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Regulatory Impact Assessment: A Tool for Better Regulatory Governance in Sri Lanka?



INSTITUTE OF POLICY STUDIES

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List of Acronyms

ADB	-	Asian Development Bank
BTT	-	Business Turnover Tax
CAA	-	Consumer Affairs Authority
EGO	-	External Gateway Operator
EIA	-	Environmental Impact Assessment
EO	-	Executive Order
ESC	-	Economic Service Charge
FDI	-	Foreign Direct Investment
FTC	-	Fair Trading Commission
ILAC	-	Incoming Local Access Charge
IPS	-	Institute of Policy Studies
ITOL	-	International Telecommunications Operator Levy
M&As	-	Mergers and Acquisitions
NGO	-	Non Governmental Organization
OECD	-	Organization for Economic Cooperation and Development
PSTN	-	Public Switched Telephone Network
PUCSL	-	Public Utilities Commission of Sri Lanka
RIA	-	Regulatory Impact Assessment
SIA	-	Social Impact Assessment
SLTL	-	Sri Lanka Telecom Ltd.
TRCSL	-	Telecommunication Regulatory Commission of Sri Lanka
UDE	-	Economic Deregulation Unit
VAT	-	Value Added Tax

Foreword

This Working Paper is the outcome of work initiated over a year ago by the Institute of Policy Studies of Sri Lanka (IPS), with assistance from the Centre on Regulation and Competition, University of Manchester, UK, to explore the potential benefits of applying Regulatory Impact Assessment (RIA) in Sri Lanka. It has been developed by an informal working group convened by IPS following a two-day RIA workshop held in Colombo in June 2004, which was attended by senior figures from the government, private sector, non-government sector and media.

The Working Paper was developed in a consultative manner so as to reflect as far as possible the views of all the stakeholders in the regulatory space. In April this year, an interim version of this Paper was published on the IPS website, and comments thereon were solicited by newspaper advertisement (*Daily Mirror* of 20 April), and a news article on *Lanka Business Online* (posted on 21 April). On 5 May, a group of experts from regulator agencies, operators, the media and NGO sector were invited to participate in a consultation on the findings of the Interim Paper. The Interim Paper was revised taking into account some of the comments that were thus received.

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It should also be noted that the views expressed herein are those of the working group and do not necessarily reflect the views of the institutions that they are affiliated with.

Executive Summary

- A market-based economy would not always bring about maximum welfare to society due to inherent failures. This is where regulations come into the picture. A strong and independent regulatory structure balances the system. A good regulatory structure will protect consumers but will also serve investors by levelling the playing field.
- However, Sri Lanka has seen perfectly well-meaning regulations backfire in practice. This is because regulations have a ripple effect and tend to run up against other existing regulations and impact people and matters not meant to be on the receiving end of it. Therefore, enforcing regulations without a clear understanding of its effects can lead to unexpected results.
- This is where a tool called Regulatory Impact Assessment (RIA) can be used. RIA is a method to assess the significant impacts – both the positives and the negatives – of a regulatory measure. RIA can be applied to an existing regulation – to find out how it has already affected people – or to a proposed regulation – to get an understanding of who will be affected by the regulation and how it will affect them, if it is enforced.
- The advantages and disadvantages of a regulation are measured by comparing it to alternative options that would achieve the same end as the regulation in question. The range of alternatives includes non-regulatory methods and the possibility of not regulating at all. The best option is picked by discerning the impacts each one has on the different groups in society.
- An RIA will consider the full range of impacts – economic, social and environmental – of a regulatory proposal. Therefore, it provides a holistic framework to integrate multiple policy objectives. In this way, RIA promotes sensitivity to wider social and other implications instead of simply imposing regulations on society. It will also minimize the possibility of an adverse effect on vulnerable groups in society.
- RIA is also a tool of good governance because it uses public consultation to develop regulatory alternatives and to understand associated impacts. Public consultation enhances the transparency, accountability, consistency and participatory nature of the regulatory decision-making process while directly helping to improve the quality of the regulation.
- RIA can be introduced to Sri Lanka's regulatory structure through a suitable implementation framework. For this, RIA must be accepted by policymakers and regulators and needs to be backed by a strong institutional framework. RIA should be incrementally rolled out through the government to encompass regulatory decision-making at the central, provincial and local government levels.

- To institutionalize RIA, it is recommended to set up an RIA unit that has top-level government support. This unit will act as the focal point for the RIA process. The President's Office, Cabinet Office and Ministry of Finance are the preferred alternatives to locate the RIA unit in, to invest it with the necessary authority. The core function of the unit will be to establish standards for regulatory quality and principles of regulatory decision-making and to provide support to line ministries and regulatory agencies, which will carry out the RIAs. The unit may be constituted as a continuing entity, or it could be given a fixed term to accomplish its objectives, after which it could lapse.
- The other aspect relates to obtaining the commitment of the regulators to the RIA process and its underlying philosophy. One suggested approach is through training, which can be done by the RIA unit. Another approach is through undertaking pilot RIAs on selected regulations, whether existing and/or proposed. The advantage of pilot RIAs is that it would make the benefits of RIA readily apparent to the regulators. A pilot RIA would also help obtain broader support in favour of RIA from the government, regulated entities, media, and the grass roots. Therefore, this Paper concludes by making recommendations on a suitable pilot RIA as the next step in taking this process forward.

1. Introduction and Rationale

Punchi Singho was born in 1930 in a village in the Southern Province. In the 1960s, when he was an energetic young man, he was looking for a livelihood. He heard that the government had started *Govijanapada Viyaparaya*, an agricultural scheme, where the government provided lands and other inputs to cultivate in the Dry Zone. Punchi Singho decided to join this programme and was selected to go to the Ampara area.

The government provided him with a plot of land under an irrigation scheme, and he began cultivating paddy, and raised a family. Under this agricultural scheme, almost all the decisions were taken through the process of collective decision-making, with strong extension services provided by the government. Hence, farmers mainly faced only the risk of “Acts of God”, and not commercial risks such as when to harvest, whom to sell to, etc.

Society evolved as time went on, influenced by what was happening in the rest of the world. Though Punchi Singho’s son Siripala is continuing the cultivation, the money he now gets from the sale of paddy is not enough to improve life for his family. The government Paddy Marketing Board which purchased the paddy no longer exists, and their harvest has to be sold to a merchant. Siripala feels that the government does not have a consistent programme to back them. He himself has to be a commercial decision-maker. However, he finds his hands tied by regulations which were imposed on them in a different context. For example, he cannot switch to a more profitable crop without the approval of the Divisional Secretariat. As a result, Siripala decided to change the pattern of livelihood and take up a different employment.

Siripala wanted to borrow some money to start a self-employment enterprise. When he consulted the local Grama Niladhari about the title to his land, he found that the plot did not belong to him, but to the State. His father had been granted the possession of the land in terms of a permit issued under the Land Development Ordinance. Siripala found he could, however, mortgage the land, with the prior approval of the Government Agent. He would then have to convince the Government Agent as well as the Bank of his capacity to repay the money. In the course of this process he observed that many supporting documents were required in this regard, and it was difficult to find them.

