Chapter **1**

Reducing Unnecessary Regulatory Burdens in Selected Sectors in ASEAN

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[1] Introduction: Why RURB?

The ASEAN Economic Community Blueprint 2025 provides a succinct and compelling rationale in response to the question, "Why reduce unnecessary regulatory burdens (RURB)?" The Blueprint states:

> The regulatory environment has substantial impact on the behavior and performance of companies. The dive towards a competitive, dynamic, innovative and robustly growing [AMS and] ASEAN entails that regulations are non-discriminatory, pro-competitive, effective, coherent, and enabling of entrepreneurship, and the regulatory regime responsive and accountable.. As regulations are essential for the proper functioning of society and economy, the challenge for ASEAN Member States is to ensure that they effectively address the identified problem while minimizing the cost of compliance to, as well as preventing unwarranted distortions and inconsistency arising from, the regulations.[1]

This statement pertains to the importance of the institutionalisation of good regulatory practice (GRP) in ASEAN to support the goals of the ASEAN Economic Community (AEC). The statement goes on to describes perfectly the fundamental goal of RURB: ensuring regulations do not impose unwarranted or unnecessary compliance costs, distortions or inconsistencies, in design and

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[1] ASEC (2016), ASEAN 2025: Forging Ahead Together. p.76.

implementation, as these regulations address the problems they are meant to address.

The focus of RURB is existing regulations. As such, it complements regulatory impact assessments (RIA), which focuses on new regulations, another component of GRP. Indeed, regulatory management tools are an increasingly important way to improve regulatory practices, through the use of evidence-based methodologies, including vertical ex-post evaluation and horizontal ex-post evaluation.

In addition, the need to institutionalise GRP at the national and international level - through international regulatory cooperation (IRC) - is becoming more obvious as governments need to do more to create a business-friendly environment.

The Malaysia Productivity Corporation (MPC), in its Handbook on Regulatory Reform, provides an even more compelling rationale for investing in and undertaking GRP and RURB. It states:

> Private sector participation in the economy and innovation require a regulatory environment that provides the necessary protections and guidelines, while promoting competition. Too often, Malaysian firms face a tangle of regulations that have accumulated over the years and now constrain growth. At the same time, regulations that would promote competition and innovation are absent or insufficiently powerful.[2]

Substitute Malaysia with most other AMSs and the statement makes an equally accurate description. As such, it would be ideal if AMSs undertake a comprehensive review of their business regulations and improve processes and procedures with the end view of reducing regulatory burdens on business, similar to the work taking place in Malaysia through the MPC and its PEMUDAH Task Force, mandated to modernise business regulations.

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[2] MPC (2016), Innovation through Collaboration [Handbook on Regulatory Reform], p.19.

The box below helps to define what regulatory burdens are in terms of the impact of regulations on business, and when regulations do impose unnecessary burden on business. Regulations are important, especially those that have legitimate social objectives, for example, concerning health, food quality, the environment and safety. So, some regulatory burdens are a necessary part of doing business. However, when regulations are poorly designed or implemented, they can become an unnecessary regulatory burden on firms.

Box 1: Key Definitions [1]

Regulatory Burdens: Arise from the costs imposed by regulation and enforcement that would otherwise not arise for businesses. Where requirements from regulation create a change in business behaviour and practices, a regulatory burden can be said to exist. Regulations can adversely impact on businesses in various ways. Most fall under the following four categories of cost impacts:

- Administrative and operational requirements, such as: reporting, record keeping; getting legal advice, training;

- Requirements on the way goods are produced or services supplied, such as: prescriptions on production methods; occupational registration requirements, requiring professionals to use particular techniques

- Requirements on the characteristics of what is produced or supplied, such as: being required to provide air bags in all motor vehicles; requiring teachers or trainers to cover particular topics

- Lost production and marketing opportunities due to prohibitions, such as: when certain products or services are banned.

Unnecessary Regulatory Burdens: While it is usually necessary that some burden is placed on business for regulation to achieve objectives, where regulation is poorly designed or written, or it is not administered or enforced well, it may impose greater burdens than necessary. In reviewing existing regulation, it is those regulatory burdens which can be considered 'unnecessary' that are of primary interest.

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[1]http://www.mpc.gov.my/reducing-unnecessary-regulatory-burdens-rurb-2/#1459471256887-6d3f19cf-97f6

The following cases are examples of burdensome regulations[3]:

• When a regulation affects more activity than what was intended or required to achieve by the regulation's objective(s);
• A subject-specific regulation that covers much issues as other more-generic regulations;
• Prescriptive regulations that unduly limit firms' decisions on technology and product choices as well as the objectives of the regulations that should be met more efficiently;
• Overly complex regulations;
• Complicated and inefficient licence application and approval processes;
• Rules or enforcement approaches that inadvertently force firms to operate less efficiently;
• Unnecessarily invasive regulators' behaviour, e.g. too many inspections;
• Overlap or conflict of activities of different regulators; and
• Inconsistent interpretation and/or application of regulations by regulators.

The list above shows that there are many ways by which regulations, either in design or in implementation, can inflict unnecessary regulatory burdens on firms.

The MPC developed the RURB methodology to review and improve business-unfriendly regulations to support the country's policy of institutionalising GRP. The Malaysian government has adopted this as a critical strategy in the country's drive to become a high-income country by 2020. Through its endeavours in this field, MPC has reported a number of success stories[4] in the implementation of RURB.

Based on the successful implementation of the RURB methodology by MPC, the Economic Research Institute for ASEAN and East Asia (ERIA) decided to undertake an ASEAN-wide study (with the exception of Singapore) to explore the RURB methodology as a tool to encourage and support regulatory reform in AMSs, and thereby support the implementation of the regulatory reform section

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[3] The list of the type of unnecessary regulatory burdens is taken from MPC (2014), 'A Guide to Reducing Unnecessary Regulatory Burdens: Core Concepts', Malaysia Productivity Corporation. See: http://www.mpc.gov.my/wp-content/uploads/2016/04/CHAPTER-3-1.pdf, p. 13.

[4] Examples can be found on its website: www.mpc.gov.my

of the ASEAN Economic Community Blueprint 2025. The ERIA's RURB project is a follow up to its earlier study on the regulatory management systems in selected countries in ASEAN and East Asia.[5]

This volume presents the results of the ERIA RURB project. The RURB project involves country studies for a sector of policy or export interest to the country. The studies involve an examination of:

a. The regulations that affect the industry;
b. Dialogue with the private sector to generate information on which regulations they view as imposing unnecessary regulatory burdens on them;
c. Options to reduce regulatory burdens while taking note of the concerns of both the regulators and the private sector.

The RURB approach also involves engendering 'regulatory conversations' among the regulators and the private sector with the view of arriving at a workable solution to the unnecessary regulatory burden.

This volume presents case studies for Brunei Darussalam, Cambodia, Indonesia, Malaysia, the Philippines, Thailand, and Viet Nam. It also includes two special papers, one explaining what RURB is and the other, a fascinating case study of the regulatory reform to reduce regulatory burdens on developers on sewerage works in Malaysia.

Following this introduction, this chapter continues with a brief literature review on regulatory burden and reform. The third section provides the contexts of the RURB case studies in terms of the regional and national efforts at promoting GRP. The fourth section describes the RURB methodology. The fifth section goes on to present its application to the country studies as well as the major findings and insights from the country case studies. The chapter finishes with brief concluding remarks.

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[5] See Intal, P. and D. Gill (2016), *The Development of Regulatory Management Systems in East Asia: Deconstruction*, Insights and Fostering ASEAN's Quiet Revolution. Jakarta: ERIA, and D. Gill and P. Intal Jr. (eds.) (2016), *The Development of Regulatory Management Systems in East Asia: Country Studies*. Jakarta: ERIA.

[2] Brief Literature Review on Regulatory Burdens and Reform

In recent years, several studies have looked at various aspects of regulatory regimes and their impact. The studies reviewed here focus on:

a. Impact of illegal payments;
b. Impact of high business entry barriers;
c. Impact of regulatory reforms.

The academic literature deals primarily around the World Bank's 'Ease of Doing Business' (EODB) rankings, with a focus on measurement and entrepreneurship. From these reports, one can conclude that there is a direct correlation between regulations and economic performance. However, the studies also show how regulations can become onerous, resulting in inefficiencies in the economy. These inefficiencies are found in many aspects of doing business, including dealing with construction permits to ease starting a business.

2.1 | Impact of Inefficient and Complicated Business Regulations and Procedures

As regulations involve complicated and technical procedures, they give rise to circumstances where businesses may opt to pay bribes as a quicker and easier solution to dealing with regulations rather than spending time and resources to deal with the regulations as stipulated (Malomo, 2013).

The impact of such payments goes beyond the cost of the unauthorised payment itself. Thus, for example, poor quality infrastructure with little funding for maintenance can be a result of giving illegal payments to overcome regulations (Kenny, 2007). Dreher (2005), in his cross-country study, shows that a 1-index point increase in corruption, as measured by the International Country Risk Guide, could result in a 0.13% reduction in gross domestic product (GDP) growth, equivalent to US$425 per capita in GDP. This paper is based on cross-sectional data from 71 countries averaged over the 1975-2001 period.

Several institutions have developed tools to measure inefficiency in business regulations. The EODB reports measure how the regulatory environment is

supportive of business operations through 10 indicators. Also, evidence-based studies, using the EODB database, show how inefficient business regulations can translate into poor economic performance. By looking at business regulations at the aggregate level, Divanbeigi (2015) showed, using EODB distance to frontier data, that a country with better business regulations results in a higher level of firm creation. Results show an improvement of 10 points in the overall EODB distance to frontier score, correlated to the increase by approximately 0.6 business per 1,000 adults.

