

# Chapter 5

## Patterns, Insights, and Lessons in the Use of Regulatory Management System

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## Chapter V

### Patterns, Insights, and Lessons in the Use of Regulatory Management System

In the previous chapter, we discussed how different countries use individual elements as part of their regulatory management systems (RMSs). In this chapter, we change our focus from looking at how elements are used across countries to looking at the approaches of individual countries and how their RMSs have evolved over time. We were particularly interested to see if we could identify general approaches or styles of regulatory management adopted by different countries in the Asia-Pacific region. By approaches we mean combinations of elements that are common across groupings in countries. For example, in the OECD at least two distinct approaches to regulatory management are used: those that focus on reducing the administrative burden imposed by the *stock of existing regulations* and those that concentrate on improving the quality of the *flow of new regulations*.

We were also interested in exploring what the experience of different countries teaches us about sequencing of the different regulatory management elements. Do countries generally start with particular sectors or with programmes with comprehensive coverage? Alternatively, do they 'start small' with particular tools or 'start with comprehensive system design'?

We faced three major challenges in our analysis of country patterns. First, every country has a unique regulatory system to make laws, regulations, and rules and these are nested in a wider set of constitutional arrangements in the overall country context. Second, there are existing 'off the shelf' frameworks or typologies for different approaches. The third challenge is the ability to draw patterns when comparing and associating those changes in the use of RMS since 1980.

Nonetheless, we did find a number of similarities across the countries in the study, which helped build our understanding of the evolution of the use of regulatory management instruments over time. The next section presents the

results from our comparison of the evolution of a country's RMS, and the subsequent section illustrates the discussion with some examples drawn from the experiences of various countries.

### 5.1. Patterns in the Use of RMS Elements

The studies on the evolution of RMSs in the 10 countries in the Project provided a useful source of comparative information. We developed a way of coding every country's RMS to enable comparison of patterns over time. In brief, each element of the RMS discussed in Chapter IV was assigned in one of two groups – instruments or institutions. Each instrument was classified as being generic (an across-the-board requirement), discretionary, or not used in the regulatory management process. Each regulatory management institution was classified as centralised, distributed, or not used (see **Table 5.1**). For example, was there centralised ministerial responsibility for regulatory quality or was responsibility distributed? We then looked at how RMSs evolved over different phases. The next section looks at how different instruments have been used over time, when the uptake occurred, and how different countries' systems have evolved.

**Table 5.1: Coding the Evolution of Regulatory Management Systems**

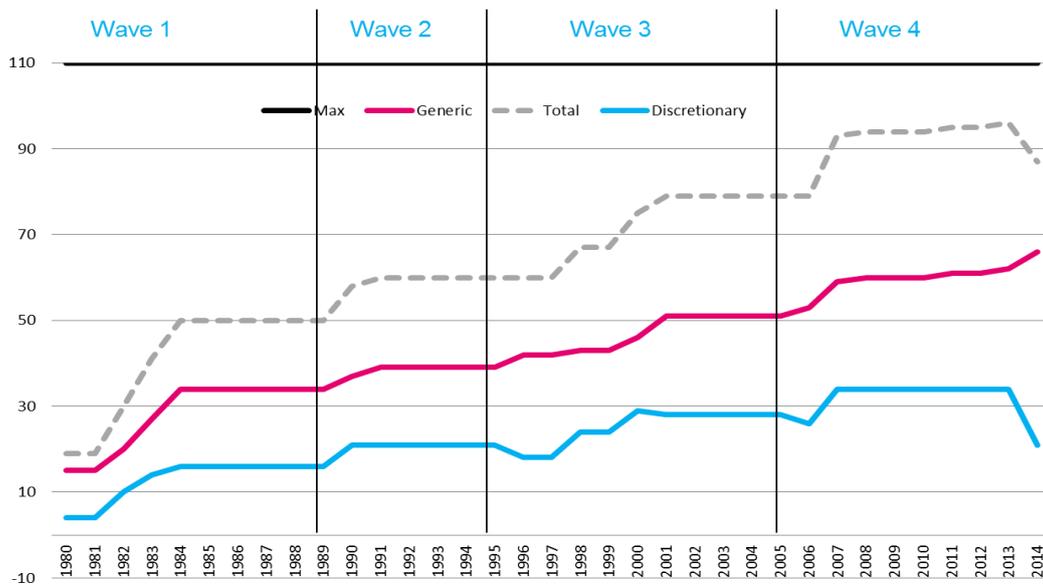
<i>Group</i>	<i>Requisite system</i>	<i>Coding (with numbers later)</i>
Regulatory environment	Context	Deregulation / Red Tape / Privatisation
Regulatory environment	Political leadership	Reduction total cost of regulation
Regulatory environment	GRP	Yes / No
Supporting practices	Consultation	Generic / Discretionary / None
Supporting practices	Communication and engagement	Generic / Discretionary / None
Supporting practices	Learning and accountability	Generic / Discretionary / None
Policy cycle	Big Policy	Generic / Discretionary / None
Policy cycle	Little Policy	Generic / Discretionary / None
Policy cycle	Legal Policy	Generic / Discretionary / None
Policy cycle	Decision-Making	Generic / Discretionary / None
Policy cycle	Change Implementation	Generic / Discretionary / None
Policy cycle	Administration & enforcement	Generic / Discretionary / None
Policy cycle	Monitoring and Review	Generic / Discretionary / None
Institutions	Central oversight body	Yes / Distributed / No
Institutions	Minister responsibility	Yes / Distributed / No
Institutions	Levels of government coordination	Yes / Distributed / No
Institutions	Regulatory review and evaluation	Yes / Distributed / No
Institutions	Capability of Regulators	Yes / Distributed / No
Institutions	Reporting of Regulatory Performance	Yes / Distributed / No

Source: NZIER.