Meanwhile, a foreign investor came to the area looking for a large extent of land, for mechanized farming of a produce intended to be sold in the international market. The investor asked the government to get together all the land parcels that had been distributed among people into one parcel, and come to an agreement with him for the entirety. With regard to the people’s livelihoods, the investor suggested an out-grower system. The government failed to clear the title of the distributed lands, and the investor left.

Finally, Siripala decided to leave everything there in the village, and go in search of work in the city of Colombo. He is now employed as an unskilled labourer at a construction site in Colombo. Where did it go wrong? Is this a result of Siripala’s own fault?

- 1.1 The above is a fictionalized narrative. However, it reflects real issues faced by the ordinary people in the country. Today we have a vast body of laws, rules and regulations, encompassing the economic, technical, social and environmental gamut, which effect on citizens and businesses. They are the result of various State interventions, over the years, to address failures caused by imperfect, incomplete or missing markets. By helping to redress such failures, regulations¹ play an important role in the attainment of poverty alleviation and economic growth.
- 1.2 A robust regulatory structure is also a preliminary requirement to maximize performance and welfare in society in a market-based economy. A proper regulatory structure would not only ensure benefits to the consumer, but would also provide a level playing field to investors. Though this country has progressed along the path of economic reforms, priority

Box 1
Economic Service Charge

The Economic Service Charge (ESC) was introduced in the Budget of 2004 as an advance against income tax, payable on turnover. It was implemented by the Finance Act, No. 11 of 2004, which came into force on 29 October 2004. According to the Act, qualifying persons and partnerships are liable to pay ESC on "liable turnover" in the relevant year of assessment, commencing from 1 April 2004. For entities liable to income tax at the normal rate, the prescribed ESC rate is 1% of turnover.

Therefore, what constitutes "turnover" is important in determining the ESC liability. The Finance Act defined it as the "total amount receivable, whether received or not, from every transaction entered into in that year of assessment in the course of trade, business, profession or vocation, carried on by such person or partnership", subject to certain adjustments for VAT, sale proceeds of fixed assets and bad debts written off.

The definition of turnover has had adverse repercussions on several sectors of the economy, casting doubt on the anticipated recovery of ESC against income tax for entities operating in these sectors. For example, sectors characterized by very high turnovers and disproportionately low profits such as the traditional export sector, plantations and distributors, are particularly affected. Another affected sector is that of commission agents, whose revenue is based on margin and face a similar blow when ESC is computed in terms of gross turnover. Thirdly affected are the leasing companies. The ESC computation does not distinguish receivables that include capital repayment, again resulting in a greater incidence of liability.

The broad rationale of ESC is to levy a tax for utilizing economic infrastructure of the country. Whilst this may be a sound rationale to introduce a direct tax on businesses, the above consequences have necessitated bringing changes to the law in addition to affected businesses having to undergo significant hardships until these changes come into operation.

¹ In the rest of this Working Paper, the term "regulation" will be used in a comprehensive sense to include as necessary all levels of primary legislation (laws, statutes), secondary legislation (by-laws, rules, orders and regulations), and any informal orders and rules deriving their authority from the State, which seek to control or influence the behaviour of individuals, firms and/or State entities.

Box 2**Liberalization of International Telecommunications**

In 2003, the Government with assistance from the Telecommunications Regulatory Commission of Sri Lanka (TRCSL) and the Public Interest Program Unit (PIPU) of the Ministry of Economic Reform, Science and Technology liberalized the international telecom market, which until 5 August 2002 was a monopoly of the incumbent Sri Lanka Telecom Ltd (SLTL). In furtherance of liberalizing the international market the Government took a decision to issue an unlimited number of External Gateway Operator (EGO) licences. Among the first to obtain the EGO licences were the six existing PSTN (Public Switched Telephone Network) operators (two fixed operators and four mobile operators). By January 2004, 32 EGO licences had been issued, paving the way for competition in this segment. The Interconnection Rules of 2003 were promulgated by TRCSL to facilitate interconnection between the PSTNs and the new entrants.

EGOs are required to pay an ITOL (International Telecommunication Operator Levy, formerly ILAC – Incoming Local Access Charge) of 0.09 USD per call minute terminated in Sri Lanka, to a Telecommunications Development Fund operated by the TRCSL. With the floor price of calls to Sri Lanka in the international market being between 0.07 – 0.09 USD, the high cost of ITOL provides an incentive to bypass the authorised international gateways. Any operator who does so has the advantage of accruing part of the ITOL towards its profit.

During the period of its monopoly, SLTL had been losing revenue from international services, because operators who were licensed to provide data transmission services were terminating and originating international traffic without authority. To address this issue in the liberalized scenario, the PSTN operators suggested measures to monitor international traffic and these were promulgated as the International Traffic By-Pass Control Rules of 2003. The experience with the By-Pass Control Rules, however, indicates that they have not been able to eradicate illegal bypass. While reliable figures are not available, it is estimated that despite the regulatory actions by the TRCSL, the current ongoing by-passing of international traffic amounts to a significant percentage of the international traffic terminated in Sri Lanka, with resultant loss of revenue to the government and the PSTN operators.

has not been given to implementing a well-structured, “independent” regulatory mechanism in the country. Regulations have often been implemented that had unintended adverse impacts, did not realize the anticipated benefits, or that became unnecessarily burdensome. The following boxes provide some illustrations.

- 1.3 The cases of unsatisfactory regulatory intervention can often be traced to the absence of a systematic approach to integrate **efficiency** and **equity** perspectives in the regulation-making process. Efficiency in this context may be defined as the allocation of scarce resources in the optimal manner to maximise returns, leading to improved economic growth. On the other hand, as empirical findings from around the world suggest, economic growth can be accompanied by increased inequality. Hence the importance of ensuring **equity** – which encompasses intragenerational equity (or pro-poor growth) and intergenerational equity (or the well-being of future generations), the two dimensions of sustainable development. Thus, there is an urgent need for a consistent systematic and holistic approach to regulatory decision-making.

Box 3

Monopolies and Mergers and Acquisitions Legislation

Competition policy is a tool used by governments to facilitate the process of competition, control the concentration of economic power and encourage innovation. The institutional framework for the enforcement of competition policy in Sri Lanka began with the formation of the Fair Trading Commission (FTC) set up under the FTC Act No. 1 of 1987. The FTC Act had several provisions to handle Monopolies and Mergers & Acquisitions (M&As). A monopoly was deemed to exist in the supply of goods or services to any particular market, if it was of a prescribed percentage of all such goods or services supplied in Sri Lanka. This market share test had also to be substantiated by a second test, determining that the monopoly was contrary to the “public interest”, before it could be prohibited under the law. The FTC did initiate a number of investigations on monopolies and mergers (altogether eight between 1995 and 2000), under these provisions. However, the competition regime underwent a significant change in March 2003, with the enactment of the Consumer Affairs Authority (CAA) Act No. 9 of 2003 that repealed the existing FTC Act.

The new CAA Act excluded the provisions on Monopolies and M&As, on the grounds that the competition authority’s physical and human resources were overstretched, and that specialist skills were required to deal with this issue. However, the real reasons are more likely to be found in the political economy factors relating to negotiations on the US-Sri Lanka free trade agreement, where the dropping of the monopolies and mergers clause in the competition legislation was offered up as a “sweetener” in exchange for duty free entry for Sri Lankan readymade garment exports. The decision was justified on the basis that a separate Monopolies and M&As Code would be enacted. However, this is yet to be done.

