

The Development of Regulatory Management Systems in East Asia

Deconstruction, Insights, and Fostering ASEAN's Quiet Revolution

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Foreword

ASEAN economic integration as spelt out in the ASEAN Economic Community Blueprint 2015 largely saw the group of 10 Member States working to facilitate market access by removing tariffs, in the case of goods, and removing entry barriers for services. And this ASEAN has done well. The next phase of economic integration in ASEAN calls for the region to focus on regulatory coherence across the 10 Member States. This will enable businesses to make better use of the market access initiatives already in place.

For clearly, there is little value in declaring that businesses are provided duty-free market access if laws, regulations, processes, and procedures make it almost impossible for businesses to take advantage of the preferences provided. Also, if regulations and standards vary widely across the region, or if customs requirements are different from port to port, businesses cannot grow.

It is in the spirit of ensuring ASEAN's competitiveness that we agreed on the need for a comparative study of the regulatory management system (RMS) in Asia-Pacific. This would provide us not only with an understanding of the RMS regimes but also a basis for a conversation on how we can further facilitate business and improve our investment environment; in so doing, help in deepening ASEAN economic integration.

We are pleased to have collaborated with the Economic Research Institute for ASEAN and East Asia (ERIA) and the New Zealand Institute of Economic Research (NZIER) in the study. On behalf of the Government of Malaysia, we must thank the Study Team headed by Ponciano S. Intal, Jr., senior economist at ERIA, and Derek Gill, principal economist of NZIER.



Rebecca Fatima Sta. Maria

Secretary-General

Ministry of International Trade and Industry, Malaysia

Foreword

The Asia-Pacific is becoming more and more integrated. Countries in the region increasingly depend on each other for our economic prosperity. Our economies have shown great resilience, particularly in the years since the Global Financial Crisis, and Asia remains an engine for global growth. Regional economic groupings such as the ASEAN Economic Community, the Trans-Pacific Partnership, and in the future the Regional Comprehensive Economic Partnership are integrating our economies and opening up great opportunities for the future.

Integration has led to greater awareness of the importance of good regulation for economic growth. Good regulatory practice and alignment of regulations across borders can reduce the cost of doing business and help build stronger flows of trade and investment in our region.

The joint study by the Economic Research Institute of ASEAN and East Asia (ERIA) and the New Zealand Institute of Economic Research (NZIER) is therefore an important and timely piece of research. New Zealand is proud to co-sponsor the study with Malaysia.

The study does not take a 'best practice' approach. All countries have different ways of approaching regulations that are shaped by their own circumstances. Instead the study looks at what has worked well in certain regulatory systems, in the hope that countries of ASEAN, the East Asia Summit, and the wider Asia-Pacific can look to these results as a reference tool to improve their regulatory systems.

New Zealand is committed to building greater regulatory cooperation in support of the ASEAN Economic Community, the ASEAN Master Plan on Connectivity, and economic integration in the wider Asia-Pacific region. I hope the results of the study will lead to further cooperation.

Thank you to ERIA and NZIER for leading the project on this important subject.



Hon Todd McClay
Minister of Trade
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Foreword and Acknowledgements

The ERIA Report 'ASEAN RISING: Moving ASEAN and AEC Forward Beyond 2015' highlights the importance of a Responsive Association of Southeast Asian Nations (ASEAN) as part of an ASEAN strategy to achieve robust and equitable growth in an integrating ASEAN region beyond 2015. A Responsive ASEAN involves ASEAN and ASEAN Member States being responsive to and addressing the concerns of business in the region as they need to maintain and continuously develop business and investment environments that assist the private sector as the key motor of sustained high and equitable growth in ASEAN.

A Responsive ASEAN also entails a responsive regulatory regime, which in terms of process involves consultation, coordination, and evaluation, and in terms of content involves pro-competitive, commensurate, and non-discriminatory regulations, or what the World Bank calls 'Smart' regulations, i.e. streamlined, meaningful, adaptive, relevant, and transparent regulations. Finally, Responsive ASEAN entails regulatory coherence that facilitates an attractive business and investment climate in the integrating region. Regulatory coherence at the regional level in ASEAN calls for greater regulatory convergence of rules, regulations, and standards, helping, in turn, to reduce trade barriers among members. Regulatory coherence at the national level involves a variety of policies and regulations fitting together in a least-cost fashion, free of unnecessary redundancies and conflicting policies that are consistent with regional and other international agreements. It also involves effective coordination among agencies at the national level as well as between national and subnational levels of government.

The Economic Research Institute for ASEAN and East Asia (ERIA) and the governments of Malaysia and New Zealand agreed to undertake a comparative study of regulatory management in countries in the East Asia and Pacific region. The New Zealand Institute of Economic Research (NZIER) joined with ERIA to undertake the study. This project was designed to contribute to connectivity in the Asia-Pacific region by focusing on the development of responsive regulatory regimes. It also has the potential to guide further capacity building in the public sector by sharing understanding across countries and creating a process for learning together.

The countries in the study included Australia, Indonesia, Japan, Malaysia, New Zealand, the Philippines, Singapore, Republic of Korea, Thailand, and Viet Nam. This meant that there was a mixture of ASEAN and Organisation for Economic Co-operation and Development (OECD) member countries from the Asia-Pacific region. Cambodia, Lao PDR, and Myanmar participated in the workshops as observers. The project tapped the expertise of both researchers and practitioners in undertaking the country studies. The collaboration among the researchers and practitioners has proven to be very fruitful.

ERIA would like to thank the Study Team headed by Ponciano Intal, Jr., senior economist at ERIA, and Derek Gill, principal economist of NZIER. ERIA would also like to thank the contributions of each member of the study team who are listed in the next section. Finally, ERIA is most appreciative of the support of the Government of New Zealand and the Government of Malaysia. The project is a good example of fruitful collaboration among research institutions and government officials.

A handwritten signature in black ink, reading "H. Nishimura". The signature is stylized with a large, flowing "H" and a cursive "Nishimura".

Hidetoshi Nishimura
President, ERIA

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List of Abbreviations and Acronyms

ACAPR	Advisory Council of Administrative Procedures Reform
AEC	ASEAN Economic Community
AMS	ASEAN Member State
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
DTF	distance-to-frontier
EAS	East Asia Summit
EODB	ease of doing business
GRP	good regulatory practice
MPC	Malaysia Productivity Corporation
MRA	mutual recognition agreement
NCC	National Competitiveness Council (Philippines)
NDPC	National Development Planning Committee
NPDIR	National Policy on the Development and Implementation of Regulations
NTM	non-tariff measure
NZIER	New Zealand Institute of Economic Research
OECD	Organisation for Economic Co-operation and Development
PRC	People's Republic of China
RIA	Regulatory Impact Analysis
RIS	Regulatory Impact Statement
RMS	regulatory management system
RRC	Regulatory Reform Committee (Republic of Korea)
RURB	reducing unnecessary regulatory burden
SRC	Smart Regulation Committee (Singapore)
TPP	Trans-Pacific Partnership

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Chapter I

The Importance of Investing in Good Regulatory Practice, Responsive Regulations, and a Well-Performing Regulatory Management System

1.1. Introduction

H.E. Ngurah Swajaya, Indonesia's ambassador to the Association of Southeast Asian Nations (ASEAN) and chair of the Committee of Permanent Representatives in 2013¹, in his keynote speech during the inaugural East Asia Summit (EAS) Regulatory Roundtable held in Bangkok on 18 July 2013, recounted how he was enthused by the much-improved highways in Cambodia and set out on a land trip from Phnom Penh, Cambodia to Ho Chi Minh, Viet Nam. However, he got stuck for a few hours at the border of Cambodia and Viet Nam. That experience brings out, to him, the essence of the theme of the first EAS Regulatory Roundtable on regulatory coherence or connectivity, that:

Good physical infrastructure does not guarantee a seamless connectivity if they are not supported by good institutional and people to people connectivity, particularly adequate regulatory coherence across the border (Swajaya, 2013, p.3).

Ambassador Swajaya's speech highlights the complementarity among the three pillars of the Master Plan on ASEAN Connectivity that the ASEAN Connectivity Coordination Committee (ACCC) oversees – physical connectivity, institutional

¹ The Economic Research Institute for ASEAN and East Asia (ERIA)–New Zealand Institute of Economic Research (NZIER) project 'Towards Responsive Regulations and Regulatory Coherence in East Asia: Deconstructing Efficient and Effective Regulatory Management System' had its beginning at the inaugural EAS Regulatory Roundtable. This Report draws preponderantly on the results of the ERIA–NZIER project.

connectivity, and people-to-people connectivity, as well as the importance of regulatory coherence across the border among ASEAN Member States (AMSs).

The call for adequate regulatory coherence for seamless connectivity was echoed by H.E. Rizal Affandi Lukman, Deputy Minister for International Economic Cooperation, Coordinating Ministry for Economic Affairs of the Republic of Indonesia, in his keynote address during the Second EAS Regulatory Roundtable held on 29 September 2015 in Jakarta. He said (Lukman, 2015, p.2):

Seamless connectivity... necessitates that the domestic regulations within the ASEAN Member States are consistent with the regulations at their borders...Investment in good infrastructure for connectivity should be matched with investments in regulatory capacities to make seamless connectivity become a reality.

At the same time, Amb. Dato' Hasnudin Hamzah, ambassador of Malaysia to ASEAN and chair of the ACCC for 2015, in his address at the Second EAS Regulatory Roundtable, emphasised the challenges facing the implementation of the Master Plan on ASEAN Connectivity (MPAC) agenda that include the difficulty of '...alignment of regional visions and initiatives and national priorities and regulations... [given] the varying structures of regulatory management, public sector governance and administration procedures' (Hamzah, 2015, p.3). In addition, '...the harmonization of domestic regulations and legislation to establish the necessary institutions or mechanisms to support implementation of regional commitments remain difficult and inadequate' (Ibid.).

Regulatory coherence 'across the border' can be construed to mean both regulatory coherence 'at the border' and regulatory coherence 'within the border.' 'Seamless connectivity,' which is the physical and logistical manifestation of the goal of 'single market and production base' under the ASEAN Economic Community (AEC), necessitates that the domestic regulations within an ASEAN Member State (AMS) are consistent with the regulations at its border(s), the domestic regulations within another AMS are consistent with the regulations at its (the other AMS) border(s), and the regulations at the border for the two AMSs do not impose unnecessary regulatory burden on the economic agents from both AMSs interacting (e.g. importing, exporting) with one another. The word 'adequate' in the phrase 'adequate regulatory coherence' in the above-

mentioned keynote speech can be construed to mean 'does not impose unnecessary regulatory burden' but does not necessarily call for uniform or harmonised regulations across AMSs.

The discussion on regulatory coherence above brings out, fundamentally, the issue of regulations and the regulatory environment in the context of ASEAN integration and, more broadly, in the context of economic performance and development of AMSs. In the context of ASEAN integration, the **ASEAN Good Regulatory Practice (GRP) Guide** puts it perfectly in its first paragraph (p.1):

Differences in the regulatory requirements of individual Member States are among those which have the greatest impact on trade. In certain situations, regulatory requirements may actually impede gains from trade liberalization.

While the GRP Guide is meant to be used in conjunction with the ASEAN Policy Guideline on Standards and Conformance, the above-mentioned statement from the GRP Guide is applicable to many areas of economic policy, and indeed amplifies very well the call for adequate regulatory coherence across borders in Amb. Swajaya's keynote speech.

Equally important, the issue of regulations and the regulatory environment in the context of economic performance and development looms increasingly large in each AMS. The 10th Malaysia Plan chapter on modernising business provides an example of the increasing policy focus on the role of regulations and the impact of the regulatory environment on economic performance (MPC, n.d., p.1):

The regulatory environment has a substantial effect on the behaviour and performance of companies. 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.

Additionally, Malaysia's National Policy on the Development and Implementation of Regulations (NPDIR) states (MPC, n.d., p.2):

There is increasing recognition that over-regulation, poorly designed regulations or in some cases under-regulation lead to regulatory failures which undermine the intentions of good policies. Global competition, social, economic and technological changes require the government to consider the inter-related impacts of regulatory regimes, to ensure that regulatory structures and processes continue to be relevant, robust, transparent, accountable and forward-looking.

Arguably the statement above culled from Malaysia's 10th Plan is a good reflection of the experience in many AMSs. Arguably also, Malaysia (together with Singapore) counts among the first in ASEAN to develop, adopt, and (increasingly) implement a comprehensive and cohesive national policy and strategy to modernise the regulatory regime and institutionalise GRP within the whole government. A number of other AMSs also have significant regulatory regime initiatives, although not yet as comprehensive, as cohesive, as systematic, and involving the whole bureaucracy as in the case of Singapore and (increasingly) Malaysia. Arguably even further, the development and implementation of modernising the regulatory regime, institutionalising GRP, and the associated changes in institutions, mindsets, and people involve a long and dynamic process, rather than a one-off thing. This is especially the case in a region like ASEAN with member states of widely differing levels of economic, institutional, and bureaucratic development and capabilities.

Yet, precisely given the varied levels of economic, institutional, and bureaucratic development and capabilities in ASEAN, investing in GRP, responsive regulations, and a well-performing Regulatory Management System (RMS) in each AMS in a concerted manner may well be one key means by which all AMSs can grow individually and as a group. It is also a possible key means by which ASEAN integrates better. This is because the implementation of the AEC agreements and the drive towards adequate regulatory coherence across borders could be furthered by the pursuit of coherence, transparency, responsiveness, non-discrimination, effectiveness, efficiency, coordination, and accountability that are the key goals of GRP, responsive regulations, and a well-performing RMS.

Thus, to some extent, this is the complementary path towards deeper economic integration in ASEAN (that is, complementary to ASEAN regional agreements on facilitation, liberalisation, and cooperation) through concerted efforts among AMSs to improving domestic regulatory regimes and processes and reducing unnecessary regulatory burdens on firms and people within the context of an integrating ASEAN. This would be some kind of an **ASEAN ‘quiet revolution’ on regulation and integration**.

In the ERIA book *ASEAN Rising: ASEAN and AEC Beyond 2015* (Intal et al., 2014), the proposed framework for moving AEC forward post 2015 includes ‘responsive regulation’ as a foundation of four pillars towards the AEC which are similar (but modified) to the current four pillars in the current AEC Blueprint 2009–2015. ‘Responsive regulation’ in the book focuses on ‘process’ (emphasis on wide consultations with stakeholders, coordination among government agencies, and monitoring) as well as ‘content’ (pro-competitive, commensurate, non-discriminatory regulations).

The Project

As a follow-up to the ASEAN Rising book, the Project ‘Towards Responsive Regulations and Regulatory Coherence in East Asia: Deconstructing Efficient and Effective Regulatory Systems’ expands and deepens further the responsive regulations’ perspective towards well-performing RMS and, implicit in that, good regulatory practice. A wide range of countries has introduced systems of regulatory management to improve the quality of the stock and flow of regulation. Many countries in the Asia-Pacific region have been reviewing the role of regulatory management regimes as a means of reducing the costs of doing business, facilitating international trade and investment, and improving regulatory outcomes in areas such as health, safety, and environmental protection.

In understanding the evolution, and deconstructing the elements, of regulatory management in 10 countries in the East Asia and Pacific region, the Project focuses on ‘what works’ to make regulatory management regimes successful. The primary research question was:

Which elements of RMSs generate the most value?

The subsidiary questions were:

- i. What are the common elements of RMSs/regimes?
- ii. What do the different countries' experiences teach us about the sequencing of the different regulatory management elements, recognising the staged approach that governments commonly take in introducing regulatory management, e.g. should they start with programmes that have comprehensive coverage, or should they 'start small' with particular tools that focus on a particular sector or area?
- iii. How are various stages in the regulatory management journey influenced by the individual country context and circumstances, including the level of regulatory capability and overall level of economic development?

Approach. The Project relied primarily on (1) studies of countries' RMSs, and (2) case studies for each country that generally focused on a successful regulatory change and contrasted that with previous or other regulatory change that did not achieve the stated goal. The studies used an analytic framework and a set of guiding questions for semi-structured interviews. The countries in the study included Australia, Indonesia, Japan, Malaysia, New Zealand, the Philippines, Singapore, the Republic of Korea (henceforth, Korea), Thailand, and Viet Nam. This meant that there was a mixture of ASEAN and OECD (Organisation for Economic Co-operation and Development) member countries from the Asia-Pacific region. Cambodia, Lao PDR, and Myanmar participated in the workshops as observers.

The research drew extensively on the judgment of the country experts. For example, once the researchers had completed their country and case studies they were asked to make a judgment about the significance of each individual element in influencing the overall outcome of the case studies and the effectiveness of the overall national system. The answers were based on a four-point Likert scale, with each respondent asked to rate each element as very significant, significant, not very significant, no significance.

The country studies and case studies are available from the ERIA website http://www.eria.org/publications/discussion_papers/ as ERIA discussion papers.

The studies for Australia, New Zealand, Korea, Japan, Thailand, the Philippines, Viet Nam, and Malaysia and Singapore (joint study) are available with this publication; the other country studies are forthcoming.

A key potential limitation of cross-country studies of this type is the lack of validity of inter-country comparisons because of different researchers' perspectives. To gain greater inter-country reliability, a variety of techniques were used. These included the convening of two workshops in which draft material was presented and then commented on by reviewers from other jurisdictions; and the provision of feedback, on an iterative basis, from the lead researchers on each of the draft country chapters.

This Report presents the key research findings and policy recommendations of the Project. The rest of Chapter I discusses (i) the importance of GRP, responsive regulation, and well-performing RMS to AMSs and the AEC, and (ii) major challenges towards efficient trade facilitation, non-protective non-tariff practice, responsive regulations and a well-performing RMS. Chapter II presents the GRP principles and responsive regulation and a typology of stages or levels of RMS development. Chapter III discusses the evolution and current status of RMS in selected AMSs and East Asian countries. Chapter IV presents the results of the analysis of the elements of the RMSs in East Asia; Chapter V is on lessons and insights from the country studies in the Project. The last chapter, Chapter VI, briefly concludes and presents key recommendations on engendering GRP, responsive regulation, and a well-performing RMS, and on regional regulatory cooperation towards greater regional regulatory coherence.

1.2. Importance of Institutions, Good Regulatory Practice, and a Well-Performing Regulatory Management System

Both theoretical and empirical studies have shown that institutional and governance factors play a critical role in the economic performance of nations, best exemplified by the pioneering work of Douglas North, on the one hand, and the proliferation of empirical studies in recent years on the impact of quality of institutions and governance on foreign direct investment among other things, on the other. For the most part, the studies show that good governance and institutional environment leads to positive economic performance. Conversely,

institutional and/or governance failings tend to raise uncertainty and transactions cost, which thereby hurts investment and growth performance.

Similarly, there is a growing recognition that the improvement of the quality of public administration and regulatory agencies are an important component of the 'second generation reforms' that emerging economies need to undertake for productivity-based growth and escape the 'middle income trap' (Sally, 2013). The 'middle income trap' is at its heart a 'governance failure; an inability to take a long-term view of the best way forward for society as a whole' (Kharas, 2013, p.2). Forming 'fair, transparent and accountable public institutions' and building 'rule of law', with 'institutional structures that produce predictable and sound decisions', though hard to accomplish, are important means of avoiding the middle-income trap (see Kharas, 2013, p.2). GRP, responsive regulations, and a well-performing RMS exemplify the improved quality of public administration and the formation of fair, transparent, and accountable public institutions that, in the above discourse, are considered important elements of the way forward in avoiding the so-called middle-income trap.

Investing in improving governance and quality of public institutions can yield significant dividends. Thus, for example, Kaufmann et al. (1999) showed large increases in per capita income, significant declines in infant mortality, and marked increases in literacy arising from improved quality in six governance indicators. Similarly, using the governance indicators developed by Kaufmann et al. and currently publicly available through *govindicators.com*, B. Anghel (2004) showed the significant impact on foreign direct investment inflow of a one point increase in the score for government effectiveness, regulatory quality, and control of corruption, other things being equal. It must be noted that a one-point increase in the governance scoring is a large improvement because the experience of many countries show that the scores barely move over a decade. The positive impact on investments arising from improved performance in institutional factors has been shown in other studies. For example, Karim et al. (2012) showed that the quality of institutions affected the inflow of foreign direct investment to Malaysia.

Parker and Kirkpatrick (2012) reviewed the empirical studies on the impact of regulatory policy (general regulatory governance indicators) and better regulation processes (e.g. administrative simplification, ex ante and ex post Regulatory Impact Analysis [RIA]). Their findings are consistent with the view that better regulation and regulatory processes contribute positively to economic welfare, even if regulations and their impact are context specific and the empirical

estimates are necessarily partial in view of data and modelling constraints.

Among the noteworthy studies are the following (see Parker and Kirkpatrick, 2012, for a detailed summary and evaluation of the studies):

- Simulation results of the impact of reduction in administrative burden on the whole economy in the European Union (EU), using a general equilibrium model (called WorldScan) by both the CPB Netherlands Bureau for Economic Policy Analysis (Centraal Planbureau, CPB) and by Gelauff and Lejour showed that there is a significant increase in gross domestic product (GDP). The impact on GDP is greater if all the EU countries undertake concurrent reductions in administrative burden. In addition, the longer-term impact is greater when the dynamic effects of research and development (R&D) are also taken into consideration. In the Gelauff and Lejour simulations, the magnitude of the GDP impact varies among EU countries.
- An econometric study by Djankov et al. suggested that more regulations are associated with worse corruption scores and that as the number of procedures to start a business increases, compliance with international standards such as on pollution declines.
- An econometric study by Jacobzone et al. indicated that improvements in the quality of RMS lead to better outcomes in GDP, total employment, employment in the business sector, and labour productivity.
- An econometric study by Loayza et al. shows that regulatory burden is inversely related with economic growth, although the negative effect becomes smaller when the quality of regulatory governance and the institutional framework is higher. This seems to suggest that the adverse effect of high regulatory burden is stronger and compelling for those countries with a relatively low quality of regulatory governance and institutional framework. Or conversely, reducing regulatory burden through improving regulatory governance and the regulatory framework would have greater economic growth impact in those countries with comparatively poor regulatory governance and a poorer institutional framework.
- The studies on the impact of RIA in Victoria, Australia by Abusah and Pingario and in Viet Nam by the Ministry of Justice of Viet Nam suggest that the adoption of RIA positively impacts on economic welfare, especially where the internal RIA processes are subject to external and independent scrutiny.

Similarly, improved ease of doing business (EODB) indicators is also shown to be positively related to improved economic and business performance, other things being equal. The Ease of Doing Business Report for 2015 highlights studies that show that (i) an improvement of 10 points in the overall distance-to-frontier (DTF) score would lead to new firm density (number of new firms in a year per 1,000 adult population) of around 0.5; (ii) such improvement in the DTF score benefits the sales and employment performance of small firms more than that of large firms; (iii) there is a positive relationship between entrepreneurial activity and indicators of the quality of the legal and regulatory environment and governance; (iv) a marked improvement from the lowest quartile to the highest quartile in the EODB ranking would lead to a higher per capita growth rate of about 0.8 percentage points; (v) simplifying business registration leads to more firm creation; etc. (EODB, 2015, pp.11–12). The upshot is that it is well worth investing in improving the business regulatory environment given the significant economic benefits.

An ERIA study (Narjoko, Dee, and Fukunaga, 2013) shows that domestic competition and government efficiency leads to greater intra-ASEAN trade than pure customs facilitation per se. Specifically, a 1 percent rise in domestic competition and the government efficiency index would lead to a 2.4 percent increase in intra-ASEAN trade. In contrast, a 1 percent rise in the customs clearance plus logistics competence index would lead to only a 1.5 percent increase in intra-ASEAN trade. Arguably, GRP and a well-performing RMS engender government efficiency and enhance domestic competition (via its integration with competition policy and market openness policies). Thus, investing in GRP and in a well-performing RMS in AMSs potentially enhances intra-ASEAN trade.

Tables 1.1a to 1.1c present the governance scores and percentile ranking of the ASEAN + 6 countries and some corresponding global averages from the early 2000s to the early 2010s; the governance scores are in regulatory quality, government effectiveness, and control of corruption. As the tables indicate, Singapore, New Zealand, and Australia rank the highest in the ASEAN + 6 countries, and indeed, among the highest in the world, followed closely by Japan, and then Korea, Brunei Darussalam, and Malaysia. The rest trail behind, starting with Thailand and the Philippines and ending up at the rear with Lao PDR and Myanmar. The values of the governance indicators do not change drastically over a short period because of the nature of the indicators and the methodology of

estimation of the indices. Nonetheless, there are noteworthy improvements in the percentile rank during the 2003–2013 period, as thus:

- Indonesia – in regulatory quality, control of corruption, and government effectiveness
- Lao PDR – in regulatory quality, control of corruption, and government effectiveness
- Japan – in government effectiveness, control of corruption, and regulatory quality
- Korea – in regulatory quality and government effectiveness
- Philippines – in control of corruption, especially during 2008–2013
- PRC – in control of corruption especially during 2008–2013
- Malaysia – in regulatory quality

Table 1.1a: Regulatory Quality Scores and Percentile Rankings

Country/Territory	2003		2008		2013	
	Score	Ranking	Score	Ranking	Score	Ranking
New Zealand	1.67	96.57	1.79	98.06	1.81	98.09
Australia	1.58	93.63	1.76	96.60	1.79	97.13
Japan	1.06	80.88	1.13	84.47	1.10	83.25
Korea, Republic of	0.75	73.53	0.72	73.30	0.98	79.90
PRC	-0.34	42.65	-0.13	51.46	-0.31	42.58
India	-0.36	40.69	-0.36	40.78	-0.47	33.97
ASEAN						
Singapore	1.83	99.02	1.90	99.03	1.96	100.00
Brunei Darussalam	1.00	79.41	0.81	74.76	1.10	82.78
Malaysia	0.60	68.14	0.36	62.62	0.62	72.25
Thailand	0.37	64.22	0.24	58.25	0.21	57.89
The Philippines	-0.03	52.45	-0.07	52.43	-0.07	51.67
Indonesia	-0.78	20.59	-0.32	43.20	-0.20	46.41
Cambodia	-0.46	36.76	-0.44	37.38	-0.35	39.23
Viet Nam	-0.56	29.41	-0.61	30.10	-0.65	28.23
Lao PDR	-1.47	6.37	-1.13	14.08	-0.85	22.49
Myanmar	-2.04	1.47	-2.20	0.97	-1.51	5.26

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: World Governance Indicators dataset, 1996–2013. Adapted from

<http://info.worldbank.org/governance/wgi/index.aspx#home>, accessed on 15 September 2015. Copyright 2014 by The World Bank.

