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Regulatory Impact Assessment in Sri Lanka: The Bridges That Have to be Crossed

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This study was designed with the objective of gathering—so as to facilitate evaluation—the varied and often contradictory positions of regulation in Sri Lanka, both among the regulators themselves, and the perception of their actions among various stakeholders. By analyzing the functioning of the telecommunications regulatory agency and the proposed multisector utilities regulatory agency, it hopes to identify the actual regulatory practices in use and thereby offer long-term corrective measures, if any were needed. In terms of this analysis, the main point of reference was the Regulatory Impact Assessment (RIA) methodology developed in collaboration with our research partners at the Center on Regulation and Competition (CRC), Manchester. Furthermore, it is the view of the authors that this system, if applied to Sri Lanka, could greatly negate the multifarious problems that plague regulation; poor decisionmaking, and regulatory capture posing the worst threats. The findings of this study were not surprising in any way: regulatory processes are conducted in an ad hoc manner with little heed given to transparency and accountability, resulting in very few positive outcomes. Moreover, progress towards the establishment of a systematic process is slow and the adoption of a stringent (or any) impact assessment practice is being sidelined due to a perceived need to expedite the liberalization of the economy at all costs. The main recommendation of this study is that the only way forward, with an eye on progress towards a better era of regulation, is through the creation of awareness of the benefits of RIA among all stakeholders. It is hoped that a greater level of objectivity will gradually be infused into the regulatory processes in Sri Lanka once such a system is adopted.

Introduction

The last few years have seen a marked shift in the thinking on regulation in Sri Lanka, with significant processes being initiated in the move towards multisector models of regulation. The adoption of this new genre of regulation is largely a response to weaknesses of regulatory governance evident in the prevailing sector—specific structures, which began with the liberalization of 1977, with few positive results to show. The centralization of

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policy development functions under the prime minister with the change of regime in December 2001, and the establishment of a special unit directly reporting to the highest level of government, the Public Interest Program Unit (PIPU), to solely address issues of competition and regulation, set out the institutional parameters for regulatory policy in Sri Lanka.

It has been decided that at least three "multisector" agencies with broad coverage would be established in Sri Lanka: one for public utilities; one for financial and banking services; and one for telecommunications, broadcasting and related communication industries. This study addresses some key issues affecting and will affect efficient and effective regulation in two of these multisector agencies, namely for public utilities and telecommunications, and for related communication sectors, with a view to assess the existence of regulatory impact assessment practices and to evaluate the scope for its development where required.

There is no denying that regulation in Sri Lanka has been weak because the institutional and legal framework is flawed. Countervailing measures are being established through a series of Acts of Parliament that are in the works and will be highlighted later on in this study. However, a question of grave importance concerns the actual underlying objectives of the state—wherein it must be asked whether the political economy objectives of the state differ from the stated goals, championed by successive political regimes since liberalization, of equitable growth, poverty reduction and creating an environment conducive to private investment flows. For example, an examination of privatization policies implemented since the late 1980s indicates that they have clearly been based on maximizing short-term revenue to the government, even to the extent of setting up de facto monopolies in certain sectors, such as what happened with the partial privatization of Sri Lanka Telecom, the incumbent telecommunications operator in 1997.

Given the dismal performance of regulation over the last quarter century in Sri Lanka, at the core of the current debate is the question of establishing effective, transparent, and fair governance institutions that will enable the required investments to flow to infrastructure sectors, and how to ensure a fair deal for consumers in the process. Independence from operators and the government is seen as the most critical factor for regulatory agency effectiveness. This independence does not imply distance from government policy or the power to make new policy, but rather, the space to implement policy without undue interference from external sources. Where government ownership is a factor to contend with, absolute independence is not possible. Moreover, independence cannot be viewed as being exempt from accountability; it should be subject to clear standards of accountability to the public and the industry. As such, the issue is really one of achieving workable independence.

Multisector regulation is a move towards the ideal, effective, transparent, fair governance, independent and accountable institutions. Sector-specific regulation agencies, in the Sri Lankan context, have been riddled with problems. While it is understandable that a Minister, who previously was responsible for a large infrastructure operator, wishes to continue to exercise authority over the sector through a sector-specific regulatory agency, the undesirability of the situation is obvious. Undue political interference by a Minister may be precluded by breaking the direct link between the Ministry and the regulatory agency. The least adversarial solution is to create a multisector regulatory agency.

Multisector agencies rest on assumptions of economies of regulation: that it is more cost-effective to regulate two or more sectors through one agency than to regulate them through separate agencies, i.e., economies of regulation relating to the assumption that public hearings, cost studies etc., are substitutable across sectors. Economies of regulation can also arise from commonalities in the objects of regulation (e.g., rights of way) and in the form of regulation (e.g., price caps). Moreover, by its very nature, a multisector agency would have to report to something other than a sector-defined ministry, which would be the legislature or the president's or prime minister's office, whereby it may be less susceptible to political pressure than an agency responsible for a single sector.

This new breed of regulatory agency must exist with substantial operational and financial autonomy. This will enable them to operate efficiently in an environment characterized by growing technical complexity, naturally leading to a rise in the number of interested stakeholders; arbitrary conflicts and potential clash of interest with other government bodies; and, worst of all, the risk of regulatory capture, since the agencies repeatedly interact with a reduced number of private firms, which is usually characteristic of all sectors at the time regulatory bodies are established, i. e., at the time of liberalization of the sector. Clear separation of the policy setting function and the implementation function, with political accountability for the former, and administrative/legal accountability for the latter, is a basic element of sound public administration and must be incorporated strongly into these new regulatory agencies.

> It is only through detailed analysis of the economic and political implications of the privatization experiences that we may obtain insights about the role different institutions have in determining the performance of the regulatory and ownership reforms (Spiller 1993: 388).

Even though the level of analysis espoused by Spiller is beyond the scope of this study, the following two main objectives will be dealt with:

- an economic evaluation of the regulation of the telecommunications sector, i.e., the sector-specific Telecommunications Regulatory Commission of Sri Lanka (TRC), its proposed successor the Information and Communications Commission of Sri Lanka (ICCSL), a multisector agency, as well as the likely effects of the Public Utilities Commission of Sri Lanka (PUCSL);

- analysis of the main challenges facing these agencies, thereby highlighting the lessons for other industries in the process of coming under the purview of one of the three proposed multisector regulatory agencies

By addressing the above mentioned two objectives, the sections to follow will provide an outline description and review of the main characteristics of the existing regulatory system, the main processes and procedures by which policies and regulations are planned and existing provisions, both formal and informal, and practices relating to Regulatory Impact Assessment (RIA) within Sri Lanka.

The perspective in this study is informed by the idea that political institutions interact with regulatory processes and economic conditions in exacerbating or ameliorating the potential for administrative expropriation or manipulation, and hence determining the utilities' economic performance. Furthermore, for the evaluation purposes summarized above, the definition of RIA used is mentioned below, which is sufficiently broad so as not to restrict the analysis of this article for the Sri Lankan situation.

> Regulatory Impact Assessment (RIA) is used to assess the likely consequences of proposed regulation, and the actual consequences of existing regulations, to assist those engaged in planning, approving and implementing improvements to regulatory systems (Norman Lee 2002: 3).

The next section outlines the methodology and limitations of the study. The third and fourth sections elaborate and analyze the proposed and already existing regulatory structures for the PUCSL and the TRC, with significant importance given to the environments in which they have to function. The final section draws out the broad conclusions, challenges and options available to the country to develop and improve the regulatory system.

Methodology and Limitations

This study was mainly researched through a series of both formal and informal interviews with a number of key individuals from the regulatory commissions under review as well as other key stakeholders. The

questionnaire used in the formal interview is laid out in Annex 1, along with the covering note used. Other documents annexed are OECD Best Practice Guidelines as Annex 3 and A Proposed Framework for applying RIA as Annex 4.

Even though much information, within certain limits, was elicited by the questionnaire, its structure over constrained the boundaries of the responses. Given the undeniable complexities of undertaking such a review of regulation in a country better known for its lack of transparency, the questionnaire's reliance on purely "Yes/No/Do not know" answers for the majority of its substance greatly overestimated, and sometimes underestimated, the extent of RIA in Sri Lanka. For example, responses to section 2 of the questionnaire greatly overstate the extent of public consultation. There was considerable consultation with stakeholders carried out at the stage of regulationmaking but conveying these decisions to the general public for further discussion is grossly under par by any standards. Another drawback can be seen in the lack of the questionnaire's inquiry into the perceived effectiveness of the consultation process, the answer to which is that its perceived effectiveness is actually quite low.

One other area that severely constrained the scope of the questionnaire, more so than the point raised in the preceding discussion, was the poor definition of "Regulatory Impact Assessment" used in the introduction to the questionnaire, which is:

> *Regulatory Impact Assessment*: systematic process for assessing the significant impacts (positive and negative) of a regulatory measure. The assessment may relate to likely impacts of a regulatory proposal (ex ante) or the actual impacts of an existing regulatory measure (ex post).

A definition as constrained as this, especially when compared to the definition used earlier by Norman Lee, did little to make the respondents aware of the breadth of activities that come under the heading of RIA. It is true that systematic processes are not used in Sri Lanka, but if not for the intervention of the interviewers who had to explain the breadth of RIA—that is to say that RIA does not merely have to follow a systematic process to be defined as such—the majority of the questions would have been left unanswered following a negative response to the very first question which inquires whether RIA is used locally.