Presently, the “hole” in the current law regarding Monopolies and M&As may be utilized by firms to achieve dominant market positions, through either expansions or mergers. While this in itself is not harmful, it could give rise to abusive behaviour or unfair trade practices by dominant firms in the market. This could lower competition, leading to a loss of efficiency and higher prices, ultimately resulting in welfare losses for consumers. The repeal of the Monopolies and M&As clause should have, therefore, been subjected to an appropriate evaluation process before the current CAA Act was passed in Parliament. In the present climate, effective enforcement of competition law in Sri Lanka, without the necessary rules in place regarding monopolies and mergers, has become much more difficult.

- 1.4 The realization of the potential for regulations to bring about overall positive or negative results has engaged other countries – led by the industrialized OECD countries – in the search for ways to improve the quality of the regulatory decision-making process. This resulted in various tools being developed and promoted over time for the use of decision-makers. Examples that may be cited are risk analysis, cost effectiveness analysis, cost benefit analysis, compliance cost analysis, business impact analysis and fiscal impact analysis. While each of these techniques varies in scope, a common feature is that they focus on efficiency criteria and not on equity.

- 1.5 The technique which emerged to address this deficiency by bringing both efficiency and equity perspectives to bear on the regulatory decision-making process is what the literature terms regulatory impact assessment (or analysis) (RIA). RIA, like any other technique, is not a substitute for decision making, but is a powerful tool to improve the quality of regulatory governance.
- 1.6 RIA may broadly be described as **a process used to assess the likely consequences of proposed regulations, and the actual consequences of existing regulations, to assist those engaged in planning, approving and implementing improvements to regulatory systems** (Lee, 2002). The core of RIA is a systematic examination, using the best information available, of the positive and negative impacts of alternative methods (including the option of “don’t regulate”) of achieving an identified objective, and how these impacts are distributed among the different groups in society. The other key feature of RIA is the promotion of widespread consultation (including public consultation) in the decision-making process.
- 1.7 By explicitly making policymakers confront alternatives to achieving their objectives and the costs and benefits and distributional impacts of the alternatives, RIA provides a holistic framework to integrate the multiple objectives – economic, social and environmental – that are at the heart of the development debate. In this, RIA builds on and integrates existing impact assessment processes, such as environmental impact assessment (EIA) and social impact assessment (SIA), which have a more narrow focus. This helps to make the outcome of the decision-making process reflect the appropriate balance between efficiency and equity, in line with the development strategy of the government. Thus, RIA can be a tool of pro-poor growth.
- 1.8 Furthermore, the requirement to engage in public consultation as part of RIA – ideally at an early stage when regulatory options are first being considered – enriches both the process of decision-making and its outcome. The benefits of consultation include:
- Better decision quality by bringing in expert advice and opinion, and the views of affected stakeholders
 - Enhanced transparency, which reduces the risk of the process being controlled by one or a few dominant stakeholders
 - Improves coordination within and between government and stakeholders, thereby minimizing confusion and grey areas, and avoiding duplication or conflicting decisions
 - Promotes participatory decision making, which increases the commitment of interested stakeholders to the effectiveness of both the regulation in question and of the regulatory process

- Makes decision makers sensitive to the full range of impacts of their actions.

The cases where regulators in Sri Lanka have undertaken public consultations prior to introducing a regulation, despite the absence of a legal requirement to do so, illustrate some of the benefits that can be gained. One such case is described in Box 4.

Box 4
**Public Hearing on Improvement of Subscribers Bills and
Resolution of Billing-Related Disputes**

Considering the number of complaints received on various kinds of billing-related disputes, the Telecommunications Regulatory Commission of Sri Lanka (TRCSL) felt it necessary to make a regulatory intervention through public hearing as empowered to the TRCSL under Section 12 of the Sri Lanka Telecommunications Act, No. 25 of 1991.

A committee was appointed to inquire into the improvement of subscriber bills and the resolution of billing-related disputes in the fixed access telecommunications sector. In August 1998, the TRCSL called for submissions from the public through the news media. Over 450 written submissions were received in response. After studying these submissions, the committee invited over 40 members of the public, whose submissions were considered to be representative of public concerns, to elaborate upon their written submissions in person before the committee.

The fixed access operators were invited to respond to the submissions at the conclusion of the first phase of hearing. Having considered the information gathered in the first phase, the committee formulated and distributed a set of "issues" to all three fixed access operators. In the second phase of hearings evidence was heard from persons with expertise in matters related to billing and billing-related disputes. The fixed access operators were invited to present their positions at the conclusion of the second phase of hearing.

Based on the information elicited in the course of the hearings, the committee issued an order requesting all fixed access operators to issue itemized billing information to customers as stipulated in the government Gazette Notification on 29 March, 1999.

- 1.9 RIA, therefore, is a powerful tool to achieve efficiency, equity and ultimately effectiveness in regulatory decision-making, as well as promoting wider accountability, transparency, consistency and participation in the decision-making process. Though RIA originated in the industrialized and developed countries, its benefits are equally applicable to developing countries. The following Section shows how a number of developing and transitional economies around the world have adopted RIA in their pursuit of pro-poor growth and democratization. Section 3 suggests a suitable governance/implementation framework for RIA in Sri Lanka. The final Section proposes a pilot study as a first step towards possible RIA implementation.

2. International Best Practice

- 2.1 As indicated in the regulatory literature, effective, efficient and equitable regulation can enhance the achievement of social objectives without creating unnecessary burdens on business or the community. Regulations are essential to protect people at work, consumers and the environment; but it is important to strike the right balance so that they do not impose unnecessary strains on businesses or stifle economic growth. Effective regulation would solve an identified problem or issue, whilst efficient regulation would minimize unnecessary compliance and other costs imposed on business as well as the community. Equitable regulation would ensure that the costs and benefits of a measure are equitably shared among different groups in the society.
- 2.2 The adverse consequences of bad regulation can well impose unnecessary costs, hamper innovation and efficiency, and create unnecessary barriers to trade and investment. Hence, the creation of new regulations or making amendments to existing regulations has to be done with due professional care. It is usually better to leave the market alone to correct itself, than imposing bad regulations.
- 2.3 Regulation must be well-designed, effectively implemented and properly enforced, if it is to yield the utmost benefits to society. In this regard, international best practice identified by various international bodies involved in regulatory management and reform processes would help policymakers determine the correct path to drive the regulatory process in Sri Lanka.
- 2.4 In 1995, the Council of the Organization for Economic Cooperation and Development (OECD) passed a Recommendation on Improving the Quality of Government Regulation, setting out the following ten questions that policymakers should ask about any proposed regulation (OECD, 1995):
- ***Is the problem correctly defined?***
 - ***Is government action justified?***
 - ***Is regulation the best form of government action?***
 - ***Is there a legal basis for regulation?***
 - ***What is the appropriate level (or levels) 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?***

This checklist forms a part of the OECD's best practice guidance which, in turn, reflects RIA policy and practice in those OECD member countries with most experience in such impact assessment. Simply raising these questions by the decision-makers themselves will encourage them to think in an objective manner before imposing regulations.