Other research tries to estimate the impact of administrative burden on growth. Poel et al. (2014) estimate the administrative burden by using EODB indicators as measurement for panel data regression analysis in 182 countries. The results show that reducing the number of procedures and time needed to complete business requirements has a significant and positive effect on economic growth, as measured in GDP. This research uses 26 countries within the European Union (EU) to test the same effect of administrative burden to economic growth. The findings suggest that lowering the administrative burden by 25% would increase economic growth in the EU by 1.62%.

2.2 ▌ Impact of High-business Entry Barriers

Freund and Bolaky (2008) use EODB indicators on starting a business, labour market regulations, and registering property as the basis of their regulation indices. The methodology used is a standard cross-country regression, with error adjusted for heteroscedasticity. Their research shows a significant decrease in per-capita income in a country where business is highly regulated. Moreover, numerous regulations also reduce significantly the link between an increase in trade and higher per-capita income. Conversely, well-managed regulations tend to have the opposite effect. Freund and Bolaky also emphasise how business entry regulations have the strongest and most significant effect on a country's per-capita income compared to labour regulations and property rights regulations.

Ciccone and Papaioannu (2007) show that reducing the time needed to register new businesses results in more business entering the high-growth industry. With the median of business growth around 1.05% across data, the business growth

difference is approximately from 0.385% to 0.40%. This research tries to estimate the correlation between entry regulations and employment growth by using ordinary least square and instrumental variable regression combined with data from the United Nations Industrial Development Organization as the dependent variable, while the time needed to comply with government procedures and industry employment, taken from Djankov et al (2002), acts as an independent variable.

Norbäck et al. (2014) also prove that a higher entry barrier, interpreted as a higher number of days and procedures to start a firm, can result in low level of country openness in international trade. Their study also noted that a high entry barrier correlates with high levels of corruption in a country. Their research uses EODB database business start-up indicators to measure entry barrier, collected from 183 countries over the 2003–2010 period.

Besides using EODB data to measure the inefficiency of business regulation, an attempt to measure how regulations on business entry can drive the creation of new firms has been made (Klapper et al., 2006). By using data from a comprehensive database of European firms, it shows that the effect of a business entry regulation could yield a 10% point difference in firm entry across industries in Europe. Furthermore, industries with a high firm entry could be affected the most by entry regulations. Similar to Klapper et al., by using United States Entry Regulation Data (Fisman and Allende, 2010), one finds that high entry regulation industries can result in low firm entry compared to low entry regulation industries. These findings show that industries respond to growth opportunities through the expansion of existing firm in high entry regulation industries. Meanwhile, in low entry regulation industries, the response is mostly through the creation of new firms.

2.3 ▌ Impact of Regulatory Reforms

To eliminate the inefficiencies caused by burdensome regulations, some research tries to suggest that regulatory reforms are the solution for the inefficiencies. Bruhn (2008) studies regulatory reform in Mexico, consisting of simplifying business entry procedure by reducing the number of procedures and days needed to start up a business. This reform translates into an increase of 30,678 firms created in all 34 municipalities, equivalent to 902 firms per

municipality. This reform also helped to increase wages by 2% more than the pre-reform wage increase.

Similar to this regulatory reform in Mexico, Aghion (2008), and Yakovlev and Zhuravskaya (2011) study regulatory reforms in India and Russia, respectively. The study on regulatory reform in India is based on the dismantling of Licence Raj from 1980 to 1990. The Licence Raj was key to the centrally controlled planned economy that managed the entry and expansion of firms in the manufacturing sector; a time when up to 80 agencies had to be satisfied before a firm would be granted a licence to produce, and even then, the state would decide what was to produce, at what price, and what sources of capital were to be used. The reform resulted in an increase in production output in the manufacturing sector, although the results varied upon whether states had pro-employer regulations or not, the former giving rise to a significantly larger increase in production and output. This finding was the result of employing a difference-in-difference econometric specification.

The regulatory reform in Russia study focuses on the simplification of inspections, licences, and business registration. By using instrumental variable and 2-Stage Least Square (2SLS) regression on the monitoring of administrative barriers to small business data, the results show that regulatory reform has a positive effect on small business employment in regions with a transparent government (the study contrasting regions based on the transparency of their governments). Looking at the outcome of reforms in the Samara region, reform on firm registration resulted in an increase in 1% point of the small business share.

Gamboa-Cavazos and Schneider (2007) conducted research on bankruptcy law reform in Mexico. The bankruptcy law, which had been overly protective of the debtor, was reformed in May 2000, thereafter limiting the rights of debtors. By using data from 78 bankruptcy cases from 1991 to 2005, the results showed that changes in the law led to a decrease in the average time spent in bankruptcy from 7.8 years to 2.3 years, along with higher rates of recovery from bankruptcy from US$0.19 to US$0.32.

Besides simplification of procedures, regulatory reform can also take place as formalisation of property rights. There are many examples on how this

formalisation can benefit the economy, as shown by Ali et al. (2016). The research of Galiani and Schargrodsky (2010) shows that the formalisation of property rights in Rwanda and Buenos Aires can lead to increasing long-run investment. Ali et al. (2016) find that successful land tenure regularisation can lessen social disputes and tensions arising, thus ensuring greater transparency and equity in terms of government revenue collection. From 2014 to 2015, the government of Rwanda secured around US$2.6 billion worth of mortgage against fraud. Galiani's research on Buenos Aires shows that when Congress passed a law expropriating lands from the rightful owners and transferring the entitlement to informal settlers, the result was an increase in housing investment and quality of education of the informal settlers.

After noting how both regulatory burdens and regulatory reforms affect economic performance, reducing unnecessary activities by government on businesses may play a role in ensuring efficiencies in business regulatory regime. Regulation of the sector is necessary but simplicity, transparency, enforcement, and a focus on the regulation outcome are likely to result in a larger impact rather than prolific but poorly enforced regulations (Kenny, 2007).

[3] Regional and National Efforts at Promoting GRP

The academic studies indicate that heavy regulations or complicated processes impose burdens on firms and on the whole economy. Not surprisingly, the discussion above also indicates that regulatory reform, when done well, contributes to improved economic performance. Thus, the studies provide supporting data and information that can be used by proponents of change to make instituting regulatory reform a more attractive proposition in the face of political and bureaucratic hesitancy.

Regulatory reform requires changes in policies, institutions, administrative structures and procedures, and need strong buy-in from the most senior level of political leadership if it is to succeed. This section looks at both regional and national efforts at promoting regulatory reform and good practice in ASEAN in recent years.

3.1 ▍ Regional Efforts and Initiatives

Pressure for regulatory reform is coming both at the national and regional levels. While the national level is where changes in regulatory procedure need to take place, the regional level is becoming an increasingly important arena for setting the agenda. This sub-section captures some of these developments.

Within ASEAN, governments started taking note of the problems faced by businesses as a result of a negative regulatory environment in the early 2000s. Discussion around GRP then gained traction with policymakers as a result of advocacy by the business community, as well as from the findings of studies by both academics and international organisations.

Following this, ASEAN economic ministers endorsed the ASEAN Policy Guideline on Standards and Conformance[6] in 2005. With its focus on technical regulations and conformity, the guideline incorporated elements of good regulatory practice. In 2009, ASEAN went on to develop the ASEAN Good Regulatory Practice Guide. The objective of this was to instill a more uniform approach to regulatory management amongst ASEAN member states in the 'preparation, compliance to and review of technical regulations'[7] stages. In addition, the guide was to be used by regulators to adopt more efficient and transparent regulations and practices.

As indicated earlier in the chapter, the ASEAN Economic Community 2025 Blueprint emphasises GRP and good governance under Section B.6 (Good Governance) and Section B.7 (Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice). Among the strategic measures under B.7 are the undertaking of regular reviews of existing regulatory implementation processes and procedures for further streamlining, institutionalisation of GRP consultations and informed regulatory conversations with various stakeholders, the setting of possible targets and milestones concerning assessments of the regulatory landscape in the region, and capacity building on GRP and regulatory reform.

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[6] http://www.asean.org/uploads/archive/20531.pdf

[7] http://regulatoryreform.com/wp-content/uploads/2015/08/ASEAN-Good-Regulatory-Practice-GRP-Guide-2009.pdf

The bias for GRP is also stated in the section of the ASEAN Economic Community 2025 Blueprint on trade in goods, specifically embedding GRP in implementing domestic regulations, so as to minimise the compliance costs of meeting non-tariff measures. This is similarly repeated in the measure on standards and conformance, specifically, embedding GRP in the preparation, adoption, and implementation of standards and conformance rules, regulations, and procedures.[8]

Further work to promote good regulatory practice has been pioneered by cooperation between ASEAN and the Organisation for Economic Co-operation and Development (OECD). In 2014, the ASEAN–OECD Good Regulatory Practice Network was established to consolidate ASEAN and OECD endeavours on regulatory practice, including the exchange of best practices amongst members. The ASEAN–OECD Good Regulatory Practice Network meetings provided a government-to-government platform to discuss GRP, bringing together regulatory policy officials from ASEAN, OECD, and other institutions, including ERIA, with the objective of supporting AMSs in implementing GRP.

At a meeting of the ASEAN–OECD Good Regulatory Practice Network in 2017, discussions continued as to how the network can promote GRP through support for the ASEAN Secretariat. It also discussed the regulatory challenges faced by small- and medium-sized enterprises (SMEs), which comprise around 95% of business enterprises in AMS. Thus, their involvement and ability to be heard is critical as it is essential that there are opportunities for SMEs to contribute fully to the economy and to become integrated within global value chains.

