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BETTER REGULATION FOR GROWTH

GOVERNANCE FRAMEWORKS AND TOOLS
FOR EFFECTIVE REGULATORY REFORM

INSTITUTIONS FOR REGULATORY GOVERNANCE

INVESTMENT CLIMATE ADVISORY SERVICES
WORLD BANK GROUP



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The findings, interpretations and conclusions included in this note are those of the author and do not necessarily reflect the view of the executive directors of the World Bank Group or the governments they represent.

Better Regulation for Growth Program

The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and the investment climate advisory services (IC) of the World Bank Group.

The objective of the BRG Program is to review and synthesize experiences with regulatory governance initiatives in developing countries, and to develop and disseminate practical tools and guidance that will help developing countries design and implement effective regulatory reform programs. Reports and other documentation developed under the BRG Program are available at: www.ifc.org/brg

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EXECUTIVE SUMMARY

Around the world, countries have established a diverse number of institutions that focus on facilitating and supporting the operation of regulatory systems, including their review and reform. The most common tasks of such regulatory institutions include:

- drafting new or amended rules and regulations (line ministries, regulatory authorities, specific institutions with regulatory powers);
- Regulating, and ensuring compliance and enforcement of rules (inspection bodies, audit offices, judiciary); and
- overseeing monitoring and reporting on the operation of regulatory processes, institutions, and systems (for example, on impacts of new regulations to assure quality of the regulatory flow, and on the review and reform of the existing stock of regulations).

This paper focuses on the third set of tasks that are within the responsibility of institutions that govern and oversee regulatory quality. These

institutions have played a key role in many countries in the Organization for Economic Cooperation and Development (OECD) by promoting a whole-of-government approach to regulatory review and reform, contributing to coordination inside the administration and in some cases working as engines of reform.

This paper looks at the role and design of regulatory reform institutions in developing countries. The paper focuses specifically on documenting and describing institutions and drivers of reform usually established at the center of government with a clear mandate to lead or advocate for regulatory reform. The objective is to explore if certain features of institutional design can be associated with a higher degree of success in implementing regulatory reform. This work aims, in part, to provide a platform for further research, discussion and analysis.

The paper does not aim to provide a comprehensive review or analysis of the very rich literature on this topic. Nor does it provide a comprehensive approach to mapping and measuring the

impact of regulatory reform institutions. Rather, the primary purpose is to provide policymakers, experts and practitioners with an introductory overview of the political economy, context and institutions of regulatory reforms. This includes identifying key issues, options and practical aspects of building successful institutions for regulatory reform in developing countries. This paper is supported by a suite of several other BRG papers that consider a wide range of related regulatory issues, processes and tools.

Information and analyses provided in this paper are based on a review of available literature, information provided by national governments (such as the UK and Bangladesh), as well as observations about several ongoing regulatory reform programs in developing countries.

Specifically, the paper looks at four different regulatory reform institutions:

- i) Regulatory oversight bodies located within the executive branch and charged with driving and managing regulatory reform efforts across government on a day-to-day basis;
- ii) High-level committees for regulatory reform charged with leading and guiding reforms at the political level;
- iii) Advisory and/or advocacy bodies charged with challenging and advising on the government's regulatory reform policy and programs; and
- iv) Ad-hoc institutions established to spearhead specific tasks and regulatory review.

The above typology is chosen as a framework for this report because it is well-known in the literature and often used to analyze similar regulatory institutions in developed countries. That said, it is important to note that the distinctions between these institutions are often unclear and in practice their roles can and do overlap. The case studies reviewed as part of this paper also confirm

that this is a relevant and feasible framework for understanding similar developments in developing countries.

Existing literature shows clearly that high-quality regulatory institutions are correlated with higher incomes, investment and economic growth. However, evidence that high-quality regulatory institutions result in greater economic growth is more limited and often based on case studies. For example, several countries such as Kenya and Korea have established new regulatory governance institutions and these have contributed to wide-ranging and successful regulatory reform programs that have generated additional economic activity and growth.

Research and debate on these complex issues (typically involving academic researchers and think tanks) are important to practitioners, developing country governments, donors and international organizations because they help identify the importance of regulatory reform institutions and features of such institutions typically associated with more successful reform programs and robust economic growth. It also helps to identify the importance of the political economy in providing an environment that is receptive to regulatory reforms and able to effectively implement such reforms.

Ultimately, all successful regulatory reform is based on aligning the incentives of various stakeholders so that they work together to facilitate better regulatory and related outcomes. If incentives are not aligned, stakeholders are usually unwilling and/or unable to cooperate. In almost all cases this results in a state of gridlock or paralysis, where effective regulatory reform is impossible or extremely difficult. Political instability can also slow successful reform efforts, as has been the case recently in Kenya, Bangladesh and Madagascar.

The research conducted in this paper is also supported by the analysis of a limited number of available cases in emerging and developing countries focused on the institutional development for

regulatory reform, and in particular on certain variables that have strengthened or undermined institution building. This paper highlights the similarities and differences in institution building between developed and developing countries to identify and better understand trends that potentially play a role in the way institutions are set up and maintained.

Analysis of case studies from Kenya, Korea, Moldova, Mexico, Macedonia, Serbia and Uganda illustrate that many have employed similar institutions and processes for regulatory management and reform. These common elements, viewed independently from the scope and the success of the reform process. These include use of small reform bodies, often at the center of government to drive regulatory review and reform programs (Korea, Kenya, Mexico), high-level political support (Korea, Mexico, Serbia), and support from forums involved in public-private dialogue and international partners. Such forums have been implemented in many developing countries. High-level committees for regulatory reform are also used in several countries, such as Kenya and Bangladesh, while other countries, such as Vietnam, have employed ad hoc high level advisory bodies.

However, the context, role, structure, purpose and activities of regulatory reform institutions are different in these countries. For example, the degree of formalization and institutionalization varies, along with the use of ad-hoc institutions for regulatory reform. These countries have often sequenced reforms differently.

The paper concludes that regulatory reform institutions at the center of government have often played a key role in developing and facilitating successful regulatory reform in developing countries. A number of characteristics are typically associated with successful regulatory institutions, including:

- having clearly defined functions and accountability;

- being located at the center of government;
- having a relatively high level of transparency and independence from the executive arm of government; and
- having staff with a wide range of public and private sector backgrounds.

Moreover, the paper provides a list of tentative design parameters and criteria to be considered when establishing institutions for regulatory reform in developing countries. The paper argues that some of those criteria, which correspond to international good practices, should be established early in a reform program to make regulatory institutions viable at an early stage and also sustainable over time. In that sense, some features of regulatory reform institutions in relatively successful developed countries can serve as a model to follow, (e.g., place regulatory reform institutions at the center of government, back them with high-level political support, staff them with skilled people with different backgrounds, ensure a high level of independence and accountability, etc).

The paper highlights the important role donors can play in establishing regulatory reform institutions, but also notes that institution building is a long-term process typically taking at least several years. Therefore, donors should ensure that their support results in sustainable and successful capacity and institution building in the long term and that support is focused, targeted, and transparent. Indeed, premature withdrawal of donor support can and does often result in the gains from institution building being lost or partially reversed.

Furthermore, there is a need to recognize that low capacity countries typically do not and cannot quickly achieve all the requirements and prerequisites needed to establish and operate a complex range of inter-related and successful institutions. Indeed, simply applying developed country models to countries without the capacities to support them is unlikely to be successful and may undermine other important reform efforts.

Therefore, some minimal criteria and priorities, in terms of functions and governance arrangements, need to be identified. Obstacles to their effective establishment should be carefully identified and addressed on a case-by-case basis. These include:

- Institutions have to be shaped integrating key governance features such as transparency, independence, and accountability.
- They have to be built in response to regulatory policy and effectively support clearly articulated policy objectives.
- They have to acquire expertise and skills over time, increase their responsibilities over time, and have a capacity to adjust to changing policy priorities.
- They have to reflect the political support and make sure they are credible vis-à-vis other institutions inside the administration and with external stakeholders such as business, consumers and other parties.

These conditions can be difficult to meet in many developing countries. However, the successful regulatory reform stories documented in this

paper show that institution building can make a great contribution to regulatory reform if it is well designed, fit for purpose and meets expectations.

In addition, as reforms gather momentum, they should gradually move on into more comprehensive institutional approaches for regulatory governance. For example, ad hoc institutions have been created in some countries, such as Kenya and Vietnam, for the purpose of launching reform efforts. These institutions can and should over time be transformed into regulatory reform units or bodies with more capacities, responsibilities and a strategic approach. Furthermore, regulatory reform units should be supported by advocacy and/or advisory institutions that can integrate the stakeholders' perspective, increase effective consultation, and advocate for reform efforts across society.

This Better Regulation for Growth (BRG) paper is a joint initiative of the Dutch Ministry of Foreign Affairs, the British Department for International Development (DFID) and IC, the multi-donor investment climate advisory service of the World Bank Group.¹

¹ See Annex 1 for a detailed description of the BRG Program.

INTRODUCTION

The importance of regulation as an instrument to reach policy objectives has increased drastically in recent decades. However, knowledge and understanding of the complex issues involved and how they interact with each other is incomplete and still evolving.

The emergence of the regulatory state² has put a significant premium on governments' capacities to regulate effectively and efficiently. The importance of high-quality regulation is reinforced by the transition of growth strategies from state-led to market-led, which many developing countries are now undergoing. At the same time, radical market liberalization in the absence of appropriate regulatory structures to promote and safeguard effective and healthy competition has led to significant policy failures. These trends have led to a broad recognition of the need to better address the regulatory environment as part of the worldwide shift to market-led economic development and growth. Better regulation has become an

important part of the development policy agenda and is discussed in more detail in related BRG papers dealing with regulatory governance.

There are numerous institutions taking the regulatory policy agenda forward. Their use varies enormously in different countries around the world. They include regulatory management and oversight bodies in the executive branch, within administrations, and, in some cases, within Parliaments. They also include independent regulators for sectoral economic activities, as well as other key contributors to regulatory quality, such as specialist law drafting offices and advisory bodies for regulatory reform.

This paper focuses on a subset of these regulatory institutions, specifically, those at the center of government that can drive successful and wide-ranging regulatory reform programs. These institutions are classified into four broad types:

- Regulatory reform units, commonly known in OECD countries as “oversight bodies for regulatory reform.”

² Majone, Giandomenico (1999), “The Regulatory State and Its Legitimacy Problems” in *West European Politics*, Vol. 22, No. 1.

- High-level committees for regulatory reform, established in some countries to leverage support and take decisions at a high political level.
- Advisory and/or advocacy bodies in charge of proposing improvements to the regulatory system by strengthening coordination and consultation mechanisms and by promoting the regulatory reform agenda.
- Ad hoc institutions for regulatory reform, established to launch regulatory reform efforts and to work on a single defined task or activity.

The distinctions between these institutions are often blurred and in practice their roles can overlap. Nevertheless, country experiences from developed high income economies and OECD members show that a well-organized and managed process, driven by institutional “engines of reform” with clear accountability for results, is important for achieving successful regulatory reform outcomes. Indeed, documented experience in high income countries illustrates that successful regulatory reform institutions typically have several common elements, including promoting regulatory reform through the allocation of specific responsibilities and powers at the center of government to monitor, oversee, and promote successful and wide-ranging regulatory reform


Very little is known about the adaptability of such institutional models and approaches to the context of developing countries with limited

administrative capacity. Therefore, the key objective of this paper is to investigate to what extent the institutional designs and organizational drivers of regulatory institutions of high income countries are adaptable to developing country contexts, while at the same time avoiding the shortcomings of a simple transposition.

This paper is divided into the following sections:

- **Section 1** briefly reviews the theoretical debate and literature about the role of institutions in facilitating higher economic growth, focusing in particular on regulatory institutions and their relevance in developing countries.
- **Section 2** discusses the main features of regulatory reform institutions at the center of government, namely regulatory oversight bodies, high level committees, advocacy and/or advisory bodies and ad-hoc institutions for regulatory reform.
- **Section 3** identifies the features of these institutions that are considered to be best practice. Section 3 also identifies and discusses lessons learned and the implications for establishing and operating such institutions in developing country contexts.