- 2.5 The legitimacy of a regulator will increase substantially, if the regulator approaches its work in a more participatory manner. Legitimacy is the acceptance of the existence and power of an entity by those who can affect it or are affected by it. It may be distinguished from powers and duties set out in a formal legal document. The OECD best practices would be helpful to regulatory institutions to gain legitimacy, particularly when they are new to the economy.
- 2.6 In August 1998, the British Prime Minister announced that no policy proposal, which has an impact on business, charities or voluntary bodies, should be considered by ministers without an RIA being carried out. The Cabinet Office reiterated this requirement in successive versions of its RIA guidelines, stressing that an RIA is an integral part of the policy development process as well as a continuous process. It consists of three sequential phases in UK practice:
- Initial RIA: Prepared as soon as a policy idea is generated
 - Partial RIA: Builds upon initial RIA, is produced prior to the consultation exercise and must accompany the consultation document
 - Full/Final RIA: Builds on the information and analysis in the partial RIA, is updated post-consultation

The Regulatory Impact Unit was established within the Cabinet Office to work conjointly with other government departments, agencies and regulators to help ensure that regulations are fair and effective in accordance with the RIA guidelines.

- 2.7 In the USA, President Reagan, in 1981, established the Regulatory Impact Analysis Program, which operates at present in essentially the same form. He effected this by Executive Order, E.O. 12291. That Order required major regulations (annual impact over 100 million US Dollars) to be accompanied by a Regulatory Impact Analysis (RIA), which had to be sent to the Office of Management and Budget (an agency within the Executive Office of the President) for review and analysis before they could be published in the Federal Register as proposals or as final regulations with the effect of law. President Clinton later issued E.O. 12866 which streamlined the process and increased the public consultation and transparency requirements.
- 2.8 The discussion so far has illustrated RIA practice among the highly developed Western economies. These countries have in common high levels of economic development, longstanding traditions of democratic governance and the rule of law and a strong institutional framework. It could be seen that these factors have had an important role in the success of RIA in those countries. However, it would be a mistake to conclude from this that RIA can only work in countries where such conditions already existed. As the following paragraphs

show, a number of developing and transitional economies that did not possess these features in the first instance, have gone on to benefit by adopting RIA.

- 2.9 Thus, a survey carried out in 2003 by the Centre on Regulation and Competition at the University of Manchester found that there was some understanding of RIA and its principles, and that some form of RIA have been used in 30 out of 40 developing and transition economies that responded (Kirkpatrick et al., 2004). In 10 of the countries, RIA was reported to be a legal requirement – they were South Korea, the Philippines, Algeria, Botswana, Tanzania, Jamaica, Mexico, Albania, Lithuania and Romania. In Tanzania, it was reported that RIA was systematically applied to all new State regulations. This underscores the point already made that RIA is a tool that can promote development and pro-poor growth in the developing country context. Another study of the use of RIA in five transitional economies in Central and Eastern Europe concluded that RIAs are a neutral means to highlight key priorities and their implications for future reform, and as such represent a valuable part of the machinery of a modernizing State (Jacobs, 2005).
- 2.10 There is a constant need to update and simplify existing regulations. But simplification does not mean deregulation. It is aimed at preserving the existence of rules while making them more effective, less burdensome, and easier to understand and to comply with. This creates the necessity for systematic and targeted programmes of simplification, covering regulation that impacts on citizens and business. RIA is a tool which has been used to systematize the process of simplification. Particularly in the case of Sri Lanka, considering the volume of legislation and regulations introduced in the era of State intervention which still prevails, a process of simplification has become a timely requirement.
- 2.11 Mexico had very low levels of regulatory governance and institutional capacity. RIA was introduced against this background, along with a process of regulatory simplification, and from 1996 onwards RIA became a legal requirement for all new regulations that had an impact on business. Implemented through an Economic Deregulation Unit (UDE), a body established under the Ministry of Trade and Industry (since 2000, reconstituted as the Commission for Regulatory Improvement, COFEMER), significant results were achieved in improving the investment climate and facilitating job creation. Regulatory reform has also been credited with being one factor which contributed to Mexico's fast recovery from the 1994 peso crisis.
- 2.12 Finally, in the developing country context economic growth is usually underpinned by foreign direct investment (FDI). Regulatory simplification, as described in the preceding paragraph, helps create an attractive investment climate and thereby contributes to attracting FDI. South Korea is a developing country that took this approach when it recently embarked on comprehensive regulatory simplification along with the introduction of RIA for significant new regulations. The Basic Act on Administrative Regulations No. 5368 was adopted in

1997 with a view to “enhance the quality of the people’s life and secure continuous strengthening of the nation’s competitiveness, by eliminating unreasonable administrative regulations” (Art. 1), and enshrines the principles of regulatory simplification and RIA.

3. Governance and Implementation

- 3.1 Spearheaded by the international donor community in the 1990s, the promotion of good governance has become intrinsic to the broader development agendas in developing countries. Good governance plays a key role in effective policy implementation. It is recognized that ‘getting policies right may not, by itself, be sufficient for successful development, if standards of governance are poor ... for this reason improving governance, or sound development management, is a vital concern for all governments.’ (ADB, 1999).
- 3.2 Four basic elements of good governance are accountability, participation, predictability, and transparency. These elements collectively underpin the capacity of governments/regulators to sustain the long-term business confidence essential for growth-enhancing private sector investment (ADB, 1999).
- 3.3 Accountability, participation, predictability, and transparency are particularly relevant to Sri Lanka in view of the changes that have taken place (and continue to take place) in the Sri Lankan polity, economy and society. These changes continuously redefine the role of the State and the related role of governance in Sri Lanka (Wanasinghe, 2001). From a development perspective, present governance imperatives for the Sri Lankan State include:
 - Providing a facilitative environment in which the actors in the market economy would be efficiently able to conduct their activities of investment, production and commerce
 - The functioning of a regulatory environment that would enable competing interests (such as, economic, social and environmental, or efficiency / equity) to find their equilibrium
 - Ensuring that the country becomes and continues to be an attractive destination for investment capital, both local and foreign (Wanasinghe, 2001).
- 3.4 An integral part of RIA is public consultation, which, when undertaken meaningfully, enhances the participatory nature and transparency of the decision-making process. Accountability is improved because RIA involves reporting on the information used in decision-making and demonstrating how the decision impacts on society. Transparency in turn reduces uncertainty, thereby promoting predictability. Therefore RIA directly contributes to improved accountability, participation, predictability, and transparency in regulatory decision-making.
- 3.5 Furthermore, it will be recollected from Section 1 that RIA also provides the framework for achieving the governance imperatives referred to above. To reiterate, the constituent process (accountability, transparency, consistency, legitimacy) and output (efficiency, equity and

effectiveness) elements of RIA underline its role as a facilitator of better governance in Sri Lanka.