Since the aim of the study did not require the analysis to venture into the realm of quantitative exposition of data, the usual problem of its paucity was not encountered. However, as is the case with all forms of information collection in Sri Lanka, a recurrent feature is the general unwillingness on the part of various stakeholders, in this case the regulators mainly, to divulge

information central to a proper evaluation of the processes and decisions of the bodies under review.

Regulatory Environment in Sri Lanka

Public policy in Sri Lanka is the joint responsibility of the executive and the legislative branches of government with the directive principles of state policy being specified in the constitution. In practice however, the fundamental principles of good governance are seldom adhered to, with the checks and balance mechanism built into the executive-legislative structures being undermined by short-term partisan politics. The permeation of disruptive politics into the policymaking process has intensified more recently with the chief executive (the president) and the legislature coming from different political parties. Moreover, even when the executive and the legislative bodies have been from the same political party, the electoral cycle has prompted ad hoc policies reflecting the incentive to maximize narrow, short-term political interests.

Regulatory principles are laid out in the specific legislation pertaining to a particular sector while policy, which currently exists in a structured format only in the telecommunications sector, though now suspended, is developed by the government in response to sector needs. In reality, there has been no consistent policy governing the regulatory process, with privatization and rules-based regulation being handled in an arbitrary and piecemeal fashion in response to a particular sector need or as dictated by political economy priorities at a given time.

The regulatory environment of Sri Lanka has been severely affected by this lack of a transparent published policy document promoting government-wide regulatory reform or regulatory quality improvement. Even though as mentioned earlier, there exists a special unit—PIPU—to deal with competition and regulation issues, which was initiated as a sunset entity at the time of the change of government in 2001, there is no explicit policy regarding regulatory reform. Without the proper initiative originating explicitly from the highest echelons of the political hierarchy, there is hardly any chance of significant changes taking place within the current system, except through conditions imposed by international donor agencies.[1]

Following the absence of regulation policies, the basic problem that plagues regulation in this country is the lack of any systematic process underlying the values and procedures that the agencies aim to carry out. For example, the relevant agency or industry-specific legislation only recommends using consultation processes. While some degree of flexibility is vital to the functioning of the agency, this provision is too vague and leaves too much

leeway in the hands of the commissioner, thus removing any possibility of making the process systematic and further worsening the problems of transparency and accountability.

Along a similar vein, it should be noted that the formulation and analysis of regulatory options is relegated to a purely consultative process which ignores the use of empirical methods, in particular a cost-benefit analysis. Given the unchecked poor governance that has saturated every stratum of the state, this completely throws open the entire playing field to easy capture by interested parties. Resource constraints, as well as time considerations, are constantly cited as reasons for not using quantitative methods in weighing the options of regulation. However, with the room that this leaves for capture by various stakeholders, insinuations into the underlying reasons border on the understanding that room for regulatory capture has been worked into the system.

Furthermore, consultation is carried out extensively only at the stage of formulating regulation, but very sparingly as a means of informing the public, or to elicit opinions from them. Experience has shown that public consultation only occurs after detailed proposals have been drafted, thereby almost completely negating the potential benefits of the consultation process. Worse still is the ambiguity that envelops the entire process of consultation since the views of participants, at any stage of consultation, are not required by law to be made public. Overall, there is an ominous lack of transparency that greatly affects the accountability and thereby the legitimacy of the regulatory agencies.

It goes without saying that the regulatory process suffers from poor management, with respect to balancing producer and consumer interests to ensure sufficient incentives for private investment, and to address price and access issues, especially with the intensification of the public-private partnership approach in the reform process. The privatization of the incumbent telecommunications operator (Sri Lanka Telecom) in 1997 is ample proof of the poor management of the regulatory process in Sri Lanka. The operator's interests were ensconced in the privatization contract at the expense of the customers, who had to put up with high tariffs for many years, with some reprieve only coming now in the form of the last of a set of tariff rebalancing allowances granted to Sri Lanka Telecom Limited (SLTL).

The regulatory structure and the composition of the regulatory body itself thus become critical to the evolution of competition in the industry. The regulatory body can either aggressively pursue procompetitive policies or it can entrench the market power of the new private firm. If those who use their control over the state and the privatization process to extract rents can also control the composition and mandate of the regulatory body, there is a

double dividend from the process: privatization is all the more privately profitable for politicians if it is followed by anticompetitive regulations. This suggests a motive for, and an explanation of, the reasons why governments, apparently committed to pursuing quite radical market-friendly policies, shift their position from pro- to anticompetition in privatized industries—a scenario which epitomizes the Sri Lankan experience up to now.

While the regulatory task of balancing conflicting stakeholder interests is difficult, even under the best of circumstances, the politicization of the regulatory process makes the regulatory authority more vulnerable to capture by particular players in the industry, and casts doubts on its impartiality. Of particular importance, which must be kept constantly at the forefront of this study, are the problems that affect the agencies due to the overall nonconducive political atmosphere prevalent in the country, owing to the chief executive and legislature coming from different parties as well as the prominent vagaries of the political business cycle. Additionally, it is important to grasp that, if one uses the "Performance criteria for a RIA system" (Deighton-Smith 1997: 213), the only conclusion that follows is that RIA is not applied in Sri Lanka at any level, neither macro nor micro, and definitely not at any stage of the regulation procedure. And, where some semblance does exist, it is usually counterproductive and merely an attempt to indicate that there are some measures of transparency and accountability being held up—a facade in every possible way.

Analysis of the PUCSL and the TRC

Many of the issues that surfaced during the interviews as well as the answers to the questionnaires are not sector-specific, and thereby indicative of the problems that effective regulation faces in Sri Lanka. These issues shall be dealt with now.

The PUCSL was established with the aim of assuming the powers envisaged for the electricity and water agencies and now the petroleum regulatory agency, with sufficient flexibility to add on other utilities as the reform process progresses. There is currently some discussion pertaining to the possible inclusion of the railway sector under the PUCSL. The bus sector was excluded from the PUCSL supposedly due to the complex constitutional issues affecting the sector, which would have held up the entire functioning of the agency due to various legal constrictions.

The proposed multisector agency for telecommunication, broadcasting and related communication industries is the ICCSL. The breadth of its duties will be covered later in this section. However, at this juncture it is important to mention the incumbent regulator, the TRC, for the telecommunication

sector and later on progress to the possible effects of the transformation of this agency into the ICCSL.

Legislation was introduced in 1991, by way of the Sri Lanka Telecommunications Act No. 25 and amended in 1996 (Sri Lanka Telecommunications [Amendment] Act No. 27 of 1996), which converted the Office of the Director General of Telecommunications (ODGT) to the TRC. The single-person authority was replaced by a five-member Commission comprised of three part-time members, with security of tenure, and two *ex-officio* members. The part-time members were drawn from the fields of law, finance, and management; the two ex-officio members were the Secretary of the Ministry, serving as Chairman, and the Director General of Telecommunications, serving as the Chief Executive Officer of the Commission.

The ODGT and the TRC both highlight the plight of regulation in Sri Lanka. The seemingly obvious conflict of interest and the substantial opportunities for capture were incorporated into the structure of both agencies. While the replacement of a single member regulatory entity with a diversified group of Commissioners appointed by the line Minister from the fields of law, finance and management was a progressive measure, the independence of the TRC was severely compromised by the appointment of the Secretary to the Ministry as the ex-officio Chairman of the Commission.

The impetus for telecommunications reform, as in other infrastructure industries, arose from the recognition that the benefits of policy liberalization in terms of export growth and attraction of foreign investment could only be realized if adequate infrastructure services were available. Furthermore, Sri Lanka is a signatory to the World Trade Organization (WTO) Regulatory Reference Paper that commits it to ensure that interconnection with a major supplier will be provided on non-discriminatory terms, in a timely fashion, and at cost-oriented rates that are transparent and sufficiently unbundled, each one being extremely relevant to the development of a competitive market in this sector. But implementation has proved difficult—the intricacies of which shall be elaborated on shortly, such as favoritism bestowed on the incumbent operator SLTL.

The degree of independence that these agencies and their officials have from government (and from special interest groups) after appointment is pertinent to the question at hand. Some useful indicators in this regard are the nature of the service contract for Commissioners (e.g., part time/full time appointees, specified term of contract etc.), mechanisms for accountability (e.g., review by legislature, judicial review, regulatory impact assessment, consultative processes before reaching a decision etc.) and financial autonomy (Knight-John 2002). All of these shall be dealt with in the separate sections that follow for each of the two regulatory agencies under consideration.

One area where there has been a substantial improvement through recent legislation is the degree of institutional coordination between respective agencies, which was non-existent in previous legislation and therein detrimental to their efficacy. There are to be written memoranda between the multisector commissions mentioned in this study and the Central Environmental Authority, the Urban Development Authority and any other such regulatory body(ies) as designated by the Minister.[2] These memoranda would secure the cooperation and exchange of information between the Commissions and each of the other bodies, as well as secure consistency in the treatment of matters which come within the scope of the functions of the Commissions and each of the other bodies. However, given the political infighting, the resulting turf wars and the general saturation with poor governance, a memorandum of understanding will not suffice and its real benefits may only be realized through proper implementation.

Further areas of improvement of the attitude towards the requirements of sound regulatory institutions can be seen through the developments over the last year in the obviously drastic changes being incorporated in new legislation, pertaining to the PUCSL and the ICCSL. One prominent example of this takes shape in the involvement of the Constitutional Council in the appointment process of the commissioners of the PUCSL and proposed ICCSL. The specifics of this and other such improvements shall be outlined in their respective sections.