Table 1.1b: Government Effectiveness Scores and Percentile Rankings

Country/Territory	2003		2008		2013	
	Score	Ranking	Score	Ranking	Score	Ranking
New Zealand	1.82	93.66	1.67	93.69	1.75	96.17
Australia	1.81	93.17	1.78	95.63	1.62	94.74
Japan	1.22	86.34	1.46	88.35	1.59	93.78
Korea, Republic of	0.93	78.54	1.05	81.55	1.12	82.30
PRC	-0.04	57.07	0.15	59.22	-0.03	54.07
India	-0.07	55.12	-0.03	54.37	-0.19	47.37
ASEAN						
Singapore	1.96	96.59	2.43	100.00	2.07	99.52
Malaysia	1.17	84.88	1.16	83.50	1.10	81.82
Brunei Darussalam	0.67	73.17	0.91	78.64	0.86	74.16
Thailand	0.38	66.34	0.25	63.11	0.21	61.24
The Philippines	-0.04	56.59	0.03	56.80	0.06	56.94
Indonesia	-0.45	37.56	-0.24	46.60	-0.24	45.45
Viet Nam	-0.43	39.02	-0.20	47.09	-0.30	44.02
Lao PDR	-1.06	13.17	-0.87	18.45	-0.76	24.88
Cambodia	-0.88	17.56	-0.95	16.02	-0.92	18.66
Myanmar	-1.24	8.29	-1.52	2.91	-1.51	4.31

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: World Governance Indicators dataset, 1996–2013. Adapted from

<http://info.worldbank.org/governance/wgi/index.aspx#home>, accessed on 15 September 2015. Copyright 2014 by The World Bank.

As indicated in the tables, progress in governance indicators is not linear: there are setbacks and apparent retrogressions. Among the more noteworthy are India and Thailand for all the three governance indicators as well as the People's Republic of China (PRC) and the Philippines on control of corruption during the 2003–2008 period.

Table 1.1c: Control of Corruption Scores and Percentile Rankings

Country/Territory	2003		2008		2013	
	Score	Ranking	Score	Ranking	Score	Ranking
New Zealand	2.38	99.02	2.33	98.54	2.35	99.52
Australia	1.94	94.15	2.07	96.12	1.76	93.78
Japan	1.18	84.88	1.31	85.92	1.65	92.82
Korea, Republic of	0.48	71.71	0.37	67.96	0.55	70.33
PRC	-0.41	43.41	-0.54	35.44	-0.35	46.89
India	-0.44	42.93	-0.36	43.69	-0.56	35.89
ASEAN						
Singapore	2.26	98.05	2.25	98.06	2.08	96.65
Brunei Darussalam	0.29	64.39	0.54	72.82	0.72	74.16
Malaysia	0.39	68.78	0.02	59.22	0.41	68.42
Thailand	-0.15	52.68	-0.42	42.23	-0.33	49.28
The Philippines	-0.53	38.54	-0.75	25.24	-0.40	43.54
Viet Nam	-0.55	37.07	-0.73	25.73	-0.53	36.84
Indonesia	-0.96	14.63	-0.56	33.98	-0.62	31.58
Lao PDR	-1.16	8.78	-1.21	6.31	-0.90	19.62
Cambodia	-0.94	15.61	-1.20	6.80	-1.01	16.27
Myanmar	-1.46	2.44	-1.56	1.94	-1.07	12.44

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: World Governance Indicators dataset, 1996–2013. Adapted from

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Similarly, **Tables 1.2a to 1.2c** provide some EODB indicators. As the tables show, Singapore and New Zealand are the world's best in terms of the overall DTF score. Among the ASEAN + 6 countries, the next best are Korea, Australia, and Malaysia; the lowest scoring among them are India, Lao PDR, and Myanmar. The tables also indicate significant improvements in a number of AMSs, most notably Malaysia, the Philippines, Viet Nam, and Thailand.

The range of the governance percentile ranks among the ASEAN + 6 countries must be the widest among regional groupings in the world, ranging from virtually 100 percent down to a low single-digit percentage. The variation among the ASEAN + 6 countries on the EODB indicators is also wide, from the world's best two countries to one of the lowest.

Table 1.2a: Overall Scores for Distance-to-Frontier (DTF) and Starting a Business

Country/Territory	Overall DTF		Starting a Business			
	2010	2015	2006	2007	2010	2015
New Zealand	88.83	86.91	95.62	95.62	99.95	99.96
Korea, Republic of	81.74	83.40	61.36	61.61	84.47	94.36
Australia	80.87	80.66	96.19	96.20	96.46	96.47
Japan	78.42	74.80	71.84	83.36	83.37	86.21
PRC	57.79	62.58	50.97	59.20	62.67	77.43
India	49.46	53.97	38.07	47.42	53.75	68.42
ASEAN						
Singapore	91.85	88.27	91.15	91.16	96.46	96.48
Malaysia	74.37	78.83	74.26	74.46	80.41	94.90
Thailand	76.43	75.27	80.53	80.58	82.30	87.98
Viet Nam	59.44	64.42	71.41	70.57	74.46	77.68
The Philippines	54.31	62.08	61.68	61.90	61.53	67.23
Brunei Darussalam	58.99	61.26	NA	48.90	48.77	53.12
Indonesia	57.18	59.15	43.05	46.14	62.98	68.84
Cambodia	48.40	55.33	34.99	36.14	42.28	41.23
Lao PDR	44.55	51.45	62.54	64.20	66.73	68.95
Myanmar	NA	43.55	NA	NA	NA	22.85

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: Distance to Frontier dataset, 2004–2015. Adapted from

<http://www.doingbusiness.org/data/distance-to-frontier>, accessed on 16 September 2015.

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Such wide variation in governance and EODB indicators, while challenging, can also be an opportunity for learning and adaptation, especially for the countries in the region as they step up further their efforts in improving their regulatory regimes and RMSs.

The need for improved regulatory regimes and RMS in a number of countries in the region is well encapsulated in the concerns and complaints raised by respondent firms in an ERIA study on supply chain connectivity of agricultural products in ASEAN in 2013 (Intal, 2013).

Among the significant concerns and complaints of the private sector are the following, many of which could be addressed to a large extent by the implementation of GRP and improvement in the RMSs in the countries concerned:

Table 1.2b: Dealing with Construction Scores

Country/Territory	Dealing with Construction			
	2006	2007	2010	2015
Korea, Republic of	85.60	87.15	87.28	85.89
New Zealand	85.77	85.70	85.82	85.67
Australia	81.38	81.40	84.47	84.30
Japan	74.49	74.49	73.63	73.30
PRC	9.14	16.37	24.40	43.75
India	21.29	21.29	21.29	30.89
ASEAN				
Singapore	89.21	89.28	92.69	92.84
Thailand	86.08	86.09	86.07	88.77
Viet Nam	81.38	82.55	83.12	83.66
Malaysia	54.93	54.95	57.38	82.49
Brunei Darussalam	NA	59.33	59.32	77.93
Cambodia	62.15	63.57	75.20	76.45
Lao PDR	65.09	66.81	67.75	68.50
The Philippines	57.69	58.20	59.30	66.08
Myanmar	NA	NA	NA	64.93
Indonesia	58.06	59.39	62.68	59.03

ASEAN = Association of Southeast Asian Nations; PRC = People's Republic of China.

Source: Distance to Frontier dataset, 2004–2015. Adapted from

<http://www.doingbusiness.org/data/distance-to-frontier>, accessed on 16 September 2015.

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Customs clearance

- **Disputes on classification and valuation** – a major source of delay and key concern for stakeholders in at least three AMSs
- **Problems of coordination with other government agencies** – an often occurrence in at least three AMSs
- National Single Window is perceived to have reduced customs clearance time and corruption
- **In border posts, congestion in the terminal and on access road**, the need to **transfer cargo** between vehicles and the need for physical inspection and security checks are the major sources of delay. **Lack of border crossing coordination** with regional neighbours is a serious concern in at least three AMSs.

Table 1.2c: Trading Across Borders

Country/Territory	Trading Across Borders			
	2006	2007	2010	2015
Australia	79.57	79.89	80.50	80.53
PRC	70.53	71.92	72.97	71.68
India	53.23	53.74	65.85	65.47
Japan	87.47	87.39	87.19	87.23
Korea, Republic of	78.60	78.64	92.51	93.45
New Zealand	84.84	84.97	84.85	85.41
ASEAN				
Indonesia	70.54	71.66	74.91	77.46
Malaysia	88.58	88.88	89.18	89.94
Philippines	72.61	73.01	74.73	77.23
Singapore	96.73	96.79	96.62	96.47
Thailand	57.44	57.79	82.73	83.57
Viet Nam	68.79	69.56	72.62	75.56
Brunei Darussalam	NA	77.52	77.66	80.87
Cambodia	49.80	50.38	61.23	65.92
Lao PDR	18.43	19.84	41.65	52.96
Myanmar	n.a.	n.a.	n.a.	70.02

ASEAN = Association of Southeast Asian Nations; n.a. = not available;

PRC = People's Republic of China.

Source: Distance to Frontier dataset, 2004–2015. Adapted from

<http://www.doingbusiness.org/data/distance-to-frontier>, accessed on 16 September 2015.

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Transparency

- **Access to and quality of information** on regulations, licences, standards, and certification, etc. are a serious concern in at least three AMSs
- **Inconsistent interpretation of rules** – a serious-to-critical issue for four AMSs
- **Irregular enforcement** and allowance for discretionary behaviour – a serious concern in at least four AMSs
- Problems of **informal payment, excessive fees, and/or corruption** is a serious-to-critical concern in at least four AMSs

Infrastructure, Transport, and Logistics services

- Domestic roads, ports, trucking, domestic logistics providers, and cold chain are rated **unsatisfactory** in at least three AMSs

- Inter-island shipping is deemed ***inadequate*** in at least two AMSs and ***very unsatisfactory*** in adequacy, cost, and quality in one AMS.
- Additional serious constraints to efficient logistics service provision raised by logistics service providers, road transport firms, and maritime transport services providers in at least four AMSs include:
 - limited hours of operation at customs facilities, improper penalties, repeated handling, limitations on vehicle fleet size and hours of operation, and limitations on foreign equity in logistics services
- Road transport service providers also complain about
 - informal checkpoints and costs as well as road capacity and quality, high toll fees, and poor quality of bridges
- Shipping firms in a number of AMSs also have serious concerns about
 - Congestion, high port charges, poor port conditions, monopolised handling of cargo, and absence of adequate warehousing and specialised storage facilities in main port and subsidiary ports

The usefulness of good regulatory processes is also highlighted in the results of an ERIA study on the implementation of AEC Blueprint measures (see Intal, et al., 2014). Specifically, the results of the study's limited survey of firms in ASEAN concerning non-tariff measures (NTMs) suggest that the respondent firms that find it relatively burdensome to meet the requirements of NTMs (that are largely technical barriers trade in the respondent firms) are those where there are

- complicated and burdensome procedures;
- excessive and redundant documentation requirements (highlighted especially by firms in the Philippines);
- high permit fees; and
- lack of in-country testing facilities (highlighted especially by firms in Myanmar).

It is worth noting that in one AMS that has a comparatively high incidence of NTMs among AMSs, the majority of the respondent firms in the country do not consider the requirements burdensome or they do not have substantial cost and time effects on them because of

- fast clearance; and
- efficient, consistent, and transparent procedures and practices (Intal, 2015).

The stark difference in the impact on firms of NTMs has led the study to recommend that the best way to address the non-tariff barrier effect of NTMs is through the implementation of GRP domestically and not solely through trade negotiations.

Finally, it is worth emphasising that in the current world of production fragmentation and production networks and regional and global value chains, the implementation of GRP, responsive regulations, and development of a well-performing RMS contribute substantially to a country's deepening engagement in regional and global production networks by reducing set-up and operations cost in the country. In addition, if the country's regulations and practices are more in line with those of partner countries and/or with global practices and standards, then the country's 'service link costs' (ERIA, 2010) with other production blocks in other countries would be lower. As such it would likely lead to the country's even deeper engagement in the regional and global production networks and value chains. As a result, the country's production network-driven trade, investment, and industrial development would be enhanced.

AEC Blueprint and TPP. Both the AEC Blueprint 2025 and the Trans-Pacific Partnership (TPP) highlight the importance of GRP and, for the TPP Agreement, even regulatory coherence; as such, both have a bearing on the system of regulatory management.

The AEC Blueprint 2025 (2015) has Section B.7 on 'Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice' and Section B.6 on 'Good Governance.' The section on good governance emphasises greater transparency in the public sector and enhanced engagement with the private sector and other stakeholders. The section on responsive regulations and GRP emphasises the minimisation of compliance cost to, and the prevention of, unwarranted distortions and inconsistency arising from the regulations; at the same time such regulations effectively address the identified problem(s). As the Blueprint points out: '(t)he drive towards a competitive, dynamic, innovative and robustly growing ASEAN entails that the regulations are non-discriminatory, pro-competitive, effective, coherent and enabling of entrepreneurship, and the regulatory regime responsive and accountable whereby GRP is embedded' (p.76). The strategic measures include regular review of regulatory implementation processes and procedures for streamlining, institutionalising GRP consultations and informed regulatory consultations, and capacity building.

The TPP Chapter 25 on regulatory coherence is also fundamentally about GRPs'... in the process of planning, designing, issuing, implementing and reviewing regulatory measures in order to facilitate achievement of domestic policy objectives, and in efforts across governments to enhance regulatory cooperation in order to further those objectives and promote international trade and investment, economic growth and employment.' The use of GRP involves the use of regulatory management requirements such as RIA for the assessment of proposed regulatory measures, a coordination mechanism or institution to promote interagency consultation and coordination, transparency through public access to information on new regulatory measures and grounds for selection of the new measures, and regular review of the stock of regulations to determine whether they remain effective. Of the 12 countries that are members of TPP, six are included in the Project: Australia, Japan, Malaysia, New Zealand, Singapore, and Viet Nam.

The importance of GRP for the region, implied in the agreements on the AEC Blueprint 2025 and TPP, is echoed by a number of ASEAN officials and officials of AMSs. For example, H.E. Ong Keng Yong, former ASEAN Secretary General, in his remarks during the Second EAS Regulatory Roundtable, emphasised the fundamental challenges facing ASEAN post 2015:

- Make the ASEAN Community ...'more real, more felt, more present, and more obvious to the ASEAN peoples...[and] make the benefits from integration more real to the people.'
- ASEAN community building will be based more on rules and regulations. The benefits of a rules-based community include making AMSs more competitive through decreasing corruption and increasing transparency and inspiring the public service to be more professional, among others.

According to him, GRP contributes to addressing those two fundamental challenges. For example, GRP encourages cooperative government–private sector engagement as well as innovations in government mechanisms and operations. In addition, with 'Southeast Asia witnessing a connectivity and infrastructure boom and many big countries [wanting] to do more infrastructure development in this region; ...if we put our ASEAN bodies and our governments to do more systematic GRP, we could obtain more benefits and profits from the infrastructure and connectivity boom' (Ong, 2015).

Similarly, H.E. Ambassador Dato' Hasnudin bin Hamzah, Malaysia's permanent representative to ASEAN and head of CPR, also emphasised the potential benefits of GRP to AMSs, as follows (2015, pp.2, 4):

Good regulatory practices [have] potential to induce a more efficient market environment for ASEAN Member States with a fair business regime to be more globally competitive, to induce greater economic growth, and to jumpstart our aspiration to achieve a more equitable reach of development among our Member States. Good regulatory practices are a seal of good housekeeping of our intention to improve our institutional structure.

Good regulatory reforms serve as important social safeguard against market failures and inefficiencies on the ground. This would facilitate the meaningful participation of all stakeholders as well as to ensure smooth implementation of projects. This is especially important in emerging markets with a huge gap in efficiency, competition and quality delivery of services.

Good regulatory reforms could ...improve competitiveness by reducing the cost structure of exporting sectors in regional and global markets; and it could create new job opportunities.

Additionally, H.E. Deputy Minister Rizal Lukman of Indonesia highlighted (2015, pp.2, 7):

The emergence of the ASEAN Economic Community is putting the pressure on [the AMSs] to accelerate the bureaucratic, administrative and regulatory reforms needed to ensure its competitiveness both in Southeast Asia and globally.... With such a massive economic potential [in ASEAN as the 7th largest economy in the world if it were a single economy]...developing good regulatory practices and regulatory coherence both at the border and within the individual country is essential to generate significant growth that is also inclusive and equally distributed.

Additionally, as the characteristics of each country are unique, it is impossible to implement a 'one size fits all' regulatory framework that encompasses the entire region. Therefore, while pushing forward regulatory coherence, there should also remain flexibility for each country to implement their regulatory framework and regulatory reforms based on their respective state developments and characteristics.

Chapter II

What Are Good Regulatory Practice, Responsive Regulation, and a Well-Performing Regulatory Management System?

Regulation, and with it regulatory policy, is one of the three central levers of government power, together with currency (monetary policy) and taxes and expenditures (fiscal policy). As such, regulation is critical in shaping the welfare of economies and societies (OECD, 2010, p.5). As the Organisation for Economic Co-operation and Development (OECD) report emphasises (Ibid., p.7),

Modern economies and societies need effective regulations to support growth, investment, innovation, market openness and uphold the rule of law. A poor regulatory environment undermines business competitiveness and citizen's trust in government, and it encourages corruption in public governance.

The challenge is to ensure that regulations address the failings of the market system (e.g. negative externalities of production and consumption, asymmetric information) while preventing regulations to be a source of unnecessary burden to firms and citizens (that can arise from poorly designed, poorly implemented, and inconsistent regulations) or of regulatory capture. GRP and a well-performing RMS engender effective and efficient regulations.

2.1. Good Regulatory Practice

GRP is underpinned by the following principles, drawing from the principles adopted by Malaysia (MPC, 2014) and New Zealand (New Zealand Treasury, 2012)². Thus, in the Malaysian core GRP principles, the design and implementation of regulation (s) need to:

- **Be a proportionate and targeted** response to the risk(s) that a (set of) regulation(s) address(es);

² Other versions of GRP include the Asia-Pacific Economic Cooperation (APEC)–OECD Integrated Checklist on Regulatory Reform and the APEC Principles to Enhance Competition and Regulatory Reform; see <http://www.oecd.org/gov/regulatory-policy/recommendations-guidelines.html>

- **Minimise adverse side effects** to achieve regulatory goal at least cost;
- **Have a flexible and responsive approach** to allow regulators to adopt least cost and incentivise compliance with regulation;
- **Have consistency** in design, interpretation, and application of and among regulations, **without duplication and overlap**;
- **Have transparency and predictability** arising from regular consultation of interested parties, easy accessibility of information on regulations, clarity of legal obligations of the regulated entities, and mechanisms engendering predictability of regulatory regime over time;
- **Have accountability and probity** provisions to reduce corruption.

In addition, the New Zealand formulation of its 'best practice regulation model' indicates the following principles:

- **Be a durable regulatory regime** capable of responding to changing circumstances;
- **Have capable regulators** and efficient systems for effective RMS; and
- **Be supporting of economic growth.**

As is apparent from the Malaysian and New Zealand cases, the specification of what makes for a GRP (model) may differ somewhat, but the core principles indicated in the Malaysian GRP principles are virtually common, reflecting the essence of GRP.

It may be noted that the characteristics of 'smart regulation' propounded by the World Bank in its Ease of Doing Business Report 2014 are very similar to the GRP principles stated above:

- S** – for streamlined: that is, regulations that accomplish the desired outcome in the most efficient way
- M** – for meaningful: that is, regulations that have a measurable positive impact in facilitating interactions in the marketplace
- A** – for adaptable: that is, regulations that adapt to changes in the environment
- R** – for relevant: that is, regulations that are proportionate to the problem they are designed to solve

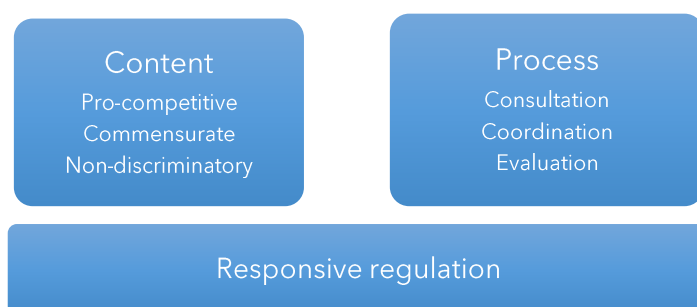
T – for transparent: that is, regulations that are clear and accessible to anyone who needs to use them.

2.2. Responsive Regulation³

Figure 2.1 presents a framework of responsive regulation, in terms of both content and process. In terms of **content**, regulations should ideally be

- pro-competitive,
- commensurate with objectives, and
- non-discriminatory.

Figure 2.1: Elements of Responsive Regulation



Source: Dee (2013).

Where government interventions are required to deal with market failures, they should generally do so in a way that does least damage to competition. This requires interventions to be targeted only at the particular markets where problems occur. It also requires that if competition in regulated markets is constrained by policy choice, anti-competitive behaviour is not able to spill over to neighbouring markets.

Governments often have additional objectives besides economic efficiency. Where interventions are designed to achieve other objectives, it is important that they do not unduly compromise economic efficiency. Multiple objectives require multiple regulatory instruments, so it is important that the appropriate *number*

³ This subsection is taken virtually as a whole from Intal et al., 2013.

and *type* of regulatory instruments are chosen. And once chosen, the interventions should not be more burdensome than they need to be to achieve their objectives.

As much as possible, interventions should not prejudice either the *number* or the *identity* of players in a market. And they should not create an uneven playing field. They should not give undue advantage to government-owned enterprises relative to private enterprises, to domestic enterprises relative to foreign-owned enterprises, and to incumbent enterprises relative to new entrants.

In terms of **process**, ideally, such regulatory interventions should involve

- consultation (with all stakeholders),
- coordination (within government), and
- evaluation (ex ante and ex post).

Broad consultation with all stakeholders can help disclose who gains and who loses from an intervention, and the likely magnitudes of those gains and losses. This information is vital in establishing the case that the intervention will produce a net gain to the community as a whole. Accordingly, it is important that the consultation be with all stakeholders, not just those whose privileged position might be threatened by the intervention. Such consultation provides an opportunity for the special pleading of these special interests to be set against the broader benefits to other stakeholders.

The scope of desirable economic interventions may not line up neatly with the portfolio responsibility of a single government department. Ministries themselves are often stakeholders whose bureaucratic position may be affected positively or negatively by an economic reform. And successful implementation may require the cooperation of more than one ministry. The views of ministries as stakeholders need to be heard and understood, and their cooperation needs to be secured. This requires coordination.

New interventions need to be evaluated before they are implemented to ensure that they have the best chance of generating a net gain to the community. New interventions can also be evaluated after they have been in place for a time, to ensure they are operating as intended. And long-standing interventions also need to be evaluated to ensure they have not outlived their usefulness. Such

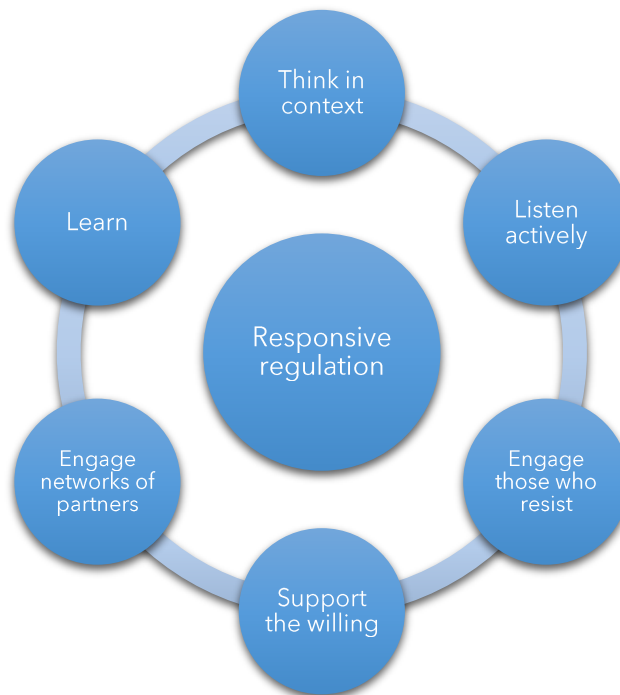
evaluations require consultation, but they also require careful analysis of the costs and benefits to various groups, and careful judgment as to where the balance of net benefit to the community lies.