- 3.6 The development of a suitable RIA implementation framework for Sri Lanka has to proceed from the specific legal, institutional and administrative framework that underpins domestic regulatory processes. Under the present governance structure, regulatory powers are exercised at three levels – central government, provincial councils and local authorities. At the level of the central government, in addition to line ministries, Parliament has, through legal statutes, created a number of separate entities to discharge regulatory functions such as, the Central Environmental Authority, Consumer Affairs Authority, Public Utilities Commission, and Telecommunications Regulatory Commission. At the provincial level, regulatory authority is exercised by provincial ministries and agencies that fall under the purview of provincial councils in terms of Chapter XVIIA of the Constitution. At the local level, municipal councils, urban councils and pradeshiya sabhas exercise by-law making authority in terms of their constituent legislation.
- 3.7 The implementation framework that is being proposed consists of two time frames – the **short to medium term** and **medium to long term**. In the short to medium term, the most important task is to undertake basic groundwork upon which RIA will be *incrementally developed*. This would require taking the actions described in the following paragraphs.
- 3.8 In the present governance culture in Sri Lanka, policymakers generally prefer to go along with the established systems and processes, and as a result are averse to trying out new approaches to exercise their functions. Furthermore, the increased transparency and accountability that RIA brings can be expected to generate hostility from interested parties who have been hitherto benefited from the lack of it. This underscores the fact that the implementation of RIA has to be driven at the highest political levels. At the level of the central government, the decision to apply RIA should, therefore, be made by a Cabinet decision. The first and most important step will be to establish the legal basis for the necessary institutional arrangements, by setting up by Cabinet decision an RIA unit as focal point within the government. The institutional location of the RIA unit will have a significant bearing on its perceived authority and hence its effectiveness. Accordingly, the President's Office, Cabinet Office and the Ministry of Finance have been identified as the preferred alternatives to locate the RIA unit in, to invest it with the requisite overarching authority and acceptance.
- 3.9 The institutional arrangements should address the desired organizational structure, appointment procedures, relationship with line ministries and regulatory agencies (in particular, those undertaking other impact assessment procedures such as EIA/SIA, as mentioned in Section 1), as well as its reporting and accountability requirements. Another matter for decision would be the lifespan of the unit. While there is justification for a

continuing entity in the interests of continuing oversight over the quality of the RIA process, in the first instance the unit could be established with a specific time frame within which to achieve the stated goals.

- 3.10 In order to provide administrative flexibility for effective operation and attract the desired calibre of persons, the RIA unit should ideally be exempted from Administrative Regulations and Financial Regulations. The unit needs to be staffed with adequate expertise drawn from the fields of economics, engineering, law, sociology and environment, and be provided training in keeping with international best practice. They should be engaged on full-time, exclusive basis and not be on part-time secondment from other government employment. The organizational structure should be skill-based wherein project teams would be established as and when required, on the premise that teamwork will subscribe to efficiency and productivity. In pursuit of this objective, the hierarchy should be designed with minimal layers, sufficient to deliver the required results, and wherever possible 'outsourcing' and 'contracting' should be given preference over the expansion of the staff (i.e., a lean entity). In the event the unit is able to dispense with the Administrative/Financial Regulations, it is imperative that it should adopt a transparent operations manual, which should be available for public inspection.
- 3.11 The mandate of the RIA unit will be to establish standards for regulatory quality and principles of regulatory decision-making, and to provide necessary support to line ministries and regulatory agencies, who will be responsible for actually carrying out RIAs. Therefore, the first task of the RIA unit will be to formulate an RIA template to guide the decision-makers. In formulating the RIA template the following matters will have to be addressed:
- The role of RIA in achieving sustainability and poverty reduction goals, i.e., how to balance efficiency and equity concerns
 - The timing and extent of public consultation in an RIA and processes for co-ordination within government
 - Coordination of RIA with more narrowly focused impact assessment processes such as EIA and SIA. The aim should be to generate synergies while avoiding costly duplication and/or contradictions.
- 3.12 Initially it will also be useful to confine RIA to those regulations where the likely positive and negative impacts or distributional effects are the most significant. To give effect to this, it will be necessary to subject all proposed regulations to an initial screening. The RIA unit should lay down the process to be followed, which it is suggested could take the form of the following steps:
- Identify the key stakeholders affected by the proposed regulation (for example, consumers, businesses, investors, regulators, law enforcement authorities), together with a rough quantification (e.g., x number of businesses)

- Identify the potential impacts, positive and negative, on each of the key stakeholders (e.g., for business – additional costs to be incurred to comply with the regulation, for consumers – better safety standards, for regulators – increased costs of monitoring compliance)
 - Considering the above two points together, give an impact rating of high, medium or low to each positive/negative impact
 - Where one or more impacts are rated as “high”, or two or more impacts are rated as “medium”, it would be advisable to undertake an RIA.
- 3.13 Once the RIA unit has formulated the RIA template and screening criteria, another Cabinet decision should require that all secretaries to ministries, heads of departments and chairmen of authorities that exercise regulatory powers should undertake an RIA before placing any new regulation that meets the predetermined screening criteria, for ministerial signature. The RIA unit will be entrusted the supervision of this process and the responsibility for providing quality assurance. To underpin this, it should be further required that the draft regulations and their accompanying RIAs should be submitted to the unit for review, and the opinion of the unit be obtained, before the regulation can be passed. The unit should be given a specified number of days within which to issue a non-binding opinion. It will be good practice to authorize the unit to publicize the RIA, as well as its opinion thereon.
- 3.14 Other important, ongoing functions for the RIA unit will be to:
- Develop and implement data collection strategies for the analysis component of RIA, keeping in mind constraints of cost and time facing decision-makers. Qualitative indicators such as perceptions surveys, focus group analysis and opinion polls could be the basis of such analyses.
 - Establish systems for collecting information on the impacts of new regulations, once they have entered into force. This will help improve the quality of the RIA process by highlighting assumptions that were not borne out, as well as signal changed circumstances justifying revisiting the rule.
 - Carry out training programmes to provide regulators with awareness of the benefits of RIA and the skills required to do high quality RIA.
- 3.15 At the same time, the RIA unit should also focus on progressively introducing RIA to the independent regulators and the provincial and local levels of government.² It can raise the awareness of the decision-makers at these levels by carrying out workshops, piloting RIA on provincial/local regulations (see Section 4) and inviting key personnel at these levels to

² The foundation is already in place for some independent regulators, which have had clear RIA “language” included in their parent legislation. For example, the Public Utilities Commission of Sri Lanka Act, No. 35 of 2002 lays down transparency and objectivity as explicit goals to be pursued by the Commission, and also requires the Commission to consult, as appropriate, with stakeholders likely to be affected by its decisions. The draft PUCSL Regulatory Manual even specifically provides that the Commission may undertake an RIA before taking a decision or beginning a review, to minimize the costs of regulation (PUCSL, 2003).

participate as observers in the working of the RIA process at the Centre. This would help mobilizing administration-level support for implementing RIA at these levels.

- 3.16 In the **medium term**, RIA should be extended to reviewing and updating existing regulations with a view to simplification of administrative formalities and addressing existing regulatory failures. In the **medium to long term**, the scope of RIA should be expanded by requiring at least a partial RIA for all new regulations. The result of the partial RIA will signal the need to go for a full RIA or not, in a particular case. The RIA unit will also have to continue to develop on the work programme it started in the short/medium term.
- 3.17 Based on the success achieved in implementing RIA, consideration should be given to placing RIA on a more firm legal basis by enshrining RIA in an Act of Parliament, as has been done in many countries. This will have the advantage of entrenching RIA as a tool for better decision-making and better governance and insulating it from changes in government. Some areas for the future legislation to provide for are:
- Establishing the RIA unit under the law. If the unit is going to be constituted as a separate legal entity, provide for the involvement of the Constitutional Council in making the apex appointments
 - Entrench RIA for all new regulatory proposals meeting a threshold qualification, specifying inter alia the timing of RIA, the matters to be covered, RIA unit review, and special provisions for urgent regulations or those where confidentiality is required
 - Provide for the systematic evaluation of existing regulations with a view to simplification and rationalization.