Notwithstanding that the issues relating to the evaluation through RIA are far more expansively dealt with in relation to the TRC, due to the wealth of literature available on the subject, the section on the PUCSL precedes it because certain developments which originated in legislation pertaining to the PUCSL have now been incorporated into the future of the TRC, i.e., the ICCSL.

However, it is important to note that, given the extent of globalization and the trend towards the confluence of best practice adoption with respect to country specifics, it is unbelievable that there is an absolute lack of awareness of the Organization for Economic Cooperation and Development (OECD) Best Practice Guidelines (Annex 3) as set out in the OECD Report on Regulatory Reform (1997).

A summary of the agencies under review is presented in Tables 1 to 4.

Public Utilities Commission of Sri Lanka (PUCSL)

State-owned enterprises are the main (and sometimes only) provider of the services in the sectors that will come under the purview of the PUCSL,

Table 1. Regulatory Agencies: Summary Data

	PUCSL	*TRC*	*ICCSL (proposed)*
Founding legal act	PUCSL Act No. 35 of 2002	Sri Lanka Telecommunications Act No. 25 of 1991, as amended by the Sri Lanka Telecommunications (amendment) Act No. 27 of 1996	ICCSL Bill, Discussion Draft of 2003
Inception	March 2003	February 1998	-
Headquarters	Colombo	Colombo	-
Regional offices	No	No	-
Number of directors	Five Commissioners + Director General	Secretary to the Ministry (ex-officio Chairman), Director General + three Commissioners	5 Commissioners + Director General
Criteria for appointment as Director General	Person with ability and integrity and having shown a capacity to address problems relating to engineering, law, economics, business management, accountancy or administration	Discretion of the Minister	Person with ability and integrity and has shown a capacity to address problems in communications, engineering, law, economics, business management, finance, accountancy, administration or consumer affairs.
Number of employees	-	204	-
Annual budget	-	Rupees 480 million	-
Source of funding	Levies charged under industry Acts and fees received for the grant or renewal of licenses under those acts	Licensing fees	Levies charged under the Act (proposed)

Source: authors' elaboration

thus the government's direct role as investor and indirect role as regulator give rise to conflict of interest. In addition, directives of the minister, despite being limited in the new legislation, must be accommodated by the agency. Direct interference of a particular minister is limited from the policy angle since policy guidelines must originate from the Cabinet of Ministers. But this

Table 2. Regulatory Rational and Agency Powers

	PUCSL	*TRCSL*	*ICCSL*
Sector characteristics:			
Type	State-owned enterprises and markets	Markets	Markets
Extent of monopoly	Vertically-integrated state monopoly in generation, transmission and distribution	Favor new entrants through regulatory asymmetry	Favor new entrants through regulatory asymmetry
Extent of competition	Varied	Varied and partially competitive	Varied and partially competitive
Granting of licenses and concessions	Yes	Yes	Yes
Tariff setting powers	Industry specific	In consultation with relevant Minister. So far based on a price-cap system.	In consultation with relevant Minister
Contractual objectives and requirements of licensees:			
Quality standards	Yes	Yes	Yes
Investment targets	Yes	Yes, but poorly enforced	Yes
Access to essential facility	Industry specific	Yes, but poorly enforced	Yes
Universalization	Industry specific	Yes, but poorly enforced	Yes
Review of anticompetitive conduct	Broadly covers any anticompetitive practices, such as collusion to exclude entry, damage competitors or to set prices, as well as abuse of dominant position and anticompetitive acquisition.	Yes, but no explicit means or procedures of review	Broadly covers any anticompetitive practices, such as collusion to exclude entry, damage competitors or to set prices, as well as abuse of dominant position and anticompetitive acquisition.

Source: Authors' elaboration.

proactive measure is compromised under section 40 of the PUCSL Act, No. 35 of 2002:[3]

> 40. Adjustment of Commission to make rules
> The Minister, by Order published in the Gazette, may make such provisions, not inconsistent with the provisions of this Act, as he may deem necessary with a view to providing for any unforeseen or special circumstances, or to determining or adjusting any question or matter, for the determination or adjustment of which no provision or no effective provision is made in this Act.

Though the safeguard of the order having to be gazetted is praiseworthy, it is hard to imagine the necessity of such a section since the technicalities of the issues involved are undoubtedly beyond the scope of the relevant minister. Thus, this section unnecessarily allows ministerial interference in the

Table 3. Formal Safeguards of Regulatory Agencies

	PUCSL	*TRCSL*	*ICCSL*
Legal mandate (freedom from ministerial control)	Yes	No	Yes
Criteria for appointment of commissioners	At least three of the members must be qualified in engineering, law, or management. Conflict of interest rules are specified.	Secretary to the Minister, who shall be Chairman. Other members must be qualified in law, finance or management. There are no conflict of interest rules.	At least three of the members must be qualified in engineering, law, or management. Conflict of interest rules are specified.
Appointment process	Directive of the Minister following approval of the Constitutional Council	Solely on the directive of the Minister	Directive of the Minister following approval of the Constitutional Council
Staggered terms	Yes	No	Yes
Length of mandate	Five years	Five years	Five years
Terms of removal	Based on grounds of diminished financial or mental capacity or a failure to discharge duties or disqualification to be a member. Requires parliamentary approval.	At the discretion of the Minister.	Based on grounds of diminished financial or mental capacity or a failure to discharge duties or disqualification to be a member. Requires parliamentary approval.
Quarantine	For three years a member of the commission cannot acquire, hold or maintain, directly or indirectly any office, employment, consultancy arrangement or business in Sri Lanka where he/she may be liable to use/disclose information acquired by him/her in the existence, performance and discharge of the powers, duties and functions of the commission.		For three years a member of the commission cannot acquire, hold or maintain, directly or indirectly any office, employment, consultancy arrangement or business in Sri Lanka where he/she may be liable to use/disclose information acquired by him/her in the existence, performance and discharge of the powers, duties and functions of the commission.
Exemption from civil service salary rules	Yes	Yes	Yes

Source: Authors' elaboration.

Table 4. Accountability of Regulatory Agencies

	PUCSL	*TRCSL*	*ICCSL*
Transparency:			
Open desicionmaking	No, consultation is not mandatory	No, consultation is not mandatory	No, consultation is not mandatory
Publication of proceedings	Not mandatory	Not mandatory	Not mandatory
Justification of decisions	Yes	No	Yes, if initiated by the relevant Minister
Consultative/ advisory boards	Yes, when required	Yes, when required	Yes, when required
Appeal procedures	Application to agency, forwarded to Court of Appeals	Application to agency, forwarded to Court of Appeals	Application to agency, forwarded to Court of Appeals
Scrutiny of budget	No	No	Yes
Scrutiny of conduct	Yes	No	Yes

Source: Authors' elaboration.

activities of the PUCSL, thereby jeopardizing the possibility of impartial rulings.

Indicative of the lackadaisical efforts of the regulators in Sri Lanka in general, and the PUCSL specifically, is the absence of the regulatory manual. Although necessitated by the PUCSL Act to be completed within six months of the establishment of the commission, the manual still has not been drafted, although it has been more than four months since the agency's inception. Furthermore, the drafting of the manual is to be outsourced to a foreign consultancy firm, highlighting the lack of local expertise. But more important are the potential losses, economic and otherwise, if the proposed regulatory system is poorly geared to the Sri Lankan context. While it is understood that there is no choice except to outsource the drafting of the regulatory manual, what is most important to note at this juncture, is the inefficiency of the PUCSL in handling this matter. With very little time left to meet its deadline, the manual that will come into effect in September will be poorly geared to answer the needs of the country and merely be adopted to comply with the stipulated deadline.[4] As for outsourcing the drafting of the manual, this too should come under scrutiny because the TRC went through a similar process a few years ago. Surely they could have been consulted by the PUCSL to build upon the knowledge already gained through the consultations carried out at that time.[5]

Since no form of RIA is required by the Act governing the PUCSL, or any other Act for that matter, in addition to the fact that the regulatory manual has not even reached the drafting stage, the answers elicited from the PUCSL for the questionnaire may not actually represent the eventual functioning of the agency but merely the views of a handful of individuals at this time.

However, the PUCSL Act No. 35 of 2002, does have some inclination towards RIA practices:

> Part IV – Objectives, Powers and Functions
> 14. (2) ...the commission shall exercise, perform and discharge the powers, functions and duties..., in a manner which it considers is best calculated:
> (f) to benchmark, where feasible, the utilities services as against international standards.

Though this points towards a form of ex post RIA, the decision to carry it out is still in the hands of the Commissioner, thus there is no endorsement of a systematic process. Furthermore, international benchmarking is actually rejected by RIA, which is based more on own practice, but with some view to the "Best Practice" guidelines of OECD countries (see Annex 3). Thus, this initiative is actually a move in the wrong direction. Benchmarking should not be viewed as an end to the need for impact assessment, either ex ante or ex post. Choosing appropriate standards, and identifying enforcement issues, are some of the inherent problems of benchmarking. Once cost-benefit analyses are opted in favor of benchmarking, a serious problem that arises is the misallocation of funds due to misconstrued priorities. For example, giving access to clean safe water to those currently deprived of such, may not require water connections being supplied to each and every house in a particular village, but merely the provision of a few stand pipes that can cost-effectively serve those deprived. A similar argument can be applied to the provision of communication services to particular areas. This is not to say that this is the best option, but only aims to indicate the need for a quantified cost-benefit analysis at various stages of the regulatory process.