The literature on **responsive regulation** stresses that consultative processes are not only critical in the design phase, for example, through formal processes such as Regulatory Impact Analyses (RIAs) but also critical on an ongoing basis to ensure compliance with regulation, and to learn when current interventions are not working or have outlived their usefulness.

Braithwaite (2011) argued that regulation needs to be responsive to the moves that regulated actors make to industry context and to the environment. While responsive regulation is sometimes identified narrowly with the concept of a sanctions pyramid (that is, try the least coercive enforcement methods first, and escalate up the pyramid only as necessary), Braithwaite (2011) identified broader principles that are relevant here (**Figure 2.2**).

Thinking in context means pretesting theories ‘on the ground’ with real participants. *Listening actively* gives a voice to stakeholders. *Engaging those who resist* shows them respect by allowing their resistance to be used as an opportunity to learn how to improve regulatory design. *Support and education* can be used to build a common understanding of the rationale for regulation, and to build the capacity and motivation to comply. In resource-poor countries, it can be particularly useful to *engage wider networks of partners*, such as industry associations and non-government organisations, and co-opt them into the design and enforcement of regulation (e.g. development of industry-based accreditation programmes and industry-based training). Drahos (2004) made this argument on resource grounds, but Braithwaite (2006) also noted that it can be useful to guard against regulatory capture. Finally, it is critical to *learn* – to evaluate how well and at what cost outcomes have been achieved, and to communicate the lessons learned.

Implicit in responsive regulation is strong private sector engagement and stakeholder-centric regulatory review, monitoring, and redesign in an integrating ASEAN and East Asia region. Responsive regulation may involve relatively ‘soft’ styles of control that may be difficult to put through a RIA process.

Figure 2.2: Responsive Regulation Process Principles

Source: Dee (2013).

In addition, a responsive approach is also likely to pick up on new risks and risk creators, thereby avoiding one of the criticisms of purely risk-based regulation – that while seeking greater efficiency, it tends to focus on known and familiar risks. Moreover, a responsive approach is likely to be sensitive to industry differences, and therefore not take the same approach to controlling small and medium enterprises as to multinationals, for example (Grabosky, 1995). Finally, responsive regulation needs to be responsive to *changes* in objectives, priorities, and circumstances. Baldwin and Black (2008, p.75) recognised that this involves a challenge:

There are real dangers that networked, smart, regulatory regimes lock their involved actors into agreed positions and approaches so that salutary reforms cannot be brought into effect. In an ideal world, conversations between networked regulatory actors might be expected to produce regulatory adjustments. In a less than ideal world, such conversations may lead to confusions, entrenched positions, and inability to respond to regulatory

failures and blame shifting. What may be needed are strategies for encouraging appropriate programmes of modification.

One such strategy is to hold ***informed regulatory conversations***, which are ***mediated*** conversations between networked regulatory actors. The presence of a mediator who can act as an ‘honest broker’ can help break through entrenched positions, not just to identify better options but also to build a consensus in favour of reform.

2.3. Regulatory Management System

The GRP principles and responsive regulation discussed above are woven together and take implementation shape through the RMS. RMS is the body of principles, policies, practices, processes, institutions, and institutional mechanisms that apply to the review of existing regulations and the development of new regulations. Gill (2016) differentiated between the formal RMS from the requisite RMS. The former refers to the ‘...set of special measures that apply to the development of new or the review of existing regulations but do not apply to other policy interventions’; the latter refers to ‘...the full set of functionality that is needed in a high performing or ideal system.’ It is apparent that the discussion in the previous two subsections is related more to the ideal processes and outcomes that are expected of the ideal or well (high) performing or quality RMS.

Each country has its actual formal RMS of making and reviewing its laws, regulations, rules, and procedures. At the same time, countries are increasingly concerned at improving their regulatory policies and processes and at strengthening their institutions to improve their regulatory outcomes, given the growing evidence that institutional factors significantly impact on investment, trade, and growth performance. Some OECD countries, of which Australia and New Zealand have been important trailblazers, and the OECD as an organisation have been at the forefront of innovation, implementation, and research towards well-performing RMS. That is not to say there is a common OECD way. As discussed below, different OECD countries have adopted quite distinctive approaches to regulatory management.

At the same time, it is worth highlighting that Singapore, a non-OECD member, has been consciously improving its overall public service system and in the process increasingly instituting and embedding the GRP principles in the whole

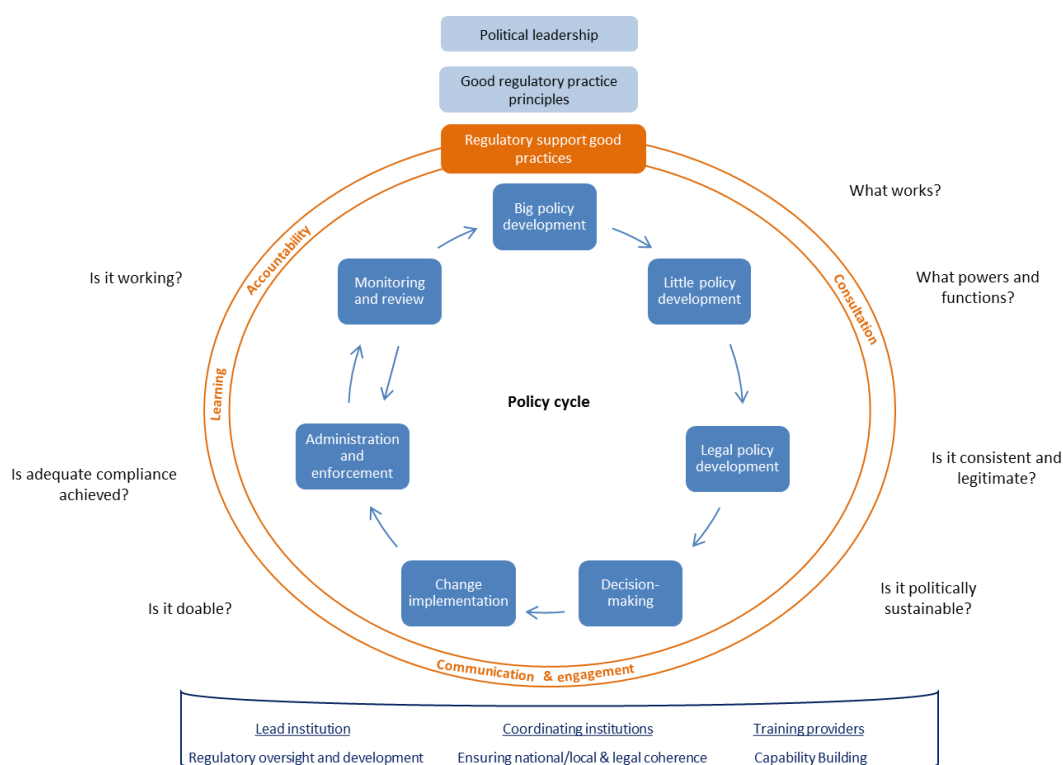
public service over the past few decades. The end result has been superior regulatory outcomes, as the global governance and ease of doing business (EODB) indicators suggest, without necessarily having a full-on RMS structure in place. The case of Singapore may be unique in that it is a small city state that is heavily integrated in the regional and global economies and with barely any natural resource to rely on. Nonetheless, it suggests that a country's RMS is 'context specific' to the culture and institutions in the country, but must embed GRPs and responsive regulation principles and processes for it to be well performing as well.

Figure 2.3, drawn from Gill (2016), presents the elements of the requisite RMS. The requisite RMS include policy (cycle) components, practices, and institutions, and an overall regulatory strategy.

The innermost cycle in **Figure 2.3** shows the *policy cycle* of policy development ('big', 'little' or 'operational', and 'legal'), decision-making, change management, administration and enforcement, and monitoring and review. The components of the policy cycle are augmented by *supporting practices* of consultation, communication and engagement, learning and accountability, and transparency. Note that the discussion above on the responsive regulation processes (**Figure 2.2**) elaborates on the consultation, communication, engagement, and learning supporting practices in **Figure 2.3**, whereas accountability and transparency are central elements of GRP discussed above. The policies and practices would require *key supporting institutions* for sustainability; these include coordinating institutions (with mandate to oversee the performance of the regulatory system), lead institutions (that ensure national and legal coherence), and training institutions (to build capabilities of the bureaucracy especially). The figure shows the overarching regulatory strategy of explicit economy-wide policy of embracing GRP principles and sometimes linked to competition and trade policies (see Gill, 2016).

At the end of the policy cycle, the main question is whether the policy intervention, as designed and implemented, is in fact working. For the latter, a menu of stock management tools that have been used, including the regulatory guillotine and the RURB (reducing unnecessary regulatory burden) approach. Regulatory guillotine is meant to eliminate redundant or unnecessary regulations, whereas the RURB approach aims largely to improve the design or implementation of regulations.

Figure 2.3: Elements Required for a High-Performing RMS



Source: Gill (2016).

The discussion above shows that GRP, responsive regulation, and well-performing RMS are interdependent. A well-performing RMS needs to be underpinned by the overarching GRP principles and characterised to a large extent by responsive regulation processes. In addition, the challenge for a well-performing RMS is to ensure that the regulatory outcomes are pro-competitive, commensurate with objective, non-discriminatory, and are embodied in the 'content' of responsive regulation and, to some extent, GRP principles.

It is worth noting that the first point or the end points of the policy cycle have been the initial focus of many OECD countries in their drive towards a requisite RMS. That is, a number of OECD countries have focused on improving their stock of regulations and procedures (with special focus on reducing red tape), whereas some other OECD countries focused initially at improving their systems for new regulations. Nonetheless, over time there is some convergence among the countries in dealing with the stock of old regulations and with the process for the new regulations.

RMS stages development framework. The discussion above focuses on the elements of the ideal RMS in conjunction with GRP principles and responsive regulation. In many cases, however, the actual RMS of many countries can be expected to differ from, and indeed could be far from, the ideal RMS. Moving from the actual RMS to an ideal RMS is not easy and would take many years or even decades; neither is it linear as there could be setbacks, reversals, or hiatuses. This is because the challenge can be of a major transformation of the bureaucracy and the overall decision-making process in the government.

A stages 'model' of RMS development is presented below, drawing from the experiences of the selected East Asian countries in the project of the Economic Research Institute for ASEAN and East Asia (ERIA) and the New Zealand Institute of Economic Research (NZIER). The quality regulatory management has the following stages or levels:

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

This stages model draws on the practitioner literature on Capability Maturity Models (CMM) developed initially in the information technology industry but increasingly applied to a range of change management processes. The CMM broadly refers to a process improvement approach that is based on a process model. Maturity models can have up to five levels, where level one typically represents an ad hoc state and a very low level of maturity and level five represents the highest level of maturity and continuous process improvement. A maturity level represents a new level of capability within a system or organisation created by a change in one or more core processes.

A review of the maturity model literature suggests that the use of maturity models to support change from process improvement produces several outcomes. In general, three changes that can be expected are *predictability*, *increased control*, and *improved effectiveness*. The use of a maturity model helps an organisation transition from firefighting to operating according to plan (Kipta and Berge, 2006).

A number of components vary as capability matures. Thus, the leadership imperative varies:

- Moving from 'starter or informal' to 'enabled' requires leadership that focuses on putting processes in place and managing the pressures around take up
- Moving from 'enabled' to 'practised' requires leadership that focuses on developing systems and a culture with a shared view on goals and processes
- Moving from 'practised' to 'embedded' requires leadership that is focused on reinforcement and learning so organisations and their staff know the script and how to respond without so many formal instructions.

The extent of measurement also varies as capability matures:

- At the starter or informal level, measurement is rudimentary. Practices processes are not rigorously planned and tracked. Performance depends on individual knowledge and effort.
- At the enabled level, processes are planned and tracked and increasingly documented as organisation-wide standards.
- At the practised level, measures of performance are collected and analysed, leading to a quantitative understanding of process capability.
- At the embedded level, processes undergo continuous refinement and improvement with effectiveness and efficiency targets established based on organisational business goals.

Fundamentally, what is under way is a shift from explicit controls (enabled and practised) to the embedded phase which uses implicit control based on cognitive cultural values (Scott, 2001).

Table 2.1 presents the stages or levels of RMS development in terms of the coverage and implementation of the RMS. In terms of the RMS coverage of economic sectors, government institutions and elements of the RMS, the coverage runs from partial and limited coverage under 'starter or informal' to virtually the whole economy and all government institutions (excluding sensitive areas like defence) and all RMS elements under 'embedded.' In addition, under 'embedded', the coverage of RMS would include at least a majority of the subnational local government units, especially states under a federal form of government which tend to have significant regulatory powers of their own compared with local government units in centralised governments.

Table 2.1: Stages or Levels of RMS Development (Classification of RMS Stages)

	Starter	Enabled	Practised	Embedded
Coverage				
Sectors	Partial	Partial	Majority	All
Institutions/	Partial	Partial	Majority	All National
Geography	National	National	National	Most State
Elements	Some	Majority	All	All
Implementation of Elements				
Generic	No	Mixed	Yes	Yes
Discretionary	Yes	Mixed	No	No
Stock/Flow Process				
Regular Stock Review	No	No	No	Yes
Coverage of stock review	Sectoral	Sectoral	All	All
RIA/RIS in flow	Sometimes	Sometimes	Always	Always
Lead Institution				
Central Oversight	No	Mixed	Yes	Mixed
Distributed	Yes	Mixed	No	Mixed
Commitment to GRP and Quality RMS in Practice				
Political leaders	Incipient	Limited	Widespread	Full
Bureaucracy	Incipient	Limited	Widespread	Full

RIA = Regulatory Impact Analysis; RIS = Regulatory Impact Statement; GRP = Good Regulatory Practice; RMS = Regulatory Management System.

Source: Authors.

Table 2.1 shows differences in the nature of implementation of the elements of RMS according to the different levels of RMS development. We define 'generic' as mandatory to the policy development process and therefore a generic regulatory management instrument. In contrast, 'discretionary' means not mandatory and is done on an ad hoc basis at the discretion of the ministry or department. 'Mixed' means the implementation of some RMS elements is mandatory or generic

whereas others are discretionary. As the table indicates, the implementation of RMS elements is discretionary at the starter or informal level, but becomes generic or mandatory at the 'practised' and 'embedded' levels.

In terms of stock and flow process, although there is a review of stock of regulations, it is not regular except under 'embedded' stage, although there can be significant review and guillotine of regulations in the earlier levels. The coverage of review of stock of regulations tends to be sectoral or limited to certain regulatory processes like administrative procedures at the earlier stages. The coverage is extensive under both 'practised' and 'embedded' levels. In addition, RIA for significant regulatory proposals and Regulatory Impact Statement (RIS) for minor regulatory changes – either put formally (especially for significant regulatory proposals) or informally (in the sense that the essential features of RIA are followed but without a formal RIA report), especially for minor regulatory proposals – are almost *de rigueur* under 'practised' and 'embedded' stages.

In terms of lead institution, there is no central lead institution under 'starter or informal' level but it is an important element under 'practised' level. Interestingly, at the 'embedded' level, the lead institution can be a centralised or a decentralised system. This is because control is now implicit under 'embedded' in the sense that each ministry and other government bodies follow GRP and responsive regulation principles and practices; as such, there may be no need for a centralised lead institution to ensure the quality of the new regulations or revisions of stock of regulations.

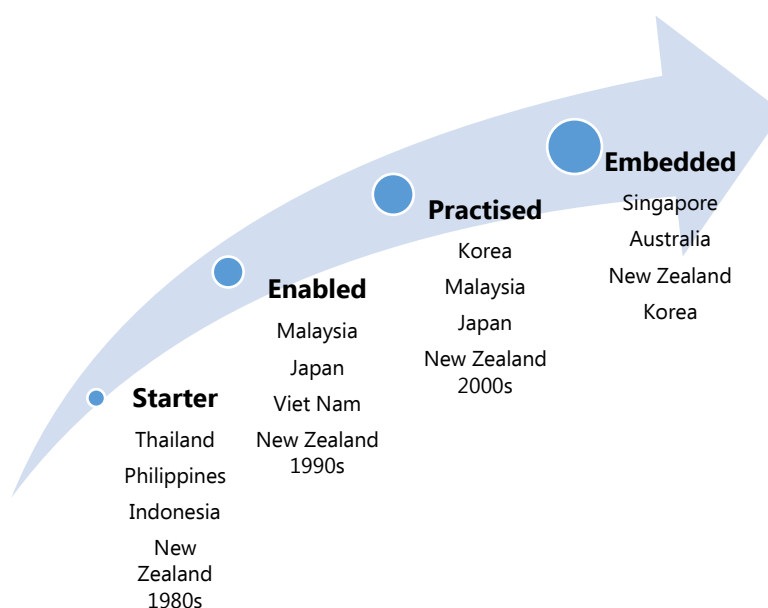
Finally, what also differentiates 'embedded' from 'practised' is that under 'embedded' there is full acceptance of and commitment to implementing GRP and a high-performing RMS by the political leadership and the whole bureaucracy; that is, GRP and quality RMS are fully embraced and embedded in the whole public service.

The discussion above and **Table 2.1** present essentially a static typology of RMS rather than a full model that explains the dynamics of movement from one stage or level to another. The study did not examine the possible factors that determine the dynamics of stage development as well as stasis or even retrogression. Such determination and analysis of the factors would have to wait for future research. Nonetheless, the experience of the selected East Asian countries in the study suggests that economic crisis (e.g. Korea), a realisation of a secular loss of competitiveness (e.g. New Zealand), a national drive at improving its investment

attractiveness consistent with deeper international linkages (e.g. Viet Nam), and competitiveness amid rising wage rates (e.g. Malaysia, Singapore) appear to have been important drivers of a vigorous and sustained push at improving regulatory policies and RMS, and thereby move up the levels of RMS development. The succeeding chapter, **Chapter III**, discusses the evolution and status of RMS in the selected East Asian countries. **Chapter IV** provides some important insights drawing from the experiences of these countries.

Finally, **Figure 2.4** presents a preliminary classification of the selected East Asian countries in terms of the typology of RMS stages or levels. As indicated in the figure, Singapore, New Zealand, and Australia are in the 'embedded' RMS stage; Indonesia, the Philippines, and Thailand are still in the 'starter or informal' stage pending effective implementation of recent policy initiatives, whereas Viet Nam is in the 'enabled' stage. Japan, Malaysia, and Korea are in the transition process: from 'enabled' to 'practised' for Japan and Malaysia, and from 'practised' to 'embedded' for Korea. As such, they straddle two stages in the figure. Note that, based on the experience of New Zealand indicated in the figure, the development towards a well-performing RMS is a long process that takes decades. RMS development can also get stalled or accelerated, which brings out the importance of political commitment given that RMS development usually covers more than one administration. The evolution and status of RMS in the selected East Asian countries are discussed in the next chapter.

Figure 2.4: Classification of East Asia Countries according to RMS Stages



RMS = Regulatory Management System.
Source: Authors.

Chapter III

The Regulatory Management System in Selected East Asia Summit Countries

3.1. Australia, New Zealand, Singapore, and South Korea

The first three countries have been the front runners in the development of a well-performing regulatory management system (RMS). Indeed, Australia was one of the earliest in the world to develop a coherent system of RMS (Carroll and Bounds, 2016, p.39) while New Zealand moved over a short period of time ‘...from being one of the most heavily regulated economies in the OECD to being on the regulatory frontier’ (Gill and Fenwick, 2016, p.3). Singapore virtually leads the world in rankings on regulatory quality and ease of doing business (EODB). Its RMS is also unique in the world in that it relies less on government ministries but rather on ‘...specially established committee or commission representing various important stakeholders’ (Lim, 2015, p.4); indeed, an important institutional innovation towards a stakeholder-centric RMS. All three countries are in the world’s top 10 in the rankings on governance indicators, headlined by Singapore and New Zealand as the world’s top two.

Australia.⁴ The development of Australia’s RMS has been a 30-year enterprise, driven by and woven into the waves of structural and policy reforms the country undertook during the period since the 1980s. The impulse for reform in the 1980s was the ‘...sharpened Australian appreciation that major productivity reforms were necessary if Australia was to successfully face increasingly competitive international challenges, at a time when its economic performance was relatively weak’ (Carroll and Bounds, 2016, p.7).

The systematic waves of reform since the mid-1980s started with major macroeconomic reforms (floating of the Australian dollar, financial deregulation, tariff reduction, and selective sector-based reforms) over the 1983–1996 period, followed primarily by sector-based microeconomic reforms highlighted by the

⁴ This subsection is taken or draws heavily from Carroll and Bounds (2016).

national competition policy reforms in 1996–2006. The third wave of reform, during 2006–2013, towards a ‘seamless national economy’, focused on reducing inter-jurisdictional regulatory barriers to trade and on strengthening and refining national and intergovernmental policymaking structures and processes. The latest and ongoing reform wave since 2013 has been focused on furthering deregulation by an intensive review of the existing stock of regulation and competition by reducing further the adverse effect of regulatory barriers on business and on refining the system of regulatory management at the national level.

The development of Regulatory Impact Analysis (RIA), a critical component of the RMS, had a ‘...slow and somewhat painful period of birth and infancy’ (Carroll and Bounds, 2016, p.7) in Australia. Introduced in 1985 to improve the quality of the flow of new and modified regulations, the RIA implementation during the latter 1980s and the early 1990s saw ‘...widespread non-compliance...and little discernible impact on the quality and extent of new or amended regulation regarding business’ (Ibid.). There are a number of reasons for this relative failure of RIA in the early years in Australia. Carroll and Bounds highlighted the lack of political commitment by ministers and senior departmental and agency executives arising in part from:

- The lukewarm reception of the departments to the RIA, imposed on short notice to them, largely because of the implication that the departments’ policy development systems were inadequate.
- The RIA system was viewed as having primarily an ideological, rather than quality improvement, purpose.
- The RIA system meant an additional workload for the public service in the early years, as well as changes to the established policy processes and practices which naturally take time to implement.

In addition, the initial oversight advisory unit, the Business Regulation Reform Unit, had insufficient resources and staff for the functions it is meant to discharge, was often consulted too late in the policy development process, put little emphasis on its training function, and largely failed to effectively monitor the RIAs undertaken by the departments and agencies. As a result, the RIA system was largely a failure during its first decade of implementation in Australia.

It was during the second decade of RIA implementation, in the context of the second wave of reform that included the successful implementation of the National Competition Policy (NCP) programme, that the RIA system (refined) gained much more traction. The NCP programme undertook a review of 1,800 regulations at the national and state levels. The new RIA, focused on ensuring new regulations, did not have anti-competitive features and did not impose additional red tape, thus complementing the NCP review of stock of regulations. The new modified RIA enjoyed stronger political commitment, with more resources provided to the regulatory oversight body. Also required were Regulatory Impact Statement (RIS) to be incorporated as one of the explanatory documents for proposed new laws in Parliament; a report of the oversight committee on the extent of departmental compliance on the RIS requirement to be provided; and an annual public report by the Productivity Commission on the compliance of government departments and agencies with the RIS requirement. The extent of compliance did improve over time although some dissatisfaction remained in the business sector, especially on the performance of the RIA system.

It is apparent from the discussion above that the development of a well-performing RMS, here highlighted in the context of a well-performing RIA system, was not straightforward. Significant and continuing political commitment and resources were needed; the bureaucracy needed some convincing given that the RIA system necessitated some changes in the existing processes. As Carroll and Bounds (2016) pointed out, it has taken about 30 years for Australia's RIA to develop into a sophisticated system, which now covers national, state, and territory governments and most forms of regulation. In addition, the existing stock of regulations has received detailed reviews with a focus on competition and productivity implications. Indeed, at the Commonwealth level, all regulations must be periodically reviewed. Also, the supporting institutions have been established and strengthened, most notably by the oversight regulatory unit being close to the centre of power, small deregulatory review units within major departments and agencies created, and the independent Productivity Commission developed to act as the major advisory body on all aspects of microeconomic reform and on regulatory performance (see Carroll and Bounds, 2016). Arguably, good regulatory practice (GRP) and a well-performing RMS are already embedded in the whole public service system even if there remains room for improvement as both OECD reviews and the Carroll and Bounds paper bring out. Arguably, there would always be room for improvement in any RMS in a world of changing economic and technological environments and possibly political imperatives.

New Zealand.⁵ Like Australia, New Zealand took about 30 years to develop its RMS into a well-performing one. Like Australia, the initial impetus for reform in the 1980s arose from ‘...sustained poor economic and broader social performance culminating in an economic crisis in 1984’ (Gill and Fenwick, 2016, p.2). Like Australia, the development of the country’s RMS is woven into the waves of structural reform and regulatory changes. At the same time, however, it appears that, more than Australia, there was a more conscious and deliberate effort in the executive department for a continuing effort at improving the regulatory climate and process, and with it the improvement in the RMS. Arguably, a key reason for this is the difference in the political structure of the two countries: New Zealand is highly centralised and with significant concentration of power on the Cabinet (Gill and Fenwick, 2016, p. 1), whereas Australia is a federal form of government with states having large powers and, with that, the greater importance of Parliament and inter-state agreements in the regulatory reform process.

New Zealand’s RMS underwent four overlapping phases, starting with sector-based reforms from the mid-1980s to the early 1990s as part of the wide-ranging programme of macroeconomic stabilisation, trade liberalisation, and structural reforms affecting private capital and labour markets in response to the 1984 economic crisis. The sector-based reforms were to shift from sector-specific regulations to general regulatory regimes, from reduction in economic regulations and expansion of broader social and environmental regulation, and from a command-and-control approach to regulation towards performance-based regulation and economic instruments. This ‘big bang’ reform programme in New Zealand was possible in the 1980s and early 1990s because of the heavy concentration of power in the Cabinet that was not required to undertake formal consultations with stakeholders and because the bureaucratic elite was supportive of the structural reform programme (see Gill and Fenwick, 2016).