Our analysis of countries' RMS evolution showed interesting patterns. As shown in the following graphs, we observed four waves of RMS evolution since 1980, over a wide range of countries, spanning the use of both instruments and institutions. We also observed that the increase in the use of RMS occurred in the aftermath of economic instability, particularly around two crises – the 1997–1998 Asian Financial Crisis and the 2007–2008 Global Financial Crisis.<sup>16</sup> Finally, instruments were largely first used in Wave 1 or prior to Wave 1 depending on the country, and institutions were mostly first used in Wave 3.

**Figures 5.1** and **5.2** show the growth in the use of RMS elements over time and the increasing use of centralised institutions and general (rather than discretionary) use of RMS elements.

**Figure 5.1: Total Use of Instruments (all countries)**



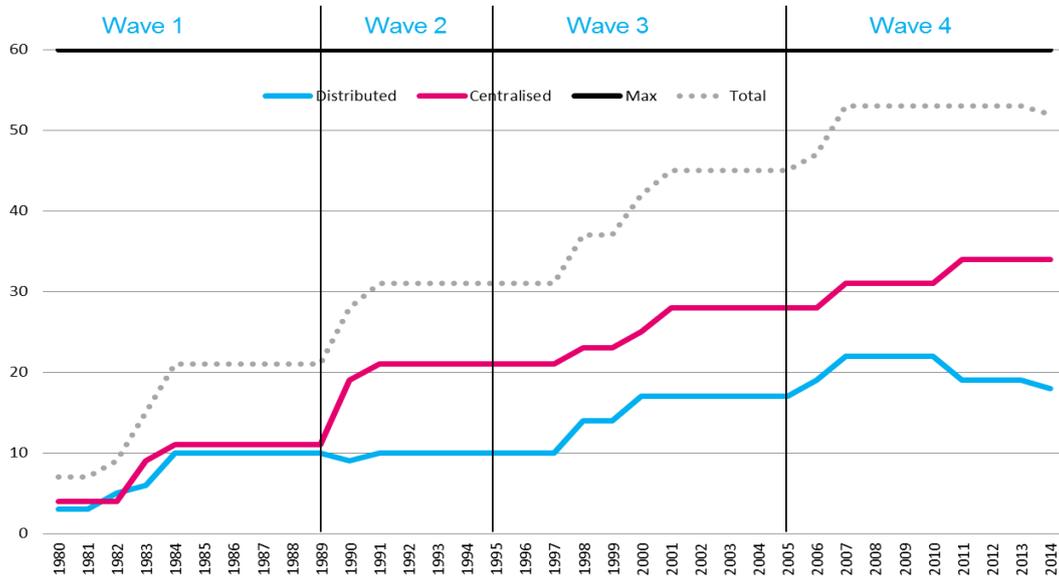
Source: NZIER.

The analysis of RMS evolution by country reveals that there were ‘early’ and ‘late starters’ in the use of RMS elements. In addition, countries were active in different periods and had different adoption patterns, some learnt progressively across the four waves, whereas others experienced a sort of a ‘big bang’ and made more sudden changes. The main observation is that RMS instrument uptake took place sooner than that of RMS institutions (see **Figure 5.3**). OECD countries and

<sup>16</sup> Correlation does not equate to causation. A number (but not all) of the country case studies brought out the role of economic crisis in triggering regulatory responses.

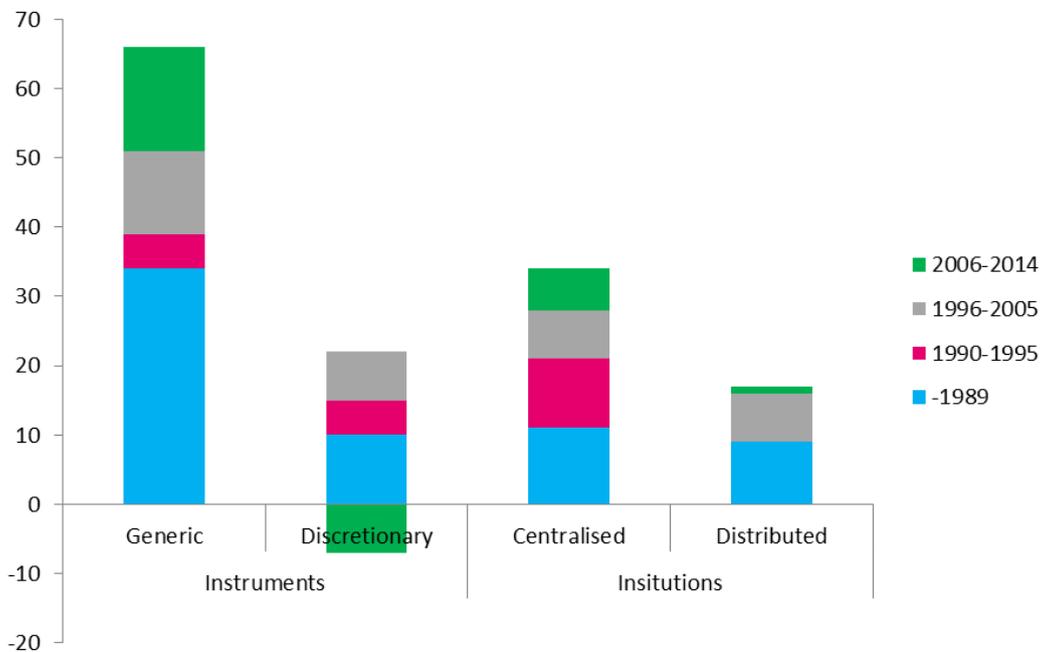
Malaysia were the main users of RMS instruments prior to 1995. The use of RMS institutions really took off in the period from 1990 to 1995.