Thus, at the ASEAN level, the discourse around GRP is growing. However, in the absence of international regulatory alignment or enforcement mechanisms, regulatory reform must be tackled at the country level. At this level, countries in the region are moving at differing paces. Nonetheless, in virtually all of them, there is a growing political commitment to improve the regulatory regime in the countries and, in most cases, with the expressed objective of improving the ease of doing business in the countries. For the case of Viet Nam, joining an

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[8]Taken from ASEC (2016), *ASEAN 2025: Forging Ahead Together*. Jakarta: The ASEAN Secretariat, pp. 63, 76–77.

extra-regional grouping where the pursuit of GRP is a binding commitment, as with the Comprehensive Program of Trans-Pacific Partnership, the creation of obligations on a country has becomes a catalyst for regulatory reform and the implementation of good regulatory practices in the future.

3.2 ▌ National Initiatives

The seven countries included in this volume have all been undertaking regulatory reforms, albeit at different speeds and with different outcomes. Progress in regulatory reforms has been dependent upon the body politic of each country which defines and affects political will and the ability to implement and change laws, institutional structures, and reform.

3.2.1. Malaysia[9]

Malaysia has been assiduous in reviewing and improving administrative procedures, reviewing and improving the quality of existing and new regulations, and improving the quality of its regulatory management system, especially since the Ninth Malaysia Plan (2006–2010). Indeed, improving the country's regulatory regime (i.e. improving the quality of its regulations, strengthening its institutional capacity, and instituting GRP principles in the bureaucracy) has been a major pillar of the country's competitiveness and growth strategy, especially since the Tenth Malaysia Plan (2011–2015).

Of special interest is the country's drive for the modernisation of business regulations overseen by a high-level public–private task force called PEMUDAH, established in 2007, with its various working groups composed of government officials and private sector leaders. The secretariat of the PEMUDAH Task Force is MPC. The MPC also works with the National Planning Development Committee in the implementation of the National Policy on the Development and Implementation of Regulations, launched in 2013 and which sets out the policy principles institutionalising GRP in the country.

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[9] This section drew on information shared by Mohd Yazid Abdul Majid of the Malaysia Productivity Corporation.

The MPC has been at the forefront of conducting reviews on regulations to create a more competitive business environment since its origins in 1962. Having MPC as an autonomous agency to carry out this work has given Malaysia a long history of advancing regulatory reform, a task embedded in Malaysia's national development plans.

Thus, the Tenth Malaysia Plan (2011–2015) mandated MPC to carry out regulatory reviews to facilitate the ease of doing business. These reviews draw on the expertise and perspectives of different representative stakeholders from the public and the private sectors. MPC has since undertaken several initiatives under the Modernising Business Licensing programme to simplify the processes and procedures aimed at enhancing a regulatory environment that is business-friendly and supports the nation's overall developmental goals. These initiatives culminated in the introduction of the National Policy on the Development and Implementation of Regulations, which aims to implement GRP in the rule-making process across all federal ministries and agencies.

The Eleventh Malaysia Plan (2016–2020)[10] reiterates the government's commitment to regulatory reform through efforts to transform the public services for greater efficiency and productivity. This includes eliminating unnecessary bureaucratic processes including approval for licences and permits as well as rules and regulations that are not in line with current needs.

The MPC has also been mandated by the Services Sector Blueprint (2015–2020)[11] to undertake initiatives on sectoral governance reform to remove structural barriers and outdated regulations by accelerating and increasing the efficiency of sectoral governance reform and ensuring that the best regulatory development practices are in place for new regulations by expanding and accelerating the adoption of the National Policy on the Development and Implementation of Regulations.

Among the five strategic thrusts of the Malaysia Productivity Blueprint launched in May 2017 is 'Ensuring Robust and Accountable Eco-System which aims

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[10] *Eleventh Malaysia Plan*: Strategy Paper 18 – Transforming Services Sector http://rmk11.epu.gov.my/ pdf/strategy-paper

[11] http://www.epu.gov.my

mainly to address regulatory constraints and developing a robust accountability system to ensure effective implementation of regulatory reviews'. The blueprint recommends expanding the guillotine approach, which is used widely around the world to rapidly streamline regulations. The guillotine approach requires each ministry to list business regulations within their purview and highlight regulations that are no longer relevant or justified. A review of all business regulations is also necessary, specifically focusing on cross-agency and cross-ministerial regulations.

The development of the RURB methodology by MPC can be understood in the above mentioned context of MPC's role as a critical cog in the review and improvement of business regulations in the country.

3.2.2. Viet Nam[12]

In Viet Nam, RURB fits in with an ongoing, agenda for structural reform, where institutional reform, to support the micro level and enhance microeconomic efficiency, has been acknowledged. The RURB is one way to achieve this, alongside other instruments for reform such as regulatory impact assessments and international regulatory cooperation.

Viet Nam has been aggressive in streamlining its government administrative procedures, exemplified by Project 30, and in improving the quality of regulations in the country. Project 30, formally known as the Master Plan to Simplify Administrative Procedures, is a comprehensive inventory and review (as to necessity, legality, and user-friendliness) of all of the administrative procedures on the four levels of government of Viet Nam. The aim was to simplify and/or delete at least 30% of all administrative procedures as well as reduce by 30% the administrative and compliance cost of such procedures. The achievements of Project 30 have been remarkable, with 93% of all the administrative procedures to be streamlined indeed streamlined by the end of 2014.

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[12]   This section drew on information shared by Nguyen Anh Duong of the Central Institute for Economic Management, Viet Nam.

The success of Project 30 led to the program called Regulation 19/NQ-CP in 2014 which is a continuing initiative aimed at improving the business environment, with targets benchmarked to the average of the top four AMSs in the EODB indicators. The end of 2017 was set as the target for Viet Nam to be at least equal to the average of the ASEAN4[13]. This was not achieved, however, for reasons that included slow progress on indicators such as starting a business, enforcing contracts, providing e-services for the public relating to business, and production activities. On issues in which progress was slow, there is a lack of enforcement mechanisms over the agencies responsible for furthering reform.

Despite these initial setbacks, however, Viet Nam raised its overall ranking by 31 places in the 2018 EODB report (see Table 1).

Table 1: Changing Rankings for Ease of Doing Business

	Country	*EODB* Ranking	
		2013[*]	**2018**[**]
1	Brunei	79	56
2	Cambodia	133	135
3	Indonesia	128	72
4	Malaysia	12	24
5	Philippines	138	113
6	Thailand	18	26
7	Viet Nam	99	68

Note: * http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB13-full-report.
       ** http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB2018-Full-Report.pdf; p.4
Source: Word Bank, 2018.

Viet Nam's joining the Trans-Pacific Partnership (now the TPP-11 or the CPTPP) is indicative of its resolve to push further domestic regulatory reform and to instil its commitment to regulatory coherence. In addition, through its commitment to the Renewed APEC Agenda for Structural Reforms 2016–2020, Viet Nam aims to adopt good regulatory practices, including regulatory impact analysis, public consultation, ex post review, RURB, and international regulatory cooperation.[14]

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[13]   Including Malaysia, the Philippines, Singapore, and Thailand.
[14]   Note: CIEM represents Viet Nam at the APEC Economic Committee, responsible for RAASR.

3.2.3. Philippines[15]

The National Competitiveness Council (NCC)[16] is the lead agency to amend, consolidate, delist, and repeal regulations in the Philippines. Its current format was established by Executive Order No. 44 in June 2011. A key objective of NCC is to create a more competitive business environment. Fostering strong public–private sector dialogue is a central tenet of this, as is pushing forward an Action Agenda for Competitiveness.

From within NCC – and its nine working groups focusing on areas including anti-corruption, business permits and licencing system, transport, infrastructure, trade and logistics – it is Project Repeal,[17] with its 'Red Tape Challenge', launched in March 2016, that most resembles RURB. Its focus is to cut red tape, similar to initiatives piloted in the United Kingdom and Korea. The Project Repeal also includes applying cost-benefit analysis / standard cost model to its work.

However, there are also differences between Project Repeal regulatory review and RURB. For example, Project Repeal looks at regulations per agency whereas RURB, being sector specific, applies an inter-agency approach. Other differences include Project Repeal not including an Issue Paper – important for setting the context of the review – as well as public consultations as a critical element of the process. However while existing regulations are not being regularly reviewed under Project Repeal, there is potential for it to do so.

As seen in Table 1, the overall competitiveness of the Philippines has improved since the establishment of NCC, the EODB ranking being just one of those included in the Global Competitiveness Report Card.[18] Although the achievements listed in the Global Competitiveness Report Card are numerous,[19] for now no studies actually link NCC to this improvement.

The Philippines enacted the Ease of Doing Business and Efficient Government Service Delivery Act on 28 May 2018. This law repeals the Anti-Red Tape Act and aims to make the process of putting up and running a business in the country

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[15] This section drew on information shared by Ma. Kristina P. Ortiz of the Philippine Institute for Development Studies.

[16] For more information about the NCC, see: http://www.competitive.org.ph/about-us/about-ncc

[17] See: http://www.competitive.org.ph/node/1361

[18] See: http://www.competitive.org.ph/rankings/

[19] See: http://www.competitive.org.ph/achievements

easier and more efficient as well as address the perennial and serious problem of red tape in the government by setting mandatory targets of processing times for different types of transactions (see Buban, 2018). Thus, there is now stronger legal foundation for regulatory improvement in the country assuming strong political will to implement it.