4. Way Forward

- 4.1 The previous Sections clearly identified the issues arising from not assessing impacts of regulations through a positive stakeholder engagement process. These Sections also discussed the availability of the RIA tool for proactively engaging the stakeholders and identifying impacts that can be resolved prior to making the regulations legalized, thus mitigating potential issues and leaving space for the next stage of enforcing compliance.
- 4.2 Many people are aware of the need to tighten enforcement of existing regulations, while the root cause remains unsolved. While the enforcers are often preoccupied with bringing in frequent changes to such regulations, quite often the root cause is that these regulations – which are intended for public good – still have unresolved issues, as a result of having been passed without due consideration. The recent issues surrounding increasing Business Turnover Tax (BTT) by the provincial councils and withdrawal of the gazette immediately after publication bear testimony, for instance.

- 4.3 The previous Sections also discussed situations where RIA is being applied in an international context, and also on the governance framework needed to set up an RIA process in Sri Lanka.
- 4.4 The way forward with the proposed implementation framework mainly lies in the hands of the Government, which would need to appreciate the concept and the need for RIA in the Sri Lankan context. A first step in the way forward, therefore, is to engage selected high-level government representatives. For this to be effectively done, a pilot RIA will have to be undertaken with opinion leaders as stakeholders on a topical regulation.
- 4.5 The Government is invited to propose an area where an in-depth RIA would be conducted, along with identification of officials who could be mandated to contribute positively through the RIA process. This step would give hands-on exposure to the selected officers of government and also help identify key bottleneck resource issues and competency development areas for the future full implementation of RIA. The findings of the pilot RIA will be fully discussed for its positive and negative aspects.
- 4.6 Decision-makers who are to be made to undertake RIAs are more likely to do it in the proper spirit, if they themselves are convinced of its benefits. While a strong “push” was identified in the previous Section as an essential prerequisite for RIA to be implemented across the government, it can very well happen that decision-makers will merely go through the motions of the RIA process, without positively utilizing it to deliver improved regulatory governance. A practical application of RIA would help to convince them of its real benefits, which will result in bringing about the necessary attitudinal change.
- 4.7 The following additional factors may be cited in favour of the case for a full-scale pilot RIA:
- The costs of actual implementation, including hidden costs, would be much clearer
 - The process flow would be clearer for replication in any other case, barriers to implementing RIA and factors that favour it would be better understood
 - It can win support from the private sector, media and citizenry.
- 4.8 The following downside issues may have to be overcome in the process:
- A full-scale RIA – given bureaucratic red tape and commitments to regular work – may take longer than anticipated and could also be more difficult to finalise if the requisite data is not readily available
 - There could be resistance from parties with vested interests, which would result in an implementation gap
 - Also, a successful pilot does not guarantee any changes or buy-in from the decision-makers, so the strong top-level “push” will still remain a necessary requirement for effective RIA implementation.

4.9 The following may be suggested as possible cases for piloting RIA. The last three are especially recommended, in view of their direct impact on the population:

- Amendments to the VAT
- Cess on vehicles imports
- Private Health Services Bill (being drafted)
- Price control formula on drugs
- Calling Party Pays Tariff
- Price control of “specified goods” by the Consumer Affairs Authority.

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Annex: Selected International Best Practice Literature

A.1 UK RIA Template

This template will help you structure your RIA. Remember that the RIA should be a stand-alone document.

Sections 1-8

Sections 1-8 should be completed for the initial, partial and full RIA.

- 1. Title of proposal**
- 2. Purpose and intended effect**
 - Objective
 - Background
 - Rationale for government intervention
- 3. Consultation**
 - Within government
 - Public consultation
- 4. Options**
- 5. Costs and benefits**
 - Sectors and groups affected
 - Benefits
 - Costs
- 6. Small firms impact test**
- 7. Competition assessment**
- 8. Enforcement, sanctions and monitoring**

Sections 9-12

Sections 9-12 should be completed after consultation and included in the full RIA.

- 9. Implementation and delivery plan**
- 10. Post-implementation review**

11. Summary and recommendation

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1		
2		
3		
4		

12. Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Minister’s name, title, department

Contact point for enquiries and comments: name, address, telephone number and email address.

Source: [UK Cabinet Office] http://www.cabinetoffice.gov.uk/regulation/ria/ria_guidance/ria_template.asp
[Accessed: 26 May 2005].

**A.2 Basic Act on Administrative Regulations, Act No. 5368 of Aug. 22, 1997
(South Korea)**

Chapter 1: General Provisions

Article 1 (Purpose)

The purpose of this Act is to enhance the quality of the people’s life and secure continuous strengthening of the nation’s competitiveness, by eliminating unreasonable administrative regulations through the clarification of fundamental matters concerning administrative regulations as well as by encouraging autonomy and creativeness in social and economic activities through the prevention from newly introducing inefficient administrative regulations.

Article 2 (Definition)

(1) For the purpose of this Act,

1. the term “administrative regulations”(hereinafter referred to as “regulations”) means actions taken by the central government or any local government in order to restrict any right of the people or impose any duty to them for the purpose of accomplishing a specific administrative objective, as prescribed in Acts and subordinate statutes.

2. the term “Acts and subordinate statutes, etc.” means Acts, Presidential Decrees, Ordinances of the Prime Minister or Ministries and such notification as determined in conformity with the delegation thereby.
 3. the term “existing regulations” means regulations that are prescribed on the basis of other Acts at the time this Act enter into force, and regulations that are prescribed according to the procedure specified in this Act thereafter.
 4. the term “administrative agencies” means agencies that has any administrative authority as prescribed by any Act or subordinate statutes, etc., or by any municipal ordinance or rule as well as bodies cooperate, organizations, institutions or individuals to whom the same authority is delegated or entrusted.
 5. the term “regulations impact analysis” means estimating and analyzing in advance, by applying scientific and objective methods, various effects that any particular regulations would have on the people’s daily life as well as the society, economy, and administration, thereby presenting standards for determining whether or not such regulations are justifiable.
- (2) The concrete scope of the regulations as defined in Subparagraph 1 of paragraph(1) shall be prescribed by the Presidential Decree.

Article 3 (Scope of Application)

- (1) Unless otherwise provided by any other Act, this Act shall apply with respect to regulations.
- (2) This Act shall not apply to matters falling under any of the following:
 1. Duties performed by the National Assembly, the Judiciary, Constitutional Court, Election Management Committee, and the Board of Audit and Inspection.
 2. Duties concerning criminal affairs, criminal administration, and security dispositions.
 3. Duties as determined by the Presidential Decree, from among duties relevant to national security, national defense, foreign affairs, reunification of Korea, and taxation to which this Act is difficult to apply to.
- (3) Local governments shall, in accordance with this Act, take necessary actions, such as registration and promulgation of regulations as prescribed by ordinances and rules, review of new establishment or strengthening of regulations, revision and repeal of existing regulations and establishment of regulation-review organizations.