Additionally, the nature of consultation recommended by law, albeit still at the discretion of the Commissioners, is outlined in the following extract from the Act:

> Functions of the commission
> 17. The commission shall, among other things:
> (b) Consult, to the extent the Commission considers appropriate, any person or groups who or which may be affected, or likely to be affected, by the decisions of the commission.

Although there is some indication that RIA methodology may be applied, the point of contention here is that it is a mere recommendation with no emphasis on the extent of consultation or the stages at which it should be

used. A similar clause exists in the draft legislation for the ICCSL. The flexibility afforded to the commission is understandably important to ensure the smooth and expedient functioning of the agency. However, this leeway is far in excess of that which can guarantee a systematic functioning of the agency. Thus, even if it is envisaged for the regulatory manual to address the issue of a systematic process, there is nothing to guide the structure of the system and unfortunately, it may purely turn out to be a reflection of the processes already in use with maybe only marginal improvements.

The regulatory procedures employed by the PUCSL may not be an improvement over any existing structure, but there has been an improvement of its independence through the inclusion of a clause laying out the terms of appointment for the commissioners. An important precedent established through the PUCSL is the involvement of the Constitutional Council (CC) in the appointment of commissioners—an attempt to move away from partisan politics and to add objectivity and independence to the regulatory process. Additionally, the commissioners are to be qualified in the fields of engineering, law and business management. Moreover, they are appointed on overlapping terms, cannot be removed without Parliamentary approval with specified reason, and are subject to conflict of interest rules. The Commissioners are to appoint a Director-General who will not have voting powers and therein create the separation of the proposal and disposal functions of the commission. All these set the stage for a significant level of legitimacy for the agency, through its actual and perceived independence. These provisions have been carried to the ICCSL Bill as well.

Specified in the PUCSL Act are activities that might be viewed as anticompetitive, such as abuse of dominant position, which is a significant improvement over previous and existing legislature pertaining to competition related issues where such definitions are not present.

The accountability and transparency of the PUCSL has been furthered on two fronts. The first can be seen through the financial autonomy granted to the agency, which will function through the use of a self-maintained fund accumulated by the collection of licensing fees, among others, in combination with the required submission of an annual book of accounts to be audited by the Auditor-General. Secondly, the Commission is also required to submit an annual report within three months after the end of each financial year, which shall be handed over to the Minister and thereafter placed before Parliament for scrutiny. These provisions are also major improvements over previous legislation for similar agencies.

The prognosis for the PUCSL is not all negative. But at this point in its life, so soon after its inception, one must be aware that it has to constantly fight off political capture from all sides and hopefully, find and then stay

along a path of good governance, with maximum adherence to transparency, thereby giving meaning to the avenues of accountability as ensconced in the PUCSL Act.

Before concluding this section, one issue of paramount importance that must be highlighted is the unsatisfactory level of consultation undertaken by the PIPU, the body in charge of setting up the PUCSL and drafting the industry acts, in the activities that it has been involved up to now. As pointed out earlier, consultation has mainly taken the form of using foreign consultants, which seems to be the source of the first set of problems outlined below. Not surprisingly, these problems are being averted through the involvement of Sri Lankans who are more than willing to aid the reform process.

Firstly, the industry acts already certified or still being drafted, are severely inconsistent with the Constitution of Sri Lanka, which clearly advocates and enforces the devolution of power to the local government bodies, as well as stipulates that these powers cannot be reduced or removed. The provisions in the Electricity Reform Act (No. 28 of 2002), the draft Water Services Reform Act and the draft Petroleum Reform Act are all in conflict with the Constitution by vesting certain powers in the PUCSL, which in effect, deprives the relevant local authorities of the power to carry out their functions. Probably, the most significant example of this problem is the centralization of licensing functions in the PUCSL, whereas such powers should be vested in the relevant local authorities, the omission of which deprives these bodies of their due revenue.

Also, without an explicitly detailed understanding between the PUCSL and the local authorities of the entire reform process in the form of public-private partnerships, the process could be halted in its tracks because of the need for local authority approval for all building permits and all other similar permits without which no infrastructure development can take place—issues which have not been taken into consideration up to now. During the drafting process, there appears to have been an absolute lack of awareness, on the part of both the foreign consultants and officials at the PIPU, of the existence of a number of institutions which could have both advised and resolved any problem arising from the clash of authority between the PUCSL and the local authorities. These include the Sri Lanka Institute of Local Governance and the Sri Lanka Institute of Development Administration.

Secondly, insufficient importance has been placed on certain aspects of the functions of the PUCSL within the electricity reform and water services acts. Specifically, there seems to be a skewed understanding of the intricacies of the sectors under reform. The reforms initiated by the Electricity Reform Act, for example, envisage a situation where the sector will be made up of a

competitive pool of generators, a monopsonist transmission company and a competitive pool of distributors. However, distributors are the only group subject to any form of penalty based on the idea that they are the only ones in direct contact with the end user and therefore any complaint must reflect a fault of theirs. This unfairly exonerates both the generation companies and the transmission company. Clearly, this grave oversight on the part of the regulators deserves immediate rectification. A similar situation has arisen with the draft Water Services Reform Act, where once again, there has been a desegregation of the distributors and the storage facilities (canals, rivers, reservoirs etc.) followed by faulting the distributors for any shortfall in service, both quality and access, both of which may result from problems well beyond the control of the distributors such as a drought.

The only conclusion that follows from the preceding discussion is that one of the main components lacking in the new wave of current regulation in Sri Lanka is the absence of a holistic approach which would have been the natural outcome if transparency was given preference over speed of implementation, which is exactly the opposite of what is happening there.

Telecommunications Regulatory Commission of Sri Lanka (TRC)

The TRC was expected to follow the broad objectives set out in a 1994 government telecommunications policy document. Its responsibilities included advising the government on the granting of licenses and on tariffs, pricing and subsidy policies; determining, in consultation with the Minister, tariffs and methods for calculating tariffs; approving interconnection charges where operators reach a mutual agreement on these charges and determine the charges in the absence of such agreement; functioning as the sole manager of the frequency spectrum; ensuring that operators comply with quality standards specified in the 1996 Act; achievement of universal service provision of an acceptable quality of service; and protecting consumer interests. It was also expected to approve the types of telecommunications equipment used by operators to ensure network compatibility.

The TRC is supposed to look at all the functions and activities relevant to the telecommunications sector and to check whether they comply with the statute and license requirements. The main focus of its monitoring includes adherence to the operator license conditions; implementation of conditions laid down in orders issued by the Commission; fulfillment of the directions of the Commission by the relevant parties; and violations of the provisions of the Telecommunications Act.

Under the existing legislation, the line Minister can issue "general or specific" directions with which the Commission must comply. Moreover, while

the TRC can recommend the issuing of telecommunication licenses to the Minister, he/she can reject these recommendations, with reasons, and give out licenses at his/her discretion. In the area of tariff control however, the TRC has more discretion with its mandate to determine tariffs, in consultation with the Minister.

One of the major problems that besets the TRC at the very outset was that the practice of hiring from state-owned enterprises did little to foster the development of independent and autonomous capacities within the regulatory body. The absorption of several former employees of the incumbent operator also led to the perception, among private investors, that the crux of the regulatory game was political issues, and not the creation of the economic incentives necessary to create a competitive market. Although the TRC did get an infusion of new blood in 1998, any benefit was short-lived because political interference over the next few years in favor of the incumbent greatly affected its effectiveness, and thereby its legitimacy in the public eye.

The TRC, as presently constituted, is in dire need of restructuring, but the current mismanagement and the over-recruitment of engineers will make the task of transforming the TRC exceptionally challenging. The organizational difficulties posed by its existence combined with the necessity of regulating cable and broadcast and the concern that one big regulatory agency, i.e., incorporating the TRC into the PUCSL, could pose a great risk in terms of regulatory failure, tipped the decision toward a convergence model. Thus, it was decided to create a new Commission, the ICCSL, which would have authority over telecommunication, Internet services, cable and broadcasting. However, the extensive reasoning based on economies of scope and industrial policy that usually underlies convergence regulation was not overtly present in the policy process. More weight was given to the problems of incorporating the TRC into the PUCSL rather than evaluating the actual benefits of creating a convergence agency to handle these sectors.

Considering the prevailing situation of telecommunications in Sri Lanka, the objective of regulation should be to promote:

- universal accessibility to basic telephone service at affordable prices; equitable treatment of subscribers in terms of service, irrespective of the operator providing it;
- opportunity for telephone companies to earn a reasonable return on their investments and to develop their networks in regional and remote areas while providing customers with efficient and good quality service;
- generation of healthy competition among telephone companies avoiding unfair and anticompetitive practices;

- development of networks and widespread availability of new technology and innovative services to respond to the needs of business and residential customers; and,

- facilitation of the introduction of new services and appropriate technologies to encourage growth and convergence of telecommunications, broadcasting and information technology in order to provide a better service to consumers (Ramasundara 2002: 83-84).

These objectives, though not explicitly stated, were clearly the ones which the TRC was committed to, through their overriding objectives of furthering competition and thereby the creation of a level playing field for all operators. However, the actual experience has been quite different with much favoritism being bestowed upon the incumbent operator for various reasons, with obvious detriment to the sector and the legitimacy of the TRC. The ICCSL Bill will, if passed in parliament, ameliorate the ambiguity concerning the actual functions of the regulatory body by explicitly outlining the functions that it will have to fulfill, as specified under Chapter IV Section 19 of the Bill.[6] This is a much needed step towards ensuring the transparency of the regulatory body.