3.2.4. Thailand[20]

Compared to Malaysia and Viet Nam, the drive towards streamlined procedures and improved regulations in Indonesia, the Philippines, and Thailand have been less systematic and government-wide up until very recently. Of the three, Thailand has the higher international ranking in the EODB ranking. Until 2015, Thailand's regulatory reform had been largely sectoral because ministries are given legal authority and large leeway in setting regulations, especially in light of the usual coalition governments in the country. Thailand has also mandated international regulatory cooperation on proposed new regulations to the Council of Ministers; however, international regulatory cooperation has been largely of unsatisfactory quality for legislative purposes. What may have tempered the potential adverse effects of new regulations is the Thai model of an inter-agency committee of officials from the issuing agency and related agencies affected by the regulation and outside experts (from, for example, academia and the private sector). Such inter-agency committee can issue, change, and scrap a regulation. (See Ongkittikul and Thongphat, 2018, this volume).

Nonetheless, Thailand issued in 2015 two landmark measures that provide strong legal foundation to government-wide efforts at improving the regulatory management system in the country. Specifically, the Royal Decree on Review of Law B.E. 2558 (2015) requires all portfolio ministries to report all laws under their responsibilities to be accessible to the public in English; review all laws every five years for improvement, revision, or deletion; and prepare an annual report on the implementation of the decree. The Licensing Facilitation Act B.E. 2558 (2015) mandates that government agencies requiring licences need to review every five years if such requirements need to be revised or stopped as well as to prepare licencing manual detailing rules, procedures, and conditions, and to set service link centres to accept request applications and provide

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[20] This section drew on information shared by Sumet Ongkittikul of the Thailand Development Research Institute.

necessary information to the public. In addition, the Public Sector Development Commission needs to ensure that the workflow and period of the granting of the licences by the government agencies are in accordance with good governance rules and principles.

It is apparent that if the two laws get implemented well, Thailand would have a strong foundation to move aggressively forward in improving further its regulatory regime. RURB would be a significant mechanism for the review process of existing laws, regulations, and procedures as mandated in the Review of Law and in the streamlining of the licencing process in the country.

3.2.5 Indonesia[21]

Table 1 shows that Indonesia experienced the biggest improvement in its EODB ranking among the countries in this volume. Yet ironically, Indonesia has long-held reputation of having an unfriendly investment environment, where the regulations are restrictive, excessive, and/or poorly designed and administered. The significant improvements are a reflection of the improvements in the regulatory regime arising from the series of deregulation packages introduced since the late 2015, including improved investment facilitation, reduction in tariffs, some deregulation in investment banking, and opening up more sectors to foreign direct investment.

Despite the significant improvements in ranking, however, Indonesia's rank remains comparatively low in comparison with the major AMSs (Table 1). This suggests that there is much more room for improvement, with plenty of regulatory bottlenecks still remaining and hampering investment in Indonesia, especially at the local level.

The regulatory regime in Indonesia is prescribed by Law No. 12/2011 (with its implementing Presidential Regulation No 87/2014), an amendment to Law No. 10/2004. This law states that an academic draft must be submitted in support of the new law. The academic draft must include legal analysis – analysing whether or not the proposed law is in conflict with the existing regulatory framework – and an impact analysis, although lacking in specifics. In practice, the

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[21] This section drew on information shared by David Christian and Adinova Fauri of the Center for Strategic and International Studies, Jakarta.

academic draft as a justification for the law is a formality, and without economic analysis supporting the regulation, the impact of the laws has been limited. The law does establish a consultative mechanism for different ministries and agencies to work together, but does not include a framework for the review of existing regulations, and the academic script process is not being applied to justify ministerial or local regulations.

To boost the business climate and overcome the deficiencies of the current regulatory framework, the government of President Joko Widodo launched an initiative to cut regulations. In December 2015, it was widely and erroneously reported that around 42,000[22] regulations would be cut. In reality, this is the approximate number of all regulations in Indonesia based on a recent survey by the National Development Planning Board. Of these, only a fraction are related to business.

How the cuts are being made and by which state agency appears unclear and uncoordinated, as different state offices manage their own regulatory reform programmes. For example, the Coordinating Ministry for Economic Affairs is primarily in charge of the production and evaluation of 'economic policy packages', while both the Office of President and the Vice President's Office each pursue their own deregulation initiatives – for example, the Vice President's Office focusing on those affecting SMEs. The National Development Planning Board has approached the issue by mapping every regulation and, in 2015, issuing a national strategy for regulatory reform. However, as a strategy, it does not provide any guidelines for implementation. Task forces have been established to look at different sectors and identify where regulations are hampering business, but these task forces are mandated only to produce recommendations.

The Coordinating Ministry for Economic Affairs has been responsible for issuing the 16 high-profile 'economic policy packages' issued up until August 2017. Resulting from the first 15 packages, around nine regulations have been repealed, 31 revised, 35 merged, and 89 replaced, alongside 49 new regulations that have been added to the books. However, identifying the regulatory

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22 Retrieved from: https://www.cnnindonesia.com/nasional/20151209002854-20-96921/jokowi-cukur-42-ribu-regulasi-listrik-agraria-dan-energi/ 22 January 2018.

bottlenecks has been ad-hoc and mostly confined to certain sectors rather than applying a systematic and comprehensive approach. The process has also been top-down with little involvement from the business sector.

Thus, in Indonesia, there is yet no single institution leading or coordinating regulatory reviews, or requiring periodic reviews. Still, new regulations are being created without the need for strong justification and economic analysis. Indeed, the situation in Indonesia has been further complicated by a 2017 Constitutional Court ruling that has removed the right of the Ministry of Home Affairs to revoke local-level regulations from Indonesia's 34 provinces and 502 districts, the sources of many of the problematic regulations.

It is worth noting that the spate of deregulation packages as well as regulatory and process improvements have been undertaken after Indonesia's commodity export boom ended with significant declines in commodity export prices. In contrast, there was not much reform during the commodity boom period before the 2007–2008 global financial crisis. That is, Indonesia tends to undertake reforms when the overall economic climate is less favourable. Since the country has not yet returned to its previous boom period and as the competition for investment has heated up even within ASEAN, the pressure for Indonesia to reform further and be more competitive remains substantial. In light of the above, RURB can contribute to deepen the participation of the private sector in the regulatory reform process in the country and engender more structured and robust 'regulatory conversations' between the private sector and the government regulators including at the local level.

3.2.6 Cambodia[23]
Addressing issues related to RURB is one of the development objectives identified by the Royal Government of Cambodia in its 2013 Rectangular Strategy, Phase 3, and its National Strategic Development Plan 2014–2018. The Industrial Development Policy 2015–2025 has also emphasised improving both the legal environment to enhance competitiveness and the investment climate by promoting trade facilitation, providing market information, and reducing

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[23] This section drew on information shared by Oum Sothea of the Royal University of Phnom Penh - Adelaide Policy Studies Center.

business transactional fees. It specifically set a target to reduce and abolish repetitive and non-transparent procedures.

An important action is related to the review of various regulations and to mainstream regulatory impact assessment, following technical assistance provided by the Asian Development Bank. While international regulatory cooperation is not mandatory, it is gradually shaping the way in which regulations are introduced. When effective, international regulatory cooperation can contribute in providing relevant information to decision-makers (in various regulatory agencies/ministries) concerning the costs and benefits of introducing new regulations. This includes crucial analysis of whether the proposed regulation is redundant or overlaps with existing regulations. Thus, impacts and related problems or concerns can be analysed and consultations with stakeholders, including the private sector, can be held.

The RURB fits well with practical needs and is in line with the government's reform agenda to improve regulatory efficiency and business environment in Cambodia. If systematically implemented, RURB will contribute to an improvement in the efficiency of public service delivery and investment, reducing the cost of doing business and lowering entry barriers, strengthening business confidence and predictability of government decisionmaking and inter-agency coordination, improving trade facilitation, and cross border transport processes.

3.2.7 Brunei Darussalam[24]

Government efforts to introduce policies and create a business-friendly environment have helped to improve the country's EODB ranking to 56 in 2018 (see Table 1), putting Brunei ahead of ASEAN neighbours, including Indonesia (72) and the Philippines (113). Although, Brunei's overall ranking is 56, certain areas still need improvement.

These efforts began on 1 April 2011 when the government engaged all district offices and municipal boards to speed up the miscellaneous licence issuance.

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[24] This section drew on information shared by Haji Masairol Haji Masri of the School of Business and Economics, Universiti Brunei Darussalam.

Onebiz,[25] an on-line business licencing system, was developed to facilitate this by streamlining, simplifying, and integrating the application processes of licences from various government agencies that previously were done separately by applicants. This involved 14 government departments and agencies that were responsible for producing licences and approvals.

Before 2015, it could take up to 101 days and 15 procedures to start a simple or low-risk business in the country. This changed when the Business License Act was amended on 1 January 2015. According to the World Bank report, it now takes 14 days for potential investors to start a business in the country. To start a business, an applicant has to register for a certificate at the Ministry of Finance before obtaining a business licence. With the introduction of the online business registration portal, through Registry of Companies & Business Names under the Ministry of Finance, it takes one working day to process and approve the incorporation certificate of business registration for companies classified as 'simple and low risk'.[26]

'Low-risk' or 'simple' businesses are able to operate once registered and in possession of the registration of certificate and an occupational permit. This improvement benefits SMEs, which make up the majority of business, and will help promote a more favourable business environment for local and foreign companies.

In December 2015, the government established 'Business Environment' under the 'Prime Minister's office, and later placed under the Department of Energy and Industry'. Accordingly, the Ease of Doing Business Unit and National Standards Centre, which were previously under the Ministry of Industry and Primary Resources, now operate under the department's Business Environment Division. This administrative change provides a special focus on EODB.