Article 4 (Principles of Stipulating Regulations by Law)

- (1) Regulations shall be in conformity with any Act, and the contents thereof shall be clearly and unambiguously described in plain terms.
- (2) Regulations shall be prescribed by Act, but the concrete contents thereof may be determined by Presidential Decree, Ordinance of Prime Minister or Ministry, or municipal ordinance or rule to such concrete extent of delegation as any Act or higher statute fixes: *Provided*, That, in case of regulations pertaining to any specialized, technical or minor matter the delegation of which is inevitably required, if any Act or subordinate statute delegate them by fixing the concrete extent of delegation, they may be prescribed by a notification.
- (3) Administrative organizations shall not restrict rights of the people or impose duties on them by means of any regulations that are not prescribed by any Act.

Article 5 (Principles Concerning Regulations)

- (1) The central and local governments shall respect the rights and creativeness of the people. They shall not interfere with fundamental rights of the people by establishing any new regulations.
- (2) The central and local governments shall establish regulations in so effective manners as to protect the life, health and environment of the people.
- (3) The scope and methods of any regulations shall be so determined as to secure their objectivity, transparency and impartiality in the most effective manner possible, to such minimum extent as required to achieve their objective.

Article 6 (Registration and Promulgation of Regulations)

- (1) The head of the central administrative agency shall, according to the provision in Article 23, register titles, contents, relevant statutory provisions, and dealing organs of regulations in his charge with the Regulatory Reform Committee (hereinafter referred to as the "Committee").
- (2) The Committee shall draw up and promulgate the list of regulations as registered according to the provision in Article 1.
- (3) If the Committee, after *ex officio* review, finds that any regulations are not registered, it may immediately require the head of the relevant central administrative agency to register them with the Committee, or to submit a plan on revision and repeal of any relevant Act or subordinate statute to abolish them.
- (4) The Presidential Decree shall determine necessary matters related to the method and procedure of registration and promulgation of regulations according to Paragraphs (1), (2) and (3).

Chapter 2: Principles Concerning Establishment and Strengthening of Regulations and Their Reviews

Article 7 (Analysis of Regulations Impacts and Internal Review)

- (1) When the head of any central administrative agency intends to newly establish or strengthen (including extending the valid period) any regulations, he shall analyze their impacts and draw up a report thereof, in comprehensive consideration of the following matters:
 1. Necessity of newly establishing or strengthening them.
 2. Whether or not their objectives are attainable.
 3. Whether or not any alternatives to them exist or whether or not any regulations similar thereto are currently implemented.
 4. Comparative analysis of the costs and benefits of persons or groups of persons who would be subject to them.
 5. Whether or not they include any factor of restrictive competition.
 6. Their objectivity and clarity.
 7. Administrative organ, manpower and budgetary appropriation required for their establishment or strengthening.
 8. Whether or not the previous determination on documents to be submitted and procedures to be followed with respect to the relevant civil petitions are proper.
- (2) The head of any central administrative agency shall, on the basis of results of an analysis of regulatory impacts as prescribed in Paragraph (1), determine persons subject to any regulations as well as the scope and method thereof and conduct an internal review on their justifiability. Opinions of the relevant experts shall be fully reflected in the results of such review.
- (3) The Presidential Decree shall determine the necessary methods and procedure of the analysis of regulatory impacts and the guidelines for making a report on analysis.

Article 8 (Stipulation of the Continuation of Regulation)

- (1) When the head of the central administrative agency intends to establish or strengthen any regulations, he shall, specify their duration period in the relevant Acts and subordinate statutes, etc., if there is no justifiable reason that such regulations must be permanently implemented.
- (2) The period of duration during which the regulations are in force shall not be set longer than required to achieve their objective. In principle it shall not exceed five years.
- (3) If deemed necessary to extend the period of duration, the head of the central administrative agency shall request the Committee to review that case according to Article 10, one year prior to the expiration of said period.

- (4) The Committee may, if as a result of the review pursuant to Articles 12 and 13, deemed necessary, recommend the head of the relevant central administrative agency to set a duration period of the regulations concerned.

Article 9 (Reflection of Opinions)

If the head of the central administrative agency intends to establish or strengthen any regulations, he shall fully reflect opinions of administrative agencies, non-governmental organizations, interested parties, research institutes, and experts which are gathered in consequence of public hearings or advance notices on the legislation of the regulations concerned, or by any other means.

Article 10 (Request for Review)

- (1) The head of the central administrative agency shall submit a request for review to the Committee if he intends to establish or strengthen any regulations. In case of a draft of legislation establishing or strengthening them, he shall do so before referring said draft to the Ministry of Legislation for review.
- (2) When the head of the central administrative agency submit a request to the Committee according to Paragraph (1), he shall submit the proposal of the relevant regulations, fixing the following:
1. Analysis report on the predicted impact of the regulation according to Article 7(1)
 2. Opinions presented as a result of internal review according to Article 7(2)
 3. Abstract of opinions submitted by administrative agencies and interested parties, etc. according to Article 9.

Article 11 (Preliminary Review)

- (1) The Committee shall, within ten days immediately after receiving the request for review according to Article 10, make a determination on whether or not the relevant regulations must be subject to review (hereinafter referred to as "important regulations") as stipulated in Article 12. The determination shall be based on the impact it will have on the daily lives and the socio-economic activities of people.
- (2) Those regulations which the Committee determines are of no importance according to Paragraph (1) are considered as having passed a review by the Committee.
- (3) The Committee shall notify without delay the head of the relevant administrative agency of the determination made according to Paragraph (1).

Article 12 (Review)

- (1) The Committee shall complete within forty-five days of request the review of any regulations that have been determined as important according to Article 11(1): Provided, That, if necessary

to extend the review period, the Committee may decide to extend it by no more than fifteen days for the preliminary review.

- (2) The Committee shall deliberate on whether or not a relevant internal review of the administrative agency was conducted on the basis of credible data and sources in conformity with due procedures.
- (3) The Committee may demand that heads of relevant administrative agencies provide supplementary documents to those enclosed pursuant to each of the items specified in Article 10 (2), if such supplementary data is required.
- (4) When the review is completed, the Committee shall notify the head of the relevant administrative agency of the results of the review without delay, according to Paragraph (1).

Article 13 (Review of Establishment or Reinforcement of Urgent Regulations)

- (1) The head of the central administrative agency may request review to the Committee without following the procedures specified in Article 7, Article 8(3), and Articles 9 and 10, if there is reason for immediate enactment or reinforcement of a regulation. The reasons shall be stated in this case.
- (2) If the Committee has decided the urgency of the regulation submitted for review according to Paragraph (1) was legitimate, it shall review within twenty days of request the validity of the new or reinforced regulation, and notify the head of the relevant central administrative agency. In this case, the head of the relevant central administrative agency shall submit within sixty days of having received notification from the Committee, results of the review in the analysis report on the impact of the regulation to the Committee.
- (3) If the Committee has determined that the regulation draft submitted according to Paragraph (1) for review does not have urgency, it may, within ten days of receiving review request, demand that the head of the relevant administrative agency follow the procedures defined in Articles 7 and 10.

