

11. ASEAN of Good Governance: Good Regulatory Practice (GRP), Regulatory Management System (RMS), and Regional Regulatory Cooperation

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ASEAN on Good Governance: Good Regulatory Practice, Regulatory Management Systems, and Regional Regulatory Cooperation

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This brief is complemented by the succeeding chapters of Vo on Viet Nam and Latif and Yazid on Malaysia.

Vision

By 2040, the Association of Southeast Asian Nations (ASEAN) will be an economically just community, reflecting full partnership in economic progress, where the voices from all segments of society will have the opportunity to be heard, where the regulatory environment is business- and people-friendly, and where the rule of law prevails and public resources are effectively managed.

Mandate

1. The ASEAN Charter Article 1.7¹ states that ASEAN should pursue democracy, good governance, and the rule of law; and Article 2(h) of the ASEAN Charter states that ASEAN should seek to adhere 'to the rule of law, good governance, the principles of democracy and constitutional government'.
2. ASEAN Economic Community Blueprint 2025² (B6): Promote the principles of good governance, transparency, and responsive regulatory regimes through active engagement with the private sector, community-based organisations, and other stakeholders of ASEAN.

ASEAN's vision for its economy is for the smooth flow of goods and services within the region, and for the region to achieve inclusive growth through a business-friendly trade and investment environment. Key to this is ensuring that good governance is central to ASEAN. This means that ASEAN must institutionalise a regulatory system where good regulatory practice (GRP) and a regulatory management system (RMS) are embedded at the national level, with regional regulatory cooperation (RRC) at the ASEAN level.

Similar to other regional initiatives such as the ASEAN Single Window or the ASEAN Trade Repository, the process of good governance at ASEAN begins at the national level. Effectiveness at the regional level is dependent on how the initiatives are implemented at the national level first, and subsequently, how the national efforts are integrated at the regional level.

For good governance at the ASEAN level, ASEAN Member States (AMS) must focus on national level GRP and RMS so that the grouping can then establish RRC to facilitate regulatory convergence. Such regulatory convergence is important for ASEAN to become more integrated; and

¹ <https://asean.org/asean/asean-charter/>

² https://asean.org/?static_post=asean-economic-community-blueprint-2025

focus on reducing the cost and increasing the ease of doing business, as a dynamic, inclusive, and highly competitive region.

National-Level GRP

GRP subjects regulatory actions to reality checks by institutionalising regulatory review and reform – thus embedding transparency as a basic principle, and building confidence in the regulatory framework, institutions, and process. GRP focuses on regulatory quality, and more importantly, it is non-discriminatory.

Generally, at the national level, AMS embark on regulatory reform to simplify and streamline regulations, ensure equal treatment for enterprises of all forms of ownership, and harmonise domestic laws in line with regional and international commitments and practices.

A key objective of GRP is to reduce unnecessary regulatory burdens. Most AMS use the World Bank's Ease of Doing Business survey as a starting point for regulatory reform. For example, in 2007, Malaysia set up the Special Task Force to Facilitate Business (PEMUDAH), a public-private sector body, to analyse the World Bank report and undertake regulatory reform at a granular level. Similarly, in 2014, Viet Nam's government adopted Resolution 19 to focus on the indicators highlighted in the Ease of Doing Business report. Yazid and Latif (2019) shows how Malaysia used the World Bank report as a starting point for reducing unnecessary regulations in the construction sector.

GRP at the national level has to take a whole-of-government approach, breaking down silos and providing greater clarity of the need for regulatory reform. GRP also reflects a symbiotic relationship between the state and its stakeholders. The state must ensure a conducive policy and regulatory environment, while its stakeholders act collectively to ensure that laws and policies are transparent, consistent, and current.

GRP and RRC have a positive impact on trade and investment. These include a reduction in trade costs through cross-border harmonisation of regulations, processes, and procedures; and a reduction in conformity assessment costs. A 2017 World Bank survey, involving 750 multinational investors and corporations in developing countries, found that the legal and regulatory environment was a key parameter in investment decisions, in addition to factors such as low tax rates and low cost of labour and inputs. Ultimately, GRP is about effective rule-making. The table summarises the GRP rule-making process.

GRP Calls for an RMS and RIA

For regulatory reform to have the desired effect of being transparent and predictable, there must be a structured mechanism for the review, change, or introduction of regulations. In other words, an RMS must be in place. It is necessary to institutionalise the RMS and have a dedicated multi-agency body to ensure policy and regulatory coherence across the state. This body is to provide oversight and monitoring for the regulatory reform process.

