to effect greater improvement in the way

government regulates businesses. To be truly relevant, active participation by the private sector is also essential.

Malaysia's competitive position, as reflected in various international reports such as the World Bank's *Doing Business Report*, was an impetus behind the formation of PEMUDAH. Using this report as a framework, PEMUDAH was tasked to address the areas related to the business environment. The public sector had been working on improvements even before the establishment of PEMUDAH. But PEMUDAH has undertaken reforms and improvement in terms of speed, urgency, and inclusiveness. Decisions are no longer made in isolation, making the end result more sustainable, meaningful, and comprehensive. This practice of inclusive engagement will continue to be the hallmark of the Malaysian public sector.

While PEMUDAH continues to focus on improving Malaysia's competitiveness rankings through its work and improvements, the country is also cognizant of the fact that rankings alone are not the only gauge of prosperity and success. Though Malaysia is not driven by the rankings alone, they show how much progress has been made and indicate the effectiveness of initiatives. The World Bank's *Doing Business Report* is widely known and assesses comprehensive measures of business-enabling environment that can be compared across 189 economies. From the *Doing Business Report*, the country can measure its efforts against other nations to see where it stands and what needs to be done to further improve its performance.

The 10 focus areas in the World Bank *Doing Business Report* that PEMUDAH used as indicators are Starting a Business, Dealing with Construction Permits (DCP), Getting Electricity, Registering Property, Getting Credit, Protecting Minor Investors, Paying Taxes, Trading Across Borders, Enforcing Contracts, and Resolving Insolvency.

2.1. The Focus Group on Dealing with Construction Permits

Regulation of construction activities is critical for public safety. It also matters for the health of the building sector and is crucial to the competitiveness of the economy. Striking the right balance is a challenge when it comes to construction

approvals. Good regulations maintain safety standards, while ensuring that the permit approval process is efficient, transparent, and cost-effective.

The indicator DCP measures the procedures, time, and cost to comply with the formalities to build a warehouse, obtain necessary licences and permits, complete the required notifications and inspections, and obtain utility connections. FGDCP was set up as a working group under PEMUDAH to look into the efficiency of the public service delivery system and government policies impacting businesses. When an important issue surfaces, PEMUDAH will set up a new focus group or task force to address the issue, often with dual chairmanship (public and private sectors) to have a balanced perspective.

FGDCP has been working together with both the public and private stakeholders, including building professionals and experts, to identify issues and challenges, propose winning solutions, and implement various improvement initiatives. This focus group has charted a radical change in the Construction Permits framework. Members of FGDCP consist of representative from the Ministry of Federal Territories, Ministry of Works, Public Works Department, Ministry of Local Government and Housing, National Water Service Commission (SPAN), Selangor Water Supply Company (SYABAS), Real Estate and Housing Developers (REHDA), National House Buyers Association, Kuala Lumpur City Hall (DBKL), Indah Water Konsortium, Malaysian Communications and Multimedia Commission (SKMM), Tenaga Nasional (TNB), Telekom Malaysia, Engineers, Architects and Planners, and the Fire and Rescue Department (BOMBA).

2.2. The Baseline Study

In *Doing Business 2012*, Malaysia had moved up five places to 18th position among 183 countries. DCP was one area identified for improvement since, despite a reduced number of procedures, Malaysia's ranking slipped by two places to 113rd position. Improvement initiatives that had been undertaken included establishing one-stop centres and reducing time taken for approvals, while other initiatives to improve the efficiency of dealing with construction permits were being undertaken.

FGDCP conducted a thorough study to identify the regulatory and non-regulatory options with respect to construction permits. On 1 June 2012, fast-tracked approval for small-scale non-residential projects known as OSC1 Submission was launched by the mayor of Kuala Lumpur City. It covered concurrent submissions of planning permission plans, buildings plans, engineering plans, fire safety plans, and utility plans, which required only 10 procedures and took 100 days to obtain approvals (compared with 37 procedures that required 140 days to obtain approval previously). Malaysia introduced Standard Guidelines, categorising the risk-based and self-regulatory inspection system, and improving the operational features of the existing one-stop centre for building permits.