The Appendix provides a comparative analysis of institutional frameworks for regulatory reform in a selected number of developing and emerging countries, including Kenya, Korea, Moldova, Mexico, Macedonia, Serbia, and Uganda.



REGULATORY REFORM, INSTITUTIONS, AND ECONOMIC GROWTH: A BRIEF OVERVIEW OF THE THEORETICAL DEBATE

There is a broad consensus in economic and political science literature and studies that effective regulatory institutions play a very important role in facilitating greater economic activity and growth. Much research and work has been done to explain the factors influencing growth and many of the successful economies have been analyzed to draw lessons (positive and negative) from the experience of selected high-growth economies. In general, this work has focused on the overall policy environment and the institutional factors underpinning healthy and competitive markets. Less attention has been paid in existing literature to the role of regulatory organizations, processes and frameworks.

Several studies have identified the causal effects of better regulatory governance on higher per capita incomes in the long run, using statistical tools and tests such as regressions on a cross-section of countries.³ For example, some studies find that the quality of governance and institutions is important in explaining the rate of investment,

³ Barro, 1997; Hall and Jones, 1999; Kauffman and Kraay, 2002.

suggesting that one way in which better regulatory governance can improve economic performance is by improving the climate for investment.⁴ Other studies find that productivity growth is higher in countries with better institutions and quality of governance,⁵ and that the quality of regulation and governance is correlated to better economic outcomes.⁶ Overall, there is a broad consensus in the literature that the ability of the state to provide effective regulatory institutions is an important determinant of how well its economy performs.

The mechanisms by which good regulatory institutions generate improved economic outcomes are not well understood. However, several studies have identified specific ways that such institutions can support the operation of healthy markets. For example, regulatory institutions play a key role in establishing and overseeing the “rules of the game” for businesses and other stakeholders – outlining what they can do

⁴ World Bank, 2005.

⁵ Olson et al., 1998.

⁶ Kauffman and Kraay, 2002.

and not do. Regulatory institutions also facilitate economic development⁷ by reducing market failures, such as information imperfections. They can also maximize economic incentives to increase productivity and trust, and to reduce transaction costs.

While there is broad agreement that regulatory governance and institutions are two of the critical factors explaining the divergence in performance across developing countries, it is important to note that there are also differences in views regarding the exact types of state institutional capacities needed to encourage better economic development. For example, there is an important empirical and theoretical controversy between liberal economists who constitute the mainstream consensus on good regulatory governance, and statist and heterodox institutional economists who agree that governance is critical for economic development, but argue that theory and evidence show that the governance capacities required for successful development are substantially different from those identified from the good governance analysis.⁸

7 Rodrik et al., 2004 and World Bank, 2002, and North 1990.

8 On the one hand, economists in favor of good governance (market-enhancing governance) argue that the critical state capacities are those that maintain efficient markets and restrict the activities of states to the provision of necessary public goods to minimize rent seeking and government failure. The relative failure of many developing country states are explained by the attempts of their states to do too much, resulting in the unleashing of unproductive rent seeking activities and the crowding out of productive market ones. The empirical support for this argument typically comes from cross-sectional data on governance in developing countries that shows that in general, countries with better governance defined in these terms performed better. On the other hand, heterodox institutional economists base their argument on case studies of rapid growth in the last fifty years and argue that such growth was associated with governance systems that intervened more directly in markets to sustain high rates of investment and to implement policies that encouraged the acquisition and learning of new technologies rapidly (growth-enhancing governance). The institutions and strategies that achieved these varied from country to country, depending on their initial conditions and political constraints, but all successful states had governance capacities that could achieve these functions. This diversity in governance capacities in successful latecomers, it is argued, means that it is not necessarily possible to identify simple patterns in the governance capacities of successful states, but nevertheless, it is possible to identify broad patterns in the functions that successful states performed, and this can provide useful insights for the current “institution building” efforts of developing and transition economies.

In this respect, although there is widespread agreement that good governance is a critical factor in explaining the outstanding performance of fast-growing economies across the globe, there is less agreement regarding how top-performing countries equipped themselves with effective and better economic governance mechanisms and institutions in the first place, or whether the good governance institutions appeared as a *function* of economic growth. Therefore, there is clear evidence of the positive contribution of good regulatory governance and effective regulatory management systems to the creation of a conducive business environment and ultimately to economic growth. However, the institutional framework, organizational models, and inter-agency coordination mechanisms that led to the introduction and mainstreaming of good regulatory management tools have not been fully understood and/or translated into operational policy guidelines for reformers. As indicated above, while there is a clear correlation, the extent of the causality between some of these institutions and economic growth remains unclear and is disputed by some.⁹

One of the key features of successful regulatory systems is that there is a broad alignment in the incentives for institutions, policymakers, regulators, business and other stakeholders. These incentives include role clarity, clear rules, transparency and predictability, each party to a regulatory transaction having an understanding of the objectives of other parties, good communication, and effective sanctions against improper or prohibited conduct. If incentives are not aligned, several perverse outcomes typically arise, such as corruption, and regulations being made and administered for the benefit of a few and at the expense of the broader community.

9 In general, there is relatively strong evidence showing that institutions—comprising economic, political, and legal aspects—are essential for long-run economic development. But there is still much to be said about the process of understanding how exactly specific aspects of institutions influence economic outcomes. Acemoglu, Daron (2008), “Interactions between Governance and Growth: What World Bank Economists Need to Know” in: *Governance, Growth, and Development Decision-Making*, World Bank, Washington, p. 2.

The empirical and theoretical issues involved in this debate clearly have critical policy implications for reform efforts in developing countries, including how donors and international organizations should engage and assist developing countries to strengthen their regulatory institutions, systems and processes.

What is very clear is that effective regulatory and economic policymaking institutions are both “market-enhancing” and “growth-enhancing.” Indeed, several low and middle income countries (such as Kenya and Korea) have established regulatory governance institutions that have played a key role in facilitating and overseeing wide-ranging and successful regulatory reform programs (see Appendix 1 for further information about these countries’ regulatory governance and institutions).

One of the changes in governance of the past two decades has been the restructuring of the institutions and processes of government, in particular the delegation of authority from politicians and ministries to technocrats and regulatory agencies.¹⁰ Some explanations to this trend can be found in the literature. One approach focuses on the dynamics of regulatory competition between countries and suggests that governments need to provide an attractive market environment and a stable regime for investment if they want to attract capital. The second school of thought focuses on regional integration processes and suggests that regulatory agencies and regulations in general are part of a new political, social and economic order characterized by processes of regional integration. A third approach highlights the role of policy learning and ‘knowledge’ actors in the diffusion of policy reforms, stressing the role of professionals, mainly economists, that promote the creation of autonomous regulatory agencies as an institutional resource that consolidates their position in the policy process.

Even if these discussions reveal how particular institutional arrangements can improve regulatory quality, there is still a need to explain how to

achieve these institutional arrangements. Developed countries have created conditions to sustain growth rates over longer periods of time, supported by the institutionalization of open access societies.¹¹ In these cases, regulation has often been used as a tool for promoting more open economic opportunities, introducing effective competition into the system and supporting the provision of services for all citizens.

By contrast, in developing countries, regulation is more frequently used as a vehicle by narrow interests to strengthen rent-seeking and unnecessary and very damaging control over key parts of the economy. Therefore, one of the key questions for reforms in developing countries is how can institutionalization of regulatory arrangements help reverse successful rent-seeking and corruption.

Little empirical evidence exists on this issue. While some developing countries have adopted similar institutional arrangements for regulatory reform similar to those existing in developed countries, there is no clear correlation at this early stage between those institutions and the improvement of the quality of regulation. For example, Mexico has established regulatory governance institutions and a wide ranging regulatory reform program. While the results have been positive, these reforms are ongoing. By contrast, reforms appear to have generated only limited results in some countries, such as Uganda (see Appendix 1) for further information on recent developments in Kenya, Korea, Moldova, Mexico, Macedonia, Serbia and Uganda). Therefore, evidence that measures the extent to which new institutional arrangements in developing countries clearly contribute to improved economic growth remains patchy and limited at this stage.

11 Following North et al definition, open access societies regulate economic competition in a way that dissipates rents and uses competition to order social relations. They oppose to natural states, which use the political system to regulate economic competition and create economic rents; they then use those rents to order social relations, control violence, and establish social cooperation. North, D. – Wallis, John – Weingast, B. (2008): “Violence and Social Orders: A Conceptual Framework for Interpreting Recorded Human History” in: Governance, Growth, and Development Decision-Making, World Bank, Washington.

¹⁰ Gilardi, Jordana, and Levi-Faur, 2006.



REGULATORY GOVERNANCE INSTITUTIONS: MAIN TASKS AND INSTITUTIONAL DESIGN

Several countries have established institutions that focus on facilitating and supporting the overall regulatory system, including its review and reform. The most common tasks of such institutions include:

- drafting rules and regulations (line ministries, regulatory authorities, specific institutions with regulatory powers);
- regulating, and ensuring compliance and enforcement of rules (inspection bodies, audit offices, judiciary); and
- overseeing, monitoring and reporting on the operation of regulatory processes, institutions and systems (for example, on impacts of new regulation to assure quality of the regulatory flow, and on the review and reform of the existing stock of regulations).

This section will focus on the third set of tasks within the responsibility of institutions that govern and oversee regulatory quality. These institutions have played a key role in many OECD countries by promoting a “whole-of-government” approach

to regulatory reform, contributing to coordination inside the administration and in some cases working as “engines of reform.”¹² It is also important to note that each country has approached the task of reforming regulations and regulatory systems differently, according to its unique political economy, history, capacities, and objectives.

As a framework for analysis, the starting point of this paper is the institution-building design that most OECD countries have followed. However, the broad approach employed in most OECD countries only partially matches the approach taken by many emerging and developing countries. For example, in emerging and developing countries there is a clear trend to establishing regulatory governance institutions similar to those in OECD countries. But there is also greater variation in the focus, role, capacities, resources and skills of these institutions in developing country contexts. While there is a widespread understanding that these institutions are essential to move forward the regulatory agenda and correspond to what is considered as good practice, there is little

¹² OECD, 2008

empirical knowledge on the way developing countries can establish similar institutions and processes that are commensurate with their unique reform priorities, stage of development, political challenges, and broader contexts.

The following subsections present a typology of the most commonly found institutions for regulatory reform, focusing on four different regulatory reform institutions:

1. Regulatory oversight bodies located within the executive branch and charged with driving and managing regulatory reform efforts across government on a day-to-day basis.
2. High-level committees for regulatory reform charged with leading and guiding reforms from the political level.
3. Advisory and/or advocacy bodies charged with challenging and advising the government's regulatory reform policy.
4. Ad-hoc institutions established to spearhead specific tasks and regulatory review.

It is important to note that the distinctions between these institutions are often blurred and their roles can also overlap. Therefore, these institutions defined broadly embrace a very wide range of governance arrangements, roles, activities, processes and outputs.

The typology follows the analytical framework typically used in developed countries. However, it contains elements that are particularly relevant to low-capacity country contexts. Thus, it incorporates not only the “traditional” institutions necessary for regulatory reform (regulatory oversight bodies, high level committees for regulatory quality, advocacy and advisory bodies), but also the initial efforts of institutionalization through ad hoc bodies, such as committees, task forces, commissions, etc. The analysis focuses on functions and arrangements of each one of the types of institutions.

Regulatory oversight bodies

Regulatory oversight bodies are the most widespread and commonly employed institution responsible for regulatory management and reform. They are sometimes called a “Regulatory Reform Unit” or a “Commission” and are typically within government, operating as part of the machinery of government. These institutions are often employed in both presidential and parliamentary systems of government, but in the former case they tend to have more extensive and formalized powers.¹³ The particular characteristics of these bodies are usually defined by the legal, economic, political and social conditions present in each country (see Box 1 for some examples of central oversight bodies). However, a review and analysis of regulatory governance and policymaking institutions in developed and developing countries shows that there are also striking similarities in terms of key roles and functions performed by them, including:

- Leading or guiding reviews of the stock of existing regulation. The objectives of such reviews typically include keeping the stock of regulations up-to-date and reflecting economic and social priorities; reducing regulatory and market risks and costs; encouraging economic activity; and establishing a clear and transparent framework for regulations to make it easier for businesses to comply with them.
- Overseeing the quality of regulations through the “challenge function,”¹⁴ including reviewing proposals for new regulations and compelling the originating regulatory agencies, departments or ministries to revise and improve the policy proposal to meet specified regulatory quality standards. This function can include power to veto draft legislation originated from proposing ministries that does not conform to

¹³ US, Mexico and Korea, all of them presidential regimes, have regulatory reform units with extensive powers, even veto power to proposed regulation that does not comply with a high quality RIA.