**Figure 5.2: Total Use of Institutions (all countries)**



Source: NZIER.

**Figure 5.3: Take-up of RMS Elements by Time Period**



Source: NZIER.

The following reveals the key findings from our analysis of country patterns in the use of RMS:

- There were four waves of change in the uptake of RMS elements.
- An economic crisis often seemed to provide a trigger for change.
- There were early and late starters among the countries in our sample.
- Some countries made big comprehensive changes and others had a more incremental approach to reform.
- RMS instruments were more commonly used before RMS institutions were put in place.

## 5.2 Lessons and Insights from the Country Studies

In examining the RMS development of the 10 East Asian countries in the Project, the following lessons and insights stand out:

### 1. The primacy of strong and continuing political commitment from the top leadership

The experiences of the 10 East Asian countries in the Project indicate that strong and continued political commitment is critical in the drive towards a well-performing RMS. As the Australia and New Zealand cases show, that drive can take a few decades to achieve and sustain over several waves of reform and a number of government administrations. Even the accelerated pace in Korea involved a succession of presidential administrations.

The strong commitment of the top leadership is important in overcoming opposition from vested interests and 'conflicted politicians' (Llanto, 2015) and reluctance from government officials as well as in building confidence among stakeholders (OECD, 2011). Examples of the commitment of the top political leadership include (i) Viet Nam's Prime Minister taking official charge of Project 30 and announcing the project's key achievements personally (OECD, 2011, pp.11–12); (ii) Korea's President Kim Dae-jung making regulatory reform a major goal of his administration in the aftermath of the 1997 financial crisis in East Asia such that there was a major regulatory guillotine, as well as Korea's President Park Geun-hye urging the need for 'great efforts to change the culture in the civil service that is conducive to regulatory reform' (Kim and Choi, 2016, p.7); and (iii) Malaysia's Prime Minister's mandate to 'just do it' when his senior officials in charge of Malaysia's regulatory reform efforts faced reluctance and difficulties with the bureaucracy during the first years of implementation (personal

communication with a senior Ministry of International Trade and Industry official). Similarly, Singapore's much vaunted, efficient, and effective regulatory system 'is a result of sustained long-term policy measures undertaken by the highest political leadership since Independence' (Lim, 2015, p.15).

Note that the need for continuing political support is for the regulatory reforms to lead to the improvement of the economy-wide – rather than just sectoral – regulatory regime. Virtually all the 10 countries in the Project have undertaken sectoral and/or macroeconomic stabilisation and structural reforms, strongly supported by the political leadership, in large part as a response to economic crises or stagnation. However, not all 10 countries have moved from sectoral and macroeconomic structural reforms to an emphasis on the strengthening of the overall regulatory regime and the design and implementation of regulations.

The waves of regulatory reform in countries like Australia and New Zealand indicate that the road to a quality RMS is not straightforward. At the same time, however, the 'regulatory policy latecomers' like Malaysia and Viet Nam (compared to the 'regulatory policy front runners' such as Australia and New Zealand) show that major programmes on reducing compliance cost and streamlining administrative procedures, reducing the quantity and improving the quality of regulations, and embracing good regulatory practice (GRP) can be important pillars of a country's overall growth, competitiveness, investment attraction, and structural adjustment strategy.

Malaysia's National Policy on the Development and Implementation of Regulations (NPDIR) (MPC, 2013) – with the principles, implementing institutions, and implementing mechanisms – provide an example of an institutionalised strong commitment at the top leadership to 'improve the rule-making process... [and] ... [effective] regulations [that] keep pace with changing times and circumstances... [and that] enhance efficiency and accountability and at the same time promote greater participation, inclusiveness and ownership of the problem solving process' (Tan Sri Dr Ali Hamsa, Chief Secretary to the Government of Malaysia, in MPC, 2013).

Thailand's Royal Decree on Review of Law and Licensing Facilitation Act, both enacted and came into force in 2015, provide a strong legal basis for substantial reform towards greater transparency of laws and regulations, greater focus on lessening the burden of regulations on the public, greater coherence of

regulations, and better enforcement of regulations. The following provided a strong foundation for the establishment of a well-performing RMS in Thailand: (i) requirements of review of laws and the attendant subsidiary rules and regulations every 5 years at least; (ii) accessibility of the laws, rules, regulations, and procedures by the public preferably by information technology system; (iii) inspection by the Public Sector Development Commission whether the work flows and periods of time for the granting of licences stipulated in the manuals follow the rules and procedures of good governance; (iv) establishment of a Service Link Centre in each government agency to receive applications for licences and provide needed information (and, where necessary, a One-Stop Service Centre to receive applications for all licences electronically); and (v) greater accountability of front-line government officials for unreasonable delay in their service provision. The challenge now is to ensure that those two landmark laws are indeed implemented well within the next 2 years as stipulated in the two laws.

For Korea, President Park Geung-hye administration's '...great effort to change the culture of civil service that is conducive to regulatory reform...[under] the administration's governance philosophy of openness, sharing, communication, and cooperation' (Kim and Choi, 2016, pp.7–8) brings out the fact that embedding GRP principles in regulatory practices and administration may call for change in the culture of the bureaucracy, which can be expected to take some time.

It is worth noting that in the case of Singapore, embedding GRP principles was not the result of structural reform programmes; rather these sprang from broader public governance reforms (e.g. administrative, institutional, attitudinal) since its independence with the mindset that '...any regulation... [is] a mechanism to facilitate the creation of wealth and income... [and the country's] regulatory policies ... [need to be ] improve[d] and fine-tune[d]...to better serve stakeholders' (Lim, 2015, p.15). Such mindset is supported strongly by the highest political leadership, the legal institution, and judicial independence in Singapore (Ibid.).