In May 2012, Kuala Lumpur City Hall issued Standard Guidelines for the construction of protective hoardings and construction signboards. Under these guidelines, builders are not required to obtain permits for constructing hoardings and signboards or to pay a processing fee. In addition, Kuala Lumpur City Hall has eliminated the requirement to obtain permits for dustbins (RORO Bin) before construction starts. It is now the responsibility of the builder to engage a registered contractor to dispose of construction debris from the site. With this initiative, the number of interactions between architects and builders and Kuala Lumpur City Hall has been reduced. Kuala Lumpur City Hall has managed to simplify and streamline all the processes involving internal and external agencies.

**Box 9.A1. Station Penchala Link: Showcase Success of OSC1 Submission
for Speedier Approval**

The introduction of OSC1 Submission serves as a gateway for seeking approvals for the construction of low-risk commercial projects. OSC1 Submission has significantly reduced both the number of processes/procedures and time taken for such approvals to be granted from 37 procedures requiring 140 days to only 10 procedures requiring 100 days. OSC1 Submission was put to test on the ground with a pilot study for constructing the new petrol station Penchala Link. The pilot test revealed that the approval to develop the petrol station was made easier and faster with the new OSC1 Submission and cost savings were realised with the reduction in procedures. Estimated savings of RM20,000 were made possible.

Ongoing initiatives include implementing best practice by empowering the private sector in the process and in approving the application; implementing a 100 percent online system for main processes; enhancing the coordination efficiency of the technical agencies at OSC National House Buyers Association, Kuala Lumpur City (DBKL); implementing a merit/demerit system to prevent

misdemeanours by the submitting person; monitoring the processing time of approval by all technical agencies, adhering to the agreed time frame; monitoring the processing time of approval by all technical agencies; integrating the payment system into the online system that will be developed; and promoting the model of enhancing efficiency in DCP to other major cities in Malaysia.

The Baseline Study – Mapping DCP in 16 Capital Cities

PEMUDAH requested FGDCP to extend the initiative to the other cities in Malaysia. A baseline study of DCP was conducted in 16 locations nationwide in September–October 2012. The methodology was based on the World Bank *Doing Business Report* with modifications to suit Malaysia's context. The study used the case example of setting up a petrol station in 16 cities in the states of Malaysia. The objectives were to reduce or eliminate irrelevant procedures, improve on those procedures deemed inefficient and ineffective, identify major constraints, and consolidate and enhance all construction permit transactions for all cities and districts in peninsular Malaysia to ensure coherence and consistency of regulatory practice in issuing permission for construction and to make recommendations on the improvement initiatives to ease dealing with construction permits. The study considered the impact of local and national regulations on small to medium-sized domestic firms in dealing with construction permits. Information on the number of procedures, time, and cost involved for an investor to obtain a construction permit for a petrol station was captured. Data was collected with the help of more than 500 private sector contributors and public sector officials. A series of workshops were conducted in 16 capital cities (Putrajaya, Labuan, Pulau Pinang, Ipoh, Alor Setar, Kangar, Melaka, Johor Bahru, Kuala Terengganu, Kota Bharu, Kuantan, Kuching, Kota Kinabalu, Shah Alam, and Seremban). The study identified differences in the enforcement of local and national regulations that could either enhance or constrain local business activity.

The study's findings put the city of Kangar at the top of the DCP league table, requiring only 20 procedures taking 80 days, with a total cost of RM6,691. The most expensive city in DCP was Georgetown, where a petrol station owner has to pay RM407,814. DCP was least burdensome in Kangar, Kuala Terengganu, and Kota Bharu. It was most burdensome to businesses in Ipoh and Georgetown.

Table 9.A3. Complying with Formalities to Build a Petrol Station in 16 Capital Cities