¹⁴ The challenge function is the capacity the regulatory reform unit has to question the quality of a proposed regulation, even to veto it, through the RIA process.

Box 1: Regulatory Oversight Bodies in Selected Countries

In the **UK, the Better Regulation Executive (BRE)** is the institution responsible for regulatory reform issues across government. Located in the Department for Business, Enterprise and Regulatory Reform (BERR), it works with government departments and regulators to scrutinize new policy proposals, achieve effective new regulations, make it easier to change or remove regulation where beneficial, to reduce existing regulatory burdens affecting business, the third sector and frontline staff in the public sector, improve transparency and accountability for regulation, effectively communicate regulatory changes and to drive forward the better regulation agenda in Europe.

In Kenya, the government embarked on a comprehensive licensing reform whose results have led to strengthening institutional capacities for regulatory reform. The government established in 2007 a **Business Regulatory Reform Unit (BRRU)** within the Ministry of Finance, in charge of coordinating the regulatory process. The main tasks of the BRRU since its inception have included: implementing licensing reform, setting up an electronic registry, drafting a regulatory reform strategy for Kenya, introducing RIA, targeting reform at the sub-national level, targeting Doing Business-specific reforms. The adoption of the Business Regulation Bill will contribute to give a legal basis to this institution.

In the **U.S., the Office of Information and Regulatory Affairs (OIRA)** is the oversight body for regulatory reform. As a federal office that Congress established in the 1980 Paperwork Reduction Act, it is part of the Office of Management and Budget, which is an agency within the Executive Office of the President. In addition to reviewing collections of information, OIRA reviews draft regulations and develops and oversees the implementation of government-wide policies in the areas of information technology, information policy, privacy, and statistical policy. OIRA reviews agency draft regulations before publication to ensure agency compliance. The review includes consideration of alternatives to the rulemaking and analysis of the rule's effects on society, both its benefits and costs. OIRA has more than 50 full-time professionals who work with agency professionals on specific issues and decisions. The majority of OIRA employees are career public servants.

In Italy, the Better Regulation Unit (Unita per la Semplificazione) has been moved from the Legal Department of the Prime Minister's Office to the newly created (May 2008) Ministry of Simplification (*Ministero della Semplificazione*), under the Minister for Simplification. The Unit is in charge of cutting red tape, simplification measures, very basic quantitative assessments linked to simplification and the implementation of the *taglia-legge* (guillotine law) at federal level. The Better Regulation Unit is composed of 30 experts nominated for three renewable years, with proved expertise on legal, economic and organizational issues.

Serbia created in April 2003 the **Council for Regulatory Reform of the Economic System**, whose mandate is to improve the business environment and foster entrepreneurship, to advocate initiatives and reforms for existing and proposed laws, regulations and other general measures and to provide opinions on draft laws, regulations and general measures, which the government then considers and eventually approves. The council is formed of high officials and private sector representatives. The minister of economy is the chair of the committee. Private sector representatives are also members and administrative support is provided by a small secretariat of economists and lawyers. The Council reports periodically to the government.

set standards for regulatory quality. The challenge function is usually formalized through a standard obligation for the oversight body to inform the appropriate political decision-making institution (i.e., Cabinet or Parliament) if it is in agreement with the analysis underpinning a regulatory proposal, often documented in a Regulatory Impact Assessment (RIA) prepared by the proponent ministry. See the related BRG paper, "Making it Work: 'RIA

Light' for Transition and Developing Countries," for further information and discussion.

- Ensuring policy advocacy, which can be seen as an institutionalized process of pursuing sustained improvements of both regulatory and related economic policy in the long term, including policy and process change, and the development of new and improved policy-making institutions, tools, and procedures.

- Providing advice and technical support in the regulatory process. This support can be given through guidance and training activities to officials, and with manuals for officials, and “help desk” mechanisms to fill knowledge gaps and exploit expertise at the regulatory oversight body.
- Monitoring and undertaking performance assessments of the rest of public administration on how regulatory policies are implemented, for example through the setting of regulatory simplification targets, periodical reporting mechanisms, and monitoring and evaluation (M&E) reporting systems, processes and indicators.

Commonalities of institutional objectives, roles, arrangements, organizational structures, staffing strategies, as well as procedural and coordination mechanisms among regulatory policymaking institutions can be found in most developed and developing countries. For example:

- Regulatory oversight bodies are commonly placed within and at the center of government, linked in the administrative hierarchy to the Cabinet or President’s office or to a relevant ministry with strong economic and society-wide focus.
- Oversight bodies are staffed with a mix of highly skilled technical experts on both economic and legal issues (economists and lawyers).
- Communication and cooperation between oversight bodies, line ministries and other regulatory agencies is effective, including provision of clear guidance, collection of information about regulatory issues and impacts, disseminating knowledge and building capacities to undertake effective and timely regulatory review and reform.

There are consultation systems and procedures to engage in wide-ranging dialogue on regulatory

issues with the business community and other key stakeholders, such as a public-private dialogue etc.

At this stage only a few developing countries have established a central oversight body. This is, in part, because such bodies require high-level support to be established and it also takes time to develop the capacities needed to be effective. That said, the experiences of countries such as Korea and Mexico that have established such units have been positive and encouraging.

High-level committees for regulatory reform

In some countries, high-level committees have been established through political decisions to provide information and guidance on regulatory problems, issues, priorities for reform and regulatory policy. In some cases, high-level committees can also make decisions about regulatory issues.

They are intended to leverage support for regulatory reform, collect relevant information and provide advice to decision makers (including at the political level) or make decisions about regulatory issues. They are usually supported by a small secretariat. Alternatively, in some countries oversight bodies support the work of high-level committees by undertaking research and providing background papers for consideration by the committee etc. (see Box 2 for examples of Committees for Regulatory reform). The main functions of high-level committees include:

- providing very high-level support to regulatory reform and comprising high-level political, bureaucratic and/or business representatives;
- providing advice to governments and the broader community and/or making decisions about the scope, design, orientation and implementation of regulatory reform. In some countries where oversight bodies do not perform such roles, high-level committees do so;

Box 2: High-Level Committees for Regulatory Reform

In Denmark, the highest level coordinating body on regulatory reform is the **Regulation Committee** (*departementschefgruppen*). Established in 1998 under the Prime Minister's Office, it comprises the Permanent Secretaries of the Prime Minister's Office and of the Ministries of Justice, Finance, and Economic and Business Affairs. Furthermore, other relevant ministries (Permanent Secretaries) participate when needed. The committee reports directly to the Prime Minister and is responsible for formulating and developing policy on legislative quality, and monitoring and ensuring its implementation in practice. The key mechanism for achieving the latter goal is its management of the legislative agenda for the coming year. The Regulation Committee is responsible for developing policy on legislative quality as well as for vetting proposals for inclusion in the legislative program, based on criteria of necessity, feasibility and whether the proposals represent the most effective option. The Committee is supported by a Secretariat jointly operated by the Prime Minister's Office and the Ministry of Finance. When the Committee's recommendations regarding the legislative program are not accepted by ministers, the matter is discussed by the Economic Committee of the Cabinet or in other relevant Cabinet committees.

In Canada, the Special Committee of Council (SCC) is responsible for the government's Federal Regulatory Policy. This Committee is supported by the Regulatory Affairs Division which provides secretariat support to the SCC. This includes monitoring regulatory proposals and preparing briefing material for the weekly SCC meetings. The Regulatory Affairs Division also supports the development and implementation of the regulatory policy. Finally, it provides secretariat support to the Deputy Ministers' Challenge Team on Law Making and Governance. The SCC is one of the Cabinet Committees and has nine members. The Treasury Board President is a member of the SCC. Four ministers must be present to have a quorum. In most federal acts, the regulation-making authority is the Governor in Council. In practice it is a Committee of Cabinet Ministers, the SCC, which acts as Governor in Council. The term "Governor in Council" means the Governor General, acting on the advice of the Privy Council (i.e. the Cabinet or one of its Committees, notably the SCC). SCC's responsibilities include consideration of all Orders in Council (OICs) and regulatory submissions that originate from departments and that require Governor in Council approval. When a regulation is to be made or approved by the Governor in Council, the SCC approves it for pre-publication in the Canada Gazette, Part I. Afterwards, the SCC approves it to be sent for signing by the Governor General and subsequent registration and publication in the Canada Gazette, Part II. When reviewing regulations, the SCC focuses on potential impacts on Canadians such as costs, benefits, fairness, policy or political implications and competitiveness.

In Bangladesh a Regulatory Reform Commission (RRC) was established on October 30, 2007. The RRC Chairman and Members have backgrounds working at the most senior levels of government or the private sector and are appointed by the government of Bangladesh, with the RRC served by a secretariat of skilled staff. The RRC undertakes research into regulatory issues and makes recommendations to the government about how the regulatory system could be improved. For example, the RRC reviews and reports on the stock of existing regulations, certain proposed new regulations, and regulatory reform programs and tools, such as RIA. The RRC also works closely with other stakeholders, such as the Bangladesh "Better Business Forum" and other business and community groups.

- resolving differences of opinion and administrative practice between different areas of government on fundamental approaches for regulatory management, finding solutions that create consensus and an agreed way forward; and
 - providing opinions about the quality of proposed regulations, often leveraging off a RIA process and/or public-private dialogue. High-level committees for regulatory reform might exert the veto power based on recommendations made by regulatory reform units on the quality of RIA, which provides greater credibility and weight to the use of this tool for policy decision making.
- In terms of their institutional arrangements, the following common elements can be found in the high-level committees:
- They are composed of senior ministers and/or very senior officials representing the core ministries dealing with regulatory reform,

(e.g. Ministry of Finance, Ministry of Economy, Ministry of Trade, Ministry of Planning, etc). In some countries, such as Tajikistan, the head of state chairs meetings of this group.

- They usually meet on a regular basis. They also have a more permanent longer term role compared to ad hoc committees (which are discussed in detail below).
- They are created by a legal instrument or by political decision of the executive, such as a President or Prime Minister.

Many developing countries have recently established high-level committees for regulatory reform. But it is still too early to ascertain how effective such bodies are in driving better regulatory outcomes. However, early experiences in countries such as Bangladesh, Vietnam, Kenya and Tajikistan have been very encouraging. In these and many other low income countries, such bodies have achieved considerable success in focusing the attention of governments and other stakeholders on the importance of good regulation in facilitating greater economic development and prosperity. Many suggestions and ideas for regulatory reforms have been recommended by such bodies, which have in turn typically initiated robust and well-informed dialogue about how to improve regulatory systems and regulations.

Advisory and advocacy bodies for regulatory reform

In several countries, the regulatory reform process has been supported by institutions with advisory and advocacy functions that incorporate the views of other interested parties, internal and external to the reform process. These institutions provide advice, facilitate coordination, and advocate reform. They can operate either within government or outside government and usually have a relatively high level of independence. They typically have a clearly defined role, have a specified focus and are advisory – they do not make

decisions on regulatory policy and its implementation. Such bodies often comprise senior business and government representatives who are well-respected opinion leaders. Support is usually provided by a small secretariat.

Both advocacy and advisory bodies for regulatory reform have been key to supporting reform efforts in many developed and developing countries.

A clear differentiation between advocacy and advisory functions can be difficult to establish in practice. Advocacy and advisory roles have a number of subtle but at times important differences. For example, advisory bodies can sometimes comprise expert's in particular regulatory issues as well as senior opinion leaders. Advocacy bodies are often very active in engaging in wide ranging dialogue with community stakeholders. That said, these roles can be provided effectively either by one organization or by separate organizations, as discussed below.

Public sector advocacy bodies

Public sector advocacy bodies essentially promote regulatory review and reform. They are usually financed by governments to support reform and help inform policy deliberations about regulatory reform issues. Even if regulatory reform units are empowered with an advocacy role, in many developed countries these units have had a rather limited impact deploying that function. That is why particular institutions have been created to deal with the advocacy function. Depending on administrative traditions, some advocacy bodies for regulatory reform have been even created by law, increasing the political commitment and their independence.