The next phases are compliance cost reduction (early 1990s to mid-2000s), regulatory flow management (since 1998), and regulatory stock management in addition to flow management (since 2009). These phases constitute ‘...consolidation, refinement and more incremental change to economic regulatory regime’ (Gill and Fenwick, 2016, p.3). Thus, for example, the introduction of RIA and RIS expands the compliance cost to include the costs of wider distortions into the analysis of new policy proposals, as well as embedding it as part of a good policy process rather than as a compliance requirement at the

⁵ This subsection is taken or draws heavily from Gill and Fenwick (2016).

end of the policy development process. The latest phase of regulatory stock management deepens further the development of the country's RMS by instituting a regular scanning of the existing legislative instruments on a systematic and ongoing basis as well as annual regulatory plans of expected new regulations or review of existing regulations. Equally important is that the perspective and approach to regulatory stock management is on '... encouraging departments to exercise responsible regulatory stewardship over their regulatory regimes and institutions, using tools that are better tailored to individual departmental circumstances... [and thereby mainstream] regulatory management as part of the public management duties of departments' (Gill and Fenwick, 2016, p.8).

Particularly noteworthy in the New Zealand case are the emphasis on the total costs of regulations due to their distortionary effects and their impact on the behaviour of firms and persons, as well as the institution of regulatory stewardship mainstreamed as part of public management. The New Zealand RMS is one of the most comprehensive in the OECD with few exceptions, and the regulatory stock review covers all central government primary law, secondary regulations, and tertiary rules. The RIAs emphasise mainstreaming the assessment as part of the policy development process rather than a compliance document prepared at the completion of the process.

From the initial 'crash through' with little consultation on the reform programme in the 1980s, New Zealand has moved significantly towards greater public consultation. This is reinforced by the Parliament Select Committee that scrutinises all government legislation that includes the routine involvement of the public in its public submission process. Finally, New Zealand has a '...robust interdepartmental process in the Executive in the policy development phase focused on improving policy coherence horizontally across policy regimes, ...ensur[ing] consistency with international trade obligations, and to a lesser extent, ...on ensur[ing] [vertical] consistency with Local Government policy regime and capability' (Gill and Fenwick, 2016, p.11). This reflects high-quality RMS embedded in the whole bureaucracy. It also demands a well-qualified bureaucracy to implement them; clearly, the capability is there as is reflected in the top two global ranking in governance and EODB indicators.

Singapore.⁶ Singapore shares with Australia and New Zealand the importance given to a well-performing RMS to improve or at least maintain the country's

⁶ This subsection is taken or draws heavily on Lim (2015).

international competitiveness and investment attractiveness. Singapore, with no cheap land and natural resources, has to be efficient and have a regulatory regime that is friendly to business and investments, both local and foreign, to attract investments and grow. In addition, given its limited policy space in view of its small size and no natural resources, it has to '...pro-actively adopt and adapt its governance and regulatory system ahead of or at least parallel with changes in the external economic environment' (Lim, 2015, pp.4–5; 7). In short, the quality and adaptability of the regulatory regime and RMS are an important competitiveness tool for Singapore.

The development of Singapore's RMS is anchored on the country's post-independence administrative, institutional, and attitudinal reforms; developed efficient and effective statutory boards in the implementation of socio-economic development programmes, thereby letting the civil service focus on regulatory and routine matters; and the strong emphasis on meritocracy and performance in the bureaucracy (Lim, 2015). Of particular interest in the development of the country's RMS are the initiatives since 2000 starting with the 'Cut Red Tape' campaign which was essentially a regulatory guillotine initiative to remove regulations that are no longer needed and to reduce the burden on the stakeholders. The setting up of the Pro-Enterprise Panel, the Rules Review Panel (RRP) that was later reconstituted as the Smart Regulation Committee (SRC) during the 2000s, marked the emergence of the country's RMS that relies primarily on specially established committees or commissions representing various important stakeholders as its core institutions. This is vastly different from most countries wherein the RMS is anchored on government agencies and ministries. To some extent, this is the institutional innovation of the RMS in Singapore that appears to be well suited for the country.

Pro-Enterprise Panel's mandate is to '...actively solicit public feedback and suggestions on rules and regulations that hinder businesses and entrepreneurship' (Lim, p.4). RRP was tasked to oversee the process of review of rules and regulations in the public sector. It mandated that the rules and regulations of government agencies be reviewed every 3 to 5 years. RRP caused the review of about 19,000 rules and regulations. It was reconstituted into SRC in 2005, '...with the broader mandate to shift the mindset of the public service from being merely a regulator to that of a facilitator as to develop a regulatory regime that is friendly to business and investment' (Ibid., p.4).

The mandate to SRC to make the public service a facilitator meant a more stakeholder- or citizen-centric approach to regulations. The SRC principles that underpin the stakeholder-centric approach include (i) agencies fostering self-regulation and market discipline as much as possible; (ii) new regulations always taking into account the views of relevant stakeholders and their implications to existing regulations; (iii) benefits outweighing the costs of the regulation; (iv) regulations being facilitative of a competitive and innovative climate; and (v) adopting a risk-management approach, instead of a zero tolerance approach, to regulations. A risk management approach means that regulators focus on high risk areas, thereby reducing regulatory burden for stakeholders in lower risk areas. The last principle has important implications. It means a thorough assessment of the risks and trade-offs, thereby requiring both data, analysis, consultations, and exploration of various perspectives. It means determining what is acceptable; at the same time there is great likelihood that the problem the regulation is meant to address would be addressed. The regulators are also urged to take a broader and national perspective in evaluating the risks, costs, and benefits of regulation (Lim, 2015).

Singapore does not have a formal RIA and RIS system except for major projects, in sharp contrast with Australia and New Zealand, which have this as one of the critical pillars of their RMSs, with an agency tasked to review the RIAs/RISs of government departments and agencies. The reason offered is that Singapore is a small economy with a well-connected government that makes it relatively easy to evaluate policy impact and to get feedback from stakeholders (Lim, 2015, p.5).

In addition, we can argue that it is also likely that (i) the SRC with its composition that includes major stakeholders and tasked for continuous refinement of regulations of the public service to better serve stakeholders, (ii) the risk management approach that looks at possible effects on various stakeholders of regulatory options consistent with risk configurations; and (iii) the facilitation mindset inculcated on the regulators provide a robust alternative to the formal RIA/RIS system. That is, the essential elements of a good RIA/RIS system are already embedded in the whole bureaucracy, and as such a formal RIA/RIS system would be largely superfluous except for major projects. Moreover, those same institutional and attitudinal factors engender GRP and would produce regulatory decisions that are consistent with the characteristics of good and responsive regulations discussed earlier in the Report. Arguably, the embeddedness of GRP

and the essence of a good RIA/RIS system is the ultimate expression of a well-performing, high-quality RMS.

South Korea⁷. South Korea (henceforth Korea) experienced the most marked improvement in indicators of regulatory quality and government effectiveness among the East Asian countries from the late 1990s to the early 2010s. The country ranks among the top five in the world in EODB rankings. Behind this remarkable performance is the strong push at the highest political level, one presidential administration after another successively raising the bar towards a well-performing RMS. Like New Zealand, Korea's regulatory reform drive started in earnest in the aftermath of the 1997 East Asian financial crisis as part of the bailout package of the International Monetary Fund (IMF) to the country:

- Under the Kim Dae-jung administration, a Presidential Regulatory Reform Committee (RRC) was established which undertook a major regulatory guillotine, abolishing about 55 percent and improving about 27 percent out of the 11,125 registered regulations during 1998–1999.
- Under the Roh Moo-hyun administration, the focus was on improving the regulatory quality by improving 'lump regulations' that cover a broad variety of ministries.
- Under the Lee Myung-bak administration, regulatory reform was put at the top of the policy agenda to bolster the country's competitiveness and to boost employment. Policy areas that had been untouchable before were tackled. The sunset system was pushed, determining that about 23 percent of the stock of regulations need to be subject to the sunset system. The government also established a regulatory information system and portal that allows citizens to voice their opinions on regulatory reform matters.
- Under the current Park Geun-hye administration, the focus of regulatory reform is further reductions in regulations, eliminating unnecessary barriers among government agencies to provide one-step administrative services, and engendering change in '...culture in civil service that is conducive to regulatory reform' (Kim and Choi, 2016, p.7). The government also strengthened further the regulatory review system through the formation of an expert committee to evaluate existing

⁷ This subsection is mostly taken from Kim and Choi (2016).

regulations issued by industries and another expert committee on the operation of the country's regulation cost system.

It is worth highlighting that the RRC, which has played a key role in the development of the country's RMS, consists of both government and civilian members, with the Prime Minister and a civilian as two co-chairs of the Committee. The RRC has the legal mandate to undertake regulatory review on all proposed regulations or modification of existing regulations, and its review requirements include an RIA, an opinion from an independent examination, and a summary of opinions from administrative agencies, interested parties, etc. Similarly, the central administrative agencies and local governments also have regulatory committees composed of both government official and civilian representatives. Thus, similar to Singapore, Korea has institutionalised private sector involvement in the RMS through the RRC and the regulatory review committee in the central administrative agencies and local governments.

As the country pushes on the change in culture in the civil service conducive to regulatory reform, the well-performing, high-quality RMS becomes deeply embedded in Korea.

3.2. Japan, Malaysia, and Viet Nam

Japan, Malaysia, and Viet Nam are firmly in the 'enabled' to 'practised' stages of the evolution of RMS. This means that the country considers regulatory policy as an important tool for growth and competitiveness for the whole country, and initiatives to improve the regulatory processes and mechanisms are being put into place.

As the countries' experiences, the process towards a fully practised quality RMS is dynamic, not necessarily monotonic, and takes time. Nonetheless, a strong political support goes a long way in pushing and accelerating the process forward.

*Japan.*⁸ Japan did not start its regulatory reform agenda in response to an economic crisis (as in the case of Korea and New Zealand) or deepening concern over declining international competitiveness (as in Australia). Instead, Japan's regulatory reform journey in the mid-1980s drew inspiration from the policy line of US President Reagan and UK Prime Minister Thatcher, which was popular at that time. Thus, the initial focus was on administrative reform and privatisation of state enterprises. It was largely after the 'Lost Decade' since the early 1990s and the economic recession in 2001–2002 that regulatory reform became a key focus of economic growth strategy under the Koizumi government, with emphasis on further privatisation of state enterprises (most notably the Postal Corporation) and strengthening coordination among the ministries. Regulatory reform did not figure significantly during the succeeding administration; it is only during the current Abe administration that regulatory reform is given prominence in the government's economic policy agenda. Overall, although Japan started its regulatory reform programme and development of its RMS during the mid-1980s almost during the same period as Australia and New Zealand, and significantly earlier than Korea and Singapore, it is yet to firmly establish and practise consistently and robustly a well-performing RMS in the country.

Two factors that can help explain Japan's experience are worth mentioning. First, Japan has a powerful central government that is '...characterized by decentralized and independent ministries by powerful bureaucrats... [together with a relatively less powerful legislature (or Diet) where about] two-thirds of the bills presented are those by the civil servants, whose ratio of passing to introducing is 80 percent compared with 30 percent of those by the congressmen' (Yashiro, 2015, p.2). In addition, the ministries '...have broad administrative discretion and ...[have]...close and informal links between public servants, producer groups, and political parties [and at the same time]...have maintained their administrative control over the local governments...' (Ibid., p.2). Note that given decentralised, independent, and powerful ministries, there would be a need for strong Prime Minister to have effective coordination between and among the ministries. However, '...the political leadership of the Prime Minister is usually weaker than his counterpart in other democracies with the exception of Koizumi...' (Ibid., p.3).

The other important factor is that Japan's corporate sector, especially its trade-exposed manufacturing sector, primarily utilised the creation and expansion of regional production networks in the lower-cost ASEAN and the People's Republic

⁸ This subsection is taken or draws heavily from Yashiro (2015).

of China (PRC) as its major means of adjusting to the changing international competitiveness environment. This means that there was less domestic pressure on Japan to reform its relatively sheltered agriculture and services sectors to maintain or improve the competitiveness of its manufacturing sector and raise significantly overall productivity as wages rose (and its currency appreciated) in Japan. At the same time, the strong producer influence in ministries – and such ministries are ‘independent’ from one another – suggests that it would be difficult to have a comprehensive and coherent overall reform programme unless there is a strong Prime Minister (which usually was not the case).

Thus, it is not surprising that foreign pressure, especially from the United States, and peer reviews in OECD meetings became an important means of reforming the domestic protective measures and rebalance somewhat the power from producer interest towards the interest of consumers (Yashiro, 2015, pp.7–8). This Japanese experience contrasts markedly with that of, for example, New Zealand where the reforms that opened up the trade-exposed sectors (through trade liberalisation measures, etc.) led to an internal political economy dynamic of greater pressure for reforms in the sheltered sectors (see Gill and Fenwick, 2016).

Japan also innovated by establishing ‘special zones for regulatory reform’ at the subnational level, where experimentation on decentralisation and inter-zone competition are encouraged. However, the economic effects have so far been limited in part because of inconsistent push by the central government by succeeding administrations (see Yashiro, 2015, pp.9–10).

‘Japan’s tradition of decentralized policymaking by each ministry’ (Yashiro, 2015, p.13) does not necessarily mean that the government is ineffective and its regulatory quality is low. In fact, the world governance indicators indicate that they are relatively high, albeit trailing substantially behind the front runners like Singapore, New Zealand, and Australia. It is likely that the strong producer influence in the (sectoral) ministries implies the efficient provision of services of interest to the producers in the concerned sector(s).

Given the above and the apparent lack of a deep need for a comprehensive regulatory reform in the country, the RMS is not yet well established and well performing. Thus, for example, although Japan formally adopted RIA in 2007, RIA is ‘...not used in the actual process of establishing a regulation but after the basic

framework of the regulation is made as a formality' (Ibid., p.12). Moreover, there is little quantification of the costs and benefits of the effects of the regulations, and no common method is used in evaluating the quantitative effects of regulations. In effect, there is yet no effective use of RIA. Arguably, the importance of more effective quantification of the cost and benefits of regulations becomes more salient as the regulatory issues increasingly involve social issues, as is apparently the case in Japan. Similarly, regulatory management is not a top priority of the ministry where the bureau responsible for efficient management of administrative procedures including RIA is located.

Moving forward, that the RMS is not yet well established and well performing may well be an untapped opportunity or resource for Japan as it aims to raise investments in the country. As the empirical studies on institutions, regulatory quality, and RMS on the one hand, and economic performance on the other, as discussed earlier in the Report indicate, improving the regulatory quality, institutions, and the overall regulatory regime in Japan could raise the country's investment attractiveness and enhance the country's economic growth potentials. Viewed in this light, investing in embedding GRP, responsive regulation, and well-performing RMS towards the level reached by countries such as Australia, New Zealand, and Singapore could be an important catalyst and anchor of Japan's 'economic renaissance' moving forward.

Malaysia.⁹ Although the 6th Malaysia Plan and Vision 2020 in 1991 raised the concern on overregulation and the need for 'productive deregulation' to reduce constraints on enterprises towards a competitive, robust, and resilient economy, and although Malaysia undertook a major privatisation and deregulation reform in the 1990s, it was essentially from the 9th Malaysia Plan for 2006–2010 that reviewing and improving administrative procedures, reviewing and improving the quality of existing and new regulations, and improving its RMS became an important pillar of Malaysia's growth and competitiveness plan. Malaysia's 10th Plan for 2011–2015 deepened further the country's regulatory initiatives as critical elements of the country's transformation plan towards realising its vision of becoming a developed/high-income country by 2020 (and in effect address its concerns of 'middle income trap'). Indeed and remarkably, over the past decade, Malaysia has been assiduous in streamlining administrative processes, improving the quality of its regulations, strengthening its institutional capacity, and

⁹ This subsection is taken or draws heavily from Seman and Bahari (2015).

instituting GRP principles in the Malaysian bureaucracy. The country is well on the way towards instituting a robust and well-performing RMS.

The clarity and cohesiveness of Malaysia's plan at improving its regulatory regime and system is worth highlighting. In the 9th Plan:

- Rules, regulations, and work procedures would be reviewed and simplified.
- Issuance of licences, permits, and approvals for trade, investment, and commercial activities would be expedited.
- Regulations and statutes would be reviewed to eliminate cumbersome regulations and procedures.
- Greater transparency would be promoted.
- The level of consultation with the private sector on new policy initiatives and legislation would be enhanced.

Similarly, the 10th Plan regulatory initiatives include the modernisation of business regulations, liberalisation of the services sector, rationalisation of subsidies to remove market distortions, introduction of competition law, and improvement of government–business interface (Seman and Bahari, 2015, pp.6–9). Most importantly, the National Policy on the Development and Implementation of Regulations (NPDIR), launched in 2013, set out Malaysia's policy and principles institutionalising GRP and provides structured process of rule-making to ensure quality new regulations and a quality RMS. This includes the mandatory requirement to all Malaysia's federal government regulators to undertake RIA on all new regulations and review of existing regulations related to or have impact on business, investment, and trade (Ibid., pp. 159–160).

Three institutions have been critical in the implementation of the regulatory vision and strategies embodied in the 9th and 10th Malaysia Plans. The first is the special high-level public–private task force to facilitate business, or PEMUDAH, established in February 2007. PEMUDAH and its task forces and working groups used the World Bank's EODB areas as the main focus and reference for its activities. PEMUDAH has succeeded in markedly improving business regulations and processes, thereby raising substantially Malaysia's global ranking to 18th best in 2015. The second institution is the National Development Planning Committee (NDPC), which oversees the implementation of the NPDIR. The NDPC, which

includes the highest civil servants in core units as members and is headed by the Chief Secretary to the government (who also co-chairs PEMUDAH), also examines the adequacy of the RIS – that presents the conclusions of the RIA – on new or modified regulations that have significant impact on business, investments, and trade.

The Malaysian Productivity Corporation (MPC) is the third and crucial anchor to the other two because it provides the critical technical secretariat support to the PEMUDAH and is responsible for the implementation of NPDIR together with NPDC. It facilitates and provides technical support and advice to the PEMUDAH task forces and working groups; in addition, it undertakes Reducing Unnecessary Regulatory Burden (RURB) on business studies to help refine the existing stock of rules and regulations. For NPDIR and NPDC, MPC provides guidance and assistance to regulators in RIA and preparation of RIS, assists NPDC in assessing the RISs, develops guidelines and programmes for the implementation of NPDIR, undertakes or ensures availability of capacity building programmes to regulators, and promotes transparency of RIS. MPC is also the coordinating and oversight body for all the regulatory coordinators in each ministry and regulatory body; the regulatory coordinators are responsible for championing GRP in their respective institutions (see Seman and Bahari, 2015, pp.20–21).

Malaysia is implementing NPDIR on a pilot basis in a few ministries. Thus, Malaysia is in the early stages of practising quality RMS. In **Figure 2.1**, Malaysia is straddling the ‘enabled’ and ‘practised’ stages of RMS development simply because NPDIR has not yet been implemented in most ministries. Nonetheless, it is apparent from the discussion above that the pace of RMS development in Malaysia has been remarkably fast. Given the strong political commitment towards a high-quality RMS in the country, it is likely that Malaysia will be firmly in the ‘practised’ stage in the near future.

Viet Nam.¹⁰ Although it has the lowest per capita income among the 10 countries in the study, Viet Nam is noteworthy for its aggressive administrative simplification programme, highlighted by Project 30, and the strong political push for improving the quality of regulations in the country. This has been part of the ongoing process of comprehensive reform in the country since the latter 1980s, including market-oriented reforms covering a ‘...wide range of institutional

¹⁰ This subsection is taken or draws heavily from Vo and Nguyen (2015).

changes, seeking to enhance the freedom of doing business and to strengthen market competition. ...The functions of the Government and public administration agencies at all levels shifted progressively from direct interventions into indirect management, using legal and economic instruments' (Vo and Nguyen, 2016, p.1). Another critical pillar of the comprehensive reform, i.e. proactive economic integration, also puts pressure towards improved regulatory regime and management. Specifically, 'Vietnam has made numerous efforts to better harmonize the domestic laws in line with international norms and practices' (Ibid., p.4). This has meant aligning the reform efforts with international integration, including among others institutional and regulatory reforms.

Project 30 has its genesis in the comprehensive public administrative reform initiated in 1995 'to rationalize the legal and regulatory framework of the public administration, reform the administrative machinery at all levels, and "renovate" the civil service with a focus on training' (OECD, 2011, p.36). Indeed, Project 30, or more formally known as Master Plan to Simplify Administrative Procedures in the fields of the State Governance, is part of the successor public administration reform programme for 2006–2010. The approach to the implementation of Project 30 may have been influenced also by the success of the implementation of the 2005 Enterprise Law, with the Task Force for Implementing Enterprise Law monitoring and reviewing the implementation of the law, and the continuous consultation with stakeholders from the design to the implementation phases of the law.

Project 30 is the comprehensive inventory and review (as to necessity, legality, and user-friendliness) of all the administrative procedures on the four levels of government in Viet Nam. It aims to eliminate or simplify at 30 percent all administrative procedures and 30 percent of administrative/compliance cost using the standard cost model as the method in estimating administrative/compliance cost. Project 30 had the strong support of the Prime Minister who took charge of the project and who personally announced key achievements (OECD, 2011, p.12).

The achievements of Project 30 are remarkable (Vo and Nguyen, 2016, pp.20–21):

- An accessible electronic database of more than 5,000 existing administrative procedures became baseline information for the control of administrative regulations.

- By December 2014, about 93 percent of 4,723 administrative procedures to be simplified had been simplified.
- Administrative burdens on businesses were reduced.
- Investors' confidence in the Vietnamese government's reform efforts was enhanced.

A related initiative to Project 30 is the decision in 2003 requiring the establishment of one-stop shops in all the thousands of districts and communes in the country. There has indeed been a proliferation of such one-stop shops, although the apparent limited connectivity and linkages among the one-stop shops had yet to result in dramatic improvement in the process of registering business in the early 2010s (OECD, 2011, p.56).

In addition to Project 30, the 2008 Law on Laws has a tremendous bearing on the development of the RMS in Viet Nam. Specifically, the 2008 Law on Laws gives official endorsement of RIAs, makes regulators more responsible for ensuring the consistency of new regulations, improves public consultation, and mandates the publication of draft legal documents on websites for comments, among others. The implementation decree on RIA includes detailing justification for the proposed new law and the types of impacts (i.e. economic, social, environmental, and legal) that need to be looked into. However, as Vo and Nguyen (2016, p.10) point out, the quality of the RIAs is usually not good and the capacity to review and assess the RIAs is limited in the country.

Resolution 19, dated 18 March 2014, is effectively the follow-up policy initiative after Project 30. A key focus of Resolution 19 is to have a more conducive domestic business environment and to strengthen Viet Nam's national competitiveness. Whereas Project 30 was a stand-alone initiative, Project 19 is a continuing initiative. More importantly, Resolution 19 improves on Project 30 in that the former sets specific targets, especially '...in areas that need improvement and the minimum requirement for improvement.... [Such] specific areas of business environment that are consistent with the World Bank's Doing Business survey' (Vo and Nguyen, 2016, p.23). The specific targets include some benchmarking with the average for the ASEAN-6 in customs clearance. The targets and benchmarking using the World Bank Doing Business survey means the use of specific indicators for monitoring compliance, which is an improvement over Project 30 that did not use specific indicators. The implementation performance of Resolution 19 has been relatively significant, with 30 out of the

total 49 specific measures under the Resolution implemented, with 10 of them having significant outcomes. Although the implementation is incomplete, a clear indication of the positive impact of Resolution 19 is exemplified by the marked reduction in the number of procedures and the time needed for business incorporation (see Vo and Nguyen, 2016, for more details).

Overall, Viet Nam has worked hard at improving its RMS, highlighted by the regulatory guillotine and further refinements in procedures starting in 2007, the setting out of the requirements and the procedures for new regulations including RIA and public consultation, and the setting of specific targets and international benchmarks with the attendant reliance on specific indicators for compliance monitoring. Nonetheless, there remains significant room for improvement in the regulatory system (Vo and Nguyen, 2016, p.30) as reflected in the experience of the RIA implementation. And the still relatively low rating and ranking on governance indicators for Viet Nam despite the progress on the regulatory reform front suggest that implementation, together with capacity building, would be the most significant challenge facing Viet Nam in its drive towards a well-performing RMS.

3.3. Indonesia, Philippines, and Thailand

Although these three ASEAN countries have undertaken significant policy and structural reforms, they are largely in the early stages of the evolution of their RMSs. The three have some of the elements of a well-performing RMS, but there is yet no operative cohesive system and overarching economy-wide framework on regulatory policy and process for quality regulations for the whole economy. Nonetheless, there are indications of heightened policy resolve to improve the regulatory systems and processes in the three countries: (i) Thailand's new laws in 2015, specifically the Royal Decree on Review of Law B.E. 2558 and the Licensing Facilitation Act B.E. 2558; (ii) the slew of regulatory reform packages in Indonesia since mid-September 2015 until the 10th package released in mid-February 2016; and (iii) continuing joint public-private efforts at streamlining procedures and revising laws towards greater liberalisation primarily pushed by the Philippine National Competitiveness Council.