| Rank | City | No. of Procedures | Time (days) | Cost (RM) |
|----------|---------------------|-------------------|-------------|---------------|
| 1 | Kangar | 20 | 80 | 6,691 |
| 2 | Kuala Terengganu | 41 | 89 | 8,988 |
| 3 | Kota Bharu | 48 | 89 | 14,122 |
| 4 | Kuching Utara | 34 | 218 | 3,739 |
| 5 | Labuan | 57 | 111 | 8,356 |
| 6 | Seremban | 52 | 64 | 25,280 |
| 7 | Putrajaya | 80 | 129 | 8,001 |
| 8 | Kuala Lumpur | 37 | 140 | 30,676 |
| 9 | Shah Alam | 55 | 106 | 25,280 |
| 10 | Kuantan | 59 | 135 | 12,335 |
| 11 | Melaka | 57 | 135 | 30,065 |
| 12 | Kota Kinabalu | 40 | 278 | 46,241 |
| 13 | Alor Setar | 51 | 262 | 22,169 |
| 14 | Georgetown | 41 | 196 | 407,814 |
| 15 | Ipoh | 58 | 306 | 10,914 |
| 16 | Johor Bahru | 66 | 192 | 18,161 |

RM = Malaysian ringgit.

Among the findings:

- The high number of procedures continues to be a challenge for business.
- The wide variation in the quality of regulation across the cities points to the presence of ample opportunities for further regulatory improvement;
- Cities can learn from the existing good practices of Kuala Lumpur.
- The existing OSC and inspection methodology can be further streamlined.

The study showed that procedures and processes differ widely in different states due to different levels of development in local context, authority, and geographical area. State governments craft their own laws, so it may take time to implement the same procedures in big cities like Kuala Lumpur and Selangor. Nevertheless, it will be beneficial to have generic, uniform procedures, which will make it easier for investors coming to Malaysia. Good initiatives done in Kuala Lumpur may be extended to other states.

Implementation, Monitoring, and Reporting

The findings gained from the study were presented to the States' Chief Ministers' Meeting chaired by the Prime Minister. The ministers took note of the cities that

were not performing and committed to expediting the necessary improvement so that they too can benefit from the successful ones. The Malaysia Productivity Corporation (MPC) and high-performing states will assist the underperforming states by sharing success stories through workshops, training, and capacity building activities.

Another study is to be conducted to examine whether there are further improvements 2 years after implementation. The findings will be presented at the PEMUDAH meeting, the Ministries' Secretary Generals' meeting, and the National Council for Local Government (MNKT). Performance figures speak for themselves. This approach uses peer pressure to get each city to improve by adhering to the construction industry's GRP.

3. Lessons Learnt

Several factors contributed to the effective implementation of this initiative:

- Establishing the baseline of the current model,
- Benchmarking against world's best practices,
- Redesigning the current model,
- Undertaking public consultation with stakeholders,
- Finalising the proposed model with consideration of 100 percent online implementation,
- Carrying out a change management programme, and
- Implementing the proposed model (with continuous monitoring and improvement).

Stakeholder Engagement

The successful implementation of the initiative required the commitment of all parties: developers, project owners, contractors, local authorities, external technical agencies, building practitioners, and professionals. FGDCP had been working together with both public and private stakeholders, including building professionals and experts, to identify issues and challenges, propose winning solutions, and implement various improvement initiatives. The government has got together in various platforms with various stakeholders involved in the

building process in the spirit of collaboration to improve the efficiency of DCP. Engagement sessions included workshops, benchmarking missions, public consultation, and an engagement with an expert from the World Bank. Through this collective effort, various issues and challenges hampering progress had been identified; a new framework that would facilitate processing and approval of construction permits was put together.

Public Consultation

Well-conducted public consultation is not only part of a transparent and democratic process in the development of regulation; it will also achieve a higher degree of acceptance and ownership of the regulation by the stakeholders. Public consultation provides a platform of opportunity to listen to the key players in the public and private sectors and gather ideas to improve efficiency in dealing with construction permits. Committed participation from everyone will ensure the success of the initiatives.

Continuous Learning

Training and hands-on sessions were conducted regularly for the processing officers, submitting persons, and contractors. Regular briefings were extended to agencies involved in attracting local and foreign investors. Ten local authorities were showcased as exemplary models to be benchmarked with; continuous monitoring and assessment to ensure compliance; providing advisory services to property investors and the public; continuous enhancement of e-submission in the OSC online system to ensure more efficient and effective submission and processing of plans.

The Regulatory Management System and DCP

A Regulatory Review Framework must be updated to ensure it remains current and in line with the changing competitive environment. To reduce the regulatory burden to business, MPC has taken various initiatives to ensure the quality of new regulation and improve the quality of existing regulations through the Quality Regulatory Management System and Framework. It was implemented to improve the quality of new regulations and to ensure that regulations are effective in addressing the desired public policy objectives and serving the country in a balanced, equitable, and transparent manner.