## **2. Deep and continuing engagement of stakeholders**

Malaysia's NPDIR is very clear on the consultation process and engagement with stakeholders:

*Regulators proposing new regulations or changes must carry out timely and thorough consultations with affected parties. The consultation effort should be proportionate to the impact of the proposed regulation. 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. Regulators must clearly set out the processes they use to allow affected parties to express their opinions and provide input. In particular, regulators must be able to identify and contact stakeholders, including, where appropriate, representatives from public interest, employees and consumer groups. Consultations should begin as early as possible in order to get stakeholders' inputs on the identification of the problem, as well as on proposed solutions.*

*Other regulators having an interest in the matter must be consulted. Regulators must determine what, if any, related regulations already exist and which other departments and agencies are involved. New regulations must be coordinated with existing ones to avoid duplication and to take advantage of possible efficiencies.*

In fact, there is deep and continuing engagement with the business sector in Malaysia best exemplified by the PEMUDAH Task Force and its working groups. In addition, in the methodology used by the Malaysia Productivity Corporation (MPC) in its Reducing Unnecessary Regulatory Burden (RURB) studies and initiatives, the stakeholders, mainly business sector, are heavily consulted and engaged in the preparation of, and public consultation regarding, its issues and options papers.

Deep and continuing engagement with stakeholders, especially the business sector, is also a characteristic of many relatively successful cases of regulatory reform and management. In Viet Nam's Project 30, the engagement was both at the highest policy level and at the individual level. The Advisory Council of Administrative Procedures Reform (ACAPR) provided strategic advice to the Prime Minister's Special Task Force that oversaw the implementation of Project 30. ACAPR's 15 working groups collected factual evidence on burdensome individual procedures for business and citizens, identified missing administrative procedures during the inventory stage, provided information on inappropriate procedures

that need to be modified, and identified priority areas for review and proposed solutions to simplify administrative procedures. ACAPR consisted of 15 members from Vietnamese businesses; the European, American, and Korean chambers of commerce; and the academic sector. Together with the 15 thematic groups, over 300 Vietnamese and foreign businesses and academics were represented (see OECD, 2011, pp.48–50). In addition, anybody can send their comments, complaints, and recommendations on any administrative procedure stipulated in the current laws, decrees, and sub laws to the Ministry of Justice. From 2011 to early 2013, the Vietnamese government received 1,750 recommendations from the public and business sector regarding unreasonable administrative procedures (Vo and Nguyen, 2015, p.16).

Korea's case is similar to that of Viet Nam, with deep engagement at both the topmost policy level and at the individual level. However, the scope is on all regulations (except on taxation, national defence, and punitive measures) and not only administrative procedures. It is also more extensive as the formal linkages go down to the local governments. At the topmost policy level, the Regulatory Reform Committee (RRC) – consisting of civilian members, government members, and two co-chairs – drives the process (the Prime Minister and a civilian co-chair). The RRC manages the country's RMS and reform policies through the Prime Minister and with the aggressive participation of the private sector and use of the RIA. The central administrative agencies and local governments have their own regulation review committee, consisting of civilian representatives and government officials similar to the RRC. In addition, the government's website for regulatory reform allows citizens to voice their opinions on everything related to regulations and regulatory reform; recommendations for improving the RMS need to be replied to within 14 days (see Kim and Choi, 2016).

Singapore's Pro-Enterprise Panel is comprised mainly of the private business sector, although it is chaired by the head of the civil service. The panel is tasked to proactively solicit feedback from the public and get suggestions on rules and regulations, and engages government agencies to review those rules and regulations to reduce their burden on business (Lim, 2015, p.6). The Philippine National Competitiveness Council (NCC) and its working groups have private sector members who are the drivers of the business-related regulatory reform, albeit advisory, recommendatory, and facilitative in nature. Interestingly, both Australia and New Zealand do not have formal regulatory institutions where the private sector sits, except for an ad hoc task force such as Australia's Task Force

on Reducing the Regulatory Burden on Business. Nonetheless, the private business sector, especially the lead business associations, is consulted on regulatory proposals and are part of the RIA. New Zealand's consultation requirements are largely informal and undertaken on a case-by-case basis; nonetheless, the culture is that there are strong expectations for early and often consultation with the concerned stakeholders.

It may be noted that the private sector (primarily the business sector) sitting in an institution that has a bearing on regulatory issues does not necessarily lead to significant influence on the regulatory regime. In the Philippines, the predecessor of the NCC, the Public–Private Task Force on Philippine Competitiveness, was less successful because there was less political support at the top compared to the NCC. Similarly, the effectiveness of Japan's Council for Regulatory Reform, an ad hoc institution composed of business leaders and private sector experts, and its similar successors depends largely on the leadership of the Prime Minister (Yashiro, 2015, pp. 12–13). In the end, it is either through a strong political commitment to better regulations and regulatory regime by the top leadership or a culture of consultation by a bureaucracy where GRP is embedded, or both, that deep and continuing engagement by the stakeholders bear significant fruits. What is clear is that for a country to gain the benefits of regulatory reform, both political commitment and a culture of consultation and stakeholder engagement are necessary.

### **3. Reducing Unnecessary Regulatory Burden (RURB)**

Virtually all regulations impose burden; the challenge is in minimising unnecessary regulatory burden. Regulations impact on costs of business through (i) administrative and operational requirements, (ii) requirements on the way goods are produced or services supplied, (iii) requirements on the characteristics of what is produced or supplied, and (iv) lost production and marketing opportunities due to prohibitions (MPC, 2014, p.12). Where regulations are poorly designed or written and/or implemented, they would impose unnecessary regulatory burdens. Such unnecessary burdens include excessive coverage by a regulation; prescriptive regulation that unduly limits flexibility of business to tap better technology, meet customer demand, or meet the objectives of the regulation in different ways; overly complex regulation; unwieldy licence

application and approval processes; and requests to provide more information than needed or more than once (Ibid., p.14).<sup>17</sup>

There are other more economy-wide burdens of poorly designed and implemented regulations. These economy-wide costs are the result of economic distortions such as lower investment and innovation as well as dead weight losses from resource misallocation; there may also be benefits foregone arising from ineffective regulations (Biau, 2015). These costs can add substantially to the compliance and administrative costs to business arising from poorly designed or implemented regulations.