Another government initiative was the establishment of a 'delivery unit'. On 6 March 2014, with the consent of H.M. the Sultan of Brunei Darussalam, the unit was created under the Prime Minister Office. Chaired by the Crown Prince, who is also the senior minister at the Prime Minister's Office, the unit aims to identify

[25] OneBiz, http://www.mprt.gov.bn

[26] Registry of Companies & Business Names, http://www.roc.gov.bn

priority areas within government agencies and provide assistance and advice in the planning and monitoring of projects. The unit, known as PENGGERAK, stands for Piloting Exclusive National Goals, Gearing Excellent Results and KPIs.[27]

[4] RURB Methodology

The RURB methodology used by the country teams was pioneered in the region by MPC. As institutionalisation of GRP and experience of RURB in each country differs, the studies should be seen against the backdrop and varied experiences of implementing regulatory reforms in the different national environments.

The RURB methodology requires problems and solutions to be identified and proposed based on dialogue between two stakeholders: regulators and business. These dialogues are mediated by an agency playing the role of honest broker between the two sides. Introducing 'informed regulatory conversations' and an independent agency can help overcome the otherwise persistent problems of intransigent interests and a lack of awareness of the other side's perspective on issues. The multiple steps to be followed for RURB are illustrated in Figure 1.[28]

The first step is to select the industry or sector to focus on. Following the identification of the sector, all regulations affecting the sector, in addition to the responsible regulators for the different regulations, are listed and mapped onto the value chain for the sector. For the purposes of this study, studies used the MPC definition of a regulation, which includes laws, by-law, and rules and directives issued and maintained by an authority to regulate behaviour. Guidelines and administrative circulars are included in this definition of a regulation.[29] Regulatory instruments include licence, permit, registration, notification, payment, and deposit.

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[27] Penggerak, http://www.jpm.gov.bn
[28] Slide from presentation, 'RURB: Reducing Unnecessary Regulatory Burdens on Business', RURB Methodology, by Dr Izhar Che Mee, Renaissance Hotel, Kuala Lumpur, 12 September, 2015.
[29] 'A Guide to Reducing Unnecessary Regulatory Burdens: Core Concepts', Malaysia Productivity Corporation, 2014.

Figure 1: The RURB Methodology Stages
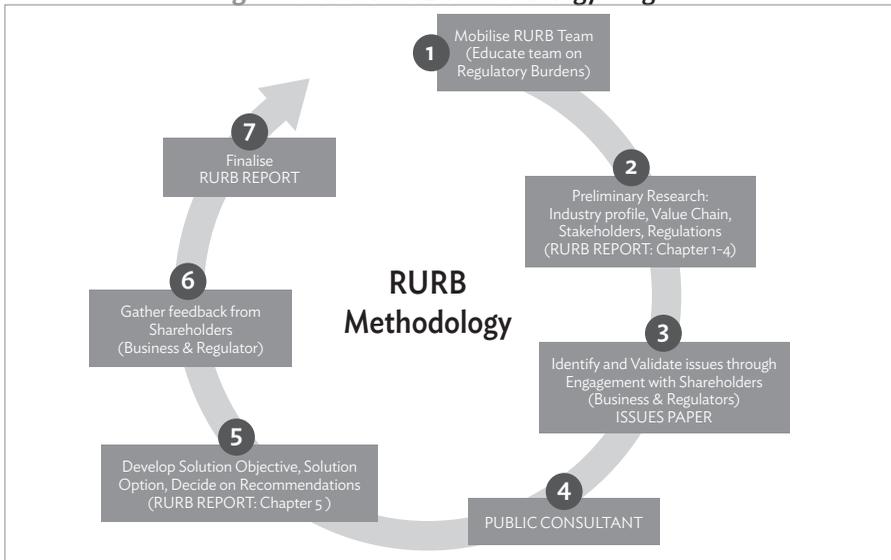
Once collected and listed, the regulations are analysed to identify the purpose and function of the regulations. Questions developed around the regulations are then written up in an Issues Paper, which is then shared with the stakeholders: regulators and those representing the private sector (both individual companies and business associations) in public consultations. These consultations can take on a variety of forms, including sharing on websites, by email or hardcopy to businesses, as well as actual meetings.

Based on the feedback, the study team next identifies solutions to the problems and proposes recommendations and options concerning each regulation found to be burdensome. Studies should also note where regulations are meeting their objectives, where they can be improved, and where they can be simplified without any risk. Around 12 weeks are needed for the feedback period if the issues are complex. Figure 2 shows the different stages of stakeholder engagement.[30]

Central to deciding the effectiveness and efficiency of regulations is an assessment of compliance costs and administrative costs. The former are the costs encountered by a business in complying with regulations. This takes

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[30]   Slide from presentation, 'RURB: Getting buy-in from Stakeholders: Regulators and Businesses', by Mr Mohd Yazid Abdul Majid of MPC, Hotel Renaissance, Kuala Lumpur, 12 September, 2015.

into account factors including time, internal resources, hiring expertise, and payments to regulators. Administrative costs are the costs encountered by a regulator to administer or enforce the regulations, including time and the number of staff to process and approve applications. Solutions are then shared with both the business community and regulators for a round of feedback. After feedback is received from all sides, the final report is drafted.

Figure 2: Stages of Stakeholder Engagement
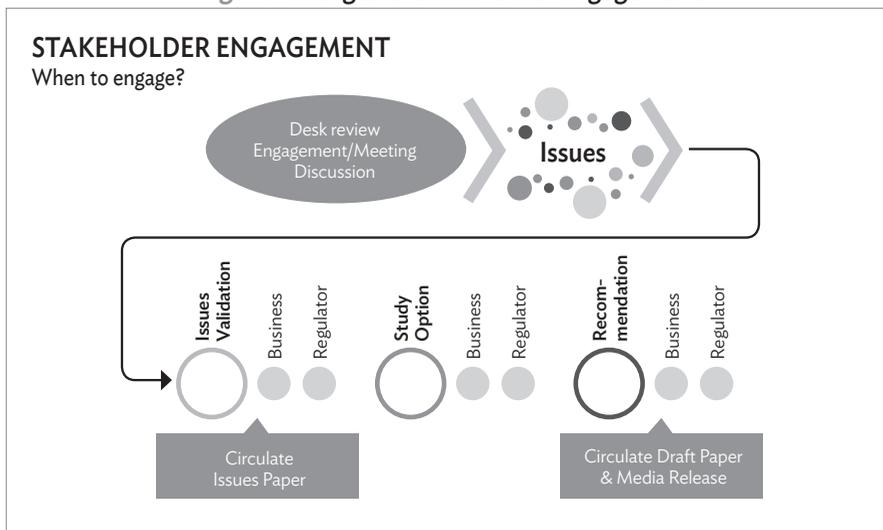
Source: Malaysia Productivity Corporation

The steps in Figure 1 do not include the 'solutioning' stage of the RURB process, where the solution agreed to by both the regulators and the private sector are pilot tested and eventually implemented if the results warrant its full implementation. This is the ultimate rationale for the RURB process: the engendering of a consensus by both the regulators and the private sector on a specific path or option that reduces the regulatory burden on the private sector. The MPC's experience of solutioning is that the pilot testing, refinement, and evaluation of the solution can be a lengthy process (see Box 1, Chapter 2 by Majid, Goh and Lok,).

[5] ERIA's Study on Reducing Unnecessary Regulatory Burdens

In applying the RURB methodology for the ERIA project, a number of adjustments and allowances had to be made. First, most of the country teams are researchers or from research institutions, unlike MPC which is a government institution with the mandate to help the private sector on productivity initiatives. As such, MPC has a clear government mandate to review business-related regulations. Having a mandate, being known and with a track-record make it easier for MPC to reach out to both the private sector and regulators, and for its findings to have an impact. The ERIA project, by contrast, is primarily a research project, albeit applied research, with the end aim of understanding the RURB concept and methodology and determining its applicability to other AMSs.

Second, although the RURB methodology includes finding solutions to issues and generating options to address these problems, this project did not apply solutioning. This is because solutioning the piloting of options in the implementation stage, based upon agreed options, as noted above, is time consuming and presupposes the making of political and inter-agency decisions around options that are beyond the scope of research institutions and this study.

Third, it was not possible to obtain quantitative analysis on the cost and benefits of the options examined. For the most part, the studies rely on qualitative analysis, in part because of the lack of data but also due to the time constraints imposed by this study.

These shortcomings aside, the country studies in this volume were able to test the RURB methodology in relation to the mapping of issues, establishing regulatory conversations, and coming up with an array of options to issues encountered. Furthermore, the results of the country studies indicate that despite the limitations stated above, RURB done well can add significant value to the regulatory reform process in AMSs.

5.1 ▌ Industry Case Chosen

The first stage in the application of RURB to other AMSs is the choice of the industry or sector for the case study. The list of industries or sectors chosen for the AMSs is given in Table 2. The industries or sectors chosen by the country research teams are either ASEAN priority industries/sectors or of significant policy and development import on a given AMS. This volume also includes a special paper on a successful RURB case for regulatory reform in the sewerage works in Malaysia, which provides a number of important lessons of interest for other AMSs.

Table 2: Study Sectors and Participating Research Organisations

Country	Research Organisation	Sector
Brunei	University of Brunei Darussalam School of Business and Economics	Halal meat processing sector
Cambodia	Royal University of Phnom Penh – Adelaide Policies Studies Center	Agro-industry
Indonesia	Center for Strategic and International Studies	Automotive industry
Malaysia	Malaysia Productivity Corporation	Warehousing services
Philippines	Philippine Institute for Development Studies	Tuna industry
Thailand	Thailand Development Research Institute	Road passenger services
Viet Nam	Central Institute for Economic Management	Fishery exports

The following gives a brief description of the industries or sectors chosen:

Brunei Darussalam: Halal industry

Reliance on the oil and gas industry has made Brunei vulnerable to world fluctuations in oil and gas prices, e.g. the low oil prices of below US$60 per barrel particularly affecting the country's export earnings and government revenue. To address this, the government of Brunei plans to reduce its dependence on oil and gas by diversification, with the halal food industry – specifically, halal food (meat) processing – as one of the industries identified as new sources of revenue. It notes that in 2012, the global halal food sector was valued at US$697.52 billion and expected to reach US$829.74 billion by 2016.[31] Brunei Halal became a focus of national planning with the announcement of Brunei Vision 2035 (along with the 9th National Development Plan 2007–2012). Besides halal products, Brunei also aims to develop itself in halal certification and as a service provider.