The ICCSL Bill will also reduce the current confusion in the areas of information technology (IT), media, telecommunications and e-business. Policies are currently defined by individual ministries in charge of respective organizations. There appears to be no central body to coordinate policies related to this vital sector, which are interdependent in these converging areas. The ICCSL, once established, will be the one central organization to take control of the coordination of policies in these converging areas.

Prior to the introduction of competition into the telecom sector, service levels in the industry were fairly poor. Service level parameters such as fault clearing, call completion, dial tone delay and settlement of billing issues were far below acceptable levels during the monopoly period. However, there has been a tremendous improvement during the past six to seven years, i.e., after competition was introduced. Telephone density, for example, has increased more than fivefold from a value of less than one per 100 inhabitants to a value of over nine within this period. Other simple indicators such as quantity and quality of services, as well as financial results and productive efficiency, show across-the-board improvements. If the independence of the TRC were significantly higher, there is no doubt that the consumer would have derived more benefits through competitive prices, the one area where there has been dismal improvement. The current tariff system for national calls is indicative of a bias towards corporate customers—where lower end subscribers pay more for each call—but there has been a significant drop in international calling

charges from the beginning of this year, a drop in rates per call of approximately 66 percent.

Although the TRC had adequate powers to gather information from any operator for various reasons at its discretion, it lacked the officials with the required competency and experience to ascertain the precise information required in the correct formats, and frequency of obtaining them. This followed on into the problems of analyzing and using the information once received, for monitoring the performance of operators so that appropriate corrective actions on problems can be taken. Presently, different divisions of the TRC are seeking the same information in different formats. Information furnished is not properly analyzed and in most cases, no further action is taken (Ramasundara 2002). The ICCSL Bill has incorporated substantial widening of powers with regard to obtaining information from operators. This, combined with the possibility of employing highly qualified and capable staff due to new salary scales that will be comparable to the private sector, will ensure that the ICCSL will be at a distinct advantage in comparison to the TRC when it comes to discharging its duties.[7] The ICCSL will also be better equipped to enforce license conditions and penalties for violation thereof, where provisions to deal with such are explicitly stated in the Bill.

Given the history of the TRC where it has advocated improper and unilateral decisions without any proper basis, the nonaccountability of the TRC for its actions has been detrimental to sector development. The only remedy available to the affected parties is through legal action, where the resolution of a dispute could last indefinitely. In a dynamic industry like telecommunications, time is very important and thus it is unquestionable that any dispute must be resolved expeditiously. It is also undeniable that private sector investors need assurance of transparency and consistency in decisionmaking and therefore, it is critical to establish a legal framework for fair and consistent regulatory decisionmaking. However, the process of appeal has remained consistent among all regulatory bodies, existing and proposed, where disputes have to be settled through the Court of Appeal, which is a notoriously tedious and time consuming process. This reflects the need to strengthen the accountability and transparency of the agencies by means of check and balance on its activities throughout any given year, or at least at specified intervals.

Like the PUCSL, the TRC functions with a significant degree of financial autonomy. This has been addressed and improved in the ICCSL Bill, where the accountability and transparency of the proposed agency has been delineated along the lines similar to the PUCSL, i.e., through the functioning of an independent fund, submission of annual accounts for auditing as well as an annual report for scrutiny by the Minister and Parliament. One significant improvement over the PUCSL is the requirement of the ICCSL to submit a budget no later than 90 days before the start of a new financial year. This

budget will be subjected to Parliament approval, following which the agency is not allowed to exceed the approved budget by ten percent.

Like the PUCSL, the ICCSL also suffers from the possibility of political capture as well as the lack of any mandatory systematic process in regulating the sectors under its control. As mentioned previously, RIA is not enforced by law into the functioning of the ICCSL. The fact that RIA and the nonmandatory nature of public consultation are not required by law, makes the following observations quite pertinent. Based on the interviews and the administered questionnaires, there seems to be a significant contradictory and non-comprehensive understanding of the workings of the TRC by its officials. There is a substantial difference of views concerning the type and scope of regulation assessment carried out by the TRC. This extends even to a disagreement about whether social and environmental regulatory impacts should be assessed, as well as whether an assessment is carried out on the impacts of regulation on different segments of society. These contradictory opinions reflect the state of regulation in the country, with little or no overriding policy and therefore no systematic process to uphold.

Furthermore, the non-application of assessment procedures (RIA or otherwise) to all cases of regulation similarly indicates the lack of systematic processes in the regulation undertaken by the TRC. Currently, the only form of impact assessment is based on an analysis of prices and quality of service. As mentioned earlier, the current pricing system is unfavorable to the consumers who are mostly in need of affordable communication methods. But although there has been a significant improvement of the quality of service in the industry, this improvement is only concentrated in major cities, where the installation of new phones can take place within short hours. Rural areas still suffer from inadequate communication services. The measure taken by the TRC to alter this was a fine of US$80,000 to recent service providers who did not adhere to the required levels of penetration into underserved areas.[8] However, the fine was too low and the operators merely opted to pay the fine instead of investing in developing the communication infrastructure in these areas.

Nevertheless, there have been some major developments in the telecommunications sector over the last year. Two of these stand out, namely: a proper interconnection framework, and the open licensing policy for external gateway operators. In the latter, licenses are being issued to all who fulfill stated criteria, without numerical limit. A non-discriminatory interconnection framework is also being established that will allow all operators to function on a level playing field. Furthermore, given the ineffective previous attempt to increase investment in underserved areas, a fund, called the "Viswa Grama," will be set up which will channel a levy placed on each incoming international minute, to those service providers who begin serving the underserved areas. Other developments include a proposed

international short code auction, an investigation of the monopoly of undersea cables, the implementation of a "Calling-Party-Pays" regime for mobile phones and the completion of the numbering plan implementation which is transforming the current system into one based on a ten-digit number system.

As mentioned earlier, regulation formulation and assessment (if any) take place only through consultation and benchmarking. The same is true of the TRC, with no empirical analysis playing a part, which is obvious, given the fact that the fine set for not adhering to universalization rules was too low. It is also true of the TRC that the consultation process merely aims to fill the void created by the lack of the relevant expertise within the TRC, i.e., consultation is only extensively used at the point of regulationmaking. Public consultation is carried out but at a level that belies its actual purpose, which is merely to fulfill a requirement to keep the public informed and thereby maintain the facade of transparency. Public consultation is only initiated once detailed proposals have been made and even at this stage, the notification procedure is at the bare minimum, leaving most of the stakeholders unaware of developments in the regulation of the sector.

A further discussion of some of the answers elicited through the questionnaire is unfortunately unwarranted due to the significant differences that permeate the very essence of the answers. There was disagreement with regard to whether or not there are "explicit published policies promoting regulatory reform or regulatory quality improvement in specific sectors," and whether or not there is "a dedicated body (or bodies) responsible for encouraging and monitoring regulatory reform or regulatory quality in the national administration." There is also disagreement on whether or not RIA is applied to social regulation. However, a point that warrants mentioning is that there is complete agreement that costs and benefits of regulation are assessed, but never quantified.

Challenges and Options

Four main problems have contributed to the poor performance of regulation in Sri Lanka: (1) regulatory capture; (2) insufficient coordination between different agencies; (3) unclear definition of their respective competencies; and (4) inadequacies in the design of antitrust legislation.

These regulatory deficiencies are compounded over time, with no review or impact assessment mechanisms in place to evaluate regulatory strategies objectively, locate areas of weakness and rectify past mistakes. Given the manner in which policy is formulated and implemented in Sri Lanka, which maximizes rent-seeking opportunities or caters to narrow political interests, donor conditionality may be the only solution.

> To date, however, it does not appear that donor agencies have been particularly active in promoting better regulation through RIA. This contrasts with the heavy emphasis that these agencies have put on privatization and market liberalization and the establishment of government agencies to regulate newly privatized, monopoly markets. State regulation needs to be effective if it is to benefit developing countries by removing market failure and promoting sustainable development. RIA is a technique for improving the empirical basis for regulatory decisionmaking. When correctly applied, it systematically examines potential impacts arising from government regulation and communicates this information effectively (Kirkpatrick and Parker 2003: 17).

Either way, considerable improvements are being established for the overall benefit of the country, as outlined in this study. Each of the above mentioned inadequacies has been dealt with in the new legislation, not to the best possible extent, but with definite improvements over previous legislation, which should translate into a better era of regulation in Sri Lanka.

The efficacy of the multisector and convergence regulatory agencies in Sri Lanka depends on organizational design, proper recruitment of staff and good leadership. Only good legislation can provide the necessary conditions for efficacy. Furthermore, this is easily understood given that the TRC lost its legitimacy due to political interference which could be traced back to poor leadership on the part of the Commissioners and the Director-General. This unhappy experience will hopefully shape the evolution of the multisector agencies over the next few years, whereby much importance must be given to enhance the independence of the commissions.

Once set up, the best safeguard for independence is legitimacy. If a regulatory agency is accepted by most stakeholders and by the public as fairly and effectively fulfilling its mandate, it would be difficult to shut it down, get it to change direction, or otherwise manipulate it. Legitimacy is won by effective communication of the claims of expertise, transparency and commitment to the public interest (Samarajiva 2002). The formal safeguards are important, especially in the context of overall poor governance. However, they are inadequate by themselves. Active and continuing efforts to win and maintain legitimacy in the eyes of the stakeholders and the public are essential if the new regulatory agencies are to survive and prosper.