Initiatives on RURB in ASEAN, primarily by Malaysia, have focused on addressing compliance and administrative costs to business as well as administrative costs to regulators. The approach used by the MPC in undertaking its RURB initiatives is worth bringing out as a possible template for other ASEAN Member States (AMSs) and as an example of effective public–private engagement in addressing regulatory burdens. MPC acts as the honest and creative broker between the private business sector and the regulators through intensive consultations with stakeholders and in-depth analyses of options. The regulated businesses identify the regulatory burdens and suggest ways of reducing unnecessary regulatory burdens. The regulators highlight the regulatory objectives and the role of regulations in protecting public health, welfare, safety, environment, among others. The role of MPC is to ‘...(a) identify the least burdensome tools for achieving regulatory ends without slowing economic growth, innovation, competitiveness, and job creation; (b) present recommendations [to PEMUDAH]; (c) provide a forum and a process for identifying RURBs and finding answers...’ (Seman, 2015, slide 4).

Methodologically, MPC’s approach involves both RURB study and RURB ‘solutioning.’ The RURB study examines comprehensively a sector in terms of value chain, maps regulations using the value chain, identifies and validates unnecessary regulatory burdens on business, and makes recommendations to remove or reduce the burdens. RURB solutioning uses a case study approach and pilot implementation involving one firm and that is replicated later on to other stakeholders (see Seman, 2015).

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<sup>17</sup> See MPC (2014), A Guide to Reducing Unnecessary Regulatory Burdens: Core Concepts for more detailed discussion.

Note that in both the RURB study and RURB solutioning, intensive engagement with the concerned business sector and the regulators is necessary. Thus, MPC's RURB methodology provides one structured and effective approach to deeper engagement with stakeholders discussed in the previous subsection. It is also a robust approach to generating consensus on ways of reducing unnecessary regulatory burdens on business.

Full-blown economy-wide analysis of impacts of regulations may require economy-wide models. However, this calls for great technical skills which are particularly scarce in many developing AMSs. Nonetheless, it is also worth noting that the RURB methodology above provides some approximation of cross-sectoral or economy-wide effects because of the value chain perspective used in RURB studies. For many regulatory issues, that may suffice.<sup>18</sup>

#### **4. Jump-starting the GRP agenda**

Countries differ in their regulatory systems and face different pressures for regulatory reform. Thus, the experience of the OECD has been that the pathways to GRP varied among OECD countries. Many have focused first on cutting red tape and managing their stocks including regulatory guillotine (e.g. Korea), and a few others (e.g. New Zealand), in managing the flow of new regulations. In the experience of the 10 countries in the Project, in tandem with sectoral and macrostructural reforms, the road to GRP started with an inventory of regulations and then the administrative streamlining of cutting red tape or modernising of business regulations. Thus, for example:

- In Korea, the RRC under the Kim Dae-jung administration had all 11,125 regulations registered. Of these 5,430 (48.8 percent) were abolished and 2,411 (21.1 percent) were improved in 1998. Of the remaining 6,811, 704 were abolished and 570 were improved. (The Committee had a target of a 50 percent reduction in regulations.) In 2000, it reviewed 2,533 lower level administrative orders (e.g. public announcements, guidelines, and by-laws) and 1,675 quasi-administrative regulations of associations and public corporations. Of the total, 2,045

<sup>18</sup> ERIA is currently undertaking a project together with MPC on reducing unnecessary regulatory burden on a selected priority integration sector in nine AMSs, involving country teams from the nine AMSs, and a short training of the country teams on the RURB methodology at MPC.

(57.2 percent) were modified (see Kim and Choi, 2016, pp.5–6). Korea's case is a good example of the use of the *regulatory guillotine* preceded by an inventory of regulations to address *regulatory inflation*.

- In Viet Nam, Project 30 undertook the first comprehensive inventory and review of all regulations with administrative procedures (APs) during 2007–2010, followed by a review and systematisation of legal normative documents. The APs were reviewed in terms of necessity, legality, and user friendliness. As a result, Viet Nam created a national standardised database of 5,700 APs (stipulated in 9,000 regulating documents) as of October 2009. The review in 2013 of legal documents issued by the central government showed that 7,981 were still in effect, 5,996 have already expired in effectivity, and 1,313 needed to be amended or supplemented (see Vo and Nguyen, 2016, pp.20–21).  
The inventory and review allowed the start of regulatory simplification and guillotine process. In 2010, the government resolved to simplify 258 APs in the priority areas of taxes, customs, construction, and real estate. To simplify these required amending 14 laws, 3 ordinances, 44 decrees, 8 Prime Minister's decisions, 67 circulars, and 33 ministerial decisions. Ministers and agencies were held responsible to amend documents for those APs that do not require changing laws and ordinances. By December 2014, 4,383 out of the 4,723 existing APs had been simplified, or a simplification rate of 92.8 percent (Ibid., p.9).

Also, the government issued a decree setting up the Agency for AP Control at the central level (Ministry of Justice) and offices for AP control in ministries and provincial offices. Among the important 'mandates' of the decree are the prohibition of commune and district local governments from issuing APs and the imposition of an impact analysis of the APs in proposed laws, decrees, or circulars.