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[31]   See: www.apfoodonline.com.

As Brunei's export of processed meat greatly depends on the price of imported products – Brunei is not producing its own meat – the ability to grow the sector is very dependent upon the regulatory environment for both the export and import of meat. The Brunei Darussalam country study provides an overview of the current state and future potentials for halal industry in a global context and details the regulatory restructuring designed, being implemented, and need to be done to promote Brunei's Halal Industry.

Cambodia: Agro-industry

Cambodia's agro-industry plays an important role in its economy, with 49% of the labour force employed in the agricultural sector. However, the sector contributes only around 26% of Cambodia's GDP as development of the agro-industry is constrained by several factors, including the complexity of regulations and licencing processes facing businesses working in this sector.

Noting the potential of the sector, the Royal Government of Cambodia, in its Rectangular Strategy, Phase 3, and its National Strategic Development Plan 2014–2018, intends to address burdensome regulations in the agro-industry as a development objective. This should help to reduce consumer prices along with time and costs for operating agro-business in Cambodia in a bid to increase competitiveness in both regional and global markets.

Indonesia: Automotive industry

The automotive sector is strategic for Indonesia as it is a leading export sector for the country and can propel Indonesia more deeply into global production networks, bring a large number of jobs, and support local SMEs. Nevertheless, production capacity in the Indonesian automotive sector lags behind that of Thailand despite having a huge domestic market. A major reason for this is that Indonesia's relatively competitive automotive production is offset by external bottlenecks and regulatory problems. Making the automotive industry a bigger export earner and a more dynamic driver of manufacturing growth in Indonesia calls for a reduction in regulatory burdens on the industry.

Malaysia: Warehousing

In Malaysia, around 40% of jobs are linked to export activities. This necessitates the logistics and trade facilitation sectors to work seamlessly so Malaysia can retain its competitiveness. A central element of the logistics and supply chain

management is warehousing, but this sector is facing many challenges to stay competitive as the demands on the sector are changing rapidly due to changing technologies and operations moving to large conglomerates that can afford to provide a wider range of services.

To remain competitive, the burdens acting as a drag on warehousing and preventing this sector from becoming more efficient need to be re-examined. Reform should benefit independent warehouses the most as they struggle to provide the specialised services, such as pre-retail services, demanded by clients. Increased efficiencies will allow SME warehouses to upgrade and meet the new demands on them.

Philippines: Tuna industry

The Philippines study focuses specifically on the tuna industry, of which the Philippines is a leading producer. However, the extent and number of regulations imposed on the industry is high, leading to pressure to improve the regulatory framework of the tuna industry. The regulatory burdens on the sector make many aspects of business difficult, such as in acquiring business permits, registration and licences for all types of fishing vessels, and certificate of product registration. Addressing these issues is important especially in light of the falling local tuna production since 2009.

Viet Nam: Fisheries industry

Fisheries is also the focus of the Viet Nam study. In Viet Nam, the sector has grown rapidly and, by 2014, fishery exports rose to nearly US$8 billion following quick expansion in domestic aquaculture. This growth coincides with and, to some extent, relies on imports of fishery products for domestic processing. However, the import of fishery products has been insufficient to keep up with the demand for exports. To address this, blocks in the supply chain of fishery exports need to be addressed, especially the blockages related to imports, production and processing, and exports.

Thailand: Bus service industry

In Thailand, poor regulations around the bus service sector have resulted in operational inefficiencies and low-quality and unsafe services. The Thailand study therefore sets out to identify the impediments for operating passenger

bus services in compliance with existing regulations while reducing unnecessary regulatory burdens around business registration.

Malaysia's sewerage works: A success case

In an invited special paper for the volume, the case study on the sewerage works approval process in Malaysia demonstrates how the process of a regulatory and permitting agency–to address complaints of the private sector stakeholders– may call for reframing the issue and an intense examination and discussion on the true goal of an agency's legal mandate. The reframing of the issue and the results of the intense internal discussion within the agency and the associated accountabilities of alternative options enabled the agency to develop more cost-efficient risk-based approval processes that the private sector stakeholders welcomed.

5.2 ▌ Key Findings and Insights

5.2.1. Importance of regulatory mapping and engagement with the private sector stakeholders

One of the key stages of the RURB methodology is the mapping of the regulations affecting the chosen industry or sector and interviewing key private sector stakeholders on the regulations they face and what they consider as burdensome. The country studies zeroed in on a few of the regulations of interest to the private sector. The discussion of the regulations in the country studies reveal a number of points, including:

• Well-intentioned regulations end up being ineffective or burdensome because of difficulties in implementation. An excellent example is the government-borne import duties (BMDTP) fiscal incentive programme of Indonesia wherein the government pays for the import duties of certain goods because they are not produced locally or the domestic substitutes are of poor quality and do not meet the needs of domestic industries that the government prioritises for development, such as the automotive industry. The BMDTP programme is conducted on an annual basis because its overall budget is regulated by the state budget law. However, utilising this facility involves long and involved processes and takes a long time. For firms, this means having their documents, industrial activities, and import plans verified

by PT Surveyor Indonesia, getting a certificate of industrial verification, and submitting their revised import plans to the Ministry of Industry before they can tap the facility. For the government, both the Ministry of Industry and the Directorate of Budget of the Ministry of Finance need to prepare the budget execution list that would allow withdrawal of funds for the programme. Firms would report their application for BMDTP to customs together with their revised import plans. Only after the Ministry of Finance has decreed that the specific company is entitled to BMDTP would the firm be able to take advantage of the facility. As this facility is on an annual basis, businesses tend to have only five months of each year to utilise it, rather than a programmed 12 months, thereby leading to substantial underutilisation of the facility. (See Aswicahyono et al., 2018, this volume.)

Implementation issues characterise many of the burdensome regulations faced by Philippine businesses. For example, starting a business involves securing a business registration and a mayor's permit. However, the number of days, signatures, clearance requirements, and processes differ very widely among municipalities and cities in the country. Similarly, exporters and fish processing plants need to secure licence to operate from the Food and Drug Administration as a requirement for hazard analysis and critical control points certification. However, there are less than a handful of Food and Drug Administration offices in the country to service thousands of food and beverage establishments spread all over the country; the on-line facility for applications is inefficient and not user friendly, and the on-site visits by Food and Drug Administration inspectors tend to get delayed. Also, local governments do not have a uniform process for issuing licences for municipal fishing vessels while the offices of Maritime Industry Authority and those of Bureau of Fisheries and Aquatic Resources can be in separate towns or cities, thereby making the process of registration and licencing of commercial fishing vessels more time consuming. (See Llanto, Oritz, and Madriaga, 2018, this volume.)

An example from the Malaysian study (see Warehousing Services chapter, Majid, Goh and Lok 2018, this volume) concerns businesses having to apply for multiple permits for various approvals, with the same information being resubmitted for each permit. Although there is no objection to the intent and purpose of the regulation, companies are incurring costs while

implementing the required regulations because they have to wait lengthy periods before receiving their planning and development approval, and the information businesses need to supply for obtaining different permits is duplicated.

Inadequate facilities can also stymie well-intentioned regulations. An example is that concerning testing requirements on imported fishery products in Viet Nam (Vo and Nguyen, 2018, this volume). In this case, both regulators and business agree with the importance of testing imported fishery products for health and safety reasons. However, it is the lack of available testing facilities that causes problems for importers. The problem, therefore, relates to implementation rather than intent, so should avail itself to mutually acceptable compromise. Similarly, limited and inefficient local laboratory facilities and technology for testing is also a problem for the halal sector in Brunei where meat can be kept at customs for too long a period (see Ahmed, et al., 2018, this volume).

Another example of a regulation designed with good intent but not providing benefit is from Viet Nam, where the study notes how both owners and direct producers of food products are required to train on food safety. This underestimates the professionalism of the business sector as those investing in business start-ups are aware of food safety and the need to employ qualified staff if they are to succeed (see Vo and Nguyen, 2018, this volume). Similarly, in the Malaysian study (see Warehousing Services chapter, Majid, Goh and Lok, 2018, this volume), we read about a regulation which requires warehouses to follow the same fire safety requirements irrespective of whether the warehouse is storing dangerous goods or not. As the author notes, a 'one-size-fits-all' policy is inappropriate. The frequency of environmental self-assessments and inspection, as noted in the Indonesian study (Aswicahyono, Christian, and Fauri, 2018, this volume), is another example.

• Regulations can impose unwarranted burdens on firms because of the lack of clarity of the regulations or their processes are based on a lack of understanding of the businesses that the regulations are meant to regulate. Regulations that lack clarity can be illustrated by the Brunei study concerning the insufficient guidelines for the halal certification process,

and by Malaysia's case, where there is a lack of transparency about rules and regulations concerning freight forwarding. From Viet Nam, product labelling is another example. In this instance, one inter-ministerial circular states all imported products must include Vietnamese language labelling while another decree states that such labelling is only required for imported goods intended for the domestic market. In Indonesia, conflicting regulations concerning environmental licencing in industrial zones are apparent. The private sector in the Philippine study also complains of the lack of clarity of guidelines on the procedures and schedule of fees for vessel licencing, including *barangay* (district) and *purok* (village) clearances and fees.