Even if a regulatory authority is established with the necessary jurisdiction, its effectiveness cannot be guaranteed. The lack of proper leadership, and well-qualified, skilled, competent and experienced staff in a regulatory body leads to the neglect of some of its key regulatory function, such as consumer protection, monitoring and maintenance of quality of service to customers, resolving interoperability issues, and enforcement of license conditions among others, giving rise to poor service level in the entire sector (Ramasundara 2002).

Of equal importance is the efficiency of the new agencies. There are problems of actually realizing the promised savings from the common supply of regulation to the different sectors. Unless several infrastructure sectors are reformed simultaneously, a multisector regulatory agency would not be created from scratch, but would have to be the result of merging several existing agencies. In the prevailing political and legal environment, it is not possible to dismiss employees in the course of such a merger (Samarajiva 2002). This would negate the realization of the hoped-for economies of regulation. In addition, a merger of two going concerns would create significant morale problems in the status- and turf-oriented Sri Lanka bureaucratic culture.

The only way to achieve economies of regulation through a multisector agency would be to staff the precursor agencies with contract employees and/ or to staff them at minimal levels. However, this "solution" would create weak and understaffed regulatory agencies at the very moment of transition from a monopoly to a liberalized environment when the actions of the regulatory agency are most crucial. Moreover, efficiency by itself should not be taken as a sole motivator for governing the actions of the commissions. Substantial public consultation and at least the proper dissemination of proposals should not be sidelined just to expedite the processes of regulation. In order for the regulatory authority to be effective, it should have a pool of competent professionals, with the necessary skills and knowledge to make informed, consistent and reliable judgments in the performance of their regulatory functions. Regulatory officials should also be able to stand firm, buffering political influences and pressures from interest groups.

To complement regulatory procedures in a welfare-enhancing way, three mechanisms restraining arbitrary administrative actions must be in place: a) substantive restraints on the discretion of the regulator; b) formal or informal constraints on changing the regulatory system; and c) institutions that enforce the above formal, substantive or procedural constraints (Levy and Spiller 1994). Given that the state is usually weak, combined with the prevalence of low remuneration scales among civil servants in both absolute and relative terms in comparison to the regulated firms, the adherence to these three mechanisms should be formulated around a commitment to meritocratic recruitment and competitive salaries, which also aids the process of recruiting and maintaining qualified staff. It is important that this has been realized in Sri Lanka and that such solutions have been incorporated in legislation for the multisector regulatory agencies.

Although this was a function of the TRC, the benefits were not forthcoming and have only been partially realized now, seemingly due to various pressures to perform, rather than any internal incentive. Such pressure could be seen from two fronts: first is the necessity to show some substantial achievements prior to the adoption of the ICCSL, and second,

government policies should significantly liberalize the sector. Hopefully, the regulatory mechanisms of the multisector agencies will not need similar external pressure to ensure that they function effectively.

Pressure from social interests, on the other hand, could decrease the quality of regulatory decisions by overemphasizing specifics that are not economically viable. But at the same time, too much insulation from societal pressures may do no good. Therefore, another question which remains to be answered is how to reconcile the desire to extend the scope of private enterprise in the economy with the need to ensure efficient planning of investment with sufficient consideration to expansion into underdeveloped areas.

Three implications emerge from the international experience of utmost relevance to the future of regulation in Sri Lanka. First, the success of the agencies in gaining autonomy and respect from the government, the regulated firms, and consumers, strengthens the regulatory environment. Second, this process takes time and learning-by-doing effects are sizeable. Third, as suggested by Levy and Spiller (1994), commitment can be developed even in what are *prima facie* problematic environments and without such commitment, long-term investment will not take place (Goldstein and Pires 2002). These observations are the "bringer of good tidings" for regulation in Sri Lanka. For, if we continue along the current path of multisector agencies with the necessary safeguards in place and working, the benefits due to consumers around the country will be forthcoming.

However, the situation is far from warranting complacency. Two indicators pointing towards the possibility of regulatory capture must be monitored. First, by examining firm-specific risk, i.e., that portion of the risk in investing that cannot be eliminated by portfolio diversification, and measures the higher return (and therefore cost of capital) required to become a shareholder in a set company (Alexander et al. 1996). Second, by comparing through event-studies, the stock-market returns for the regulated firms with general stock-market returns, to test the hypothesis that the regulatory package shows symptoms of capture by special interest groups (Dnes and Seaton 1999). These indicators should be taken into consideration at the time when annual reports are submitted to the minister, and thereby parliament, for scrutiny. Another option would be to make it mandatory for the regulators themselves to monitor these indicators with a significant proportion of their annual report given to the elucidation of these values.

Additionally, the regulatory body should not be allowed to run away from the issues. Being the regulator of the sector, it should be accountable and create an environment for consultations; provide correct interpretations of license conditions which are complex due to the nature of the technicalities

involved; make firm determinations wherever required; and take appropriate action for the enforcement of decisions. The absence of a proper regulatory mechanism leads to prolonged litigation among competitors, and due to the complex nature of these issues, the judicial system finds it extremely difficult to resolve them in time, which contributes to the detriment of the overall development of the sector (Ramasundara 2002).

As to the need for substantial continuous development for regulation in Sri Lanka, a self-explanatory definition of impact assessment is vital to the longevity and progress of the current reforms.

> Impact assessment is an information-based analytical approach to assess probable costs, consequences, and side effects of planned policy instruments (laws, regulations, etc.). It can be used to evaluate the real costs and consequences of policy instruments after they have been implemented. In either case, the results are used to improve the quality of policy decisions and policy instruments, such as laws, regulations, investment programs and public investments. Basically, it is a means to inform government choices: choices about policy instruments, about the design of a specific instrument, or about the need to change or discontinue an existing instrument (SIGMA 2001: 10)

The incorporation of such measures into the regulatory system will enhance the measures being established, as outlined in this article. Functioning in a similar capacity is the following checklist, which would greatly aid the actual processes of formulating and enforcing regulation in Sri Lanka.

OECD Regulatory Quality Checklist

- Is the problem, to be addressed, correctly defined?
- Is the government action justified to deal with this problem?
- Is regulation the best form of government action?
- Is there a legal basis for regulation?
- What is/are the appropriate level(s) of government for this action?
- Do the benefits of regulation justify the costs?
- Is the distribution of effects across society transparent?
- Is the regulation clear, consistent, comprehensible and accessible to users?
- Have all interested parties had the opportunity to present their views?
- How will compliance be achieved?

Source: OECD (1995)

Overall, it is plain to see that noteworthy steps are being taken to improve the regulatory system in Sri Lanka. The fact that the ICCSL Bill is

more extensive in its dealings with certain issues, such as the accountability of the agency, in comparison to the PUCSL Act, is indicative of the gains derived from learning-by-doing. Over the long term, enhancing policy coherence and credibility by returning decisionmaking powers to the regulatory agencies, consolidating the sources of rulemaking, and achieving higher coordination capabilities are all factors that cannot but be overstressed.

The challenge facing regulation in Sri Lanka is multifarious, not merely because of poor governance, but because of the lack of willingness on the part of certain individuals to break out of the mindsets that have governed regulation for so long in this country. They should be commended for trying to work within the given system, but without overhauling or at least pushing at the seams of the system, there can be no significant long-lasting change, which would transform regulation into a form needed to progressively adhere to its stated objectives. This is why RIA is vital to the development of regulation in this country. It will help push the boundaries well beyond that which is allowed today. From this understanding, the steps to advance are not easy as there is much to be done in terms of regulatory capacity building if RIA is to be operated systematically and effectively in Sri Lanka. But they are definable, and therefore can be followed.

The first barrier which must be broken is the mindset of the individuals involved in the actual processes of regulationmaking. Once this is done, the so called resource constraints will no longer be perceived as such and therefore RIA can be adopted in a format relevant to the Sri Lankan context. Thus, the need for capacity building, though obvious, is a requirement which must be addressed now. The need is not merely to improve capacity building in the country in adherence with RIA but to construct it from scratch. A series of seminars, similar to the ones conducted in the Philippines and Malaysia, is undoubtedly the only way to begin this process. Such seminars should be conducted in two levels. First, with the actual regulators to give them an understanding of the processes covered by RIA, and second, awareness of such should also be created among the stakeholders who stand to benefit from improved regulatory procedures, namely the relevant operators as well as consumer groups.

While the situation is much too premature to think about formulating a RIA framework for Sri Lanka, it is definitely the second stage of the transformation process. Admittedly, only when there has been a significant development through the proposed seminars will there be any meaningful discussion on this issue. However, if one were to wait until that point to formulate a framework, the momentum may be irreparably lost for the foreseeable future. Thus, this process must coincide with the seminars so that proposed frameworks can be at least discussed without too much gap between the discussions and the seminars. The best starting point seems to be the

framework included as Annex 4. To extensively quote the authors of that framework:

> In proposing a framework for the use of RIA in developing countries, an immediate choice exists between developing an approach that has a relatively narrow field of application, implying the need for multiple approaches to cover different fields or sectors, or one that is more comprehensive. While a comprehensive, integrated framework will be less finely tuned to the needs of specific countries or specific sectors e.g., environmental as against economic regulation, it is preferred because it has the potential to achieve wide application. From this generic framework, it should be possible to develop specific implementation frameworks more directly applicable to particular fields of regulation (Kirkpatrick and Parker 2003: 14).

Once this has taken place, the goals of development policy, such as achieving sustainable development and poverty reduction, which is normally understood to require long-run economic growth, environmental protection and social justice (UN 1997: 1), can become central to RIA in Sri Lanka. By placing an explicit heavy weighting on poverty reduction and skewing the assessment in favor of regulatory changes that assist the poor, RIA can become "pro-poor," a factor which though receiving some notice now has yet to become central to regulatory process, and thereby, help realize the goals of creating an environment conducive to private investment flows, equitable growth, and poverty reduction.