Advocacy bodies are conceived as a vehicle to collect information about regulatory issues (including the views of stakeholders), inform stakeholders and citizens about the benefits of regulatory reforms, and help to implement such reforms. Therefore, advocacy bodies are often supported

by a secretariat and conduct research and persuade different stakeholders about the need for reforms in an independent manner. Membership includes governmental and non-governmental personalities, which facilitates the inclusion of businesses' and citizen's perspectives in challenging vested interests, as well as to overcome resistance or bureaucratic inertia to reform the public sector. Box 3 describes the main characteristics of some Advocacy Bodies.

Some of the key functions of advocacy bodies for regulatory reform are the following:

- Produce information that can help prepare and reform regulations. Advocacy bodies can
- generate reports, gather data or conduct surveys that can contribute to better policy decisions.
- Contribute to a policy environment and community debate that is conducive to reform.
- Support the identification of priorities and sequence of reforms to reduce opposition, build coherence with other interventions and drive reform through and beyond the political cycle.
- Encourage the use of policy instruments and alternatives to regulation in order to advocate

Box 3: Public Sector Advocacy Bodies in Selected Countries: Main Features

Name and country	Year (creation and existence)	Membership	Type of mandate	Purpose and results
Business Advisory Council (BAC) – Croatia	2006	10 business representatives	Permanent	Strategic support by promoting reform and reporting progress Operational and practical support by identifying missing regulations and being a link with business community, in particular SMEs
External Advisory Committee on Smart Regulation (EACSR) – Canada	2003–2004	10 business representatives	Ad hoc, it lasted 15 months	Presented a final report with recommendations to improve the Canadian regulatory system
Dutch Advisory Board on Administrative Burden (ACTAL) – Netherlands	2000	3 business and civil society representatives	Temporary	It advises on proposed legislation and on cabinet plans, as well as on strategic subjects Annual and ad hoc reports
Better Regulation Commission – UK Today Risk and Regulatory Advisory Council	1997–2007	15 (1 local government, 6 businesses, 8 civil society)	Semi-permanent. It substituted the Better Regulation Task Force	It provided independent advice and challenges to government on its management and delivery of better regulation, as well as independent scrutiny of departments' plans for regulatory simplification. Annual and ad-hoc reports
Productivity Commission – Australia	1998	Chairman, between 4–11 members	Permanent	Annual and ad hoc reports, research reports and commissioned studies
Council for the Promotion of Regulatory Reform (CPRR) – Japan	1994	15 members (7 business and 8 civil society)	Renewed every 3 years under different official names	Annual report and 3-year Action Plan

solutions that can break inertia in the approaches traditionally used by the administration.

- Create and strengthen a constituency for reform inside and outside the administration, facilitating a forum for dialogue and cooperation.

Advocacy bodies have been created in different countries through a variety of mechanisms:

- They have independence from the executive, branch even if they are linked to the executive authority.
- They are integrated by members with various backgrounds and representing major stakeholders in the regulatory process.
- Members are appointed for fixed terms in order to ensure continuity and political support.
- Permanent or ad-hoc in nature, they are supported by a legal basis that varies according to contexts (law, decree, Cabinet decision, etc.)
- These institutions are accountable through reports that are often made publicly available.
- They report, in some cases, directly to a senior minister and/or to the Parliament.

At this stage developing countries usually do not use or rely on public sector advisory bodies. Hence, experience with such bodies in developing country contexts is currently quite limited. It is unclear whether establishing such bodies should be a high priority for developing countries. Indeed, it may be better to focus, at least initially, on establishing high-level advisory committees with senior public and private sector representatives, along with private sector advocacy bodies.

Private or public/private sector advisory bodies

Advisory bodies usually focus specifically on providing advice to decision makers and the community about regulatory issues and how they can be best managed. Advisory bodies for regulatory reform can be from the private sector, a mix of public and private sectors, or include independent regulatory experts drawn with academic and other expert backgrounds. Furthermore, such bodies are typically appointed and endorsed by governments.

Such bodies are typically active in consultation with a wide range of stakeholders. These bodies are important for consultation, data gathering, and feedback. But they do not have a specific mandate to independently drive their policy agenda and be proactive in their research and recommendations. Box 4 gives two examples of advisory bodies in developed countries.

Box 4: Advisory Bodies in Developed Countries

In Italy, the Permanent Board for Simplification (*Tavolo permanente per la semplificazione*) was constituted in March 2007 as part of the efforts to improve regulation and simplification policies, conceived as a consultative mechanism. The Board was created to study and review with interested parties and stakeholders the concrete measures to improve the regulatory system and reduce red tape. Meetings of the Board include representatives from government, business associations, consumer and users associations, regions, provinces and municipalities.

In the European Commission, the Group on Better Regulation (Mandelkern Group) has provided advice since 2002. Its main tasks included exploring the systematic use of impact studies, how to increase transparency in the consultation process and the integration of simplification of adopted texts and wide use of codification. The Mandelkern Group also concentrated on the type of structures that would ensure new procedures to improve the quality of the regulation.

The functions of advisory bodies are the following:

- Respond to government's requests to review particular regulations, regulatory issues or government proposals, providing a focus for discussion and gathering opinions that can be transmitted to the government.
- Engage in regulatory policy dialogue and debate.
- Provide advice on alternatives to government regulation to achieve government objectives and improve the regulatory environment.
- Strengthen consultation mechanisms, including through engaging in direct consultation with stakeholders about specific regulatory problems, issues and possible ways forward.

Advisory bodies have the following characteristics in terms of institutional arrangements:

- They are established inside the administration, with members coming from different ministries and agencies relevant for regulatory decision.
- They are set up either on an ad-hoc or permanent basis.
- They usually have a specific mandate to consider particular regulatory issues, problems or possible solutions.
- Members meet to discuss and identify concrete measures to improve the regulatory system and meet the mandate given to them by the government.
- Their recommendations are not usually binding, but they can provide inspiration for further policy debate and action.

- They can include private sector participation in various forms: as part of permanent representation or providing a forum for their participation.

Such bodies currently operate effectively in a range of developing countries, such as Bangladesh, Tonga and Vietnam. In capacity-constrained countries where there is often limited dialogue between the public and private sectors, such bodies can provide a very effective way of initiating such dialogue, exchanging views, building trust and transparency, and developing agreement about desirable regulatory reforms.

Ad-hoc institutions for regulatory reform: Working committees, task forces, etc.

In an increased number of emerging and developing countries, some preliminary institutional arrangements are found to support initial regulatory reforms. These institutions, ad-hoc in nature in most cases and with a narrow focus, are labeled in different ways. In some countries, they are called *committees* or *commissions*, in others they appear as *task forces*, *sectors* or *initiatives*. In many countries, these institutions have become, over time, drivers of sector specific or issue specific regulatory reform. These institutions typically have the following functions:

- Make specific recommendations on particular regulatory reform projects, issues or reforms to the government.
- Promote initial coordination among line ministries, regulatory agencies and other bodies with regulatory powers.
- Identify and create capacities for regulatory reform inside the administration.
- Establish dialogue with the private sector by promoting regulatory reform efforts, creating

channels of communication and introducing consultation procedures with it.

- Launch specific parts of regulatory reform projects or a single defined task or activity, such as programs on licenses, particular strategies for reducing administrative burdens, review of the stock of legislation, etc.
- Lead and participate in the design, implementation and monitoring of projects on regulatory reform.

The governance arrangements and relationships between these institutions differ from country to

country. This variation corresponds not only to particularities of the context, but also to the nature and scope of the work they are assigned to conduct (see Box 5 for some examples). There are, however, some common elements that can be identified:

- They are normally set up on an ad hoc basis. These institutions are not designed to remain in the institutional landscape of the country in the long term. They are established to be in charge of particular efforts and programs.
- There is no single model concerning their legal basis. They might be established either

Box 5: Ad-hoc Institutions for Regulatory Reform

In Mexico, the government set up in 1989 the Economic Deregulation Unit (UDE). This unit was created to implement the new policy process of regulatory reform. It was constituted by a small, high-level group of professionals outside the traditional structures of the bureaucracy, ca. 15 economists and lawyers. It operated under the general purview of the powerful Ministry of Trade and was directly accountable to the trade minister. In 2000, the UDE became the Federal Regulatory Improvement Commission by the amendments introduced to the Federal Law of Administrative Procedures, which increased the responsibilities and scope of work.

In Vietnam, the government set up in 1999 an Enterprise Enforcement Law Task Force, an institution responsible for overseeing the implementation of the Enterprise Law. In the first two years, the task force conducted work on licensing, recommending the abolishment of 160 business licenses that were deemed unnecessary out of a total of 335 that were in force. Lack of political commitment and vested interests reduced the effectiveness of the work done, and licenses increased by 2004. A new task force was recommended to conduct further work on licensing and its reform. The government of Vietnam recently launched Project 30, an ambitious public administrative reform initiative using the guillotine approach. The goals of Project 30 are to simplify and publicize all public administrative procedures concerning business and citizens, and to rationalize the process of issuing new procedures/licenses. The Project is led directly by the Office of the Government (OOG). A Special Task Force and an Advisory Council consisting of 15 business associations, institutes and agencies team up with the Project at the central level. There is also one special task force for each ministry and each province nationwide. This is the first time that a Project has been designed with strong commitment from both the government and business associations.

In 2004, the Minister for Finance of **Kenya** established a Licensing Committee composed of public and private sector representatives to review licenses. This committee worked from 2005 to 2007. The chairman of the committee was a lawyer from the private sector, and other members came from government institutions. The joint secretaries were officers from the Ministry of Finance and the Ministry of Trade and Industry. During its two years of work, the committee prepared an inventory of 1,325 licenses imposed on businesses in Kenya. The committee reviewed the licenses in accordance with specified criteria. The licensing reform served as a gateway for regulatory reform and opened up the possibility to address systemic problems. The government of Kenya decided to embrace a more comprehensive program, in addition to carrying on the licensing reform. To move forward on these tasks, the Ministry of Finance established a small unit, the Business Regulatory Reform Unit (BRRU) in 2007, composed of part-time junior level staff (with good technical skills and lots of enthusiasm) and led by a higher level officer with strong professional background, experience and networks, who had also served as a member of the Licensing Committee. Political support has also been critical for the success of the Unit, but its formalization has taken some time.

by a legal document or by a decision of the executive.

- They require political support from ministries or parts of the center of government with a strong focus on economic and regulatory issues and interested in enabling the business environment.
- Membership depends on the role they have. Task forces, for instance, typically refer to intra-governmental groups without external representation. Committees, by contrast, often include private sector participation.
- They are chaired by a person with political support and credibility, either from the public or the private sector. Regulatory experts often play a direct and active role.
- They are usually small institutions supported by a secretariat and/or by staff with different backgrounds, usually economic and legal.
- Their responsibilities can evolve and change over time according to a range of factors,

such as the pace and sequence of the reform program.

- Their creation is supported by donors.

Many developing countries now use public and private advisory bodies and private sector advocacy bodies. In many cases such bodies were established over the last few years, so it is too early to draw definitive conclusions. However, the experience to date has been broadly positive. In countries such as Kenya such bodies have played a very important role in driving regulatory reforms. In others such as Bangladesh they have succeeded in raising the profile of regulatory issues among governments and other stakeholders.

Developing countries do not generally use a central unit to oversee and facilitate regulatory reform. Nor do they employ public sector advisory bodies. While experience with these bodies is very limited, the establishment of a small oversight unit to monitor, report and contribute to regulatory reform may be a useful low cost way of strengthening regulatory institutions and processes in developing countries.



BUILDING INSTITUTIONS FOR REGULATORY REFORM IN DEVELOPING COUNTRIES: CHALLENGES AND EMERGING LESSONS

This section presents an analysis of common and diverse elements found in the case studies presented in the Appendix, complemented by observations and anecdotal evidence from ongoing programs. These key elements are fundamental for establishing a strategy for building institutions for regulatory reform.

Based on those elements, a final section of this chapter will deal with some lessons learned that can contribute to establishing some criteria in terms of functions and structure of institutions for regulatory management.