Indonesia.¹¹ Indonesia's RMS is evolving, as it faced two major 'shocks' in the late 1990s and early 2000s, i.e. democratisation and decentralisation. During the Suharto era (1967–1998), the President was very powerful and the executive power was highly centralised. Among the characteristics of the regulatory formulation and development planning during the period are the following (Damuri and Silalahi, 2014):

- Planning biased, with the Basic Guidelines of State Direction (GBHN), adopted as a decree (and hence, given legal force) by the People's Consultative Assembly (MPR), which was transformed into the 5-year development plans (Repelita) and further elaborated in the short run through the budget process;
- Top-down, with limited inputs from the regions even if the plans and regulations are implemented at the subnational level;
- Sectoral approach and perspective, with most of the implementing regulations formulated to address specific sectoral issues;
- Coordination problems were addressed through a number of mechanisms such as the coordinating minister positions, consultative councils, intra-ministerial teams, a presidential decree (Inpres) to give regulatory guidance, and the formulation of policy packages of interrelated policies and programmes with the President himself being in charge of coordinating the policy package(s).

The fall of Suharto led to the two major 'shocks' to the regulatory decision process. The first is democratisation, which means much greater powers of the Parliament in regulation and rule-making especially through the budget process, as well as greater voice from stakeholders including seeking judicial review of legislated regulations. The second is decentralisation, with subnational units having substantial regulatory powers in their own jurisdictions. The result was a proliferation of local regulations, significant use of judicial review, and the need to bring in the comments of Parliament members in the budgeting of ministries.

In response to the two major shocks, Indonesia revised its regulatory decision process as follows:

- Law No. 10/2004 (and improved by Law No. 12/2011) – provides several principles and a common approach to the formulation of laws and

¹¹ This subsection draws heavily from Damuri and Silalahi (2014), but has been updated with the reports on the series of deregulation and stimulus packages since mid-September 2015.

regulations. Two aspects are worth highlighting. One is 5-year planning (Prolegnas) and subsequent prioritisation of laws and regulations on a yearly basis; the regulations include presidential regulations. The other is the mandatory RIA in terms of an academic study of the new bill. The academic paper differs substantially from the usual RIA because the former focuses on legal aspects, does not assess the direct and indirect effects to the economy and cost to stakeholders, does not have quantitative and empirical analysis, and seldom undertakes consultations with stakeholders.

- Specification of the scope of local authority, procedure in the formulation of local regulation, and the mechanism to ensure local regulations are consistent with national policy. This also includes the review of the thousands of local regulations and determining which need to be withdrawn.
- Coordination and harmonisation of regulatory elements through the coordinating ministers and ad hoc inter-ministerial committees to discuss concerned bill. Law No.12/2011 mentions consultation mechanism between ministries but there are no implementing regulations on the matter.
- Law No. 12/2011 also describes the consultation process with civil society and academics, but does not provide guidelines on appropriate public consultation as of 2014. The law also stipulates the dissemination of bills and drafts of regulations. However, websites of ministries and agencies are 'often poorly managed and infrequently updated' (Damuri and Silalahi, p.13).

Overall, the elements of an RMS are present in Indonesia. However, most of them – such as RIA, stakeholder consultation, and dissemination – are merely the semblance of the elements of a quality RMS. Moving forward, the challenge is in reframing and strengthening them towards a well-performing RMS. However, this calls for the more fundamental way forward; that is, a clear policy and concerted effort at instituting GRP and at establishing a well-performing RMS as a major growth and competitiveness strategy for Indonesia.

There are strong indications that Indonesia is moving more forcefully into improving its regulatory regime. In response to the economic slowdown and the need to move the economy away from heavy dependence on commodities exports whose prices have plunged, the Indonesian government has unveiled a

series of 10 deregulation packages (so far) since mid-September 2015. Thus, in the first package, 89 regulations were restructured out of 154 regulations under investigation for reasons of inefficiency due to overlapping or duplicative regulations '...in order to strengthen coherence and consistency, while slashing regulations that were blocking further development of the nation's industrial sector' (Indonesia Investments, 10 September 2015). Indeed, the President declared to reduce and streamline around 42,000 regulations (presidential, ministerial, central, local, and district levels) that he believes hinder investment. Bappenas' tool of regulatory review process allows for classifying the regulations into 'inconsistent', 'duplication', 'multi-interpretative', and 'inoperative' (CSIS, 2016, p.2). The review and reform of regulations that support cutting of red tape and EODB has been complemented with a series of other economic reform policies that include speeding up investing licensing for investment in industrial estates, relaxation and/or reducing tariffs, tax incentives, scrapping of double taxation on real estate investment trusts, deregulation in investment banking, and opening up further to foreign ownership of more economic sectors. It appears that the series of economic reform would continue, with the preparation of the planned 11th package focusing on reducing dwell time at ports and reduction of logistics cost in Indonesia (Indonesia Investments, 25 February 2016).

As the country deepens and implements its reforms and moves towards a cohesive policy and programme of government-wide efforts at improving the regulatory systems, administrative processes, and institutional coordination, Indonesia would effectively transition from 'starter' to 'enabled' stages.

The Philippines.¹² The Philippines has undertaken a series of major economic reforms since the latter 1980s into the 2000s opening up the economy; dismantling monopolies; liberalising a number of highly regulated sectors like telecommunications, energy, and water; devolving and decentralising a number of national government functions; etc. The big policy reforms tended to be sectoral and macroeconomic stabilisation policies but did not segue into a concerted big push at improving the quality of regulations and the regulatory process, design, and implementation unlike in Viet Nam. Arguably, this is partly because regulatory policy is a relatively new discipline that was largely espoused by the OECD to which the Philippines is not an associate, unlike Indonesia and Viet Nam. As Llanto (2015) highlights, governance issues, together with 'weak

¹² This subsection is taken or draws heavily from Llanto (2015).

...institutions', have tempered the benefits to the country of the big policy and institutional reforms it has undertaken since the late 1980s.

At the same time, 'alignment of political and institutional interests with regulatory objectives and the expected benefits arising from the regulation can ensure support for and implementation of good regulations...[while] satisfaction of personal political objectives collides with regulatory reform efforts...[can] derail passage of good laws...[thereby bringing out the] tension ...between implementation of good regulations on the one hand, and on the other hand, the weak capacity of Philippine institutions and the intervention of conflicted politicians who have no incentive to arbitrate among competing interests with the general welfare of society in mind' (Llanto, 2015, pp.15–16).

Llanto (2015) asserts that improving the regulatory quality and developing a well-performing RMS can help address the governance issues that the Philippines has faced for a significantly long time. Comparing the country's actual situation with the requirements of a high-quality RMS:

- The Philippines does not yet have a '...strong central oversight body or institutional mechanism that would systematically coordinate, check for consistency and review efforts on new regulations or amendments to existing regulations contemplated by different regulators' (Ibid., p.22). The current regulatory institutions (i.e. NEDA interagency committees under the NEDA Board, congressional oversight committees) are not mandated, nor do they have the capacity, to undertake the oversight and review role on new or existing regulations. In effect, the regulators in the country operate in 'regulatory silos' (Llanto, p.23).
- Philippine regulators are not required to undertake RIAs and issue RISs on their new regulations or revisions of existing regulations, although they typically do cost–benefit analysis. However, the results of such exercises are not made available to analysts, researchers, and the public. The country has started an Asian Development Bank–funded pilot RIA project to develop capacities in three ministries and to be rolled out to other agencies in the future, with NEDA aiming to establish a central office for best regulatory practice (see Llanto, 2015).
- Perhaps more fundamentally, there is yet no overarching government policy and strategy to institute GRP in the whole government and establish a well-performing RMS in the country.

Arguably, it is the institutional weakness of the country's regulatory system, together with the country's comparatively poor business and investment climate and performance vis-à-vis its neighbours in East Asia and globally – as reflected in the low ranking of the Philippines in the EODB, Logistics Performance and Global Competitiveness Indices – which has forced the Philippine business sector to catalyse the creation, and drive the operations, of the National Competitiveness Council (NCC) in 2006. The NCC is a public-private council with two co-chairs from the government and the private sector, and with 14 technical working groups dealing with key areas affecting business and investment, similar to the PEMUDAH Task Force in Malaysia. (NCC was borne out of the earlier Public-Private Task Force on Philippine Competitiveness, which oversaw the drafting of a competitiveness policy framework for the country.) With strong support from the current president, NCC has shepherded some significant business reforms that have helped improve substantially the global ranking of the Philippines in the last few years in indicators such as EODB and Global Competitiveness Index.

As highlighted by Llanto (2015), the success of NCC brings out important lessons, including the importance of transparency, execution and delivery, teamwork, the need to focus on multiple fronts, embedding and institutionalising change, maintaining momentum, and the importance and effectiveness of public-private collaboration. It is also important to emphasise the critical role of political support from the top, which to some extent explains the success of NCC and the weakness of its predecessor, the Public-Private Task Force on Philippine Competitiveness.

Despite the success of NCC, the large gap between the Philippines and the front runners in ASEAN and East Asia in the global ratings and rankings of business and investment climate and performance indicators suggests that much more needs to be done moving forward in the Philippines. What differentiates PEMUDAH from NCC is that the former is operating under a clear government policy and strategy of embedding GRP, modernising business regulations, and establishing a quality RMS as an economic competitiveness and growth strategy, moving Malaysia out of a middle-income trap and towards a high-income country.

Moving forward, Llanto highlights the importance and potentials of a well-performing RMS in the Philippines. The elements of the RMS prevailing in the country would need to be strengthened and be '...pulled together into a coherent

and coordinated system' (p.65), backed by '... political will and able leadership to surmountopposition from vested private groups and conflicted politicians' (p.64).

Thailand.¹³ Until 2015, significant regulatory reform in Thailand had been largely sectoral, best exemplified by the corporatisation and privatisation (of state-owned enterprises) reforms in the transport, energy, and telecommunication sectors. These reforms were catalysed initially by the need to increase supply capacity in the face of surging demand from a fast-expanding economy, followed by the IMF conditionality after the 1997 crisis in the country and expressed in the Master Plan for State Enterprise Sector Reform. The privatisation drive of SOEs was also emphasised in the early 2000s during the Thaksin government as a driver of Thailand's economic growth.

Until 2015, there was no major policy initiative and concerted government effort at embracing GRP and developing a well-performing RMS, unlike in Malaysia and Viet Nam. There has been a large element of fragmented sectoral policy formulation in Thailand because under its code of administrative law, ministries and departments are given significant legal authority and leeway in setting regulations. At the same time, inasmuch as Thailand's governments are usually coalition governments (except under the Thai Rak Thai party), '...each party would not interfere in the other parties' line of responsibilities' (Poapongsakorn and Nikomborirak, 2003, p.145).

De jure, Thailand has few of the important elements of a well-performing RMS; however, de facto, they are not. Thus, for example, RIA was made mandatory in 2004 for the submission of any regulation to the Council of Ministers for policy approval; and the RIA is in line with OECD guidelines. However, '...most of the RIA reports are only 3–4 pages and the quality...not useful in the legislation process; the RIA process starts after the draft bill is finalised; RIA is required only [for] the [proposed] Act that [goes] to Parliament but not with the lower levels of legislation; e.g. Royal decree, Ministerial regulations; no RIA guideline...; no stakeholder consultation and/or public participation in the RIA process; no dedicated agency ...scrutinizing the RIA report' (Ongkittikul and Thongphat, 2015, p.29). In short, the RIA is ineffective because the real essence of a good and effective RIA (e.g. stakeholder consultation on alternative options, use of RIA from

¹³ This subsection is taken or draws heavily from Ongkittikul and Thongphat (2015), and Nilrapunt (2015a, 2015b, 2015c).

the beginning of the policy process, quality review of RIA reports) is missing in the way it is implemented in Thailand.

What mitigates the poor RIA process on new regulations is the Thai model of a committee having the legal authority to issue, change, or scrap a regulation (Poapongsakorn and Nikomborirak, 2003, p.129). The committee is composed of senior officials from the core agency and from other ministries which will be affected by the regulation, as well as outside experts (such as academics, businessmen, representatives from business associations, and former senior officials) (Ibid.). The outside experts in the committee could be the venue for stakeholder views, for example. However, the committee members could have a conflict of interests, and/or be subject to heavy influence by business or politics (Ibid., p.129).

Both the Poapongsakorn and Nikomborirak (2003) and the Ongkittikul and Thongphat (2015) papers highlighted the lack of policy coherence arising from the structure of rule-making and dynamics of parliamentary coalitions. The substantial rule-making power of ministries and departments in addition to the Parliament has meant that '...the Council of Ministers often has no incentive to legislate new law since the administrative process could be handled by the executive branch and the legislation process takes longer time' (Ibid., p.31). And as indicated above, ministries tend to be relatively independent because of the nature of coalition governments in Thailand, except when there is a dominant party in Parliament and/or strong Prime Minister. There is yet no inter-ministerial mechanism to coordinate regulatory reform nor a central body that oversees the RMS and ensures the quality of regulations (Poapongsakorn and Nikomborirak, 2003, p.146).

Until 2015, the Thailand case appeared to have some semblance to the Japan case in view of the relatively independent and powerful, de facto, ministries and the vulnerability of the ministries and departments to business interests. In addition, Thailand also performed well in EODB indicators just as Japan performs very well in governance indicators. Like Japan, the challenge had been in forging a comprehensive economy-wide regulatory policy and management system improvement agenda that would help the country propel further upwards in EODB and regulatory quality indicators similar to Malaysia.

The Royal Decree on Review of Law B.E. 2558 (2015) and the Licensing Facilitation Act B.E. 2558 (2015) (see Nilprapunt, 2015a and 2015b) provide the strong legal foundation for a robust government-wide RMS in Thailand. Among the salient provisions of the Royal Decree on Review of Law are the following (Nilprapunt, 2015a, pp.2–5):

- All portfolio ministers shall order all related agencies to report all laws under their responsibilities and the same reported to the Law Reform Commission within 1 year of the Royal Decree coming into force.
- All portfolio ministers are required to review all laws every 5 years for improvement, revision, or repeal with the aim of strengthening national competitiveness, sustainable development, meeting international obligations, lessening adverse effects or unnecessary burden to the public, preventing, and suppressing corruption, etc.
- All portfolio ministers are required to submit an annual report on the implementation of the Royal Decree to the Council of Ministers and the National Legislative Agency.
- All the laws shall be translated into the ASEAN working language (i.e. English), which needs to be available to the public within 2 years of the Royal Decree coming into force.
- Information on the Law, including the translations, are available to the public without charge and via information technology system.

Similarly, the Licensing Facilitation Act stipulates, among others, the following (Nilprapunt, 2015b, pp.2–5):

- Each government agency with the authority to issue licences is required to review every 5 years those laws that grant it the authority to issue licences, whether such licensing needs to be repealed or replaced by another measure.
- Each government agency with the authority to issue licences is required to prepare a licensing manual that stipulates the rules, procedures, and conditions (if any), work flow, period of time for the granting of licence, and document requirements. Submission of application can be made by electronic means.
- The Public Sector Development Commission must ensure that the work flow and period of time for granting the licence are compliant to the rules and procedures of good public governance.

- Each government agency needs to establish Service Link Centers to accept applications for licences and to provide the licence-related information to the public.
- If warranted, the Council of Ministers may establish a One-Stop Service Centre (OSSC) to service all applications under all the laws related to licensing, the application of which could be done electronically.
- The government authority is liable for any damage caused to other persons (e.g. applicants) if such application is delayed unreasonably.

It may be noted that the two laws were the recommendations of the Law Reform Commission of the Office of the Council of State as a result of its research on 650 Acts of Parliament and their implementation. The Council found that about 90 percent of the legislations are based on a 'close government control system' wherein business activities are subject to licensing; that 'almost all subordinate legislations were made to ease the performance of [the] powers and duties [of the government authorities] rather than public facilitation' (Nilprapunt, 2015c, p.3). In addition, cost-benefit, cost-effectiveness, and public consultation were not considered in the issuance of the subordinate legislations determining the rules, procedures, and conditions for the granting of each licence (Ibid.). Also, 'almost all authorities do their works without collaboration with [other authorities] even within the same agency' (Ibid., p.4).

The laws were apparently meant to address such weaknesses in the regulatory system of the country. If the two laws above are fully implemented within 2 years of the laws having come into force (since mid-2015), then Thailand would be firmly into the 'enabled' stage in the development of its RMS. Nilprapunt (2015c, 2015) indicates that the Thai government is also planning to improve the implementation of the RIA in compliance with the GRP of ASEAN and the Asia-Pacific Economic Cooperation (APEC). The challenge, of course, is whether or not the two landmark laws and the planned improved RIA would really be implemented well, given the unsatisfactory implementation of RIA in the early 2000s.

Chapter IV

Deconstructing Regulatory Management

All countries have their own unique regulatory system to make laws, regulations, and rules. Increasingly, countries are introducing regulatory management policies and strengthening their institutions to make their regulatory systems more effective. As part of the project we explored three questions:

1. What are the elements that make up an RMS?
2. Which elements add most value?
3. How does the use of elements change with levels of economic development?

Turning to the first question, a high-performing or requisite regulatory system needs to have a range of the elements of the classic policy cycle, together with supporting practices and institutions (see **Figure 2.3** in Chapter II). These policy components are in dark blue at the centre, practices in brown around the centre, institutions at the bottom in grey, and the overall regulatory strategy at the top in light blue.

The *policy cycle* for regulatory development includes:

- 'Big Policy' development – which focuses on what works best in terms of intervention options and whether regulation is indeed the best option,
- 'Little Policy' development – which focuses on what powers and functions are needed to enable the regulation to be implemented,
- 'Legal Policy' development – which focuses on nesting the policy into the broader corpus of law in ways that are consistent and legitimate,
- Decision-making support – which focuses on supporting decision-makers to assess what is politically sustainable,
- Change implementation – which focuses on change management required to get the systems and capabilities in place to support the new regulation.

These elements of the classic regulatory policy cycle need to be augmented by *supporting practices*.

- Consultation
- Communication and engagement
- Learning
- Accountability and transparency.

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

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

4.1. Element by Element Review

'Big Policy' development

The focus of big policy development is to address the question 'What works?' ('Big' policy can be distinguished from the 'little' or operational policy required to make the 'big policy' effective.) The key functionality required for 'big policy' is intervention analysis and Regulatory Impact Analysis (RIA), which is a common tool used in a range of countries. The capability needed is the ability to consider regulation against other policy interventions to assess the most effective means of achieving the policy objective.

Common questions raised in this phase include:

- Is the problem clearly defined and is intervention necessary?
- What are the alternatives to regulation?
- Is regulation the most effective form of intervention?
- How are cross-border issues – such as compliance with the General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS), and Free Trade Area (FTA) provisions on goods and trade in services – addressed?
- Do the benefits of regulation justify the costs?

‘Little Policy’ development

Little policy (or operational policy) is focused on the powers and functions needed to make the ‘big policy’ effective. The key functionality is a mixture of skills including process design, legal analysis, and organisational analysis. There is no common tool used across countries but in some cases some of these issues are covered by RIA systems and their accompanying documentation.

Key questions addressed in this phase include:

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

‘Legal Policy’ development

Legal policy is focused on ensuring the legitimacy of the powers and functions involved and their coherence with the rest of the legal framework. The key functionality here is legal analyses. Every country has its own institutional arrangements and there is no common tool used across countries. Key questions addressed in this phase include:

- Is there a legal basis for the regulation?
- Is this regulation consistent with superior and subsidiary law (vertical consistency) and related legislation (horizontal consistency)?
- Is the regulation clear, consistent, comprehensible, and accessible to users?

- Is there duplication and are there inconsistencies in administrative requirements?
- Is the draft compliant with international obligations?
- Is the regulatory regime proportional to the nature of the problems?

Decision-making support

Support is required for decision-makers in the executive and the legislature to handle the complexity of considering, developing, and amending regulations. The key functionality required is a combination of the little policy, financial and economic analyses, and the legal policy skills discussed above. Every country has its own unique institutional arrangements, and there is no common tool used across countries.

Change implementation

Change implementation is focused on 'what' is required for each function and 'how' to implement the change once decision-makers have decided. The key functionality required is the ability to design and execute change. Every country has developed its own unique ways of working but change management planning is a common technique. Ideally, a change implementation plan is developed as a guide.

Administration and enforcement

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

Key questions addressed in this phase include:

- What specific capabilities and what resources are required to support them?
- What is the regulatory compliance strategy that is required?
- What are the regulatory risks and the risk management strategies required?

- What procedures exist to review the procedural fairness and legality of regulatory decision-making?
- How should independence in decision-making be protected?
- How should regulators be made accountable?
- What information is required to support monitoring and review?

Monitoring and review

Monitoring and review are focused on assessing whether a regulation is working as intended. Ideally, it is based on a monitoring and review plan, required as part of the RIA. Information generated can be used to fine-tune the implementation of the regulations and provide early warning of any big or little policy issues that need to be addressed. The key functionality required is the ability to gather information so the operation of the regulation can be reviewed. According to the OECD (2010, p.50), ex post evaluation of regulation 'is a near universal weakness' across OECD countries. Key big policy questions addressed in this phase include:

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

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

Stock management

Stock management reviews whether regulations are working as intended. The key functionality required is the ability to review groups of regulations systematically to ensure they are effectively meeting their objectives. (It differs from monitoring in that the focus is generally on regimes, i.e. groups of regulations rather than individual regulations.) Different countries have adopted a wide range of 'regulatory stock management' tools, including the standard cost model, regulatory guillotine, red tape reduction targets, 'one-in, two-out' or 'one-in, one-out', regulatory budget, the use of review clauses, or sunset provisions. These

review tools vary in their breadth (i.e. how wide the coverage is) and depth (i.e. focus on administrative costs or wider distortions).

Key questions in the review phase include:

- What are the objectives of the regulatory regime?
- Has the regulatory proposal achieved the objectives for solving or mitigating the issue?
- Who were the target audiences (i.e. regulated individuals and organisations) of the proposed regulation?
- Who were the intended beneficiaries of the proposed regulation (e.g. general public, specific groups within the public)?
- What behavioural changes in the target audience were intended to be achieved (e.g. awareness, understanding, capacity, compliance)?

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

Part B – Supporting Practices

The discussion to date has focused on the components of the classic policy cycle. However, good policy development also includes good supporting practices, such as

- Consultation
- Communication and engagement
- Learning
- Accountability and transparency.

Consultation

Consultation can be undertaken for a number of purposes:

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

As a result, consultation can occur at multiple stages in the RMS; for example, when addressing the big policy question of what works, the little policy questions

as to how the regulatory regime should operate, on how exactly should the policy be enacted in law, in the design of the change implementation stage, and in monitoring and review to see whether the regime is working.

Communication and engagement

Regulatory outcomes are co-produced in the interactions between the regulator and the regulatee. Thus, open communication and active engagement with citizens and businesses are crucial for regulatory effectiveness. Therefore, most developed countries have moved to having an online, readily searchable database of all legislation and rules open to all involved.

Learning

All regulatory changes have the nature of an experiment as it is generally uncertain how the patterns of actual behaviour will evolve over time. Thus, it is important to have the ability to learn both about whether the regulatory regime is necessary, efficient, and effective, and also to learn about how to implement and enforce the regime more effectively to improve compliance.

Accountability and transparency

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

Part C – Institutions

Policies and procedures do not exist in isolation; they need to be sustained by institutions. The diagram highlights three sorts of institutions – the ‘lead’ institution, coordinating institutions, and training providers.

The lead institution is a coordinating body that has the capability and mandate to oversee and develop the regulatory system and report on its performance. The OECD (2012) listed the roles of the ‘standing oversight body’ to include

- improving regulatory policy,

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

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

Other institutions undertake specialised roles to ensure the quality of regulation, such as an institution that specialises in legal drafting to ensure consistency between statutes and between primary statutes and secondary rules. A key requirement for regulatory coherence is that an institution takes responsibility for ensuring consistency between national and subnational regulations and between national law and international obligations. Training providers are also required to build the capabilities required.

4.2. Assessing which RMS Elements Added Most Value

We turn to our assessment of the value each element added based on the survey of country experts. Our aim was to isolate patterns in the impact of the RMS elements used by countries in our research sample.¹⁴

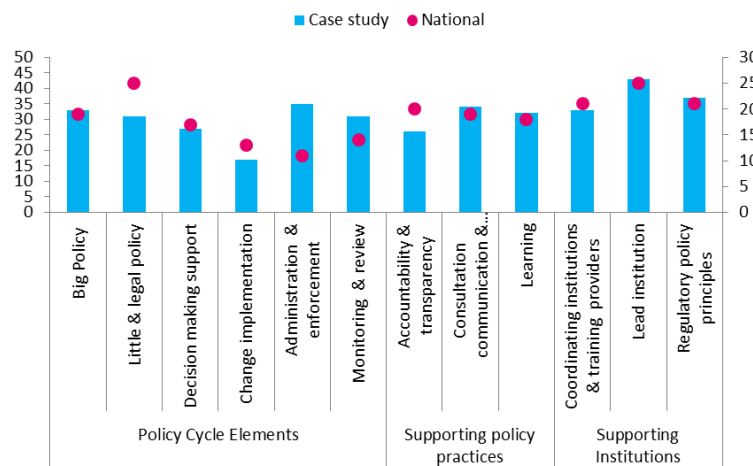
To address the question of which elements added the most value, we used the judgment of the country experts. We asked the researchers once they had completed their country and case studies to judge the significance of the individual elements in influencing the overall outcome of the case studies and the effectiveness of the overall national system. The answers were based on a four-point Likert scale – very significant, significant, not very significant, no significance. The study found that elements were consistently ranked across countries regardless of whether the focus was on the country system studies, successful case studies, or unsuccessful case studies. In summary, the analysis of RMS elements suggested:

¹⁴ The material in this section and the introductory section to Chapter VI drew on the work of Killian Destremau, Economist at NZIER, who contributed extensively to the analysis underpinning this project. His input and insight have been very valuable.