Endnotes

[1] However, this too does not seem to be forthcoming. See page 29 of this report.

[2] There is also provision for concurrent jurisdiction with the Consumer Affairs Authority on competition related matters.

[3] Available online at: http://www.pucsl.gov.lk/PUCSL.pdf

[4] At the time of writing there was some indication that the regulatory manual may only be fully functional two months after the stipulated deadline.

[5] The regulatory manual for the TRC never came into effect, with the consultants' report merely being filed away.

[6] Available online at: http://www.pucsl.gov.lk/iccsd.pdf

[7] The TRC did have a similar allowance to accommodate non-civil service salary scales. However, its perception among the stakeholders as merely another bureaucratic organization, deterred many professionals from joining its ranks

[8] "Underserved" is used in place of "rural" because there are legal connotations pertaining to the definition of rural areas, which can include urban areas as well–the definition of rural is merely a geographical one pertaining to the jurisdiction of a certain type of local government body. This problem is set to seriously jeopardize the functioning of the PUCSL due

to a clash of authority with the respective bodies that handle development issues at the local levels of the state.

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Annex 1

Regulatory Impact Assessment Questionnaire

Centre on Regulation and Competition
Institute for Development Policy and Management
University of Manchester, UK

1. Please return the completed questionnaire by 04th July 2003.

2. Definitions of key terms used in the questionnaire:

Regulation: refers to the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, orders and rules issued by all levels of government and by nongovernmental bodies to whom governments have delegated regulatory powers. Regulations fall into three main categories: economic regulations, social regulations and environmental regulations.

Regulatory Impact Assessment: systematic process for assessing the significant impacts (positive and negative) of a regulatory measure. The assessment may relate to likely impacts of a regulatory proposal (ex ante) or the actual impacts of an existing regulatory measure (ex post).

A Country covered by this questionnaire (please name your country):
.....

B Please name the regulatory department or agency for which you work and the type of regulation undertaken e.g. telecommunications, environment etc
.....
.....
.....

1 Assessment of Regulatory Impacts

1.1 Is RIA undertaken before a new regulation is adopted:

- in all cases? ( )
- in some cases? ( )
- never? ( )
- don't know? ( )

If 'in all cases' or 'some cases':

- is RIA required by law?

  Yes ( ) No ( ) Don't know ( )

- are there explicit, published guidelines or criteria for the selection of regulations requiring RIA?

  Yes ( ) No ( ) Don't know ( )

1.2 Is RIA applied in the following areas?:

- economic regulation

  Yes ( ) No ( ) Don't know ( )

- social regulation

  Yes ( ) No ( ) Don't know ( )

- environmental regulation

  Yes ( ) No ( ) Don't know ( )

1.3 What proportion of regulations in the following areas has been subject to RIA?:

	All	Most	Few	Don't know
economic regulations	( )	( )	( )	( )
social regulations	( )	( )	( )	( )
environmental regulations	( )	( )	( )	( )

1.4 Are there Guidelines on how RIA should be undertaken?

Yes ( ) No ( ) Don't know ( )

1.5 Where RIAs have been undertaken:

have they assessed the costs (only) of regulation?

Yes ( ) No ( ) Don't know ( )

- have they assessed the benefits and costs of regulation?

  Yes ( ) No ( ) Don't know ( )

- have they assessed the impacts (positive and negative) on different segments of society?

  Yes ( ) No ( ) Don't know ( )

1.6 Where benefits or costs are assessed are they quantified?

Not at all ( ) Sometimes ( ) Always ( ) Don't know ( )

1.6 Are RIA documents publicly available?

Yes ( ) No ( ) Don't know ( )

1.7 Is RIA used:

- to assess (ex ante) regulation proposals?

  Yes ( ) No ( ) Don't know ( )

- to evaluate (ex post) regulation outcomes?

  Yes ( ) No ( ) Don't know ( )

2 Consultation and Participation

2.1 Is public consultation a part of the process of making new regulations?
In all cases of proposed new regulations

Yes ( ) No ( ) Don't know ( )

In some cases of proposed regulations

If yes in some or all cases: Yes ( ) No ( ) Don't know ( )

- Is consultation required by law?

  Yes ( ) No ( ) Don't know ( )

- What forms of public consultation are used? (tick all that apply):

  - informal consultation ( )

- public notice and invitation to comment ( )
- public meeting ( )
- Don't know ( )

· At what stages in the regulatory process is consultation undertaken?:

- prior to outline proposals being made?

  Yes ( ) No ( ) Don't know ( )

- prior to detailed proposals being made?

  Yes ( ) No ( ) Don't know ( )

- after detailed proposals are made?

  Yes ( ) No ( ) Don't know ( )

· Are the views of participants in the consultation process made public?

Yes ( ) No ( ) Don't know ( )

· Please give recent examples below of where consultation has been used for proposed regulations

3 Overall Strategy for Regulatory Reform

3.1 Is there an explicit, published policy promoting government-wide regulatory reform or regulatory quality improvement?

Yes ( ) No ( ) Don't know ( )

If yes:

· does it establish explicit objectives of reform?

Yes ( ) No ( ) Don't know ( )

· does it set out explicit principles of good regulation?

Yes ( ) No ( ) Don't know ( )

In what year was the policy introduced _____

3.2 Are there explicit published policies promoting regulatory reform or regulatory quality improvement in specific sectors?

Yes ( ) No ( ) Don't know ( )

If yes:

- Have there been any independent regulators?

  Yes ( ) No ( ) Don't know ( )

  If yes, please specify in which sector(s)_____

3.3 Is there a dedicated body (or bodies) responsible for encouraging and monitoring regulatory reform or regulatory quality in the national administration?

Yes ( ) No ( ) Don't know ( )

If yes:

- Can this body(ies) conduct independent and expert analysis of regulatory impacts?

  Yes ( ) No ( ) Don't know ( )

- Does this body(ies) monitor progress made on reform by individual ministries?

  Yes ( ) No ( ) Don't know ( )

- Is this body routinely consulted as part of the process of developing new regulation?

  Yes ( ) No ( ) Don't know ( )

3.4 Is there a specific Minister/Ministry responsible for regulatory reform?

Yes ( ) No ( ) Don't know ( )

If yes:

- Which Minister/Ministry is responsible for regulatory reform?_____

3.5 Are you familiar with the OECD guidelines on RIA?

Yes ( ) No ( ) Don't know ( )

3.6 Is your country's approach to regulatory impact assessment modelled on the approach recommended by the OECD:

Yes ( ) No ( ) Don't know ( )

3.7 Is your approach to RIA modelled on any particular country's approach

Yes ( ) No ( ) Don't know ( )

If yes, which country .....

3.8 Is RIA used by regulators in the utilities sector (electricity, water, telecommunications, transport)

Yes ( ) No ( ) Don't know ( )

If yes, please state in which utilities .....
If yes, please identify how it is used
Ex ante (for proposed new regulations) ( )
Ex post (to assess the impact of regulations already introduced) ( )
Both ex ante and ex post ( )

4.0 Name and Address :.....
.....

This is required so that we can send you the results of our research. You may, however, wish to leave this blank for confidentiality reasons.

Annex 2

Completed Questionnaires

2.1: H.W.K Indrajith

2.2: Jayanat Herath

2.3: Susrutha Goonesekara

Annex 3

OECD 'Best Practices' Guidance

3.1 Good practices for improving the capacities of national administrations to assure high quality regulation

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a coordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation.

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels.
2. Establish explicit standards for regulatory quality and principles of regulatory decision making.
3. Build regulatory management capacities.

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis.
2. Systematic public consultation procedures with affected interests.
3. Using alternatives to regulation.
4. Improving regulatory co-ordination.

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS
(In addition to the strategies listed above)

1. Reviewing and updating existing regulations.
2. Reducing red tape and government formalities.

Source: OECD 1997a.

3.2 Checklist of regulatory quality techniques

Managing Regulatory Systems

- Establish a system for tracking and registering existing laws and regulations, and for planning future laws and regulations.
- Establish responsibility for improvement at the ministerial or prime minister's level.
- Establish a central oversight body.
- Establish a high-level advisory commission.

- Develop a standardized "checklist" for regulatory decisionmaking in the ministries.
- Adopt an administrative procedure law.
- Establish a system of regulatory analysis.
- Establish mechanisms for public consultation and participation.
- Conduct systematic reviews of existing regulations.
- Promote cultural change within bureaucracies.

Ensuring Public Consultation and Participation

- Publish an agenda listing the regulations being developed.
- Establish general requirements for public consultation.
- Establish notice and comment procedures.
- Establish public hearing procedures.
- Facilitate broad consultation through support of disadvantaged interests.
- Require that decisionmakers be informed of consultation results.
- Set up advisory groups.

Ensuring Legal and Technical Quality

- Clarify the authority to initiate laws and regulations.
- Establish standards of legality.
- Establish standards for quality of drafting.
- Evaluate the substantive content of regulations.
- Require implementation feasibility studies.
- Establish regulatory process standards.
- Establish centralized drafting, coordination, or review of legal texts.

Assessing Costs and Economic Effects

- Require impact analysis of the costs and benefits of proposed laws and regulations.
- Establish a central economic analysis unit.
- Establish an economic analysis capability in regulatory programs.
- Integrate economic analysis into the legislative and regulatory process.