Malaysia and Viet Nam attempted to institutionalise an RMS before PEMUDAH and Resolution 19 were in place. However, the previous attempts were not successful in bringing about the desired change. Vo (2019) provides an example of the reform process in Viet Nam before Resolution 19, and highlights why previous attempts at regulatory reform were less successful.

For an RMS to be sustainable and effective, both PEMUDAH and Resolution 19 show that it requires commitment at the highest level; a formal institutional structure to drive the reform agenda; buy-in and commitment from all parts of government to undertake the reform; the engagement and involvement of all stakeholders; and clear objectives and tangible, quantitative targets.

In Malaysia, the RMS was backed by a clearly articulated policy – the National Policy on the Development and Implementation of Regulations

(see Yazid and Latif, 2019) The Malaysian RMS includes PEMUDAH as well as a dedicated Secretariat in the Malaysia Productivity Corporation (MPC) to monitor and follow through on the regulatory reform process and to undertake advisory, advocacy, and capacity building roles.

An RMS should include consultation with all relevant stakeholders as well as an assessment of the likely impact of the regulatory reform – regulatory impact assessment (RIA). The RIA provides clarity on the need for the regulatory reform or change, or the introduction of new regulations; specifies the goals of the regulation; and includes a cost–benefit analysis of the regulations. There may be variations in the way AMS undertake the RIA. In general, the RIA covers the problem statement; clear objectives to solve the problem; the range of options for solving the problem; assessment of each option to weigh the cost and benefit; sufficient public consultation with the affected parties, including interested regulators; recommended option(s) with a conclusion; and a comprehensive implementation strategy on the preferred option(s).

Some AMS have their RMS in place, with varying degrees of effectiveness. Despite acknowledging the inherent value of the RMS and GRP, the pace of implementation of some of these initiatives has fallen short of expectations. A key challenge appears to be the RIA, which is seen as onerous and a challenge for some AMS. The lack of capacity as well as data can affect the quality of the RIA, and therefore the quality of the regulations. Likewise, some AMS consultation processes lack transparency, inclusiveness, and accountability.

A comprehensive RMS would also include a mechanism for ex post evaluation of the regulatory reform. This involves assessing the impact of the regulations within a government entity (vertical ex post evaluation) and a sectoral ex post evaluation – the impact of the regulation across the value chain. The ex post evaluation is an iterative, consultative process to ensure that regulations are current and relevant.

From National Level GRP to RRC

The aspiration for ASEAN is that GRP will be part of the group's DNA by 2040. At both regional and national levels, GRP and RRC will be key determinants of ASEAN competitiveness and its attractiveness as an investment destination. It is thus necessary for ASEAN to focus on the quality and effectiveness of its regulations, and improving its institutional capacity and accountability.

While state-level GRP and RMS are necessary, they are not sufficient. The regulations may vary significantly amongst AMS. ASEAN will need to address the regulatory divergence across AMS for greater economic integration, facilitating seamless trade flows, and improving the investment environment. Regulatory divergences may reflect legitimate differences in preferences across jurisdictions. However, there may also be the unintentional result of regulators working in silos, without due consideration to state and regional level requirements. One solution to narrowing these divergences may be mutual recognition agreements. ASEAN has extensive experience with mutual recognition agreements, and is aware of the challenges in concluding and implementing them.

ASEAN will require a mechanism to deal with regulatory divergence, the impact of national-level regulations on regional supply and value chains, and regional integration; and a system to monitor impacts and ensure compliance. All regulators and enforcement agencies will need to coordinate effectively and consult and engage collaboratively with stakeholders.

The road towards RRC includes:

- ensuring that the national and ASEAN trade repositories are as comprehensive as possible, so that regulators have a better picture of and can assess regulatory divergence amongst AMS;
- developing capacity for AMS to conduct ex post evaluation activities – to help regulators question the logic of their regulatory requirements; and

- establishing a mechanism for consultation at the regional level for sharing best practices and reducing regulatory divergence.

Just as a dedicated GRP oversight body is required at the national level, the region will need a mechanism to address these challenges. Hence, the need for RRC under the auspices of the ASEAN Secretariat. In this context, ASEAN will have to leverage technology to integrate the national-level RMS and thus facilitate region-wide regulatory cooperation.