- The key elements were the lead institution, policy instruments (such as RIA and legal support), and regulatory policy principles.
- The most important single element was the ability of the lead institution to achieve accountability for regulatory quality, particularly where a singularity of purpose around regulation was lacking (this role depends upon political commitment and bureaucratic capability).
- RMS had a strong influence on policy design (little and big) but a weaker influence on regulatory policy execution (change management and administration and enforcement).
- The importance of the wider public sector management context (including the role of the judiciary).

Figure 4.1 shows elements that were assessed as significant or very significant in adding value to the operation of the national RMS (shown with dots) or the individual case studies of regulatory reform (shown in bars). The consistency of overall rankings of elements in the case studies and for the national system as a whole lends support to the robustness of the rankings of the elements.

Figure 4.1: National Elements and Case Study Rankings

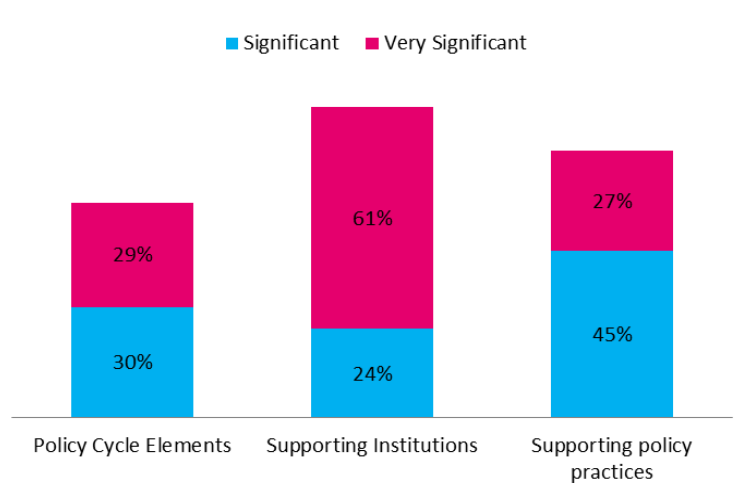


Source: NZIER.

In the introduction to this chapter, we discussed how an RMS is made up of three types of individual policy elements – the range of the elements that combine in the policy cycle, together with supporting practices and institutions. **Figure 4.2** shows the most significant elements grouped by type. The most valuable regulatory management instruments were lead institutions and regulatory policy

principles, followed by coordinating institutions (those three regulatory management instruments combined making the RMS group supporting institutions). Consultation in supporting policy practices and administration and enforcement in policy cycle elements were also important, emphasising the need for an understanding of the implementation challenges, both from the policymakers' point of view and in light of the regulatee's input.

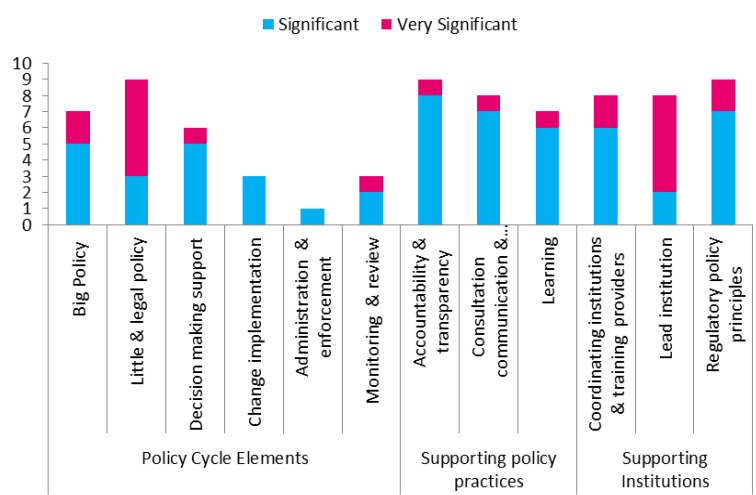
Figure 4.2: Grouping Significant Elements by Type



Source: NZIER.

In the rest of this section, we report on the ranking of elements for the national system and for the different types of case studies. **Figure 4.3** shows the elements that were either significant or very significant in adding value to the national regulatory process. Country experts ranked the 'lead institution' and 'little and legal policies' as the two very significant elements of the RMS. The second group of elements that were ranked significant included 'Big policy', 'Accountability', 'Transparency', and 'Regulatory policy principles.' Finally, there was a third group of elements that were not ranked highly; these included 'Change Implementation' and 'Monitoring and Review.'

Figure 4.3 National System Elements Rankings

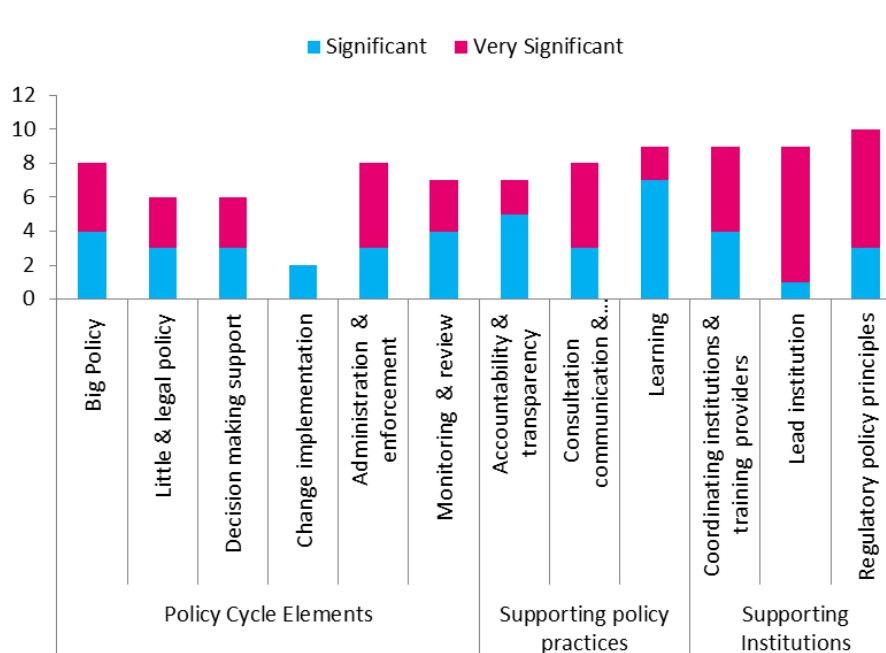


Source: NZIER.

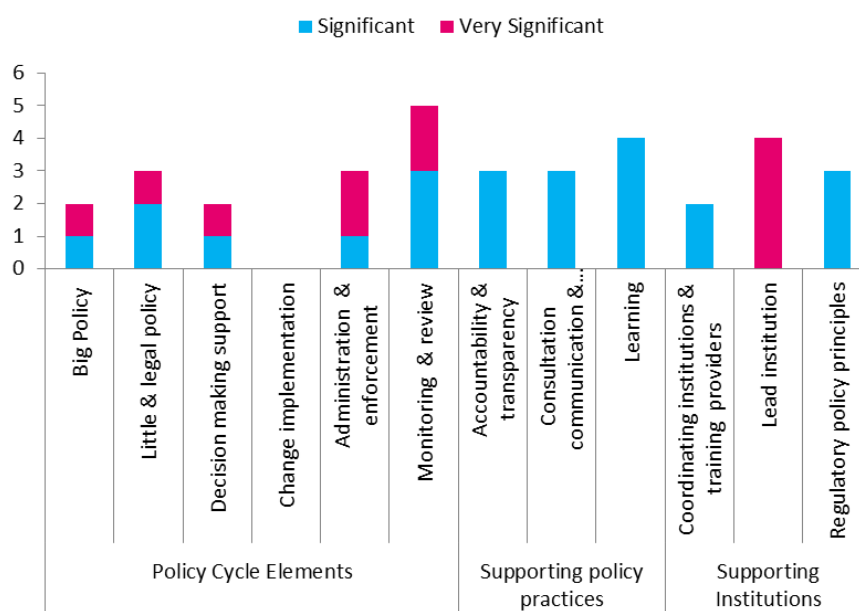
Country academics and practitioners were also asked to assess which elements of the RMSs had the most impact on the outcome of the case studies of successful and unsuccessful regulatory reforms (see **Figure 4.4** and **Figure 4.5**, respectively).

The country experts predominantly attributed the value of supporting institutions in case studies of successful reforms. Supporting policy practices provided a strong role, while policy cycle elements played an important but relatively less valuable role in the success of reforms.

Looking at case studies of unsuccessful regulatory reforms, the results were broadly similar. Researchers were asked to make a nuanced judgment about which elements could have made a difference in averting the failure of the regulatory reform. Supporting institutions were again important; policy cycle elements were, however, more important than policy practices. The lead institution was again the most important element. Monitoring and review and administration and enforcement and, hence, policy cycle elements were more important than supporting policy practices. Monitoring and review provide instruments that allow failures to be addressed.

Figure 4.4: Elements Significant in 'Success' Case Studies


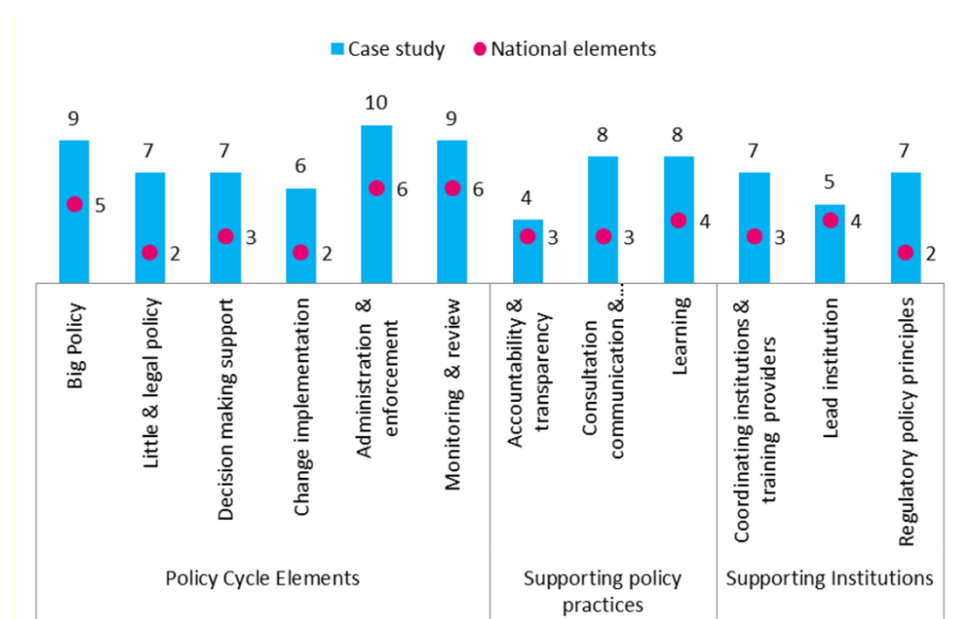
Source: NZIER.

Figure 4.5: Elements Significant for Unsuccessful Reforms


Source: NZIER.

Furthermore, researchers were also asked to identify where the RMS needs strengthening (**Figure 4.6**). The main elements that could be made more effective were administration and enforcement as well as monitoring and review. This result is similar to the responses of the case studies of unsuccessful reforms.

Figure 4.6: Requisite System – Which Elements Would Have Made a Difference?



Source: NZIER.

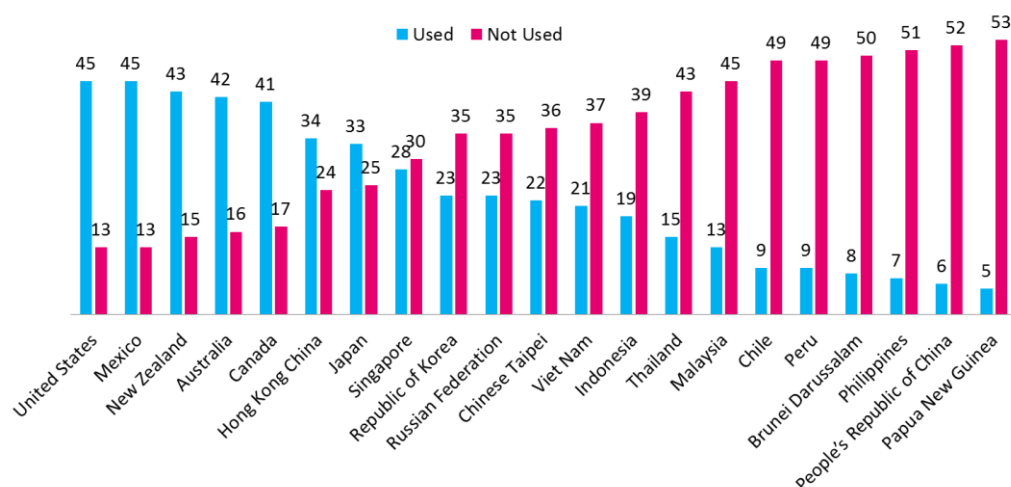
One of the subsidiary research questions for the study was how the use of RMS elements changes with the level of economic development. The Asia-Pacific Economic Cooperation (APEC) baseline study contained a useful source of data as APEC includes a range of economies with widely varying levels of economic development. The main overall finding from the baseline study is that there is a great disparity in the use of RMS instruments by APEC economies as shown in **Figure 4.7**.

There is a clear distinction between higher-income OECD and lower-income non-OECD economies: OECD countries have introduced a greater number of formal practices.¹⁵

¹⁵ Chile is a recent member of OECD and still shows relatively lower use of formal RMS instruments than other OECD countries.

Figure 4.7: Use of RMS Instruments by APEC Economies

Economies ranked by count of RMS instruments used.



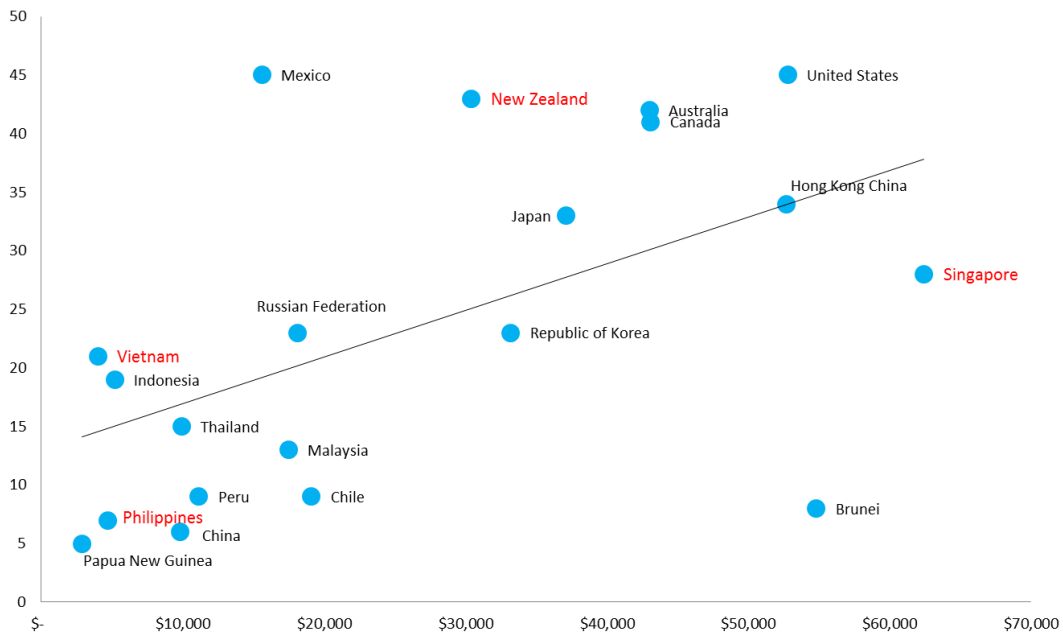
APEC = Asia-Pacific Economic Cooperation; RMS = Regulatory Management System.
Source: APEC (2011).

OECD is also known as the 'rich countries' club' because the membership is based among other dimensions, on the level of economic development. **Figure 4.8** shows that economic development and the generic use of RMS instruments are strongly correlated. Mexico (OECD) and Brunei Darussalam (non-OECD) stand out as outliers. The use of formal RMS instruments is related to economic development; but within OECD and non-OECD countries, there are different mixes of RMS. For example, ***it would be a mistake to conclude there is a standard OECD approach.***

Econometric analysis by the OECD (Jacobzone et al., 2010) identified a range of discrete country strategies. One group (including the Netherlands) is focused on reducing administrative costs for the existing stock of regulations. Some countries (including New Zealand, Australia, and the United States) are more focused on the regulatory coherence of the flow of new regulations and institution capability. Other countries (such as Korea) are focused on both administrative costs of stocks and institutional capability and the flow of new regulation. Finally, there is a group of low use countries such as Sweden.

Figure 4.8: Economic Development and Use of RMS Instruments

(Horizontal: GDP per Capita (PPP), Vertical: Use of RMS instruments)



RMS = Regulatory Management System.

Source: APEC, Central Intelligence Agency.

Which RMS elements are used in APEC economies? **Table 4.1** summarises the strength of the use of RMS instruments by APEC members by breaking down the use with respect to the three main groups of RMS instruments (coordination, RIA, and consultation).

We use three indicators to describe the use of RMS instruments:

- **Strong:** More than two-thirds of available RMS are used.
- **Moderate:** Between one-third and two-thirds of available RMS are used.
- **Weak:** less than one-third of available RMS are used.

The middle black line separates OECD and non-OECD countries (with the exception of Hong Kong, China). With regard to the individual groups of RMS instruments, we observe the following:

- The use of coordination is relatively widespread.
- The use of RIA and consultation are more concentrated in OECD countries.

- A small number of countries have a unique mix in their use of RMSs: Mexico and Korea (weak use of consultation), Singapore (weak use of RIA), Russia (strong use of consultation but weak use of RIA).

Table 4.1: Strength of Use of RMS Instruments*

APEC economies are ranked by the number of RMS instruments used.

	Internal Coordination of Rulemaking Activity	Regulatory Impact Assessment	Public Consultation Mechanisms
United States	Moderate	Strong	Strong
Mexico	Strong	Strong	Weak
New Zealand	Moderate	Strong	Strong
Australia	Strong	Strong	Strong
Canada	Moderate	Strong	Strong
Hong Kong China	Moderate	Moderate	Strong
Japan	Moderate	Moderate	Moderate
Singapore	Moderate	Weak	Moderate
Republic of Korea	Moderate	Moderate	Weak
Russian Federation	Moderate	Weak	Strong
Chinese Taipei	Moderate	Moderate	Moderate
Viet Nam	Moderate	Weak	Moderate
Indonesia	Moderate	Weak	Weak
Thailand	Moderate	Weak	Weak
Malaysia	Weak	Weak	None
Chile	Weak	Weak	Weak
Peru	Weak	Weak	Weak
Brunei Darussalam	Weak	None	None
Philippines	Weak	None	Weak
People's Republic of China	Weak	None	Weak
Papua New Guinea	Weak	None	Weak

* 'None' refers to the non-use of any formal instrument in that category for the specific country.

RMS = Regulatory Management System.

Source: APEC, NZIER.

Overall the relationship between economic development and the use of RMS tools is consistent across coordination, RIA, and consultation. Thus, although there are different country mixes of RMS elements, a clear pattern shows that use of formal RMS instruments is related to economic development, but within OECD and non-OECD countries.

Chapter V

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

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

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

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

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

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

5.1. Patterns in the Use of RMS Elements

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

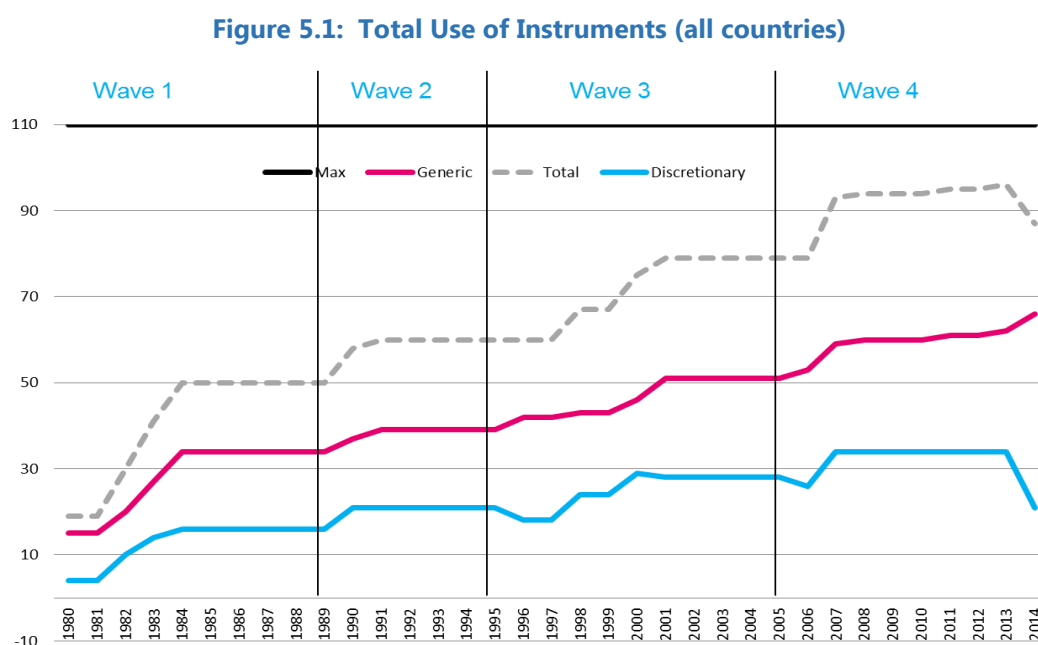
Table 5.1: Coding the Evolution of Regulatory Management Systems

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

Source: NZIER.

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

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



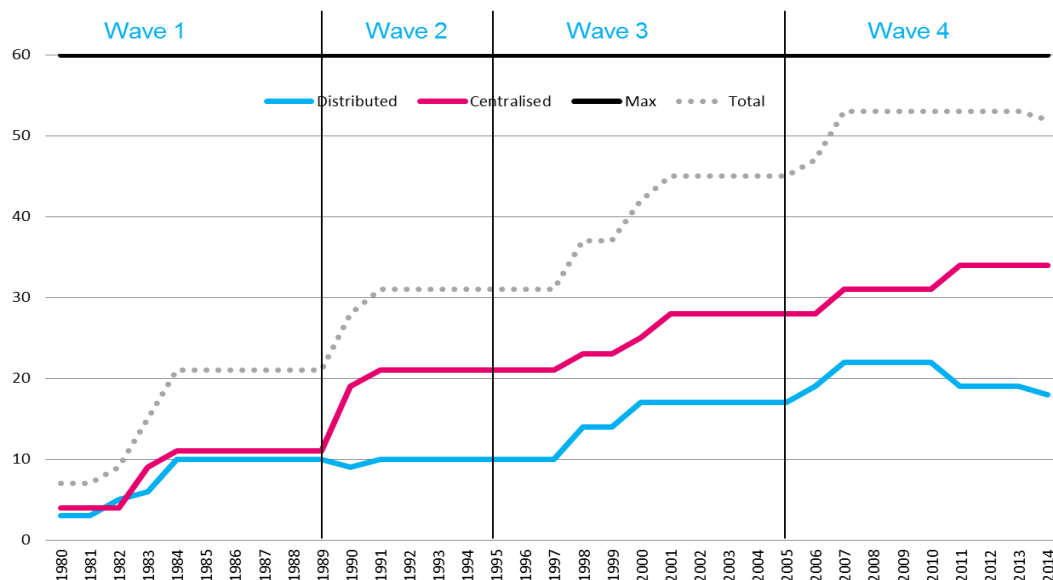
Source: NZIER.

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

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

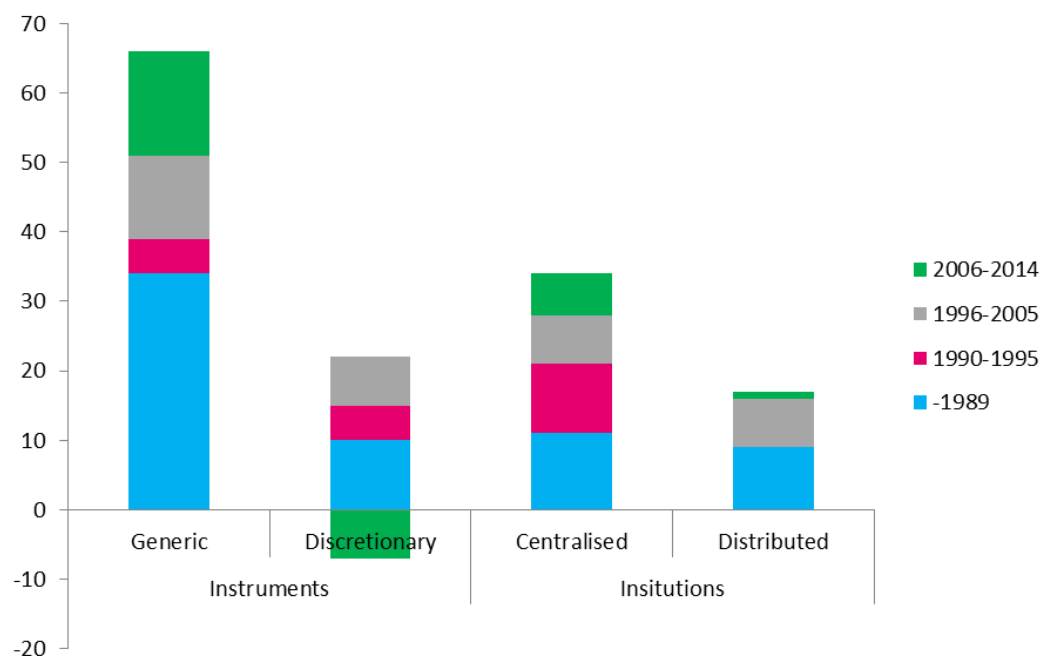
Malaysia were the main users of RMS instruments prior to 1995. The use of RMS institutions really took off in the period from 1990 to 1995.