Key shared elements in institutional building for regulatory reform

The different case studies in the appendix, which include Kenya, Korea, Moldova, Mexico, Macedonia, Serbia and Uganda share many of the key elements for the institutional setup for regulatory management and reform. These common elements,

viewed independently from the scope and the success of the reform process, are the following:

- Some form of centralized institutional arrangement by the government appears to be needed to accompany the initial reform efforts (e.g., Kenya, Korea, Mexico, and Serbia). In all cases reviewed, initial reform efforts have been supported by an institutional arrangement, which can take the form of an *ad hoc* committee, a small unit in charge of targeting a specific reform area, a group of experts in charge of defining an action plan, or a task force in charge of a single defined activity. Institutional arrangements seem to be essential to take forward the reform agenda and to coordinate efforts inside the administration. They are also relevant to establish a counterpart for the private sector which might be included in some of the arrangements.
- From the case studies reviewed there is a clear trend of governments establishing small rather

than big institutions to launch regulatory reform processes. This tendency can be explained, in part, by regulatory reform often being given a relatively low priority, at least initially. Once traction, momentum and stakeholder support for regulatory reform has developed, countries usually develop and implement larger and more wide ranging regulatory review and reform programs.

- Technocratic and policy expertise is needed to undertake the tasks that institutions for regulatory governance are required to do. In developing country contexts, regulatory reform institutions are normally staffed with a small number of professionals with outstanding skills and capacities. In some cases, different backgrounds can also play an important role in consolidating teams that will have the capacity to respond to different regulatory problems and challenges. Regulatory reform is not a science, but it requires expertise and understanding of modalities, tools and approaches. One key element in being successful at early stages of the reform process is to have the right people in place. Many of the cases revised show that medium and lower level officials need to have some initial expertise and capacities that will be built over time.
- Political support is essential to ensure that the regulatory reform institution is seen by stakeholders, such as businesses, and the bureaucracy as a credible and influential body. According to the cases analyzed in this report, political support is fundamental to creating and maintaining successful regulatory reform institutions. Political support can be provided by the appointment of members of the institution by very senior officials (President, Prime Minister, Minister), the institution being given a high level of independence and access to high level decision makers, the participation of senior officials in meetings and by endorsement of action plans and programs for regulatory reform. Political support also means that behind the whole strategy there is

a political will to implement reforms, which in many cases supposes a confrontation with vested interests (inside and outside the administration). Lack of political support can lead to a delay in reform efforts, to withdrawal of formal backing and even to the extinction of the institution. This point is also illustrated in a few cases where the technical and preparatory work in support for a regulatory reform was fully in place. In the case of Uganda, the Cabinet's reluctance/failure to endorse a RIA program led to wide uncertainty about the credibility of the program and lack of compliance with the continued roll-out.

- The center of government remains mostly responsible for launching and driving regulatory reform efforts. In most countries analyzed, the role of the executive branch, and in particular the Prime Minister's offices (Korea) and key ministries (e.g., Ministry of Finance in Kenya, Ministry of Trade in Mexico), is fundamental in leading and kicking-off regulatory reform. This leads to the conclusion that any reform effort has to be championed by the center of government—in fact, this corresponds to the nature of regulatory reform, a policy field that deals with core government functions and requires a change in the administrative culture.
- Advisory and advocacy bodies are key players in increasing awareness of the importance of regulatory reform, in better reflecting private sector's interests and demands, and in establishing a communication and coordination channel between the administration and external stakeholders.
- In some cases, initial institutions for regulatory reform have been supported by international partners (international organizations, donors, consultants, etc.). Institutions for regulatory reform in emerging and developing countries have been influenced by international good practice models and tools that

have been used by other countries. Successful donor support is characterized by clear priorities and donors having a medium to long term focus needed to develop robust, sustainable and successful regulatory reform institutions and processes.

- The role of donors has also an aspect related to the financing of these institutions. At early stages of their creation, these institutions are often financed by donors. In very few cases they are financed by the government budget. This may occasionally have created perverse incentives for the remuneration of their staff and very little incentives for long term institutionalization. Officials and local consultants get attracted by working on ad hoc initiatives where resources are available and salaries can be higher than in the rest of the administration. However, if these institutions cannot be maintained over time in financial terms, there is a risk that key staff will move on when the highly remunerating ad-hoc structure is terminated.
- While donors play an important role in helping to establish and finance regulatory reform institutions, one big challenge is that donor organizations often have relatively short time horizons – perhaps a year to two – while establishing viable, successful and sustainable regulatory reform institutions usually takes several years. Therefore, in some cases donors have helped to establish such institutions only to withdraw support after a year or so and focus on other activities. Paradoxically this short term focus on many donor organizations undermines the original objective of establishing successful and sustainable regulatory reform institutions.
- Regulatory reform institutions in both developed and developing countries are not static and unchanging. Rather, they constantly evolve and change over time. Such institutions take at least several months, usually longer, to be established and operational. As discussed above, in some cases regulatory

reform institutions fail to achieve initial expectations. In such cases their roles will usually evolve or change over time, as new issues or priorities emerge. Alternatively, some regulatory reform institutions over time gain traction, purpose and credibility. They usually improve their capacities and ability to undertake a wider range of tasks and focus on a wider range of issues. Stakeholders' support for regulatory institutions is central to their success or failure. In all cases, regulatory reform institutions change and evolve over time and for those that achieve success, it takes several years to establish a clear trajectory, gain credibility, clear direction and purpose.

Divergent elements in institution building for regulatory reform

There is considerable variation in the context, role, structure, purpose and activities of regulatory reform institutions. For example:

- Although **the “center of government” is broadly recognized as the best location for the institution driving regulatory reform**, the specific location within the executive for the regulatory oversight body varies from country to country. The decision where to locate the oversight body has two main implications:
 1. The need to identify reform champions inside the administration that will be in a position to support the program, even confronting vested interest and resistance from other parts of the administration; and
 2. The need to build some sense of ownership of the reform by certain institutions, which can later on reflect the way the reform unit positions itself vis-à-vis other institutions and external stakeholders.

- Regulatory oversight bodies and advisory and advocate bodies are set up with different legal basis. **The degrees of formalization of institutions for regulatory reform are different across countries, which is certainly linked to the specific legal and political environment that exists in a particular country and the legal underpinning that should back them.** However, this fact might also be a consequence of the degree of broader political support backing the institution and a reflection of the tensions that such an institution might create inside the administration. While international practice suggests that units with legal bases tend to last longer, because that helps to isolate them from political turbulence, some evidence shows that strong commitment to reform and a good understanding of the importance of regulatory reform inside the administration could help to keep them even in the presence of a serious political crisis (e.g., Kenya in late 2008). What the cases reviewed suggest is that it takes time to formalize the framework to establish institutions for regulatory reform.
- Political leadership of the different institutions for regulatory reform varies from country to country. Political leadership can be linked to personalities, but it also refers to the capacities that the unit develops to position itself inside the administration and against external institutions. This can certainly have an impact on the policy formulation and implementation of the reform. The cases reviewed show that different forms of leadership are possible. In some cases, reforms have been supported by particular individuals with strong commitment to reform, but in others leadership has been maintained by having a capable, strong group of reformers. **In all cases, ongoing and sustained political support has been essential.**
- Experience in developed and developing countries suggests that initial **ad hoc institutions for regulatory reform and oversight bodies may be confronted by interest groups which oppose regulatory reform.** For example, private sector interests sometimes oppose reforms which may expose them to effective competition. In other cases powerful interests in the bureaucracy oppose regulatory reforms because of perceived loss of power, status and influence. Therefore, the sustainability or longevity of such institutions may depend not only on its ability to conduct good focused reviews, but also on its ability to overcome powerful interest groups lobbying to preserve the status quo.
- The way governments involve different stakeholders in institution building varies from country to country. Even if external participation seems to be a precondition for a more successful reform, the level of involvement of external stakeholders (mainly from the private sector and academia) is different in each country. In some cases, private sector representatives are part of the management and decision level of advocacy/advisory bodies. They contribute by providing an external perspective that is useful to better define and implement the strategy.
- The degree to which the unit responsible for regulatory management and reform is able to integrate its own reform efforts into a national, broader reform process differs from country to country. **In the emerging and developing country cases reviewed for this paper, regulatory reform efforts are not isolated from a broader strategy to improve the investment climate, to promote competition in the economy or to enable the business environment.** In almost any case, regulatory reform efforts have been undertaken without considering that they are part of a broader strategy.
- In developing countries it has taken time to recognize that regulatory reform efforts play an essential role in changing the fundamentals

of the regulatory system, and medium- and long term perspectives should be considered in the time frame of wins. **Some countries have been more successful in placing the regulatory reform efforts at the core of a broader strategy**, which has an impact on the way institutions can expand their responsibilities (in particular the quality control role of draft regulations) and be seen as more authoritative when they advocate reform and win supporters.

- **Regulatory oversight bodies tend to have increased responsibilities over time, but the evolution of such bodies does not follow a uniform path.** Increasing responsibilities depends on different factors: the staff capacities and skills available, the financial resources needed to increase the scope of the daily work, the political support that new responsibilities could require and the extent to which the regulatory unit increases its coordination power inside the administration, among others. A fundamental issue here, however, is to link responsibilities to the reform process. For instance, at what stage of the process can a regulatory reform unit challenge the quality of a draft proposal? In other words, when is a regulatory reform unit “mature” to do more and new things in expanding the scope of its work? Answers to these questions, as seen from the case studies analyzed, can only be found in a combination of different factors and there is no evidence of a single way to do it.
- Sequencing reform efforts is done in different ways. **Identifying proper sequencing in an appropriate manner is key to successful implementation. In some of the cases, revised sequencing was shaped more as a consequence of specific contexts and conditions than a broader predefined and predetermined strategy in which clear objectives and steps were proposed.** In some cases, regulatory reforms have started

with the introduction and use of very specific tools to simplify business procedures and/or improve the regulatory stock, which has been followed later on by an expansion of the scope of the regulatory reform. In some other cases, regulatory reforms have been ambitious since the beginning, trying to design a comprehensive policy, setting up regulatory institutions and introducing the use of several tools to improve regulatory decision. The choice of using certain tools is relevant for sequencing, but in some cases it is not done having in mind the different possibilities available. Successful stories and failures can be found on both sides, but some evidence shows that starting at a small scale and increasing the scope of reforms gradually bring better outcomes.

- **The introduction and implementation of RIA, as one of the main tools to improve regulatory decision, does not necessarily accompany the transformation of other institutions dealing with regulatory reform.** Indeed, the establishment of RIA processes and institutions has often been integrated at different stages of broader regulatory institution building. Some ad-hoc institutions for regulatory governance seem to be in a position to establish good grounds for RIA introduction, but others do not seem to have the capacity to do so successfully. This can be explained by different factors:
 1. It can be linked to the sequence of the reform process, in which RIA is seen as a medium-term goal.
 2. It can also be linked to the scope of the reform process, which might start with the stock of regulation and the process does not move to the stage of tackling the quality of the flow of regulation.
 3. It can be a response to the requirements of donors, whose programs might be too

ambitious and do not have sufficient stakeholder support, or capacities to properly implement.

- **The institutions dealing with regulatory reform issues tend to have different and broader mandates than in developed countries.** In some cases, institutions for regulatory reform are also assigned with other responsibilities or the staff is not only dedicated to regulatory reform issues (e.g., Kenya). This has important consequences in a positive and negative sense. While staff can have a broader perspective and better understanding of the roots and possible solutions of problems, these institutions can face problems in getting “reform attention” and get sidetracked or distracted and focus on other issues and priorities. Long term sustainability of these institutions varies in different countries. Some institutions for regulatory governance do not last long, some others are preserved over time and even strengthened by giving them a legal basis that isolates them from political instability. Countries that have made progress in preserving these institutions over time probably foresaw a better institutional design since their conception, paying attention to organizational incentives, change management, human resources, accountability issues and budgeting mechanisms. Political support also plays a determinant role in their sustainability. Without it they tend to disappear and/or be replaced by other institutional mechanisms that no longer have the power to move forward the reform agenda.