- In Malaysia, the focus is on business-related regulations. 'There are over 3,000 regulations weighing heavily on business, administered by 896 agencies at the federal and state levels' (NEAC in Seman, 2013). Addressing this, Malaysia's PEMUDAH Task Force and its focus groups have been continuously working at modernising business regulations, under thematic areas similar to the World Bank's Ease of Doing Business (EODB) process to allow for global referencing. Thus, for example, under 'starting a business', the number of procedures and days (using EODB methodology) declined from 10 procedures and 37 days in 2007 to 3

procedures and 6 days in 2013 (Abdul Aziz, 2013). Similarly, the focus group on trading across borders have continuously worked on improving the customs procedures – such as advance manifest submission, workflow to move physical examination from beginning to end, etc. – and thereby reduced further the number of documents required and the number of days to import and export. In the process it also moved up Malaysia’s global ranking from 18 in 2012 to 6 in 2014 (Saat, 2013). There are many more examples or areas of process improvement and improved ranking globally, such as dealing with construction permits. In business process re-engineering, there was a systematic review of all business licences, legislations, and regulations, with the end view of eliminating archaic licences and of automating licences throughout the country into BLESS (Business Licensing Electronic Support System). As of the third quarter of 2015, 317 licences had been automated into BLESS (Hussain, 2015). Similarly, the government has been aggressively expanding online payments of government services (through *myBayar*), from 42 agencies and 70 agencies in 2008 to 402 agencies and 712 services in 2014 (Ibid.).

- Thailand, the Philippines, and Indonesia are also giving particular importance to addressing regulatory and administrative bottlenecks to improving the EODB and the investment climate in the three countries. Indeed, a major work of the NCC is on initiating, implementing, and monitoring EODB reforms. There are 10 EODB work teams, each team in charge of one EODB indicator – e.g. starting a business, dealing with construction permits, getting electricity, registering property, getting credit, etc. Each work team is composed of the relevant agencies for the indicator as well as private sector representatives. The composition is similar to Malaysia’s PEMUDAH Task Force in that both private and government stakeholders are included in each working group. The country has seen marked improvement in its EODB ranking globally, but there is still much to be done given that the country is still very far from the global leaders (see Moreno, 2014).

In the case of Indonesia, the slew of reforms undertaken in the country over the past several months since the third quarter of 2015 are also meant to ease doing business and to improve investment facilitation in the country. Thailand’s Licensing Facilitation Act aims to effectively change the culture of licensing in the country with the ultimate goal of improving EODB and the country’s international competitiveness. The change in the culture of licensing is towards less discretion by officials and towards

more standardised and more transparent procedures for the granting of licences, greater coordination among government authorities granting licences, reduced unnecessary administrative burden and compliance costs to people and investors, and greater accountability of front line officials for failure to comply with the standard rules and manuals (see Nilprapunt, 2015c).

In Korea, the regulatory guillotine used to address regulatory inflation during the Kim Dae-jung administration was followed up by initiatives aimed at improving the quality of regulations, greater transparency of regulations through a web portal, a mandate for the regular review of regulations, and the deepening of regulatory reform. In Malaysia, the modernising of business regulations deepened into the NPDIR that institutionalised GRP principles, periodic review of regulations, and a rule-making process for quality new regulations. Malaysia, through the MPC, has been refining its RURB methodology as part of its review of regulations in priority areas. In Viet Nam, the simplification of administrative procedures led to simplification of regulatory documents and the issuance of Resolution 19 in 2014 on key measures, with targets, focused mainly on EODB areas to improve the business environment and strengthen national competitiveness. Resolution 19 deepened the regulatory reform by changing important laws to make them more business friendly. Thus, for example, the Enterprise Law effectively abolished five procedures and dramatically reduced the time needed for business registration from 64 days to 6 days. The Investment Law eliminated investment certificate requirements on all domestic investment projects (see Vo and Nguyen, 2016).

There is some logic in giving emphasis at the start of a regulatory reform process to the reviewing and simplifying or modernising of procedures and regulations. To a large extent, streamlining administrative procedures, cutting red tape, and modernising business regulations are the 'low-hanging fruits,' easiest to gain, at the start of reform because unnecessary red tape is one of the most visible signs of bureaucratic inefficiency. As unnecessary red tape adversely affects virtually everybody, it is relatively easy to gain the support of key stakeholders in its review, commencing a deeper engagement for later, more difficult reforms. As the picking of 'low-hanging fruits' results in early and clear benefits to stakeholders and the general public, it increases credibility of the government's regulatory reform efforts, further bolstered by increased private sector support for the drive to improve regulations and procedures and the rule-making process. Improving regulations and the RMS can face significant headwinds as pressures

from potentially affected interests in some key regulations; having broad public support arising from clear and visible benefits from the low-hanging fruits strengthens the '...legitimacy of the program and aids its prospects for survival' (Peter Carroll, personal communication).

It is worth noting that success in reducing red tape and modernising business regulations does not necessarily lead to deepening the regulatory reform effort and the embrace of GRP and a well-performing RMS. Ultimately, in the three examples above, the underlying animus for deeper regulatory reform, better regulations, and better ways of managing existing and new regulations is the country's drive to improve its competitiveness in trade and investment in the evolving and increasingly competitive global market place. At the same time it is supportive of the pursuit of other societal objectives such as on the environment and quality of life, and thereby in the process improve economic and social welfare to its citizens.

##### **5. Regulations and the quality of RMS institutions (oversight, coordination, training)**

As noted above, there is merit in starting the GRP and quality RMS road with 'low-hanging fruits' like cutting red tape, simplifying administration, and modernising business regulations. This is because after the low-hanging fruits are picked, further regulatory reform may call for more difficult changes in the politically sensitive laws. As Carroll and Bounds (2016) emphasised, '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...' (p.32). It is apparent that in such intensely political space, RMS institutions would need to be of good quality, open, and creative to be credible; bring clarity to policy options; and be able to facilitate consensus among contending interests on the way forward.