Figure 5.2: Total Use of Institutions (all countries)



Source: NZIER.

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



Source: NZIER.

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

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

5.2 Lessons and Insights from the Country Studies

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

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

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

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

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

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

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

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

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

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

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

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

2. Deep and continuing engagement of stakeholders

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

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

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

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

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

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

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

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

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

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

3. Reducing Unnecessary Regulatory Burden (RURB)

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

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

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

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

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

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

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

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

4. Jump-starting the GRP agenda

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

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

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

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

- In Viet Nam, Project 30 undertook the first comprehensive inventory and review of all regulations with administrative procedures (APs) during 2007–2010, followed by a review and systematisation of legal normative documents. The APs were reviewed in terms of necessity, legality, and user friendliness. As a result, Viet Nam created a national standardised database of 5,700 APs (stipulated in 9,000 regulating documents) as of October 2009. The review in 2013 of legal documents issued by the central government showed that 7,981 were still in effect, 5,996 have already expired in effectivity, and 1,313 needed to be amended or supplemented (see Vo and Nguyen, 2016, pp.20–21).

The inventory and review allowed the start of regulatory simplification and guillotine process. In 2010, the government resolved to simplify 258 APs in the priority areas of taxes, customs, construction, and real estate. To simplify these required amending 14 laws, 3 ordinances, 44 decrees, 8 Prime Minister's decisions, 67 circulars, and 33 ministerial decisions. Ministers and agencies were held responsible to amend documents for those APs that do not require changing laws and ordinances. By December 2014, 4,383 out of the 4,723 existing APs had been simplified, or a simplification rate of 92.8 percent (Ibid., p.9).

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

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

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

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

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

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

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

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

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

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

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

As noted above, there is merit in starting the GRP and quality RMS road with ‘low-hanging fruits’ like cutting red tape, simplifying administration, and modernising business regulations. This is because after the low-hanging fruits are picked, further regulatory reform may call for more difficult changes in the politically sensitive laws. As Carroll and Bounds (2016) emphasised, ‘policymaking in a democracy, inevitably and continuously, will be subject to competing political pressures, from those desiring change for the benefits they hope it will bring, to those who resist change, for fear the benefits that they currently receive will diminish or be eliminated. The making of regulation is an intensely political process and occurs in multiple arenas in which the regulation selected is determined as much by the relative power of the participants as by the process and the quality of regulatory content...’ (p.32). It is apparent that in such intensely political space, RMS institutions would need to be of good quality, open, and creative to be credible; bring clarity to policy options; and be able to facilitate consensus among contending interests on the way forward.

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

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

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

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

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

6. Keen sense of market and international competition and public–private collaboration

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Crises as opportunities

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

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

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

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

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

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

Chapter VI

Key Recommendations *Fostering ASEAN's Quiet Revolution* and Concluding Remarks

Regulations (regulatory policy), together with taxes/government expenditures (fiscal policy) and currency (monetary policy), comprise the three core levers of the state in managing the economy and society (OECD, 2010, p.11). The government uses its regulation lever to affect the behaviour of firms, institutions, and people, balancing out their competing interests, and addressing the failings of the market and institutions that can potentially adversely affect the society's health, environment, security, and stability. Thus, regulations are key instruments in the arsenal of the government to drive investment, innovation, market openness, and sustainable growth, and engender social cohesion and a healthy society and environment.

By affecting or forcing changes in behaviour, regulations necessarily impose a regulatory burden or cost on firms, people, and institutions. However, when regulations are ill designed or poorly implemented, then regulations can impose regulatory burdens on firms, institutions, and people that are greater than necessary. A poor regulatory environment undermines business and investment climate, hampers innovation, hurts competitiveness, and engenders corruption and people's scepticism about government.

Not surprisingly, the results of empirical studies on the impact of regulations on the economy such as those discussed in Chapter I indicate that improving the regulatory environment through better governance, improved regulatory management system (RMS), more streamlined administrative processes, and more transparent and participatory regulatory decision-making bring overall economic gains.

Thus, it is well worthwhile to invest in more streamlined administrative procedures, improved regulatory management, and better governance. Policymaking as well as rule-making is an inherently and intensely political process where various interests, objectives, and factors shape decisions and their

implementation so that good regulations do not come about serendipitously. Good and responsive regulations – those that are proportionate, targeted, transparent, non-discriminatory, pro-competitive, and consistent – are the product of a good and responsive regulatory regime, i.e. one that is accountable, actively adaptive, consultative, coordinative, and evaluative. They require adherence to good regulatory practices (GRP), well-performing institutions, competent people, efficient and transparent processes, and above all political will and public support. The achievement of such a system involves a dynamic and challenging journey as the experiences of the countries in the Project indicate.

There is urgency as well as great opportunities in investing in GRP and international regulatory cooperation (IRC) in light of greater economic uncertainty at present and emerging significant industrial restructuring in East Asia (such as the People's Republic of China [PRC]). GRP and IRC improve the region's investment attractiveness in the face of prevailing economic uncertainties in the region. GRP and IRC in developing ASEAN facilitate industrial restructuring in East Asia as the PRC shifts gears towards greater domestic consumption amid rising wages. As stated earlier, GRP and IRC help deepen regional production networks to more countries and sectors.

6.1. Committing to GRP and Quality Regulation Revolution

There has been a quiet revolution in governance during the past two decades, initiated primarily by Organisation for Economic Co-operation and Development (OECD) countries, the OECD, and the World Bank, centring on embedding GRP principles, the drive to reduce regulatory burdens, and on good quality regulations. Among the 10 countries in the Project, two (Australia and New Zealand) have been global front runners in this quiet revolution; two (Singapore and Korea) have been rapid and successful adapters and innovators; and two others (Malaysia and Viet Nam) have been having major recent successes in joining the revolution.

As indicated in **Figure 2.1** in Chapter II, the RMSs of the three other countries in the Project – Indonesia, the Philippines, and Thailand – are still in the 'starter' stage and starting the transition to the 'enabled' stage. In contrast to the other seven countries, the governments of these three countries display nascent political commitment to reducing regulatory burden and improving the quality of regulations, these being top national priority. Deepening such political

commitment, similar to Malaysia's National Policy on the Development and Implementation of Regulations (NPDIR) and its implementation, provides the impetus to establish the core institutions, processes, and changed mindsets necessary to implement GRP and to accelerate the drive for quality regulations and rule-making.

The country studies indicate that the three countries do have some of the elements of a formal RMS but that there are important gaps and/or the elements are not performing well and/or are individual silos, rather than an integrated RMS. This suggests that the three countries do have some of the foundation necessary to achieve an integrated, well-performing RMS. Indeed, there have been positive developments and success stories on the regulatory front in the three countries, such as the National Competitive Council (NCC) in the Philippines, the Competition Law in Indonesia, and the Law on the Protection of Car Accident Victims in Thailand. Also, the recent deregulation acts of the Government of Indonesia indicate that it is moving increasingly more vigorously towards substantial regulatory reform. Similarly, Thailand's Royal Decree on the Review of Laws and the Licensing Facilitation Act are indicative of Thailand's increased resolve at the highest political level towards substantial regulatory reform. The challenge in the next few years is to transform the increased policy resolve into effective regulatory reform in terms of processes, institutions, and systems.

[RECOMMENDATION]

In view of the above, the next step of **'Go for It'** may be what is appropriate.

Similarly, **'Go for it'** may well be the appropriate recommendation for the **implementation of the strategic measures under GRP and Responsive Regulations under items 35 to 39 under B.6 and B.7 of the ASEAN Economic Community (AEC) Blueprint 2025**. In effect, **All ASEAN Member States (AMSs) commit to the institutionalisation of GRP and to the development of a well-performing RMS**. Sections B.6 and B.7 are the strongest indication of the commitment ASEAN and the AMSs to good governance, GRP, and responsive regulations that would augur ASEAN's quiet revolution. To wit (pp. 76–77, italics supplied):

- i. Promote a more responsive ASEAN by strengthening governance through greater transparency in the public sector and in engaging with the private sector;*
- ii. Enhance engagement with the private sector as well as other stakeholders to improve the transparency and synergies of government policies and business actions across industries and sectors in the ASEAN region;*
- iii. Ensure that regulations are pro-competitive, commensurate with objectives and non-discriminatory;*
- iv. Undertake regular concerted regional programmes of review of existing regulatory implementation processes and procedures for further streamlining and, where necessary, recommendations for amendments and other appropriate measures, which may include termination;*
- v. Institutionalize GRP consultations and informed regulatory conversations with various stakeholders in order to identify problems, come up with technical solutions, and help build consensus for reform. Enhancing engagement with the private sector as well as other stakeholders contributes to regulatory coherence, increased transparency and greater synergies of government policies and business actions across industries and sectors in the ASEAN region;*

The regulatory agenda may include the setting of both targets and milestones in order to facilitate a regular assessment of the regulatory landscape, and periodic review of progress and impacts in the region.

The following recommendations from Llanto (2015) for the Philippines may also be relevant for other AMSs such as Cambodia, Indonesia, and Lao PDR, appropriately adapted to fit the countries' specific contexts, in conjunction with the implementation of Sections B.6 and B.7 of the AEC Blueprint 2025:

- **The government must exercise firm leadership and political will in reducing regulatory burden and improving regulatory quality. It can do this by establishing a formal and requisite... [i.e. ideal or well-performing] ...RMS. It can start by issuing an Executive Order**

announcing RIA as a whole-of-government policy, and not for sector regulators only.²⁰

- **The political leadership should identify or constitute a central oversight body that will oversee the implementation of a formal and requisite RMS.**
- **The role, mandate, and stock of regulations of regulatory agencies should be reviewed to reduce the regulatory burden.**
- **Regulatory agencies should build capacity for undertaking RIA and formulating regulatory impact statements.**
- **Government oversight agencies (e.g. National Economic Development Authority) should ensure a more intensive involvement of the private sector, civil society, academe, research institutions, and media in regulatory reform.**
- **Research institutions such as the Philippine Institute for Development Studies should intensify their efforts in conducting impact assessment studies, especially those bearing on regulations.**

6.2. GRP, RMS, and Level of Development

Figure 4.9 in Chapter IV showed that a positive relationship exists between the level of development of member economies of the Asia-Pacific Economic Cooperation (APEC) and the use of RMS instruments; that is, the more developed APEC economies display a greater propensity to use RMS instruments than the poorer and developing APEC countries.²¹ This trend might seem to suggest that GRP and RMS are only for the rich countries.

²⁰ Or a Royal Decree or a Law as in the case of Thailand.

²¹ Malaysia is way down in use of RMS instruments in the figure. This is likely to be the case because the figure uses data from the early to mid-2000s, whereas the major RMS initiatives of Malaysia happened in the late 2000s and after.

However, the experience of Viet Nam's Project 30 shows that this is very definitely NOT the case. Indeed, one of the key lessons of Viet Nam's experience is that '...even developing economies with limited resources can carry out regulatory reform' (Vo and Nguyen, 2015, p.12). The Viet Nam case, with its initial focus on a major programme of inventory and streamlining and simplification of administrative procedures, is especially relevant for countries such as Cambodia, Lao PDR, and Myanmar (CLM) whose Ease of Doing Business (EODB) scores and rankings are very low and where the private sector respondents to ERIA surveys have been complaining about burdensome permit and licensing processes and the need to pay informal fees in addition to inadequate infrastructure facilities. In short, regulatory reform starting with the development of an administrative procedures inventory, simplification, and streamlining would provide substantial societal and economic dividends for the CLM countries as well as for Indonesia and the Philippines.

Vo and Nguyen (Ibid.) listed two other important lessons from Viet Nam's Project 30 that would be relevant for the implementation of similar programmes in CLM (Cambodia, Lao PDR, Myanmar) countries and possibly even for Indonesia, the Philippines, and Thailand being:

1. Political commitment is especially important to the success of an administrative procedure reform project. In the case of Project 30, the Prime Minister showed his clear and strong commitment to administrative reform. In reality, the Prime Minister officially endorsed the Project and announced its key achievements personally. In addition, the Special Task Force can directly report to the Prime Minister. The high political determination is a key factor to overcome potential reluctance among ministerial and local officials. This is also a key factor to build confidence among stakeholders. In addition, with high political determination, the project was designed with ambitious quantitative goals which could themselves create a pressure for interested parties to push up the reform.

2. Carrying out the reform needs a sound institutional structure with sufficient capacity. For the case of Project 30, a coordinating body (the Special Task Force) at the center of government was set up. This Special Task Force was assigned sufficient power to deal

with and directly instruct other ministries and local government. In addition, the Special Task Force was equipped with competent staff(p.12).

Hence, to jump-start the GRP agenda and implement AEC Blueprint 2025, it is recommended that:

[RECOMMENDATION]

- **Cambodia, Lao PDR, and Myanmar (and possibly, even Bandar Seri Begawan) should commit to developing GRP and to the Quality Regulation Revolution**
- **CLM countries should undertake an Inventory and Simplification/ Strengthening Administrative Procedures Programme to jump-start the road to GRP and a well-performing RMS**

6.3. Embedding the RIA/RIS Mindset Early On and Strengthening RIA/RIS Capacity

Regulatory Impact Analysis (RIA) and Regulatory Impact Statement (RIS) are essential features of a well-performing or requisite RMS and sound rule-making. Ideally, an RIS specifies (i) what is the problem or issue that needs action and why there is a need for government action; (ii) the examination of a range of regulatory and non-regulatory options; (iii) the assessment of the costs and benefits of each option; (iv) a list of those who were consulted and how; (v) a recommended option; and (vi) a strategy for implementing and reviewing the recommended option (MPC, 2013, p.11; Australia Department of Prime Minister and Cabinet, 2014, p.1). It is apparent from the above elements of an RIS that a good RIS is not easy to prepare; considerable technical skills are required to prepare a quality RIA/RIS.

The quality of many regulatory reviews under the RIA/RIS system in many of the countries in the Project has been highly mixed, often unsatisfactory. This suggests that such systems have not been very useful and have had little impact on

polycymaking. In Viet Nam, for example, the quality of RIA ‘...normally is not as good as expected, and the capacity to review and access RIAs is limited either’ (Vo and Nguyen, p.10). In Indonesia, the academic paper that is required to accompany proposed bills ‘...that provide assessment on the impact of the bill including how it relates with other existing legislation...focuses more on legal assessment of the new regulatory bill, rather than providing expected economic, social and environmental benefits...’ (Damuri and Silalahi, 2014, p.11). In Thailand, ‘most RIA reports are...only 3–4 pages and the quality of the RIA reports were not useful in the legislation process...[the] RIA process [is] started when the draft bill was finalized; therefore, RIA seem to be an obstacle rather than an improvement mechanism’ (Ongkittikul and Thongphat, 2015, p.29). In Japan, ‘RIA is not used in the actual process of establishing a regulation, but after the basic framework of the regulation is made...there are not enough quantitative costs and benefits analysis on the effects of regulation....no uniform method for evaluation of the social costs of regulations’ (Yashiro, 2015, p.12). Even in Australia where RIS is mandatory for all Cabinet submissions, with a long history of RIA development and practice, and there is an official guide on preparing RIS, there is ‘...a varying, but often very limited commitment to, and respect for, the RIA process and the resulting RIS by ministers’ (Carroll and Bounds, 2016, p.32).

It is suggested that the ‘ideal type standards’, mandated by many RIA systems, although of considerable value for the systematic assessment of the quality of proposed regulations, may initially be too demanding for countries at the onset or in the early stages of their drive to attaining a good quality RMS, especially those with limited staff capacity and technical expertise. Hence, it may be of value to commence with a less demanding RIA system that can be made more rigorous over time.

Deighton-Smith and Carroll suggest that a more limited, less demanding RIA system be introduced, as follows (29 May 2015, personal communication):

[RECOMMENDATIONS]

- **Apply a ‘proto-RIA’ (or ‘skeleton RIA’ or ‘framework RIA’) to laws because the major regulatory burdens tend to be caused by laws.** A proto-RIA/framework or RIA/skeleton does not demand detailed quantification of the specific effects of the legislation (where the technical

skills requirement would be more substantial) and instead focuses on answering the key questions regarding the necessity for the proposed regulation and assessing the best available alternatives. In essence, a systematic qualitative consideration about the costs and benefits of a proposed regulation is suggested. Where the 'proto-RIA' suggests that there will be major costs and benefits, then a quantitative analysis should be undertaken only for such cases. Proto-RIA needs to be done at the earliest possible stage of the regulatory decision process for it to be useful.

- **Use extensive consultation with concerned stakeholders in developing the proto-RIA** to get feedback on the rationale and realism for the proposed regulation and to ensure whether there is an accurate understanding of the problem being addressed by the proposed regulation or legislation.
- **Or create a standing Business Panel as a sounding board and consultation mechanism for the proposed legislation.** The business panel can change membership as necessary to deal with the specific regulation under examination.
- **If one does not already exist, start developing a Productivity Commission-type institution with high-level analytical skills, capacity building, and skills training functions.**

As the national capacity for regulatory review and assessment grows, so should the demands of the RIA system for the increased quality of regulatory proposals from all departments and agencies. In essence, the 'proto-RIA' should develop into a sophisticated and demanding system. Smaller departments and agencies may continue to lack the full range of skills necessary for high-quality RIA, and responsibilities in such cases can rest with a credible central body such as the Australian Productivity Corporation. Similarly, the most complex, nation-wide regulatory proposals could be reserved for such a commission or a research institution such as the Central Institute for Economic Management in Viet Nam.

The shortage of RIA/RIS skills, especially related to cost-benefit analysis in ASEAN and East Asia countries, suggests that it is worthwhile to:

[RECOMMENDATION]

- **Develop a regional cooperation programme on RIA/RIS training, research, and innovation, in tandem with regional institutions' (e.g. Asian Development Bank [ADB]) capacity building programmes on RIA/RIS at the national level.**

It is worth noting that Singapore does not for the most part use a formal RIA/RIS process with an oversight agency that is responsible for the quality of RIAs/RISs, except for major projects. Instead it relies on continuous linkage and feedback with the stakeholders on the regulatory changes, which together with the civil service's high-level technical skills and the pressure from the market and global competition help provide the anchor for its regulatory decisions (see Lim, 2015).

Arguably, Singapore is a special and atypical case. However, the Singapore case highlights the importance of investing in capacity building for the regulators and the bureaucracy as discussed in the previous chapter. It is likely easier to learn and enact rules and regulations than to find able and competent people who can apply and implement them well. Arguably, even if the RMS is not perfect, having people who are competent and with integrity implement the rules and regulations could still produce good regulatory results. Thus, investing in the capacity of the bureaucracy would need to be emphasised. In addition, the drive to embed GRP and develop a well-performing RMS can be expected to be boosted by efforts to instil and cultivate a good public governance culture, e.g. integrity, excellence, dedication, etc. Thus, it is proposed to:

[RECOMMENDATION]

- **Establish a regional cooperation programme among civil service and regulatory institutions strengthening the capacity of the regulators and the bureaucracy, especially with respect to regulations.**

6.4. GRP, International Regulatory Cooperation, Regulatory Coherence, and Seamless Connectivity in ASEAN

Amb. Swajaya's keynote speech during the inaugural East Asia Summit (EAS) Regulatory Roundtable is particularly salient in the current world of global and regional value and supply chains and production networks. He called for 'adequate regulatory coherence across the border' towards 'seamless connectivity' in ASEAN. This was echoed in the keynote speech of Deputy Minister Rizal Lukman during the second roundtable. In this world of 'unbundled production', seamless connectivity provides the ideal environment that allows for the efficient expansion of production over a wider geographic area, both domestically and across borders within ASEAN, thereby deepening the production networks and value chains in the region and allowing more ASEAN countries to participate more deeply in those networks. The result is a more inclusive ASEAN as the poorer AMSs become more deeply connected in the regional production networks. ASEAN would also be a more attractive investment destination and a more competitive production platform because the varying factor and human capital complementarities and advantages of various ASEAN countries are maximised.

At the same time, the description of the elements of responsive regulation in this Report states that 'responsive regulation as content' means regulations that are pro-competitive, commensurate, and non-discriminatory. Pro-competitive implies pro-trade because trade, especially import, enhances the competitive environment in a country. Similarly, non-discriminatory regulation implies one that does not discriminate among domestic and imported products that meet the social, health, environment, and other objectives of the regulation as well as among domestic and foreign firms. Thus, the pursuit of GRP and good regulations is expected to facilitate trade and investment in the context of globalising economies and the integrating region.

The discussion above indicates that the pursuit of GRP and a well-performing RMS and the implementation of the AEC Blueprint and the Master Plan on ASEAN Connectivity are complementary. Implementing them would bring about the 'adequate regulatory coherence across the border' that Amb. Swajaya called for.

Regulatory coherence has historically referred to policy coherence wherein domestic agencies and laws are aligned or consistent with a national regulatory reform agenda and are vertically coherent between multiples of government in federal states (Mumford, 2014, p.4). This is one key goal of GRP and a well-performing RMS on the domestic front. Thus, the implementation of GRP and having a well-performing RMS engender domestic regulatory coherence. In recent years, regulatory coherence has been discussed in terms of international trade and, logically, regional integration. The growing interdependence of countries and the growth of international production networks inevitably raise the issue of cross-border regulatory coherence as exemplified by Amb. Swajaya's keynote speech.

In enhancing cross-border regulatory coherence, Mumford (2014, p.5) presents three interrelated elements of a multidimensional strategy:

- ***Coherence between domestic and international policy goals.*** The impact on trade and investment is taken into account as part of the policy process in the making of a new domestic regulation.
- ***Coherence between domestic laws and agencies.*** The number of domestic agencies that all deal with the same trade or investment transaction take a consistent and efficient approach.
- ***Coherence between the laws and the agencies of two or more economies***, or generally called ***International Regulatory Cooperation (IRC)***. Cooperation between economies aimed at reducing the regulatory barriers to trade and investment arising from different laws in different countries.

The first two are the province of GRP and RMS. For the third, Mak and Nind (2015) argue that IRC can

- lower barriers to trade and investment;
- enhance regulatory capacity and capability, and build confidence and trust; and
- increase policy and regulatory effectiveness.

Further, it can involve unilateral action (primarily the unilateral adoption or recognition of, say, global standards or the regulatory standards of another country); informal cooperation (information sharing, policy coordination, cross-agency appointment); and formal cooperation through enforcement cooperation, mutual recognition agreement (MRA), and harmonisation (see Mak and Nind, 2015). ASEAN is already undertaking a number of IRC initiatives such as the MRAs and harmonisation activities in standards and conformance and the MRAs on professional services.

[RECOMMENDATION on GRP]

To jump-start the GRP agenda, each AMS agrees to draw up an inventory of all national government's existing regulations, together with their administrative measures, and develop and implement a plan for their simplification, modification, or termination.

It is worth repeating at this juncture what H.E. Deputy Minister Rizal Lukman emphasised that, given each AMS is unique, it is not possible to have a 'one size fits all' regulatory framework for the whole region. As such, there is need for '...flexibility for each country to implement their regulatory framework and regulatory reforms based on their respective state developments and characteristics' (Lukman, 2015, p.7).

In addition, ASEAN can use the wide spectrum of IRC initiatives (including more of those it has already developed) to help facilitate the implementation of IRC in support of deeper economic integration in ASEAN, including the following:²²

[RECOMMENDATION on IRC]

- **Creation of a High-Level Task Force or 'tasking' the High Level Task Force on Economic Integration (HLTF-EI) to guide and coordinate work on and IRC in ASEAN. Given the apparent policy of ASEAN against creating more committees, working groups, and task forces,**

²² All the recommendations except for the first one are based on the results of an APEC workshop on regulatory cooperation held in Cebu, Philippines on 31 August 2015. Although the discussion in the workshop was in terms of APEC economies, the recommendations are equally relevant for ASEAN and the AMSs.

this function of guiding and coordinating ASEAN work on GRP and IRC could be delegated to the current HLTF–EI. In effect, HLTF–EI’s work programme post 2015 would be focused more on engendering GRP and overseeing IRC in ASEAN.