Assessing Compliance and Implementation Requirements

- Include implementability and enforceability criteria in drafting directives for legal instruments.
- Develop systematic compliance strategies.
- Use an implementation assessment checklist.
- Require explicit parliamentary consideration and approval of resources required for implementation.
- Apply project planning and management techniques.

- Educate and involve the decisionmakers.
- Organize training sessions for ministry staff on implementation assessment.
- Strengthen common elements of regulatory system.
- Ease implementation problems by slowing the pace of new regulation.

Communicating and Codifying Laws

- Require that all legal requirements be comprehensible.
- Require that amendments to existing laws and rules specify the changes that are being made.
- Establish editorial review boards.
- Publish national gazettes.
- Prepare periodic codifications of laws and regulations.
- Establish public information offices.
- Establish intra-governmental workgroups.

Source: SIGMA 1994: 14-15.

3.3 Performance criteria for an RIA system

1. *Systematic*. RIA must be part of a larger system that supports core analytical requirements and ensures that the analysis is able to influence policy decisions.

2. *Empirical*. RIA must make maximum use, within cost constraints, of quantitative data and rigorous empirical methods. This will maximize objectivity and comparability.

3. *Consistent but flexible*. Analytical approaches must be broadly consistent to optimize overall results. However, analysts must retain sufficient flexibility to target scarce resources for the most important regulatory issues and fit the analysis to the issue at hand.

4. *Broadly applicable*. RIA should be applied to as wide a range of policy instruments as possible. It should not be possible to avoid RIA by using a different instrument.

5. *Transparent and consultative*. Extensive consultation should inform RIA. The results of RIA should, in turn, be widely available and the basis of decisions made clear.

6. *Timely*. RIA should be commenced early in policy development and its results made available in time to influence decisions before they are made.

7. *Responsive*. Effectiveness depends ultimately on how well decisionmakers apply the insights of RIA. This requires that RIA address issues that are practical and connected to the current policy debate.

8. *Practical*. RIA systems must not require infeasible resource commitments and must not impose unacceptable delays on decisionmaking.

Source: OECD 1997b: 213.

3.4 Getting maximum benefit from RIA: best practices

1. *Maximize political commitment to RIA*. Reform principles and the use of RIA should be endorsed at the highest levels of government. RIA should be supported by clear ministerial accountability for compliance.

2. *Allocate responsibilities for RIA program elements carefully*. Locating responsibility for RIA with regulators improves "ownership" and integration into decisionmaking. A central body is needed to oversee the RIA process and ensure consistency, credibility and quality. It needs adequate authority and skills to perform this function.

3. *Train the regulators*. Ensure that formal, properly designed programs exist to give regulators the skills required to do high quality RIA.

4. *Use a consistent but flexible analytical method*. The benefit/cost principle should be adopted for all regulations, but analytical methods can vary as long as RIA identifies and weighs all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued to maximize consistency.

5. *Develop and implement data collection strategies*. Data quality is essential to useful analysis. An explicit policy should clarify quality standards for acceptable data and suggest strategies for collecting high quality data at minimum cost within time constraints.

6. *Target RIA efforts*. Resources should be applied to those regulations where impacts are most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower level rules or Ministerial actions.

7. *Integrate RIA with the policy-making process, beginning as early as possible*. Regulators should see RIA insights as integral to policy decisions, rather than as an "added-on" requirement for external consumption.

8. *Communicate the results.* Policymakers are rarely analysts. Results of RIA must be communicated clearly with concrete implications and options explicitly identified. The use of a common format aids effective communication.

9. *Involve the public extensively.* Interest groups should be consulted widely and in a timely fashion. This is likely to mean a consultation process with a number of steps.

10. *Apply RIA to existing as well as new regulation.* RIA disciplines should also be applied to reviews of existing regulation.

Source: OECD 1997b: 215.

3.5 The 1996 Arrow principles: ten elements of high quality analysis

1. Each analysis contains a useful comparison of favorable and unfavorable effects of proposed regulation with

   (a) primary focus on estimates of overall benefits and costs, and
   (b) secondary focus on distributional consequences, that is, on

2. impacts on particular segments of society as well as on

   a) issues of equity within and across generations

3. The analysis relates these effects to those of practicable, alternative approaches, including more and less extensive requirements.

4. Scale and scope of analysis varies with the stakes involved and with the prospects that analysis can affect the regulatory outcomes.

5. Estimates of the regulatory cost stemming from any job or wage losses are based on whatever transition costs will be incurred from job switching, since regulation generally affects employment distribution across industries rather than total employment. In the rare cases where a particular regulation significantly affects total employment, regulatory cost estimates are of the net effect on workers, consumers and producers.

6. Emphasis is on incremental effects – effects expected relative to a clearly specified baseline, the situation likely in the absence of the regulation.

7. Effects are quantified to the extent practicable, using plausible ranges and best estimates reflecting expected values; any "margins of safety" are stated explicitly.

8. Qualitative factors are not subordinated to quantitative factors in situations where the former are recognized as being important, in which case they are fully characterized in the analysis. Potentially irreversible consequences are identified.

9. Analysis is subjected to external review, the extent of which varies with the importance of the decision. Such review may entail peer review conducted within government and/or by respected outside experts. Retrospective assessments of analyses should be undertaken periodically by independent researchers.

10. All analyses use the same common core set of assumptions such as the social discount rate, the value of reducing risks of accidents and premature death (expressed as number of life-years extended), and the value of other improvements in health. Where alternative values appear more suitable, the analyses indicate how outcomes differ from those that emerge using the common core values.

    a) Future benefits and costs are discounted to present values using a range of discount rates chosen to reflect how individuals trade off current for future consumption rather than the rates of return on private investment.

    b) Values used to monetize risk reductions are based on trade-offs that individuals can be observed making in voluntary transactions that yield small risk reductions at the expense of other amenities, goods or services.

11. A standard format is used to summarize each analysis, highlighting:

    a) the net present value of benefits and costs of both the preferred and the main alternative options,
    b) notable features of the stream of these benefits and costs,
    c) key assumptions employed, with a list of factors that have and have not been quantified, and
    d) incremental net benefits of each regulatory alternative.

Source: Arrow et al., 1996 quoted in OECD 1997: 126-127.

Annex 4

A Proposed Framework for Applying RIA

The 1997 OECD guidelines provide a basis for establishing this framework (OECD, 1997). These guidelines are now reformulated under the principles of (i) building an effective regulatory management system, (ii) improving the quality of new regulations, and (iii) upgrading the quality of existing regulations, to reflect the particular needs of developing economies.

The first step in providing a framework for RIA in a developing country involves building an effective regulatory management system. This requires:

1. Adopting regulatory reform policy at the highest political levels in developing countries. Reform principles and the use of RIA need to be endorsed at the highest levels of government. RIA should be supported by clear ministerial accountability for compliance, perhaps through the Prime Minister's department.

2. Establishing explicit standards for regulatory quality and principles of regulatory decisionmaking within government. It is important to allocate responsibilities for RIA program elements carefully. Delineating responsibility for RIA across regulators will improve "ownership" of the process and facilitate its integration into government decisionmaking. A central body within government is useful to act as champion of the RIA process (e.g. Prime Minister's office) and ensure consistency, credibility and quality at the departmental level. This body needs adequate authority and skills to perform this function successfully (hence the possible preference for the Prime Minister's Office).

3. Introducing effective training schemes in regulation theory and practice. It will be important to give regulators and relevant civil servants the skills required to undertake and appraise high quality RIA.

4. Introducing effective data collection processes. Data quality is essential and the framework should clarify data needs, quality standards for acceptable data and suggest strategies for collecting data at minimum cost and within the required time limits.

5. Instituting systems to monitor regulatory implementation. RIA should be integrated within the policymaking process, beginning as early as possible, so as to assist capacity building and the rollout of RIA across government; it should become an automatic part of the legislative process.

6. Clarifying the role of RIA in achieving sustainability and poverty reduction goals. The precise impact of RIA in terms of these goals and the trade-offs with other goals need to be stipulated.

The second step is to improve the quality of new regulations. To this end government will also need to institute:

1. Procedures to ensure that RIA is built into the process of regulatory evaluation, at the earliest possible stage in the design of important new regulations and proposed regulatory changes.

2. RIAs that take into account the public's views. Systematic public consultation procedures with affected interests should be introduced to ensure the widest possible input into regulatory decisionmaking. Interest groups should be consulted widely and in a timely fashion and treated evenhandedly.

3. Methods for assessing regulatory options, including not regulating. Resources should be concentrated on those regulations where the impacts are likely to be the most significant and where the prospects are best for altering regulatory outcomes. RIA should be applied to all significant policy proposals, whether implemented by law, lower level rules or Ministerial actions.

4. Systems to ensure improved regulatory coordination within government. The method adopted should include facilities for peer review within government, perhaps by a dedicated impact assessment bureau.

5. Regulators should see RIA as integral to policy decisions within government, rather than as an "add-on" requirement for external consumption or to meet donor requirements.

The third step is to *upgrade the quality of existing regulations*. This will be achieved by:

1. Systematically reviewing and updating existing regulations. RIA should be applied to reviews of existing as well as new regulations. The results of RIA must be communicated clearly with concrete implications and options explicitly identified to ensure transparency on the need for change. The use of a common format for RIA within government will aid effective communication.

2. Reducing red tape and government formalities. The benefit/cost principle should be adopted for all regulations, although analytical methods can vary as long as RIA identifies all significant positive and negative effects and integrates qualitative and quantitative analyses. Mandatory guidelines should be issued within government to maximize consistency of approach.