Similarly, regulations imposed on businesses without a clear understanding of the sector, and which can result in unintended consequences, can be illustrated with an example from Viet Nam. Designed without a clear understanding of the sector – in this case, who is importing fish and where the people who buy imported fish for export are purchasing from – Viet Nam's regulation results in creating difficulties for fish importers. A regulation on the minimum wage in Viet Nam supports a government wage policy, but when forced on the fishery sector, creates difficulties for businesses to follow. Viet Nam also requires onsite checking of exports before being able to benefit from a drawback in import duties. However, there is no link between onsite checking and drawback, making the regulation devoid of sense. (See Vo and Nguyen, 2018 this volume.)

From the Malaysian country study, there is a regulation that requires all developments to follow the provision of parking spaces in relation to the size of the development, without taking into account that a warehouse does not require the same parking provisions as developments for other types of usage. As a result, warehouses are unable to optimise their use of space productively.

In summary, the discussion above indicates that regulatory mapping and interviews with the private sector provide good insights as to which regulations are burdensome for the private sector and which regulations are ineffective. Many of the regulations are not 'unnecessary' per se, but the burden is 'unnecessarily large' because of the implementation problems or the regulations

are burdensome because the benefits are miniscule relative to the compliance cost.

5.2.2. Regulatory conversations and the crafting of the options and recommendations or agreements

The regulatory conversations and in-depth discussions with the stakeholders have proven to be fruitful in the crafting of possible solutions to the problems. Some solutions seem straightforward while others require legal or major policy changes. The Philippine study provides many examples of such straightforward solutions agreed upon by both the regulators and the private sector stakeholders. Thus, as examples, the following are some of the agreed upon courses of action (see Llanto et al., 2018, this volume):

- Local governments to provide clear guidelines on the procedure and schedule of fees for registration and permits, including barangay and purok clearances and fees;
- Local governments to implement the Joint Memorandum Circular No. 1 (of the Department of the Interior and Local Government, the Department of Trade and Industry, and the Department of Information and Communication Technology)[32] requiring the release of business permits and licences within two days, and the use of a simplified application form;
- The Bureau of Fisheries and Aquatic Resources and the Maritime Industry Authority, the two permit- and licence-granting agencies, to establish one-stop shop offices in General Santos City fish port complex, as both agencies are located in different parts of the region. This complex is the most important tuna unloading and processing zone in the country.
- The Food and Drug Administration to conduct training and accreditation seminars in accessible locations (to the concerned firms) and not just in Metro Manila, Cebu, or Davao.

The Philippine country study contains many more examples.

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[32] Note that the name 'Department ' in the Philippines is equivalent to 'Ministry' in other AMSs. The Philippines largely follows the American system of classification of agencies.

The Malaysian country study on warehousing (Majid, Goh and Lok, 2018, this volume) also provides examples of recommendations that are relatively straightforward and operational in character. Examples are the following:

- Establish, publish, and maintain guidelines on good warehousing practices, as the recommended solution to the problem of the lack of clarity and different practices by local authorities on how to operate a warehouse.
- Adopt special lane to cater low-risk development (e.g. warehouses) and develop a checklist and/or user manual as the recommended solutions to hasten the release of construction permits.
- Create a checklist and standards specific for various categories of warehouse in terms of fire requirements, instead of the one-size-fits-all fire safety requirement for both dangerous and non-dangerous goods that leads to higher compliance costs to warehouses catering to non-dangerous goods.

The Indonesian country study provides a number of examples of relatively straightforward recommendations and/or agreements after the authors evaluated other alternatives. Thus, for example, with respect to the BMDTP issue (Aswicahyono, at al., 2018, this volume):

- Start conducting early the initial verification (before the beginning of the calendar) instead of the practice of starting the initial verification process in January, because the verification process by PT Surveyor Indonesia takes more than three months.
- Create a 'track-record'-based mechanism exempting trusted firms from the initial verification discussed in the previous item.
- Use the online information system developed in mid-2016 to speed up the validation process of the revised import plans of firms eligible for BMDTP.

The other country studies have similar examples where the recommended or agreed solutions are relatively straightforward. Also, some of the recommendations such as those in the Philippine and Indonesia country studies only require greater inter-agency coordination. The many examples of such relatively straightforward solutions suggest one major merit of RURB: Facilitated regulatory conversations between regulators and the concerned private sector can generate practical solutions on a number of largely implementation or operational issues. The more regular and continuous the facilitated regulatory

conversations among the regulators and the private sector is, the greater are the possibilities of finding better ways of implementing and even designing regulations that meet the goals of the regulations while at the same time reducing the regulatory burdens to the private sector.

The country studies indicate that there are suggested solutions to certain issues that would require changes in policy or in law. Thus, for example, in the case of Brunei Darussalam, the reduction in the number of officials for on-site audits of abattoirs for halal certification (agreed upon by the relevant agencies during the 'regulatory conversation' among regulators and the private sector) would require an amendment to the Halal Meat Act. In a similar vein is the recommendation in the Indonesian country study to revise the Government Regulation No. 142/2015 to exempt tenants located in industrial zones from preparing full environmental licence as an incentive to attract companies to industrial zones, especially those designated as special economic zones.

The Thailand country study (Ongkittikul and Thongphat, 2018, this volume) includes a policy recommendation of developing an efficient and demand-driven quality control system that would incentivise the bus operators and render the new quality control system effective. In the case of Cambodia, while the issue of informal payments in exports and imports can be addressed to some extent in the short run through the publication of official fees and the establishment of real-time complaint and reporting mechanisms, the long-term solutions recommended are related to stricter integrity measures and the increase in government salaries to more decent levels (Oum et al., 2018, this volume).

Arguably for these issues that require significant policy changes, a more institutionalised mechanism of government and private sector interaction that can monitor, review, and examine policies and programmes, new and old, would be needed to push for the solutions that require major policy changes or changes in law. This is because significant changes in policy and law involve much more time and consultations, and likely, changes in institutional mindsets, as the Malaysian case study on the national water services agency discussed below indicates.

5.2.3. Using RURB to reframe a regulatory institution's mindset: The case of Malaysia's National Water Services Commission (SPAN)

Indeed, the case of the Malaysian sewerage works application process (Naidu, 2018, this volume) indicates that long-lasting solutions may require total regulatory buy-in, serious institutional review, and rethinking and reframing of mandate and processes. The title of Naidu's paper, 'The Journey of Regulatory Reform in Removing Bureaucracy from the Sewerage Works Appoval Processes in Malaysia', is telling. It is a journey because sometimes it takes a lot of time and a circuitous process which, in the case at hand, involves institutional reframing of the approach to achieve the goals of the institution.

We learn from Naidu that regulators can suffer from complacency and a failure to challenge their own assumptions. She writes, 'SPAN routinely engages stakeholders..to understand the challenges and impacts of the regulations. Although real estate developers.. have frequently raised issues…it has been assumed that the complaints..arise from their desire not to comply with requirements..' After the study was initiated in response to complaints heard by MPC, 'SPAN undertook an evidence-based study..to show, through facts, that the existing sewerage works approval procedures are the most appropriate for Malaysia.' These assumptions were all challenged through hard reflection as the case history proceeded.

That reframing ultimately meant the need to 'remove the bureaucracy' or rather more like transforming the bureaucratic approach into a risk-based approach, with the bureaucracy having a clear understanding of the various types of risk they deal with that are associated with the procedures involved and with the approvals issued. The result has been to ease up on the approval procedures for the lower-risk applications (where the majority of the applications fell), which allowed SPAN, Malaysia's sewerage agency, to reallocate human resources away from the desk-bound approval process and into on-the-ground monitoring and enforcement for enhanced quality of the sewerage works and infrastructure.

A key insight from the SPAN case is the importance of the purpose and intention of review. Naidu's involvement in the review of sewerage works approval processes began as part of her work at SPAN, and in response to complaints

received by MPC. Thus from the start, there were actual problems to redress, the reasoning behind the review was clear, and it was part of an institutionalised way of carrying out review.

It must be pointed out that the journey that Naidu described in the paper started with a study by MPC on all related approval permits for the construction industry. The study gave the industry players a platform to complaints and frustrations on SPAN, with respect to the approval process. Note that the issues were raised before but it took the MPC study to move SPAN to act on them. Two plausible reasons for acting on them are that (i) the MPC study was meant to improve Malaysia's scoring in the global Ease of Doing Business, which is a stated Malaysian government policy; and (ii) MPC has high credibility in both the government and private sectors, in part because it is the secretariat to Malaysia's PEMUDAH Task Force as well as MPC's recognised performance, professional competence of its staff, and overall impartiality. Thus, to a large extent, MPC became the *de facto* intermediary between the private sector and SPAN.

5.2.4. RURB, consensus-making, and the role of the intermediary

The country studies show that regulatory mapping, analysis of regulations and options, and engagement with the private sector and regulatory agencies, can unearth many instances of regulatory burdens, both in design and implementation, leading to unnecessarily large regulatory burdens. In addition, practical recommendations or agreements to reduce the unnecessarily large burdens can be generated.

In light of the above, the country studies in the ERIA project show that RURB has a huge potential as a support mechanism for the institutionalisation of GRP in AMSs and ASEAN. The RURB studies in this volume were implemented as an academic exercise, to show the potential benefits of regulatory review using the RURB methodological approach, with its own structured and disciplined way of identifying regulatory burdens. The studies were carried out in 'real time', where the concept and practice of regulatory review differs from country to country, so affecting the ease or difficulty of implementing an RURB study.