Emerging lessons on the development of institutions for regulatory governance in developing countries

The institutional arrangement commonly found in emerging and developing countries has the following structure. This does not correspond to a recipe and variations exist in all countries.

Furthermore, it does not matter how brilliant technical reforms are if the political economy is not supportive and able to implement effective reforms. That said, many developing countries have established institutions responsible for regulatory reform (regulatory reform unit, committee, task force, etc) that start working on some aspects of a regulatory reform program. The initial steps of the reform program can include a licensing review and reform program, the use of certain tools for simplification (such as the standard cost model to identify administrative burdens imposed on businesses by regulatory and taxation systems, etc). These focused reforms will later on be expanded into a more comprehensive regulatory reform program, providing the initial institution with new and expanded responsibilities. Specifically with regard to regulatory oversight bodies that do not have wide-ranging powers and roles, ministerial committees can play a key role in making decisions on regulatory matters. Regulatory oversight bodies, at initial stages of the reform process, are often supported by external partners, in particular donors that provide consultants and support capacity-building. The government can also establish an external advisory or advocacy body that encourages stakeholders’ participation and provides feedback for regulatory decisions. This watchdog institution creates additional transparency and a system of checks and balances inside the administration to improve the design and implementation of regulatory policy.

Early in the evolution of a regulatory reform program, ad hoc institutions for regulatory reform have played an important role to kick-off initial reforms and generate traction and momentum for further – often more wide-ranging – reforms. The impact in generating reform momentum, however, depends in part on the extent to which they contribute to the “institutionalization” of regulatory reform. This institutionalization has to reflect the sequence of the reform process to make complementary the capacities of the institutions to the magnitude of the responsibilities they acquire over time (see Box 6 about the establishment of Ad Hoc institutions in East Africa).

Box 6: Establishing Ad Hoc Institutions in East Africa

Five countries in East Africa (Uganda, Tanzania, Kenya, Rwanda and Zambia) that were part of country case studies conducted by IC continue to face challenges in building institutions for regulatory reform. Kenya, Uganda and Tanzania have all established “Better Regulation Units” (BRUS), which have formally been given the responsibility for promoting better regulation procedures in general and for introducing regulatory impact assessment methodology in particular. There are proposals under consideration within the Rwandan and Zambian governments to do the same. These institutional developments have been hampered by the fact that the BRUs have been given other responsibilities, as in the case of Tanzania, or have not been resourced at levels commensurate with their responsibilities, as in the case of Uganda. Perhaps, too much has been expected from these units, given that they have not been supported by high-level regulatory councils that can continually reinforce the government’s strategic commitment to reform.

Successful institutionalization of regulatory reform institutions requires fundamental changes to the incentives facing stakeholders, including political decision makers, officials, business, the media and other parties. If regulatory reform programs do not fundamentally change incentives, the status quo will prevail and the regulatory reform program and associated institutions will not achieve their objectives of improving the transparency, effectiveness and efficiency of regulations and regulatory systems.

Based on the analysis conducted through the review of some case studies as well as establishing some commonalities and differences found in institution building in those cases, some practical lessons can be drawn to structure and set up regulatory governance institutions in developing countries. This subsection concentrates only on regulatory oversight bodies and advocacy/advocacy bodies, for several reasons:

- First, they are at the core of the regulatory reform process and have the greatest responsibilities in facilitating and/or conducting regulatory reform efforts.
- Second, high-level committees’ design depends heavily on the particular governance and reporting arrangements in a particular country, which makes it difficult to replicate in other countries.
- Third, ad hoc institutions tend to transform into units over time.

The list presented below is not exhaustive. It just provides an initial categorization of minimal elements required to establish functioning regulatory reform units or advisory/advocacy bodies for regulatory reform in countries with low capacities.

Setting up a regulatory reform unit: Structure and functions

In developing and emerging countries, regulatory reform units are fundamental to design and implement regulatory reform. The establishment of these units has to be structured taking into account the existing institutional framework in the country and the specific legal, political and administrative contexts.

Structure

Some of the following elements are essential to define the structure of the unit in charge of regulatory reform issues:

- The unit has to be placed at the center of government, either under the Prime Minister’s Office, Ministry of Finance, Ministry of Economy, Ministry of Planning or Ministry of Trade. The actual location will depend on which Ministry is capable and/or willing to provide certain institutional arrangements

that will entrust the Unit with clear responsibilities, political leadership and accountable mechanisms.

- The unit has to be granted with a certain degree of independence that can help it to exert its powers and take a lead in moving the regulatory reform agenda forward. Independence means in this sense having autonomy in decisions, access to decision makers, allocation of financial resources and technical capacity to make assessments with authority and credibility.
- The unit has to report directly to the Minister, Cabinet or other high level forum, which will help minimize the risk of political interference in the day-to-day work and advice of the unit. This will also provide the political support needed to perform its role well.
- Even if a legal basis for the unit is not important when the unit is first established, institutionalizing its existence in a legal document (law, Cabinet decree, ordinance, etc.) is advisable in the medium and long-term.
- The unit can be initially small. It can be staffed with a handful of skilled and motivated staff, increasing in size over time to typically between 5 to 20 staff members. A balance between different skills and backgrounds (economic and legal at least, but not only, experience in both public and private sectors, etc) helps ensure that the unit can provide high-quality advice to decision makers. Therefore, a key objective is to create the critical mass of qualified technical staff by concentrating key regulatory oversight functions in the unit.
- Units in developing and emerging countries are sometimes supported by donors who can provide foreign experts. This can provide the skills and insights needed to quickly establish and focus the work of a regulatory reform unit. However, this can also generate a range

of practical organizational and management problems, such as salary differentials between foreign and local staff undermining the recruitment of top local experts. Foreign experts should also be accountable to the government, not only to donors funding their posts. Therefore, differences between supervision controls, performance evaluation and remuneration should be avoided wherever possible.

Functions

Some of the following functions are required for a regulatory reform unit to make its work relevant, credible and influential:

- The unit needs to have coordination powers inside the government so it can mobilize and incentivize ministries, regulatory agencies and their staff. Particular negotiations with some line ministries can be useful to ensure their participation in the reform process, along with transparency mechanisms and the ability to report to decision makers where ministries or regulatory agencies are impeding the government's regulatory reform program.
- The functions of the unit depend, in part, on the objective and scope of the work that needs to be done. Functions should not be too ambitious at the early stages so the unit has a clear and achievable objective and focus, and can achieve results and build credibility. Its functions should be well focused, strategic and consistent with broader policy objectives and developments. The main goal of the unit should be to provide in a transparent manner high quality advice to decision makers about regulatory issues, options and impacts, thus improving the quality of new or amended regulations.
- At the early stages of its creation, the unit itself has to establish and build the skills of its own staff and internal capacities, such as

guidance manuals for officials etc. Donors can provide critical support at this stage in helping to build skills and capacities of the unit. Over time, the unit can itself provide targeted training and support to officials working on regulatory policy issues and proposals.

- They should develop minimal criteria and rules for the introduction and implementation of new or amended regulations. One way to do this is to employ RIA. The five key elements of a RIA light system which have been developed by WBG for developing countries are:
 1. Political commitment to establish and operate an effective and self sustaining RIA process;
 2. A unit or group of regulatory reformers—preferably based in a central area of government—which oversees, comments and reports on the quality of regulatory proposals, before decisions about regulation are made;
 3. Clear and consistently applied criteria and rules employed to screen regulatory proposals;
 4. The regulatory policy development process is transparent and includes consultation with stakeholders; and
 5. A capacity building program is in place, involving preparation of guidelines, training of officials preparing RIA and facilitating the required cultural changes, and establishing monitoring, evaluation and reporting systems.
- In most emerging and developing countries, donors play a key role in financing and supporting regulatory reform efforts. The unit can often provide a point of contact with donors, since it typically has a “whole of government” perspective and can help donors focus and

coordinate their contributions. The unit can help also align donor support to reduce transaction costs and duplications.

- Monitoring and evaluation should be integrated as part of the functions of regulatory institutions, including the regulatory reform unit. M&E is an essential task to better understand developments in the process, identify gaps, and to review outcomes and impacts of regulatory reform programs.

Setting up an advocacy and/or advisory body for regulatory reform

In emerging and developing countries, the establishment of some form of advocacy or advisory body for regulatory reform is also supported and recommended by WBG, to act as an external “watchdog,” to give voice to the private sector and other stakeholders. This institution can also contribute with an explicit advocacy role for making recommendations through consultations inside and outside the government.

Structure

Some of the following elements are fundamental in terms of structuring an advocacy and/or an advisory body:

- Advocacy and/or advisory bodies have to be placed outside the direct oversight of a ministry or agency. In the case of an advisory body, it has to reflect the incorporation of a diversity of ministries and agencies, while an advocacy body should be above in the administrative hierarchy to exert responsibilities with independence and credibility.
- Advocacy and/or advisory bodies should incorporate representation from the private sector and experts such as academics to help guarantee that their voice is heard and their concerns are taken into account. An advisory

body can link directly with the private sector through open consultations. Advocacy bodies should have as part of their membership representatives from the private sector.

- Members of an advisory body can be representatives from different ministries and agencies whose recommendations are typically not be binding on the government or decision makers. Advocacy bodies for regulatory reform should be integrated by stakeholders from the private sector, academia, etc. that are appointed for fix terms, have a clear role, and focus but also independence from the government in fulfilling its role.
- Advocacy bodies should be transparent and accountable. They should make their reports publicly available and report to audit offices or Parliament. Advisory bodies should also be accountable by making public the results of their deliberations and consultation procedures, as well as the recommendations they put forward to the regulatory reform unit or other institutions.
- Advisory bodies can be set up on an ad hoc basis. Advocacy bodies can be institutionalized on a more permanent basis. In both cases, high level and ongoing political support is required to give the body the credibility and influence it needs to achieve its stated objectives.

Functions

Some of the following functions should be undertaken by an advisory or advocacy body to make its work relevant:

- Strengthening coordination and consultation among institutions inside the administration is a fundamental function of advisory bodies.

They have to be seen as a forum of discussion that encourages debate on regulatory reform issues.

- Advisory bodies have to reflect in their discussions the concerns expressed by businesses and other stakeholders. They can incorporate new consultation mechanisms with stakeholders to gather information and establish links to private sector and community organizations.
- Advisory bodies have to make recommendations that result from consultation processes to the regulatory reform unit. A key function is to advise the unit on how to deal with certain issues and how to improve regulatory policy.
- Advocacy bodies are established primarily to advocate for reform. As discussed in previous sections of this paper, this can be done in different ways, but among them, advocacy bodies have to raise awareness of regulatory reform issues and contribute to place those issues at the center of the political debate, in order to increase constituency for reform.
- Advocacy bodies have to provide clear guidance on the way forward with regulatory reform.
- Advocacy bodies can act as a watchdog in the regulatory process, in particular when a RIA system is being set up. At initial stages of the process and while ministries and regulatory agencies are developing capacities to conduct RIA, the regulatory reform unit can do RIAs. Over time, the advocacy body can play a role in reviewing the quality of the RIA and guaranteeing that it is conducted in the proper way.

CONCLUSIONS

Building better and stronger regulatory institutions is a key component of regulatory reform efforts in emerging and developing countries. Even if little evidence exists so far to demonstrate the extent to which the setup of institutions has a direct impact on improving economic growth, adequate institutions with clear governance arrangements seem to be an integral part of the regulatory system and of the efforts that emerging and developing countries are taking. Institutions have contributed to move forward the reform agenda and to improve the regulatory environment by setting new rules, increasing transparency and promoting a cultural change in the administration.

The analysis of the small number of available cases shows, however, that transferability of institutional arrangements from developed to emerging and developing countries is not the best and only solution. In low capacity countries, a number of factors with different sources of origin (lack of resources and skills, polarization of regulatory

decisions, low degree of stakeholders' participation, inefficient data collection, etc) can be more acute and have a negative impact in the way institutions are set up and developed over time. Institutions can neither be built at the speed they grow in developed countries nor acquire the functions and responsibilities they have in those contexts.

This means that institutions for regulatory quality in emerging and developing countries have to evolve as the whole strategy matures:

- Institutions have to be shaped integrating governance parameters such as transparency, independence, and accountability.
- They have to be built in response to the scope of the regulatory policy and to be effective for its purposes.
- They have to acquire expertise and skills over time and increase their responsibilities once

they have grown to move from one step to the other in the agenda.