The RMS played a significant role in the success of DCP initiatives. The following RMS principles guided DCP:

- **Develop and maintain a system to manage the regulatory process that meets requirements**

MPC and PEMUDAH conducted a thorough study to identify regulatory and non-regulatory options to reduce regulatory burdens on the business community in construction permits. The introduction of OSC1 Submission, a special lane to get faster approval, will now require only 10 procedures and take 100 days to process the permits (compared with 37 procedures requiring 260 days).

- **Adopt good regulatory principles at the highest government level**

Establishing PEMUDAH in 2007 was a significant step in adopting the good regulatory principles. It helps facilitate business and alleviate the burden of unnecessary regulations on business. In 2009, the Performance Management & Delivery Unit (PEMANDU) was formed to improve public services delivery to business to reduce redundancy, standardise functions, and remove overlapping functions, with a clear governance structure to ensure execution and compliance. FGDCP under PEMUDAH has been spearheading the initiative to liberalise the construction sector. Best practice was identified, and quick gains achieved by reducing procedures and time to process development proposals.

- **Ensure new regulations are in accordance with the defined process**

The processes undertaken by FGDCP are in line with the definition in the National Policy on the Development and Implementation of Regulations and Best Practice Regulation Handbook and in compliance with the regulatory process management requirements.

- **Consultation with stakeholders and interested parties**

The consultation sessions identified available options, analysed impact, and obtained agreement on the option chosen.

References

- APEC (2014), 'Summary of Individual Economy Reports of Good Regulatory Practices – Singapore Development in Good Regulatory Practices', in *APEC Economic Policy Report 2014*. Singapore: Asia-Pacific Economic Cooperation.
- CCS (2008), Competition Commission of Singapore. The Competition Impact Assessment for Government Agencies can be found at <http://app.ccs.gov.sg/Legislation.aspx>
- Hamsa, A. (2013), Foreword, *National Policy on the Development and Implementation of Regulations*.
- Lee, C. (2002), 'Telecommunications Reforms in Malaysia', *Annals of Public and Cooperative Economics*, 73(4), pp.521–540.
- Lim, H. (2015), 'Regulatory Coherence: The Case of Singapore', *Regulatory Coherence: Technical Paper, ERIA/NZIER Project Report*. Jakarta: ERIA.
- Mohamed, M. (2015), Press Release, 'Good Regulatory Practice As A Priority for the ASEAN Community', 11 March, YB Dato' Sri Mustapa Mohamed, Minister of International Trade & Industry, Malaysia, quoted at the launch of the OECD Report, *Implementing Good Regulatory Practice in Malaysia*.
- NPDIR (2013), Malaysia Productivity Corporation – 'National Policy on the Development and Implementation of Regulations (NPDIR)', July, available at <http://www.mpc.gov.my>
- OECD (2015), *Implementing Good Regulatory Practice in Malaysia*. Paris: OECD Publishing. DOI: <http://dx.doi.org/10.1787/9789264230620-en>
- Quah, J.S.T. (1996), 'Wielding the Bureaucracy for Results: An Analysis of Singapore's Experience in Administrative Reform', *Asian Review of Public Administration*.
- Raj, R. (2008), *Good Regulatory Practice – Malaysia's Experience*. Paper presented at WTO TBT Committee Workshop on Good Regulatory Practice, 18–19 March, Geneva.
- Seman, A.L.A. (2014), 'Implementation of Good Regulatory Practice (GRP) in Malaysia', Presentation, 12 September, Kuala Lumpur.
- World Bank (2008), *World Bank Group. The Growth Report: Strategies for Sustained Growth and Inclusive Development*. Washington, DC: The World Bank. <http://hdl.handle.net/10986/6507>

World Bank (2014), *Doing Business 2015: Going Beyond Efficiency*. Washington, DC: The World Bank. DOI: 10.1596/978-1-4648-0351-2

World Bank (2016), *World Bank Group. 2016. Doing Business 2016: Measuring Regulatory Quality and Efficiency*. Washington, DC: World Bank.
<http://hdl.handle.net/10986/22771>