In politically sensitive areas, it is best that the lead oversight institution, which has the political or legal authority to make decisions and recommendations, is supported strongly by a technically competent, and preferably relatively

independent institution, to provide the technical analysis of options and impacts of regulations and alternative options for revising old or instituting new regulations. Thus, for example, Viet Nam's Special Task Force for Project 30 had 50 permanent staff who included experts on law and economics seconded from the Office of the Government, ministries, and ministerial-level agencies. The Special Task Force and ACAPR also had private sector experts that were seconded to both under the USAID/Viet Nam Competitiveness Initiative programme. The programme also provided support to Project 30 through study missions, technical support, design and support of the national database, and training programmes. The International Finance Corporation (IFC) supported the measurement of administrative burden (see OECD, 2011, pp.39, 47).

The two best examples of a strong, independent oversight institution are the MPC and the Australian Productivity Commission. The Australian Productivity Commission is an internationally highly regarded institution for its analyses and expertise especially on sectoral, industry, and microeconomic aspects of reform. The Commission's competition policy and regulatory reviews have helped shape Australia's policy debates. Given the institution's primary focus on productivity, the MPC – also a government agency – has a strong linkage with the private business sector. As the secretariat to PEMUDAH, that linkage, focus, and credibility with the private business sector came in very handy to MPC. Its technical expertise, credibility to both the private sector and the government agencies, and its political backing under PEMUDAH and the Ministry of International Trade and Industry enabled MPC to facilitate consensus among the members of the working groups. MPC has become a go-to agency for the private business sector to raise and discuss problems that they face with Malaysian regulations and procedures. MPC also provided a lot of training to concerned government agencies and local governments on the methodology used in EODB measures. As a key implementing agency for NPDIR, MPC supports the National Development Planning Committee (NDPC) in the review of the RIAs and RISs and provides training and guidance on GRP and RIA (e.g. best practices handbook), among others, to concerned agencies. MPC tapped OECD, Australian Productivity Commission, the World Bank, and others to train their staff and provide expert advice.

The good performance and impact of both MPC and Australian Productivity Commission suggest the merit of establishing such a productivity commission-type body, with its body of technical expertise and knowledge, as a source of independent and robust advice on microeconomic and regulatory

reform issues for the national government, especially in large countries where having such technical expertise in so many regulatory agencies would be difficult to attain and where an economy-wide perspective to regulatory issues becomes even more critical. A very small city-state like Singapore may not need such a productivity type body because it has a very small well-trained bureaucracy that is strongly attuned to the concerns of and impacts on business and other stakeholders. In effect, the whole bureaucracy mimics somewhat the function of a productivity-type commission.<sup>19</sup>

## **6. Keen sense of market and international competition and public-private collaboration**

It is worth noting that at least three of the major business reform programmes undertaken by the countries in the Project – Malaysia’s modernising business regulation under PEMUDAH, the Philippines’ NCC, and Viet Nam’s Resolution 19 – all use international benchmarks, primarily the EODB indicators. This reflects the view that regulations and outcomes of regulatory reform need to be benchmarked against international competition or international standards. This reflects the keen sense that countries compete for foreign investments and foreign markets, and maintaining or improving one’s competitiveness need to consider the performance of the competitors as judged by the same international benchmarks, like EODB.

The use of international benchmarks has helped focus the energies of related agencies and the private sector around performance-based measures. PEMUDAH has been the best known in the region in its success of driving the modernisation of business regulations in Malaysia. Nonetheless, the Philippines’ NCC initiatives have started to bear positive fruits, as indicated in the improvement in the ranking of the Philippines in EODB, from 138 in 2013 to 108 in 2014, and in the WEF Global Competitiveness Index, from 75 in 2011 to 52 in 2014 (Llanto, 2015, p.42). At the local level, Quezon City, which is part of Metro Manila, worked with NCC to streamline business procedures through a simplified business permit and licensing system, resulting in major reduction in procedures and time spent by the private sector and contributed to the increase in business registration in the city (see Llanto, 2015, pp.53–60). Thailand’s Law Reform Commission will use Thailand’s global ranking on EODB, on the burden of government regulations,

<sup>19</sup> Korea does not have a productivity commission but it has a number of highly regarded government-funded research institutions staffed by experts and highly educated researchers. They can serve like productivity-type bodies.

and on corruption – in both the World Economic Forum (WEF) and the International Management and Development indices – as the basis for the success of the reforms undertaken under the Licensing Facilitation Act and the Royal Decree on the Review of Laws (see Niprapunt, 2015c). Similarly, Viet Nam’s Resolution 19 explicitly uses the World Bank’s Doing Business indicators as a basis for setting specific targets and for monitoring compliance. The early results have been remarkable, with a marked reduction in the number of procedures and the length of time it takes to register a business, for example (see Vo and Nguyen, 2016).

Llanto, in assessing the NCC case and based on his discussions with NCC officials, offered the following lessons on competitiveness. The lessons are as valid in and relevant to many other countries and not just for the Philippines (pp.47–48):

1. **Transparency leads to competitiveness.** In 2011 and 2012, public infrastructure spending went down as the new administration wanted to review all infrastructure projects and procurement procedures. Public infrastructure spending picked up in the subsequent periods under better governance and some control over corruption. Investor confidence rose in response to better governance and transparency.
2. **Work in progress is not good enough... [and] it’s all about execution and delivery.** In competitiveness, the country is ranked and scored only when the job is completed and implemented.
3. **Teamwork is important, Avoid silos.** Not one government agency can solve interconnected problems. Coordination and commitment to reform are crucial.
4. **Focus on multiple fronts and not just on a single variable.** There is no single bullet, single solution to complex problems. Coordination is important to deal with multiple, complex issues.
5. **The competition never sleeps.** For instance, Singapore, one of the highest ranking countries in the world, is always on a continuous improvement programme.
6. **The bar always rises.** A competitive world raises the bar all the time, and the country should be ready for it.
7. **Speed-to-reform should be the new mantra.** Action plans more than feasibility studies.
8. **Maintain momentum.** The Philippines cannot afford to slow down the pace of reform. In fact, it should accelerate the reform process.