At the same time, RURB is about fostering a consensus-making approach to regulatory reform. Consensus coming from all stakeholders is genuinely considered in the development of options through on-going dialogue. Engagement with stakeholders must by necessity be involved, in-depth, and on-going to establish the relationship of trust, facilitate mutual understanding, and establish the status of trusted intermediary. This must necessarily be time consuming. The time commitment needed for a successful RURB is because of the actual time needed to make arrangements, meet and gather feedback from all stakeholders, in addition to the more understandable time needed to build trust among the public and private stakeholders. Naidu pointed out another reason for the time taken, which is for the task force members [in the SPAN case] to rid themselves of prejudices and avoid being influenced by ingrained assumptions. Thus, while this project is an academic study, the Malaysia sewerage works case shows that regulatory reform and RURB is, in reality, not an academic exercise in as much as it impacts on people and institutions.

This suggests that the status and role of an intermediary agency to act as interlocutor between regulators and business is critical to the eventual success of RURB. Stakeholders require confidence in the neutrality of the intermediary and belief that it will act as honest broker in developing solutions to problems. The interlocutor in the regulatory conversations would need to have credibility and persistence and clear understanding of the concerns of both the regulators and the business sector being regulated. Where RURB has already been institutionalised and the intermediary has a mandate from the government, this comes more naturally. The MPC benefits from its long-standing history and mandate of carrying out this work, and MPC is a trusted player by regulators and business community, both sides accepting it is trying to find the best possible solution. In Viet Nam, CIEM has been pioneering this, and also benefits from its mandated position to implement RURB studies, and a regulatory environment supportive of regulatory review.

Where RURB is not well established and no organization is mandated to carry out this work, undertaking a successful RURB is more difficult. As an example, in Indonesia, the Centre for Strategic and International Studies took on the role of intermediary for the study. However, as an academic organisation with no legal status for involvement in regulatory review, implementing RURB has proven to be difficult and time consuming because the initial reaction of the stakeholders

was one of wariness, defensiveness, and less willingness to finding common grounds.

Also, where there is yet no mandate to do regulatory review, the intermediary may face expectations from the private sector that the agreed-upon solutions would need to be pushed by the research institution through the policymaking process in the country. The Philippine Institute for Development Studies, which undertook the country study, faced the dilemma of managing such high expectations from the stakeholders. The credibility of the Philippine Institute for Development Studies for the private sector stakeholders lies in that the institution is a government institution with known strong linkages with policymakers and regulators.

It is apparent from the discussion above that as an intermediary, the ability to have a successful fruition in terms of the adoption of the RURB recommendations or agreements depends on having a mandate to carry out RURB. Without a legal mandate, even if solutions are accepted (verbally), the most the intermediary can do is to promote the findings of its study.

At the same time, the studies show the strength of RURB as a methodology for identifying problems and proposing solutions based on intensive dialogue between stakeholders, and how crucial trust is as an element to carry out the role of intermediary in the process. We see through the studies that the ability to perform the role of intermediary varies from one country to another, based on the mandate of the intermediary, the track-record of the intermediary, and the trust the intermediary can instil amongst stakeholders.

5.2.5. Regulatory reform and regulatory review

Naidu cautions that '[i]t is important not to simply introduce regulatory reforms as an academic exercise'. She notes that '[r]egulatory reforms should be based on the principles of good governance and, thus, should be participatory, consensus-oriented, transparent, responsive, effective, efficient, equitable, and inclusive'. She goes on to note that '[a]n effective engagement process provides valuable information that can be used to design effective regulatory or non-regulatory solutions'. Indeed, as Majid, Goh and Lok (this volume) note, regulatory review should ideally be ingrained in the normal order of governance,

part of '[a] well-functioning regulatory system..essential to enhance governance and promote stability, productivity, progress, and prosperity, while at the same time protecting public health and safety and the environment'.

Where regulatory reform is not an engrained way of thinking, study findings at most can influence key players to be attracted to RURB as a helpful tool for promoting regulatory reform. But reforming the workings of government will remain a massive challenge, so progress towards reform will remain incremental. Where regulatory review is being implemented systematically, applying RURB is easier but, it should be noted, the regulatory review approach being applied is still generally less intensive and engaging than the iterative RURB methodology.

In Viet Nam, the task of conducting regulatory reviews is handled by an agency responsible for preparing regulations. This brings three advantages. First, the drafting agency has access to whatever data are available on the subject. Second, the agency has the capacity to gather comments from the stakeholders already involved in consultations. Third, it is cost effective as the process does not need to be contracted out to an independent reviewer.

However, in-house reviews contain downsides that weaken their credibility as they can be seen to lack independence. If the review is carried out by the agency tasked with drafting regulations, it may be difficult to get fresh insights into the impact of the regulation as outside stakeholders may be unwilling to express their true thoughts when talking to the regulator. Finally, if done in-house, there may be less incentive to make a thorough and comprehensive review.

Another issue that affects the representativeness of regulatory reviews is the number of businesses engaged in the informed regulatory conversations. Furthermore, if the dialogue partner is a business association, it must be representative of the sector and its members. Thus, for example, the Vietnam Association of Seafood Producers and Exporters has many members and it can speak to the regulators on behalf of all members. However, other sectors tend to be dominated by a few big players that dominate the business association to the detriment of smaller members. In such a situation, the RURB process is less likely to suggest findings that benefit all members proportionately.
Conversely, one should remember that for RURB to be successful, the government needs to be well represented. If the government does not

understand the objectives of the RURB study, it may not send the most appropriate officials along to the regulatory dialogues. Without the correct level of officials, it will be more difficult to formulate acceptable solutions and to get buy-in for supporting options. This poses a problem for RURB where the process is not already understood and accepted.

[6] Concluding Remarks

Against a backdrop of various national and regional efforts to promote GRP, the case studies show that RURB is a helpful tool for identifying regulatory problems and generating options to address them. The studies also show the extent to which regulatory burdens are hampering business, even in countries where regulatory review is embedded within governance systems and which rank highly in the EODB reports.

The country studies show that RURB can successfully identify problematic regulations, sectoral-wide and along the value and supply chain, and suggest options as solutions. A key strength of the methodological approach is the emphasis it places on dialogue as a key way to generate ideas, build trust between regulators and business, and create consensus between all parties about workable and agreed, if not best, solutions, to regulatory burdens without compromising health and safety concerns.

Informed regulatory conversations between stakeholders reveal and expose issues which can be agreed simply and potentially addressed without the need for an elaborate regulatory reform. Thus, through a process of mapping and robust consultations, changes can potentially be agreed at a minimum cost, but bringing a real, tangible and immediate impact on businesses. In other cases, findings will highlight more complex situations, ones which will take time and trust, along with improved institutionalised mechanisms, to bring about improvement, but still showing how the process of change must have inclusiveness.

Informed regulatory conversations highlight the different perceptions and nuanced understanding of all parties. Such subtleties are not captured by top-down, ministry-led initiatives to reduce regulations. RURB therefore offers

an opportunity to look beyond regulations and the problems created by their implementation through administrative rules and procedures that themselves can become a source of problems. Moreover, RURB, through dialogue with stakeholders, allows for an assessment of regulations, an evaluation of which ones are still needed or not, and an understanding of how the regulations work on the ground. The intermediary acts as a feedback loop from business to regulators who otherwise may fail to see the impact of regulations. Policymakers ideally make decisions based not just on qualitative judgements but also quantitative ones. The review of recent academic studies highlights the benefits that can accrue to business from regulatory reform. Cost-benefit analysis, or standard cost analysis, should thus be integral to the RURB approach as it allows the intermediary agency to prioritise different options, and the policymaker to make a decision based on quantitative data.

It should be noted that RURB has been designed to cut the burdens on business. Thus, it is private sector-oriented. However, it should also be remembered that implementing regulations costs the government money too, so cutting unnecessary regulations can create savings for the state, too.

As an academic study and in the absence of a legal framework that mandates RURB, the findings for most of the country reports are illustrative of the benefits that could be gained from RURB, without expectation of implementation. Indeed, even where a mandate does exist, as the case study from Malaysia shows, new sets of problems and challenges can emerge to challenge GRP even where regulatory review is longstanding and integral to a country's governance practices.

Where RURB and regulatory review had been absent or weak, conducting the country studies was fraught with difficulties. Without a history of dialogue between stakeholders or a belief that regulators work in good faith to try and bring about a win-win situation, it was difficult for the intermediary organisation to generate the options to various burdens. Thus, without even taking into consideration the regulatory burdens and the options suggested, the dialogue process involved in RURB in itself was an important first step to be taken to help show the potential value of this exercise. The results of this study are therefore

important as an evidence-based contribution that can help change mindsets by highlighting how RURB can engender beneficial outcomes to all stakeholders.

All countries in the region have enacted reforms to improve the regulatory environment in their country, but the impacts of these initiatives vary from country to country based on the approach to reform. The experiences of many countries in the world suggest that system-wide reforms with high levels of political buy-in lead to much more successful results. Thus, it is best to institutionalise GRP as the anchor of the system-wide approach to reform. The country studies indicate that the RURB methodology is a useful complement to and tool for the institutionalisation of GRP in all AMSs. It is also clear that the benefits of RURB are most apparent in an environment where RURB has the support and commitment from the most senior level officials.

The RURB works best where the practice is located within an independent body or is carried out by actors with a mandate to conduct RURB and follow-up on the findings. Where a clear mandate does not exist, regulatory reform lose direction and slows to the pace of inter-ministerial and agency coordination and standard operating procedures.

The studies in this volume show the potentially large benefits for business – and indeed the economy as a whole – in countries embracing RURB to improve business-related regulations. Where this is achieved, RURB will support the flowering of stronger, more efficient and competitive economies, improving employment prospects and livelihoods for the populace.

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