- **Regular ‘horizontal exchanges of experiences’ between members on regulatory policy in support of GRP, thus building up a ‘better understanding of different regulatory systems and approaches...and build confidence between interested parties’ (Aranda Girard).**
- **The encouragement of informal bilateral and multilateral cooperation of policy coordination, including agency appointments and work sharing (Mak and Nind).**
- **Widening and deepening of AMSs’ ‘familiarity’ with existing international conventions which are public goods that can then be the basis for more efficient regional international private transactions; Apostille Convention (Ian Govey).**
- **Encouragement of the unilateral adoption of GRP and regulations from abroad.**
- **Encouragement of the concerted unilateral and voluntary adoption of international standards.**
- **Encouragement of innovative regulatory initiatives; e.g. Asian Region Funds Passport (Sim, 2015).**
- **The provision of capacity building and technical assistance on GRP and IRC to the poorer AMSs. It is important to note that effective regulation is due in part to the role, structure, and expertise of regulators (Bounds, 2014); hence, the importance of capacity building.**

The AEC Blueprint 2025 has indeed some provisions on IRC, primarily with respect to capacity building:

Undertake targeted capacity building programmes with knowledge partners such as the Organisation for Economic Co-operation and Development (OECD) and ERIA to assist ASEAN Member States in the regulatory reform initiatives, which takes into account the different development levels, development needs, and regulatory policy space of each ASEAN Member State.

Similarly, Amb. Hamzah recommends that ‘...the **Heads of National Planning Agencies of ASEAN Member States to engage with the National Coordinators on ASEAN Connectivity** with participation from [the] private sector and relevant stakeholders to discuss and synchronize regulatory reforms’ (Hamzah, 2015, p.4).

In addition, it is worth noting that there exists an ASEAN–OECD Good Regulatory Practice Network. This network can be upgraded to an **ASEAN GRP Network** that can support the ASEAN High Level Task Force in implementing GRP in ASEAN. It may also be worthwhile to consider the establishment of a **pool of experts and trainers on GRP in ASEAN** to help with capacity building and with the analysis of regulatory and IRC and cooperation issues in ASEAN.

6.5 Putting It All Together and Moving Forward Fostering ASEAN’S Quiet Revolution²³

As highlighted earlier, regulations are essential for the proper functioning of society and economy. But when they are poorly designed, inconsistent with other regulations, or not administered and enforced well, regulations can impose greater burdens on companies and citizens than necessary and thereby inhibit productivity, especially of small enterprises, which comprise the bulk of ASEAN businesses (MPC, 2014, p.12).

²³ This section benefited from inputs from Faisal Naru of OECD and Mark Steel of the New Zealand Ministry of Business, Innovation and Employment.

The challenge for AMSs is to ensure that the regulations effectively address the identified problems while minimising the cost of compliance with the regulations in each Member State, and preventing unwarranted distortions and inconsistency arising from them. In addition, differences in regulatory requirements among AMSs that impose substantial and unnecessary barriers to intra-ASEAN movement of goods, services, investment, capital, and skilled labour would need to be addressed.

GRPs powerfully address the regulatory concerns raised above and promote good governance. ASEAN has recognised the importance of GRP in the ASEAN Policy Guideline on Standards and Conformance (2005) and the Blueprint 2025 includes 'Effective, Efficient, Coherent and Responsive Regulations, and Good Regulatory Practice' (pp.76–77) as a key element of ASEAN's drive for a 'Competitive, Innovative and Dynamic ASEAN' (p.70). It likewise emphasises embedding GRP to minimise the compliance cost of meeting non-tariff measure (NTM) requirements and in the preparation, adoption, and implementation of standards and conformance rules, regulations, and procedures (p.63).

The common pursuit of GRP and a well-performing RMS, together with IRC, by ASEAN and East Asia members will go a long way in engendering greater regional regulatory coherence. In the process, **ASEAN's Quiet Revolution** of GRP, RMS, IRC, and regulatory coherence will be fostered.

6.5.1 Core Good Regulatory Practice Principles

An important initial step towards the realisation of ASEAN's Quiet Revolution is for ASEAN to adopt the core GRP principles. GRP principles in the design and implementation of regulations 'are a useful toolkit for measuring and improving the quality of regulation and its enforcement, setting the context for dialogue between stakeholders and government' (UK Better Regulation Task Force, p.1). Regulations are construed in this paper to be all written legal and quasi-legal instruments including laws, decrees, secondary regulations, guidelines, circulars, codes, standards, and others. The principles help identify where unnecessary regulatory burdens on business could be reduced (Ibid, p.5).

There is no clear and agreed complete set of GRPs that has been used by governments and analysts. Nonetheless, a number of commonly emphasised principles can be considered core GRP principles. The following core GRP principles draw from or are taken from the GRP principles of Malaysia, APEC, OECD, ASEAN GRP Guide, Australia, New Zealand, and the United Kingdom.

Principle No. 1: Have a proportionate and effective response to the risk being addressed

This principle highlights the fact that most regulations address risks to society, the economy, and the environment that are not adequately addressed by individuals or the market. Examples are environmental pollution, food-borne illnesses, fraud, fire, etc. (MPC, 2014, p.17). At the same time, as the ASEAN GRP Guide puts it, the regulatory response ‘...produces benefits that justify costs [imposed on firms and citizens],...serves clearly defined policy objectives, and be effective in achieving those objectives’ (ASEAN GRP Guide, 2009, p.1). In effect, the problem is clearly stated and the regulatory response justifiable and appropriate (APEC, 2010, p.3).

Thus, the proportionality principle means regulatory agencies (and other government bodies including the legislature) intervene only when it is necessary and socially beneficial. This implies the importance of a clear empirical understanding of the risk(s) to be addressed and the corresponding appropriate risk management regulatory approach to undertake. That is, the nature of the regulation is commensurate with the severity of the risk, considering the various regulatory and non-regulatory options. Generally, this means a greater reliance on outcome-based (or performance-based) regulatory and non-regulatory measures rather than prescriptive regulations except where risks are severe. Proportionate response also implies that greater attention be given to the impact of regulations on small and medium-sized businesses, which tend to be disproportionately burdened by the regulations compared with large firms. Finally, this implies that a range of feasible options (regulatory, non-regulatory, co-regulatory) are considered, and the benefits and costs are taken into account (Council of Australian Governments, 2007, p.4).

Principle 2: Minimise adverse side effects and market distortions

Under GRP, a regulation, as well as its implementation, needs to minimise adverse side effects to only what is necessary to achieve regulatory objectives at the least cost (MPC, 2014, p.4). It also needs to ensure it does not unnecessarily lead to market distortions by unnecessarily limiting competition and by being discriminatory against other domestic and foreign firms. The exception is when '...the benefits of the restrictions to the community as a whole outweigh the costs, and the objectives of the regulation can only be achieved by restricting competition' (Council of Australian Governments, 2007, p.4).

Minimising the adverse side effects may entail that regulations and their implementation are targeted and focused on the regulatory problem of concern, and that the regulators are more concerned with activities that give rise to the most serious risks (UK Better Regulation Task Force, p.6). Similarly, regulations need to be as little trade restrictive as possible to meet the desired objectives (ASEAN GRP Guide, p.2).

Principle 3: Consistency and coherence of regulations and predictability of implementation of regulations

Consistency and coherence of regulations means no conflicting or duplication of regulations. This calls for, among others (OECD, 2012b, p.17):

- appropriate coordination mechanisms among concerned agencies or regulatory institutions, as well as between levels of government on regulatory policies and practices;
- information sharing and greater transparency between levels of government to address asymmetric information and promote complementarities among regulations; and
- identification and reform of overlapping regulations in regulatory issues that cut across levels of government.

Consistency also implies that enforcement agencies apply regulations consistently across the country (UK Better Regulation Task Force, p.5).

Consistency and coherence of regulation are central to a genuine whole-of-government ownership of GRP, making appropriate coordination mechanisms among concerned agencies and regulatory institutions critically important. In all

of our bureaucracies, vertical accountability incentives and disciplines are so powerful that making GRP a reality requires a very strong countervailing commitment to looking and working across agency silos. The predilection of bureaucracies for working in silos that are largely isolated from each other is one of the main obstacles to regulatory practices creating a better experience for the regulated (Mark Steel, personal communication). For example, ensuring seamless regulatory facilitation, or efficient multi-channel government–customer interface, for a business enterprise faced with multiple licences, permits, and approvals from various agencies in its operations, would require effective coordination agencies together with streamlined regulatory requirements and simplified systems and work procedures (Seman and Bahari, 2016, p.7). This approach of reviewing regulations from the perspective of the operations of a business enterprise animates the initiatives of Malaysia's PEMUDAH Task Force, for example.

Of importance for the AEC is the minimisation of regulatory differences among countries in ASEAN, both in terms of the regulations themselves and in the implementation of the regulations. This is because such regulatory differences can become significant barriers to trade, investment, and labour flows within the region. That is why, for example, the ASEAN GRP Guide calls for regulations '...to be based on international standards, or on national standards that are harmonised to international standards, except where legitimate reasons for deviations exist' (ASEAN GRP Guide, p.2).

Regional efforts towards greater regulatory coherence in the region, which can be categorised under the broad rubric of IRC include MRAs in selected priority sectors and professional services, integrated harmonised systems like the ASEAN Single Window, and harmonisation of technical regulations or processes such as the ASEAN Cosmetics Directive. The drive towards minimal regulatory differences and greater regulatory coherence among AMSs would also call for, as the ASEAN GRP Guide emphasises, equal treatment of products of national origin and like products imported from other AMSs.

Predictability of the implementation of regulations engenders a greater sense of certainty to regulated entities about regulatory compliance risks now and in the future, and thereby provide a more conducive environment for investment. The greater predictability and certainty of the regulatory regime are enhanced by clear decision-making criteria that are publicly known as well as by considering

the design of regulatory regimes that firms need to take long-term investment decisions (Mumford, 2011, p.38).

Principle 4: Transparency and stakeholder participation in the design, implementation, monitoring, and review of regulations

Transparency ‘...addresses many of the causes of regulatory failures, such as regulatory capture and bias towards concentrated benefits, inadequate information in the public sector, rigidity...and lack of accountability. [It] encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation. Transparency is also rightfully considered to be the sharpest sword in the war against corruption’ (OECD, 2002, pp. 65–66).

Transparency measures include the following:

- Public access to information on regulations and quasi-regulations such as laws, policies, circulars, rules, guidelines, decisions, and procedures together with, where appropriate, expected service standards (e.g. duration of processing of licence application), and where practicable, make such information available online. Preferably, the information includes guidance to regulated parties on expected compliance requirements and how to comply with legal requirements or how regulators will assess applications (MPC, 2014, p.40).
- Regulations, rules, and procedures are clear, simple, well organised, and in plain language, ‘...recognizing that some measures address technical issues and that relevant expertise may be needed to understand and apply them’ (Trans-Pacific Partnership Agreement, Chapter 25, p.7).
- As in the case of Thailand’s Royal Decree on Review of Law, transparency is also enhanced with the requirement that the regulations are translated into English and are easily available or accessible, thereby reaching out to the foreign stakeholders.

Effective consultation and stakeholder participation involves a continuous process of engagement and communication with affected stakeholders from a wide variety of perspectives and interests at all stages of the regulatory cycle. Moreover, the stakeholders are provided reasonable time to give considered responses and provide feedback on how the results of the consultation process have been taken into account in the decisions on the design, implementation, and revision of regulations and quasi-regulations. Effective consultation with and engagement of various stakeholders can be expected to help ensure that those who are affected by the concerned regulation have a good understanding of what the regulation is and how it addresses the problem of interest, help provide suggestions on alternative options, allow regulators to assess competing interests, identify interactions between different types of regulations, provide a check on regulator's cost assessment, and may enhance voluntary compliance with the regulation (Council of Australian Governments, 2007, p. 6).

Principle 5: Robust review mechanism to ensure the continuing effectiveness of regulations in a changing economic and social environment

Given dynamic markets, technological and other developments globally, regionally, and nationally, regulations can over time become redundant (which may call for termination) or require revisions, or non-regulatory options may have become preferable. Thus, it is important to have a robust review mechanism that ensures that existing regulations remain relevant and effective. The review and evaluation of regulations and the regulatory regime also aim to '...improve the performance of regulatory quality tools and institutions – measured in terms of their ultimate goal of increasing the effectiveness and efficiency of regulation over time' (APEC, 2010, p. 6).

A more systematic and systemic review mechanism is to build in a review requirement in each regulation or a blanket policy or law on sunset clause or regular review of regulations, e.g. every 7 years under Malaysia's NPDIR and every 5 years under Thailand's Royal Decree on Review of Law. This approach favours the establishment of a central oversight institution monitoring the performance of regulations and the review process, e.g. Malaysia's NDPC supported by the MPC and Thailand's Council of Ministers supported by the Law Review Commission.

Two popular methods that have been used in the review of regulations are (i) Reducing Unnecessary Regulatory Burden (RURB), focused on the review of

existing regulations, which has been implemented systematically in Malaysia; and (ii) RIA, which tends to be used primarily on proposed new regulations, where a number of AMSs have been undertaking capacity building with the support of ADB. In both, consultation with and engagement of affected and concerned stakeholders is critical. And in both, some quantitative or qualitative estimation of costs (burdens, especially under RURB) and benefits both direct and, in the more sophisticated RIAs, economy-wide (especially under RIA) is important to aid in the prioritisation and decision-making on actual regulations and alternative regulatory options and refinements.

Principle 6: Accountability, probity, and responsiveness in the enforcement of regulations by regulators

The quality of enforcement of the regulations by, and indeed the overall compliance strategy of, the regulators can affect the willingness of affected entities and individuals to comply voluntarily with the regulations. A critical concern for regulators is how to deploy limited resources in the most efficient way such that regulations are effectively administered to meet the objectives of the regulations at least cost to business and citizens (APEC, 2010, p. 27). A responsive and incentivised compliance strategy and enforcement of regulations, together with accountability and probity of the regulators, contribute towards good enforcement of the regulations.

A responsive or incentivised approach to enforcement of regulations means calibrating the tools of enforcement depending on the behaviour of the regulated entities or individuals. For example, regulators would go easy on and help facilitate the compliance of those who are willing, but sometimes unable, to comply. But they would use the full force of the law against entities and individuals who do not want to comply (Ibid, pp. 27–28). Accountability demands that the enforcement of regulations by regulators is not arbitrary and there are recourse and appeal mechanisms in cases where regulators unfairly penalise a business. Probity of regulators help address corruption in implementing regulations.

Regulatory agencies would need to have clear lines of accountability to Ministers, the Parliament, and to the public. Accountability is enhanced when regulators establish clear standards of judging them and explain how and why final

decisions are made. It is also enhanced by an accessible, fair, and effective complaints and appeals process (UK Better Regulation Task Force, p.4). Robust governance mechanisms on the regulators need to protect regulatory agencies from undue influence and regulatory capture.

6.5.2. Towards institutionalising GRP and RMS in ASEAN

The GRP principles listed above are meant to be 'benchmarks' against which actual regulations and regulatory regime are evaluated. It is apparent from the above that they are not easy to be implemented. It will take much time, a change in mindsets, capacity building, and, above all, continuous political commitment and support at the highest level.

GRP Strategic Measures. The 'Nay Pyi Taw Declaration on the ASEAN Community's Post-2015 Vision' issued on 12 November 2014 makes specific reference to '[promoting] the principles of good governance, transparency and responsive regulations and regulatory regimes through active engagement with the private sector, community based organisations and other stakeholders of ASEAN'.

ASEAN and ASEAN-focused initiatives had been undertaken or launched to address GRP in ASEAN. These include the ASEAN Good Regulatory Practice Guide (2009, Bangkok); ASEAN–OECD workshop on regulatory reform (2010, Ha Noi); ASEAN Regulatory Reform Dialogue (2011); ASEAN Regulatory Reform Symposium (2012, Manila); East Asia Summit Regulatory Roundtables I and II (2013 and 2015, Bangkok and Jakarta, respectively); ASEAN–OECD Good Regulatory Practice Conference (2015, Kuala Lumpur); ERIA–Reducing Unnecessary Regulatory Burden (RURB) project (2015–2016); and the ASEAN–OECD Good Regulatory Practice Network.

Moving forward, the AEC Blueprint 2025 lists the following strategic measures for GRP implementation and institutionalisation in ASEAN in 2016–2025 (ASEC, 2016, p. 77):

- *Ensure that regulations are pro-competitive, commensurate with objectives, and non-discriminatory;*

- *Undertake regular concerted regional programmes of review of existing regulatory implementation processes and procedures for further streamlining and, where necessary, recommendations for amendments and other appropriate measures which may include termination;*
- *Institutionalise GRP consultations and informed regulatory conversations with various stakeholders in order to identify problems, come up with technical solutions, and help build consensus for reform;*
- *The regulatory agenda may include the setting of both targets and milestones in order to facilitate a regular assessment of the regulatory landscape, and periodic review of progress and impacts in the region; and*
- *Undertake targeted capacity building programmes with knowledge partners such as OECD and ERIA to assist ASEAN Member States in the regulatory reform initiatives which takes into account the different development levels, development needs and regulatory policy space of each ASEAN Member State.*

Moving Forward: Towards Institutionalising GRP in ASEAN. The key elements towards the institutionalisation of GRP in ASEAN are as follows:

1. Continuous political commitment at the highest level of the government and administration. The implementation of GRP involves most especially the government bureaucracy and the government rule-making process. Thus, political commitment at the highest level is essential to institutionalise GRP in each AMS and the whole region. At the same time, the commitment of the top leadership in the bureaucracy is critical for embedding GRP into the bureaucracy and thereby help shape the bureaucracy's culture despite changes in the political leadership.

A number of AMSs have already done so. Malaysia has its NPDIR, which institutionalises GRP in the whole government. Viet Nam's Project 30, its initial key whole-of-government GRP initiative of streamlining administrative procedures and regulations involving administrative procedures across all levels of government, was overseen and coordinated by the Prime Minister and the Prime Minister's Office. In 2015, Thailand enacted the Royal Decree on the Review of Law and the Licensing Facilitation Law, which mandates whole-of-government

review of regulations and streamlining of licensing procedures, respectively. Singapore has been embedding GRP in the whole bureaucracy since 2000 with its 'Cut Red Tape' initiative and the efforts of the Rules Review Panel (later, Smart Regulation Committee [SRC]), so much so that Singapore's RMS is arguably one of the best in the world at present.

Towards the implementation and institutionalisation of GRP in **all AMSs and the whole ASEAN region**, the following measures are to be implemented at the regional and national levels, respectively:

Regional Level:

- ***ASEAN Leaders sign a declaration for the adoption of the core ASEAN GRP principles and the key implementation measures for the institutionalisation of GRP in the whole ASEAN.***
- ***Create a regional body to coordinate and review the implementation of the ASEAN GRP Agenda (or mandate an existing ASEAN body, such as the High Level Task Force on Economic Integration [HLTF-EI]).*** The focus of the regional body is on the border and behind-the-border regulations and administrative procedures that have direct bearing on the movement of goods, services, investment, capital, and skilled labour within ASEAN, which can be termed the 'covered regulations and procedures'.

National Level:

- ***National policy and programme for the implementation and institutionalisation of GRP in the country.*** The national policy and programme may include presidential orders or laws on the review of administrative procedures for streamlining and EODB similar to Viet Nam's Project 30, Thailand's Licensing Facilitation Act, and Malaysia's modernisation of business regulations primarily under PEMUDAH. It may also include a mandate for regular review of regulations (similar to Thailand's Royal Decree on Review of Law) and a capacity building programme. The national policy and programme can be expected to be at least a medium-term agenda. The national policy and agenda aim for implementation in the whole government over time, and not only sectoral or limited to selected agencies.

- ***Create or assign a suitable national central body at the heart of the government with appropriate powers and a capable secretariat to oversee the national implementation and institutionalisation of GRP over time in the country.*** An example is Malaysia's central body that implements the NPDIR, i.e. National Development Planning Committee (NDPC), supported by the MPC and the National Institute of Public Administration (INTAN). Similarly, Viet Nam's Project 30 was coordinated by the Prime Minister's Special Task Force under the Office of the Government of the Prime Minister.

2. Inventory and publish all regulations and administrative procedures, so these are accessible to the public. Set out a streamlining programme on all administrative procedures to reduce unnecessary regulatory burdens on regulated entities and individuals. For the 'covered regulations and procedures' directly related to the implementation of AEC Blueprint measures, the review and publication are undertaken concertedly at the regional level to implement strategy number 2 for GRP in the AEC Blueprint 2025. Viet Nam's Project 30 provides a very good example of a comprehensive inventory of administrative procedures and regulations with administrative procedures, which are available online and accessible to the public. Project 30 aimed to streamline the administrative procedures, with an indicative target of reducing or refining regulations by at least 30 percent. The inventory and streamlining of the administrative procedures (as in Viet Nam) or similarly licensing procedures (Thailand) or modernising business regulations (Malaysia) has been a good way to jump-start the GRP agenda because these procedures and business regulations impact directly on people; as such, streamlined procedures bring in people's support for the more difficult components of the regulatory reform programme.

3. Set out a programme of regular review of regulations at the national level, and concertedly at the regional level, on the covered regulations and procedures, e.g. every 5 years. Set targets and milestones. For example, at the national level, the mandate for a review of regulations every 5 years is in Thailand's Royal Decree on Review of Law. Factors considered in the review include justifying the need for such law in the current context; strengthening national competitiveness and sustainable development in light of changing economic, social, technological, and other environments; meeting international obligations; reducing the burden on people arising from the law; reducing corruption arising from the implementation of the law; and engendering efficient

and effective one-stop service (Nilrapunt, 2015a, pp.3–4). In the case of Malaysia, the 10th Malaysia Plan mandated the MPC to review existing regulations to remove unnecessary rules and compliance costs, undertake cost–benefit analysis on new policies and regulations, provide sectoral productivity estimates, and undertake productivity research to make recommendations on policy and regulatory changes that enhance productivity (OECD, 2015, p.32).

The reviews can be done in a strategic way, such as doing sectoral reviews, which are also less burdensome on regulators doing the reviews. The reviews should preferably look at the cumulative impact of the regulatory regime instead of individual regulations only. At the regional level, the regional body coordinating GRP implementation mentioned may start the review across countries on a sectoral or specific policy basis.

4. At the national level, set out a medium-term and long-term programme of institutionalisation of stakeholder engagement and of institutional development and capacity building for the regulators. Deep and continuing engagement with stakeholders, especially the business sector, is a characteristic of relatively successful cases of regulatory reform in ASEAN. Malaysia's PEMUDAH Task Force, composed of both government officials and private sector leaders, has been the driver of business regulations and processes streamlining in Malaysia. The Philippines' NCC of both government and business officials has been in the forefront of regulatory process reforms in the country in recent years. In Viet Nam's Project 30, the Advisory Council of Administrative Procedures Reform (ACAPR), composed of representatives from the Vietnamese and foreign business chambers and the academic sector, provided the strategic advice, factual evidence, and analyses to the Prime Minister's Special Task Force. Singapore's Pro-Enterprise, composed mainly of the private business sector but led by the head of the civil service, proactively solicits suggestions on rules and regulations and engages with government agencies to reduce the burden of regulations on business.

Effective implementation of GRP requires capable regulators who are steeped in GRP principles and approaches. Among the more important GRP-supportive approaches are the proto-RIA and full-blown RIA as well as RURB. Proto-RIAs (or skeleton RIAs or framework RIAs) do not involve detailed quantification of the effects of (proposed) regulation but focus on answering the key questions regarding the necessity for the proposed regulation and assessing qualitatively

and systematically the best available alternatives. Proto-RIAs would be appropriate for AMSs with very limited technical capacity at present, except for a few regulations that address big issues with trade-offs, which need a more quantitative approach.

Nonetheless, AMSs may need to invest to build the analytic capability of an institution in their country similar to Malaysia's MPC. Similarly, such institution would need to develop capability on RURB for a systematic approach to engaging the private sector and regulators and to analyse alternative options to RURB on business.

5. At the regional level, set out a medium-term and long-term programme of regulatory cooperation to support capacity building and regulatory reform of AMSs, sharing of experiences, intra-regional inter-agency cooperative arrangements for the implementation of GRP in the region, and regulatory convergence within the region.

There is a wide range of possible unilateral, informal, and formal IRC initiatives that can be pursued towards regulatory convergence (see Mak and Nind, 2015). It is also useful to encourage innovative regulatory initiatives such as the Asian Region Funds Passport. Finally, it is important to develop and support capacity building and technical assistance on GRP, especially to the poorer AMSs. Current regional capacity building initiatives include an ADB-funded programme on RIA; the ERIA-funded modest pilot study-cum-training on RURB in conjunction with MPC; and APEC-initiated GRP and IRC initiatives.

Concluding Remarks

Finally, and summing up, the implementation of the above recommendations is the fostering of ASEAN's Quiet Revolution: *ASEAN's quiet revolution is one of GRP and regulatory coherence in each AMS, regulatory cooperation and convergence among AMSs driven by AEC measures, and regional cooperation in capacity building towards well-performing RMSs* (e.g. training networks, sharing of experiences). The resulting regulatory connectivity deepens and strengthens institutional connectivity in ASEAN. Considering that the regulatory system is like a connective tissue, similar to physical infrastructure, within and among AMSs, seamless connectivity in ASEAN is underpinned not just by good, integrated, and connected physical infrastructure, transport, and logistics systems but also by GRP and well-performing RMSs. Thus, AMSs' concerted implementation of AEC Blueprint measures, together with GRP, responsive regulations, and a well-performing RMS in each AMS, will facilitate regulatory convergence, lower transactions costs, and support ASEAN's drive towards a highly integrated and cohesive economic region. In short, as Ambassador Trevor Matheson of New Zealand to Indonesia emphasised during the Second EAS Regulatory Roundtable, GRP and regulatory coherence are key to ASEAN integration. And ASEAN's regulatory connectivity and integration ensures a more compelling ASEAN as an investment destination, a driver of socio-economic development, and a catalyst for deeper people-to-people connectivity and community building in ASEAN.

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