9. ***Embed and institutionalise change.*** Executive orders, legislations, laws are necessary for institutionalisation. But more important are actual practice, reform mindset, and culture of the country.
10. ***Public-private collaboration is important and effective.*** The public and the private sectors have their respective strengths and it is important to harness these for regulatory reform.

## **7. Regulatory reform as kaizen and investing in the regulatory institutions and bureaucracy**

Regulatory reform in a number of countries in the Project started as part of 'big bang' structural reform programmes (e.g. Australia, New Zealand, Korea, and Philippines). However, as the RMS is built up, regulatory change becomes a continuous process of adaptation to the changing environment; in effect, regulatory reform as kaizen or continuous improvement. The regular review of regulations and the use of a sunset clause in regulations in RMS is a mechanism that helps approximate kaizen. Two other elements are important towards embedding regulatory reform as kaizen. One, as noted above, is the use of continued regular engagement and a feedback mechanism between the regulators/bureaucracy and the stakeholders to help generate common consensus on the changes in the economic, technological, and regulatory environments and the determination of necessity for and evaluation of options as a response to the changing environments.

Two is a bureaucracy that is adaptive and capable of managing change. As the results of the deconstruction of the RMSs discussed above indicate, the wider public sector management context is important for effective RMS. This calls for a competent bureaucracy; this is especially so as the regulatory issues can become more complex and networked (involving a number of related areas and agencies), which may involve greater technical skills by the bureaucracy. Thus, there would be a need for investing in the skills and competence of the whole bureaucracy. Arguably, Singapore's system is akin to regulatory reform as kaizen.

It is valuable to have incentive structure that rewards innovation in the bureaucracy. An example of this is the recognition and promotion of the Malaysian customs personnel who collaborated with the MPC team to successfully refine customs regulations to allow a more streamlined flow of materials between Singapore and Malaysia, thereby reducing a multinational company's operating costs. This encouraged the company not to leave Malaysia and instead made Malaysia its regional operational hub and expanded its

operations there. Especially in developing countries where the civil service is often poorly paid and the implementation of regulations becomes an illegitimate source of extra income for officials, the successful implementation of regulatory reform may call for an incentive system in the bureaucracy that supports regulatory innovations undertaken by civil servants for the benefit of the economy and country.

Additionally, as in the case of Viet Nam where the international donor community provided technical support and training to the government in the implementation of Project 30, the poorer AMSs (i.e. Cambodia, Lao PDR, Myanmar) may need such technical support and training if they are to embark on significant efforts at inventorying, reviewing, and refining their regulations and administrative procedures. They may also need some assistance in developing their analytic capability on regulatory issues, perhaps through the establishment of a productivity commission institution in the countries.

## **8. Crises as opportunities**

The experience of a number of countries in the Project indicates that domestic economic crises and secular decline in competitiveness have been important triggers for significant reforms that in a number of cases led to concerted national efforts at improving the overall regulatory regime. These countries include Australia, New Zealand, and Korea among the OECD members in the Project. Even in Japan, it was the 'Lost Decade' of the 1990s that led the Japanese government to resuscitate regulatory reform under the Koizumi government in the early 2000s, and again after some years of hiatus, in recent years under the Abe government.

Among ASEAN countries, crises or secular decline in competitiveness seemingly is not as critical in the East Asian OECD countries. Malaysia's drive for GRP and a robust and efficient RMS appears to be heavily influenced more by its ambition to become a developed country (or at least a high-income country) by 2020 rather than because of an economic crisis. Similarly, Viet Nam's drive for a much-improved regulatory environment appears to have been a product more of a government-determined effort to markedly raise its investment and pace of economic development and transformation, rather than arising from domestic economic crisis. For a number of ASEAN countries, crises triggered substantial

domestic macroeconomic and sectoral reforms, but not yet a concerted push for improving the design and implementation of regulations (Indonesia, Philippines). Nonetheless, the Philippines' determined efforts to markedly improve its EODB global rankings – and the attendant improvement in regulatory processes and implementation in a number of business areas – in recent years are due in large part to dissatisfaction in the country with its poor foreign direct investment performance and low economic growth compared with its reference countries in the region for so long.

Similarly, the recent policy packages of the incumbent Indonesian government – a number of them related to easing the processes of business and investment facilitation – are to some extent a reaction to the significant slowdown in the country's economy. One of the top priorities of Thailand's new government under Prime Minister Prayut Chan-o-cha is the improvement of the country's 'national competitiveness' through EODB and regulatory transparency. Arguably, this emphasis on increasing the country's national competitiveness – together with the other priorities of national peace keeping, constitution drafting, reconciliation, and counter-corruption (Nilprapunt, 2015c) – reflects the government's deep concern about the very slow growth of the Thai economy in recent years and the apparent decline in the competitiveness and investment attractiveness vis-à-vis emerging countries like Viet Nam.

The potential of crises as a catalyst for furthering regulatory reform and improved regulatory practices is highlighted by Deputy Minister Rizal Lukman in his keynote address during the Second EAS Regulatory Roundtable (pp.2–3):

*The current dynamics of the economy which is indeed slowing across the globe, and not just in this region, calls for a greater need to develop good regulatory practices and to divest or remove unnecessary regulatory burden, or unnecessary regulations that hinder or delay the movement of goods, services, and people and even movement of information.*