- They have to reflect the political support and make sure they are credible vis-à-vis other institutions inside the administration and external stakeholders.

These conditions can certainly be difficult to meet, but successful stories documented in this paper show that institution building can make a great contribution to regulatory reform if it is well-designed and meets expectations.

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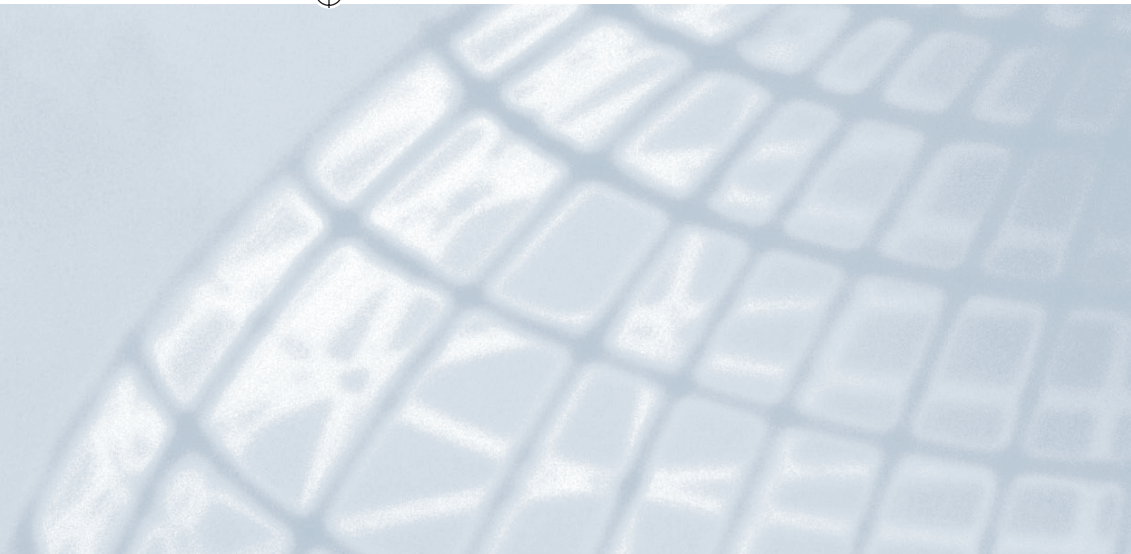
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APPENDIX I. REGULATORY GOVERNANCE INSTITUTIONS IN SELECTED EMERGING AND DEVELOPING COUNTRIES

The following appendix presents a series of case studies in which institutional frameworks for regulatory governance have been set up to accompany different degrees of regulatory reform efforts. Each case contains an analysis of relevant variables that help understanding the design, setup, lifecycle and some measurement of success or failures by these institutions. The case studies were constructed by a review of existing literature and interviews with people directly involved in them.

Some of the variables incorporated in the case studies include: permanent or ad hoc (time-bound), established by law or decree/circular, mandate to review pre-defined types of laws/regulations or new regulations, mandate to explore regulatory issues on own initiative, advisory or executive role.

Kenya

Institutionalization of regulatory reform in Kenya has gone through several phases. The current regulatory reform efforts to improve the business

environment in Kenya started with reforms targeting business licensing.

An IC study prepared in 2004 identified the licensing regime as a major burden on business activity. The “guillotine” approach was recommended as the most appropriate mechanism to implement licensing reforms in a comprehensive, cross-cutting manner. To this end, the Minister for Finance of Kenya set up a licensing committee composed of public and private sector representatives to review licenses. This committee worked from 2005 to 2007. The chairman of the committee was a lawyer from the private sector, and other members came from government institutions. The joint secretaries were officers from the Ministry of Finance and the Ministry of Trade and Industry. As is the practice in Kenya, committee members received an allowance from the government for their participation.

During its two years of work, the committee prepared an inventory of 1,325 licenses imposed on businesses in Kenya. The committee reviewed the licenses in accordance with specified criteria

(“necessity,” “legality” and “business friendliness”). Because of the energy of the chairman of the committee, as well as the high political priority placed on the review process, it was possible to sustain the work over this period. At the end of its mandate, the committee submitted recommendations for each license: if a license met the criteria noted above, the license should be retained; if it met only some criteria, it could be simplified; if it was found that it did not meet the criteria, it was recommended to be eliminated. The committee produced a final report with the overall findings, as well as some recommendations on next steps, including implementation of the licensing reforms and the need to address underlying regulatory reforms. Not all recommendations of the committee to alleviate the burdens imposed by the licenses survived the subsequent budget and political decision-making stages, but a good deal of reforms were adopted and implemented.

The licensing reform served as a gateway for regulatory reform and opened up the possibility to address systemic problems. The government of Kenya decided to embrace a more comprehensive program, in addition to carrying on the licensing reform. To move forward on these tasks, the Ministry of Finance established a small unit, the Business Regulatory Reform Unit (BRRU) in 2007, composed of part-time junior level staff (with good technical skills and lots of enthusiasm) and led by a higher level officer with strong professional background, experience and networks, who had also served as a member of the licensing committee.

The main tasks of the BRRU since its inception have included: implementing licensing reform, setting up an electronic registry, drafting a regulatory reform strategy for Kenya, introducing RIA, targeting reform at the sub-national level, and targeting Doing Business-specific reforms. Kenya’s efforts in improving the Doing Business indicators served as an important catalyst and rallying point because they opened up channels of communication inside the government. The BRRU, in the first several years of DB-related reform

efforts, played a coordinating role, and also helped to highlight the important achievements in licensing and other reform areas that would impact Kenya’s Doing Business indicators. This contributed to the naming of Kenya as a “global top-10 reformer” in the DB Report of 2008.

Political support has also been critical for the success of the unit. In his annual budget speeches of 2006, 2007 and 2008, the Minister for Finance expressed the government’s strong support for licensing and regulatory reform. This has significantly bolstered the BRRU’s work within the Ministry of Finance and across government. Another factor contributing to the credibility of the unit is that the junior staff reflects diverse geographic representation, a consideration that proved to be critical as Kenya descended into post-election crisis in early 2008.

The formalization of the BRRU has taken some time. During initial planning discussions, there were concerns that dedicating junior staff to specific activities would limit their professional growth opportunities. As a result, people participating in the unit have other tasks inside the administration that are not related to regulatory reform issues. This has made it difficult to ensure constant levels of commitment.

So far, the BRRU is not a completely institutionalized unit. Additionally, with the end of the work of the licensing committee in 2007, there is presently no institutionalized structure to provide expert oversight or direct private sector feedback to the work of the BRRU. One solution for institutionalizing the BRRU, as well as relevant supervisory and advisory structures, is the adoption of a business regulation bill. However, this has faced some delays, possibly due to competing interests within government bodies, including the Ministry of Finance itself.

The unit still needs to strengthen its role as a forum of discussion of regulatory reform efforts. It has not yet opened up its activities for stakeholders’

review and suggestions. This is a task that might take some time and could be done only when the BRRU increases its responsibilities and scope of its work, integrating the use of RIA and consolidating consultations when regulations are produced. This would lead BRRU to have more oversight and advisory roles in the future, a step that is envisaged in the whole regulatory reform strategy for Kenya.

The Kenya example of regulatory reform has been successful for several reasons. There was an overall understanding that licensing was a major problem for the economy and something had to be done. The initial licensing program ended up with an inventorization of all licenses, which had never been done before and was considered a great achievement. The implementation phase of the licensing reform has been completed. It was conducted by a core group of reformers that are very knowledgeable and convinced about taking the reform forward. Most importantly, they have created a network inside the administration that supports them in their efforts.

Even if Kenya experienced a difficult political crisis at the end of 2007 and the beginning of 2008, there has been a political will to continue to support the BRRU and its efforts. The institutionalization of the unit through the bill had been already submitted and vetted, and many important stakeholders have agreed to do it in principle. The international exposure of Kenya (top reformer of Doing Business Report for 2008) and IC support throughout the process have been essential to continue the regulatory reform efforts.

Korea

In 1997, the Korean government established the Regulatory Reform Committee (RRC), created by the Basic Act on Administrative Regulations. Several committees had preceded its creation, but those institutions had a more ad-hoc character and functions as they were dealing with particular laws and issues that were hindering economic growth.

The RRC was created to lead government-wide reforms. It was set up as an official government body directly accountable to the Korean president and co-chaired by the Prime Minister. The RRC is composed of 25 members, 18 of whom are from the private sector and 7 government officials from various departments. This brought important changes in the relationship with the bureaucracy. Since government officials and civilians are part of the RRC, the structure created a more even match between reformers and those opposed to reform, internalizing reform in a permanent “challenge function” in the bureaucracy. The political support given by the Prime Minister has been important to avoid capture by a resistant bureaucracy. The secretariat function supporting the RRC is undertaken by the Regulatory Reform Office which is located in the Prime Minister’s Office. This unit includes around 40 civil servants and 3 professional experts, under the direction of the Deputy Minister for Regulatory Reform.

The RRC has wide-ranging responsibilities and powers. Its functions include not only quality control of individual regulations, which has been done through implementation of RIA, but also to define basic direction for regulatory reform in the country through the preparation of annual report plans, consultation with stakeholders and the public, and the review of RIA documents prepared by ministries. Article 24 of the Basic Act on Administrative Regulations (BAAR) identifies seven functions to be undertaken by the RRC. It states that the RRC is responsible for deliberation and coordination of:

- the basic direction of regulation policy as well as research and development of regulatory institutions;
- items that pertain to the review of establishing and reinforcing new or existing regulations;
- review of existing regulations, establishment and implementation of a comprehensive plan on regulatory improvement;

- registration and promulgation of regulations;
- gathering and processing opinions on regulatory upgrading;
- inspection and evaluation of progress made by administrative agencies on different levels in terms of regulation improvement; and
- other items deemed by the head of the committee as requiring deliberation and coordination of the committee.

Even if the RRC has been essential in moving forward the regulatory reform agenda, some policy areas remain out of its oversight and proposals of law out of its scrutiny. In order to overcome this gap, other committees and institutions have been set up to continue efforts on regulatory reform. The Regulatory Reform Task Force (RRTF) was established under the Prime Minister's Office in August 2004 to facilitate reform of "bundle regulations" that involve multiple ministries, rather than single regulations. The RRTF is under the responsibility of the Deputy Minister for Regulatory Reform and comprises 26 public officials and 24 experts from research institutes and businesses. This shows the government's strategy of fully involving the private sector in the reform process.

The work of the RRC and the RRTF are coordinated by the participation of the Prime Minister in both the RRC and the Regulatory Reform Ministerial Meeting, which oversees the work of the RRTF. In addition, the deputy minister in charge of regulatory reform under the Prime Minister is the administrative coordinator of the work of the RRC, RRTF and the Business Difficulties Resolution Center, which acts as a form of one-stop shop ombudsman to resolve regulatory issues faced by businesses.

FYR of Macedonia

Macedonia has moved into regulatory reform with the initial objective to improve the quality of regulations affecting business activity. The goal is

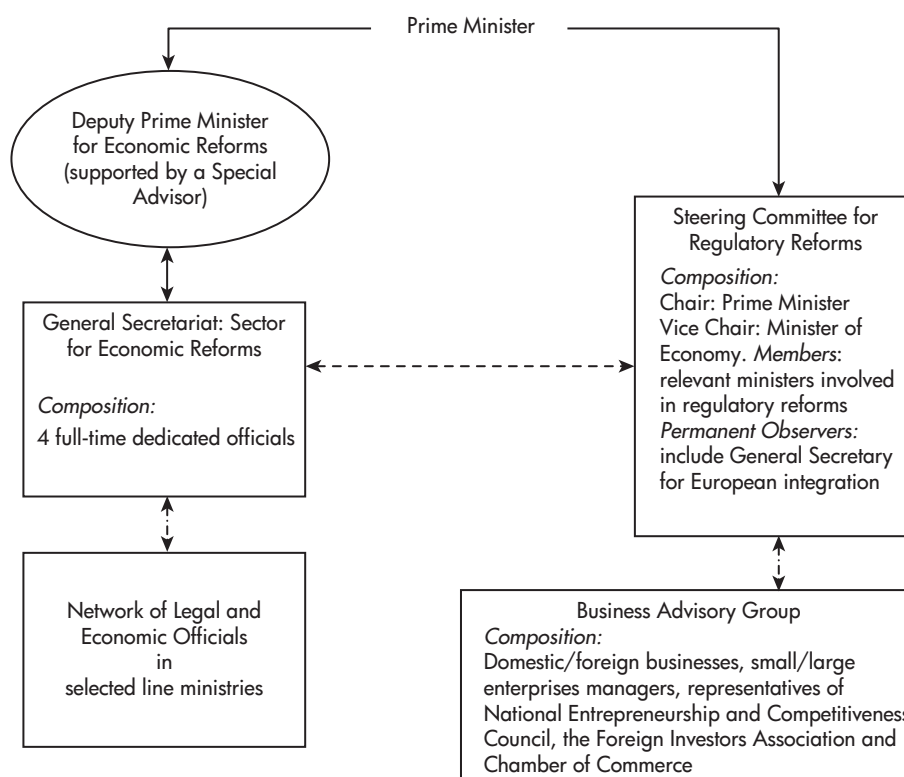
to build the institutional capacity for a comprehensive approach to business environment reform, which takes care of reforming existing regulations (reviewing the stock) and creating disciplines for new regulations (reviewing the flow).

The following chart presents the desired institutional structure of regulatory reform in Macedonia. The government established a Committee for Implementation of Regulatory Reform, chaired by the Deputy Prime Minister for Economic Affairs, to support the guillotine on regulations, introduced by a government decree on November 2006. The institution that coordinates the guillotine process is a Sector for Regulatory Reform, which consists of 34 working groups (14 within ministries and 20 within other government bodies). The Sector for Regulatory Reform is responsible for introducing RIA (development of a RIA manual and RIA forms).

The roles of the different institutions are the following:

- **The Steering Committee (SC).** The objective of the SC would be to ensure the implementation of a comprehensive strategy for stimulating economic growth through increased foreign and domestic investment. Since improving the business environment constitutes a critical element of this strategy, the SC would be responsible for implementing a strategic approach to business environment reform and for improving FYR Macedonia's attractiveness as a location for investment. In addition, the SC will provide a forum for resolving cross-ministerial issues affecting the business environment. The SC should meet at least monthly.
- **The Special Advisor to the Deputy Prime Minister for Economic Reforms on Business Environment Issues.** The role of the Special Advisor to the DPM would be to support the work of the PM and the Deputy PM for the Economic System with the SC. The Adviser's responsibilities will include the

Chart 1: Proposed Structure of Regulatory Reforms in Macedonia



development of a strategic approach to improving the country competitiveness, development and championing of the business environment reform agenda, and monitoring of business environment reforms. The Advisor will be supported by two full-time dedicated officials who will: (i) prepare and/or commission background reports and analysis for SC deliberations; (ii) coordinate the agenda for the SC; and (iii) provide logistical support to the SC.

- **The Sector for Economic Reforms in the General Secretariat (SER).** The role of this sector will be to implement the regulatory impact analysis function at the center of government and to review proposed legislation. Specifically, the SER will: (i) implement the guillotine review of existing legislation in the specifically targeted regimes – starting with the two pilot regimes; and (ii) review new policies and regulations affecting the business

environment for conformity to RIA quality standards. The responsibility for preparation of the RIA for new regulations and policies will rest with the relevant ministries. The head of the SER will report to the head of the General Secretariat and the Deputy Prime Minister for the Economic System. The SER will coordinate this task through the inter-ministerial network of legal and economic experts. The work of this sector will complement that of the Policy Review Sector as well as the European Integration Sector of the General Secretariat. Therefore, organizational and functional synergies should be captured. The SER will also be responsible for monitoring and evaluation of progress made by the government in improving the business environment (including monitoring the pace and quality of regulatory reform), and information dissemination among relevant stakeholders, including the business community and civil society.

- **The Business Advisory Group** would provide a critical link in the stakeholder consultation process by representing the business community and providing inputs for the National Strategy, and the SC's reform agenda. The Business Advisory Group should include representatives of the National Entrepreneurship and Competitiveness Council, the Foreign Investors Association and Chamber of Commerce. It should meet with the SC at least on a quarterly basis.
- The Network of Legal and Economic Officials would comprise high level officials of relevant line ministries. They should be in charge of preparing the RIAs and the submissions under the Guillotine review process. In due time, the network of the officials should become the grouping of key legal and economic experts assisting ministers and senior officials in preparing policies and regulations.

moved from a strategy of deregulation to a broader and more sustainable strategy of regulatory management improvement.

The new strategy was aimed at improving the regulatory environment for private sector activity by creating appropriate market rules and institutions, and building more effective and efficient governance. The UDE began to devote great efforts to horizontal regulatory reform that benefited virtually all economic sectors. Once experience was gained, the UDE developed tools for regulatory governance, such as the control over the stock and the flow of regulations, imposing minimum quality standards to ministries on new regulation. The UDE created a complete inventory of business formalities and required ministries and agencies to submit a justification for each one they wanted to impose. This process led to the elimination of 45 percent of business formalities by 1999.

Mexico

Regulatory reform in Mexico started in the mid-1980s, when the government opened up the economy after decades of protectionism and liberalized a number of key economic sectors. From the institutional perspective, the Mexican government assembled a small, high-level group of professionals outside the traditional structures of the bureaucracy (15 people, mainly economists and lawyers). They formed the Economic Deregulation Unit (UDE), created in 1989, which operated under the general purview of the powerful Trade Ministry (SECOFI) and was directly accountable to the Trade Minister.

At the beginning, the UDE directed much of its efforts toward fostering efficiency in the provision of non-traded goods and services that were shielded from international market competition. It used an opportunistic strategy, selecting economic sectors where deregulation could yield large gains at little political cost. But later on, the UDE found that it could no longer address regulatory problems facing the economy unless it

In 2000, the government moved to institutionalize regulatory policy through a series of amendments that were introduced to the Federal Administrative Procedures Law. The UDE was transformed into the Federal Regulatory Improvement Commission (Cofemer), with an expanded mandate, legislative backing for many of the UDE's powers, and new enforcement powers. Cofemer was created mainly to impose quality and transparency disciplines on the public sector. Cofemer quickly became a driving force for regulatory reform in Mexico. With a budget of approximately 5 million dollars per year, Cofemer is staffed by 69 employees, of which 60 are professionals (mostly economists, lawyers and industrial or computer engineers). It is headed by a General Director, directly appointed by the Mexican President and who has the right to organize the structure and functioning of the Commission.

Cofemer's mandate is to ensure transparency in the drafting of federal regulations and to promote the development of cost effective regulations that produce the greatest net benefit for society. Cofemer's

approach to regulatory reform is based on its mandate and encompasses four main activities:

- elimination and simplification of business and citizen formalities;
- transparent and analytical review of all draft regulations and their regulatory impact assessments;
- diagnosis of and proposals to reform existing laws and regulations in specific areas or economic sectors; and
- support for state and municipal regulatory improvement programs.

Cofemer is responsible for designing, coordinating and implementing a Regulatory Improvement Program, supported by the Federal Regulatory Improvement Council, which was also strengthened by the amendments to the Federal Administrative Procedures Law. This council is chaired by the Minister of Economy. Members come from different ministries, business sector representatives, academia, competition authority, consumer protection agency, etc.

The Mexican government has also set up a Council for Competitiveness to foster and consolidate competitiveness of the Mexican economy. This council allows private agents to liaise with different ministries and other agents from economic sectors to analyze concrete structural and sector-focused strategies to increase competitiveness.

Moldova

On February 2004, the government of Moldova introduced a decision to reform state regulation on entrepreneurial activity. To reach this objective, the government created an interdepartmental commission, as a political body with decisional powers to coordinate the reform. A working group was attached to the commission, working as its secretariat. The commission is composed of 36 members, including representatives of public

authorities, businesses and donors. It meets four times a year to approve or contest the working group's decisions. The commission was in charge of implementing the first Guillotine Law, which included a revision of more than 1500 official acts. The commission was also in charge of the registry of all official regulatory acts that affected entrepreneurial activity, as well as of the coordination in issuing certificates given by central administrative bodies and subordinated institutions to legal and natural persons to do businesses.

A second Guillotine Law was approved in 2006, and entered into force in 2008. This law introduced basic principles for regulatory quality, such as predictability, transparency and the use of RIA. The law facilitated the set up of a special commission, adopted by Parliament decision, which is in charge of linking between the interdepartmental commission and the Parliament to improve the regulatory environment for businesses.

Serbia

Serbia created in April 2003 the Council for Regulatory Reform of the Economic System, whose mandate is to:

- improve the business environment for private firms and foster entrepreneurship;
- advocate initiatives and reforms for existing and proposed laws, regulations and other general measures; and
- provide opinions on draft laws, regulations and general measures, which the government then considers and eventually approves.

The council is formed of high officials and private sector representatives. The Minister of Economy is the Chair of the committee. Private sector representatives are also members and a small secretariat of economists and lawyers assists the council's meetings. The council reports periodically to the government.

During the first year, the council's main activities were to reform the registration of the business system, to prepare RIAs on targeted proposals, and set up a registry of regulation with legal security.

Uganda

The Poverty Eradication Action Plan identified some of the constraints on private sector competitiveness, and better regulation and RIA as tools that the government could use to achieve economic growth. In the framework of that plan, Uganda has worked since the late 1990s on establishing a program for regulatory reform that has covered different aspects, the institutional included.

The Regulatory Best Practice is aimed at improving the quality of Uganda's regulatory environment and investment climate. Two phases took place in the framework of that project:


- **Phase 1, the Deregulation Program** (2000–2003), was coordinated by the Ministry of Finance and Economic Development (MoFPED) and focused on piloting regulatory best practice, advising government on opportunities for regulatory simplification, reforming specific legislation, capacity building, etc.
- **Phase 2, the Regulatory Best Practice Program** (2004–2007), was given a wider focus and aimed to institutionalize regulatory best practice and RIA in policy and lawmaking in the country.

This second phase included the setting up of a Regulatory Best Practice Unit within the MoFDEP.

This unit was in charge of designing a RIA system with input from the Cabinet Office. The program team that participated in that proposal was based in MoFDEP, but it worked with relevant government agencies, including the Cabinet Office, the Ministry of Finance, the Ministry of Trade and Industry, the Uganda Management Institute and the Office of the Prime Minister.

In 2006, when the funding from donors stopped and the Ministry of Finance ceased to be the main ministry driving regulatory reform, the Regulatory Best Practice Unit was transferred to the Ministry of Tourism, Trade and Industry (MoTTI). The reasons for this institutional move are of a different nature, but the most important ones refer to the fact that the MoFDEP did not show commitment and ownership of the project to maintain sustainability over time, while the main focus of its work was on macro level issues and the budget. The move to the MoTTI was appropriate as that Ministry was interested and supportive to the project, but the timing played against it.

As a result, the Cabinet Secretariat in the Office of the President was entrusted with key responsibilities in government policy monitoring, management and performance; and evaluation. It projected substantially increased levels of competence and professionalism, and showed itself to be committed to international best practice standards. The RIA Unit was created and placed in that institution. The main tasks of the RIA Unit were to champion institutionalization of RIA process across government, to issue policy guidance on RIA and to track progress with regard to the quality of draft policy submissions to Cabinet.



ANNEX I: BETTER REGULATION FOR GROWTH PROGRAM

The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and IC, the investment climate advisory service of the World Bank Group.

The objective of the BRG is to improve the regulatory and investment climate in developing countries, thereby stimulating private sector investment, economic growth and poverty reduction. The BRG program aims to achieve this by developing and disseminating for the first time widely practical and operational guidance that will help developing countries design and implement effective regulatory reform programs.

The BRG Program has resulted in preparation of eight thematic papers on regulatory governance issues, covering a broad spectrum: from regulatory governance, links to competition policy, regulatory institutions and tools to indicators for regulatory quality. It has also involved preparation of five country case studies on regulatory capacities in selected African countries.

The web portal www.ifc.org/brg is part of the BRG Program and contains key documents, including references extracted from a comprehensive compendium of resources on regulatory management and reform and a newly developed RIA database.