Article 14 (Improvement Recommendation)

- (1) The Committee may recommend to the head of the relevant central administrative agency the withdrawal or improvement of new or reinforced regulations, should it be deemed necessary based on a review according to Articles 12 and 13.
- (2) The head of the relevant central administrative agency shall follow the recommendation given according to Paragraph (1) unless there is a significant reason to do otherwise, and shall submit the result of the procedure to the Committee according to the Presidential Decree.

Article 15 (Second Review)

- (1) The head of the central administrative agency may request a second review to the Committee according to the Presidential Decree, if he has objections to the review findings or judges that he may not carry out the recommendation of the Committee.
- (2) If there is a request for a second review according to Paragraph (1), the Committee shall complete the second review within fifteen days of the second review request and notify the head of the relevant central administrative agency of its findings.
- (3) Article 14 shall apply *mutatis mutandis* to second reviews as according to Paragraph (2).

Article 16 (Compliance with Review Procedures)

- (1) The head of a central administrative agency shall not draft or reinforce a regulation without the review of the Committee.
- (2) The head of the central administrative agency shall submit a review opinion of the Committee on the regulation in question to the Minister of Legislation when he request the review of a draft Act or regulation to write or reinforce. The same procedure applies to presenting the bill to the State Council.

Chapter 3: Improving Existing Regulations

Article 17 (Submission of Opinion)

- (1) Anyone may submit their opinions on abolishment or amendment (hereinafter referred to as “improvement”) of an existing regulation to the Committee.
- (2) The method and procedures of submission of opinions according to Paragraph (1) shall be defined in the Presidential Decree.

Article 18 (Review of Existing Regulations)

- (1) The Committee may review improvement of existing regulations that meet any of the following criteria:
 1. In cases in which the Committee has acknowledged the need to review a submitted opinion according to Article 17.
 2. In cases in which the Committee has received items on improvement of existing regulations from the Business Activities Deregulation Committee according to the Act on Special Measures for Deregulation of Restricted Corporate Activities.
 3. In other cases in which the Committee has acknowledged the need for a review of a specific existing regulation after gathering data on the opinions of interested parties and experts.
- (2) Articles 14 and 15 shall be applicable to reviews according to Paragraph (1).

Article 19 (Independent Improvement of Existing Regulations)

- (1) The head of the central administrative agency shall annually identify regulations that need improvement, after gathering data on the opinions of interested parties as well as experts on those regulations.
- (2) The head of the central administrative agency shall submit the results of the improvement according to Paragraph (1) as defined by the Presidential Decree to the Committee.

Article 20 (Establishment of a Comprehensive Plan to Improve Regulations)

- (1) The Committee shall select regulatory areas or specific regulations for each year to focus on improvement, and notify the head of the central administrative agency of the improvement guidelines after receiving deliberation by the State Council. If the Committee acknowledges the need, it may set a time frame for the improvement in the guidelines for a specific regulation.
- (2) The head of the central administrative agency shall submit to the Committee a plan for regulation improvement of that agency according to the guidelines pursuant to Paragraph (1).
- (3) The Committee shall establish the government's comprehensive plan to improve regulations based on the regulation improvement plan of each central administrative agency according to Paragraph (2) and shall promulgate the plan after deliberations of the State Council and approval of the President have been made.
- (4) The method of drawing up and promulgating the comprehensive plan on regulation improvement as well as the necessary procedures shall be defined in the Presidential Decree.

Article 21 (Implementation of Comprehensive Regulation Improvement Plan)

- (1) The head of a central administrative agency shall improve the existing regulations under his jurisdiction according to the comprehensive plan on regulation improvement of the government that was established and promulgated according to Article 20, and shall submit the results to the Committee according to the Presidential Decree.
- (2) The head of a central administrative agency shall complete improvement of those regulations having time frames determined by the Committee according to the latter half of Article 20(1), and shall notify the Committee of the results. *Provided, That,* if the improvement has not completed within the time frame set by the Committee, the head of the agency shall immediately submit to the Committee the reason for the delay as well as the improvement plan for the regulation in question, and shall communicate the results after the improvement has been completed.

Article 22 (Organizational Restructuring, etc.)

- (1) The Committee shall notify the heads of the central administrative agencies that oversee governmental organizations and budgets when improvement of an existing regulation has been completed.
- (2) The head of the relevant central administrative agency who has been notified according to Paragraph (1) shall decide on a rational measure to make changes in the governmental organization or the budget after the existing regulation has been improved.

Chapter 4: Regulatory Reform Committee

Article 23 (Establishment)

A regulatory reform committee that is responsible to the President is to be established to deliberate and coordinate governmental regulation policy as well as to oversee, review and improve regulations.

Article 24 (Functions)

The Committee is responsible for deliberation and coordination of each of the following:

1. Setting the basic direction of regulation policy as well as research and development of regulatory institutions.
2. Items that pertain to review of establishing and reinforcing new or existing regulations.
3. Review of existing regulations, establishment and implementation of a comprehensive plan on regulatory improvement.
4. Registration and promulgation of regulations.
5. Gathering and processing opinions on regulatory upgrading.
6. Inspection and evaluation of the progress made by administrative agencies on different levels in terms of regulation improvement.
7. Other items deemed by the Head of the Committee as requiring deliberation and coordination of the Committee.

Article 25 (Composition, etc.)

- (1) The Committee shall be comprised of no less than fifteen and no more than twenty members, including two heads of the committee.
- (2) The heads of the Committee shall be chosen by the President, one being the Prime Minister and the other chosen from a pool of candidates with knowledge and experience.
- (3) Members of the Committee shall be selected by the President based on their knowledge and experience and a public servant designated by the Presidential Decree. Non-public servant members shall comprise more than half the total number of members on the Committee.

- (4) The Executive Commissioner to the Committee shall be chosen from the non-public servant members by the head of the Committee other than the prime minister.
- (5) The term in office for non-public servant members shall be two years, with allowance for a second term.
- (6) If both heads of the Committee are unable to perform their duties due to irrevocable circumstances, the member named by the prime minister shall act as the head of the Committee.

Article 26 (Quorum)

Issues at member meetings shall be decided by the affirmative vote of over half of the members on the roll.

Article 27 (Status Guarantee for Members)

Members are not subject to dismissal or removal from their offices except in one of the following cases:

1. Sentenced to imprisonment without prison labour or a more severe sentence.
2. Unable to carry out duties due to long-term illness

Article 28 (Subcommittees)

The Committee may form special subcommittees for efficient management of its work.

Article 29 (Expert Members of the Committee, etc.)

The Committee may recruit expert members and necessary researchers for professional research activities regarding its work.

Article 30 (Research and Opinion-gathering, etc.)

- (1) The Committee may take any of the following measures it regards necessary to carry out its role according to Article 24:
 1. Request for explanation from the relevant administrative agency or data and documentation.
 2. Request for appearance and statements of opinion by interested parties, references, or appropriate public servants.
 3. On-site investigation of relevant administrative agencies, etc.
- (2) In terms of review of a regulation, etc., the head of the relevant administrative agency may request the appearance of relevant public servants or experts before the Committee in order to give their opinions or submit data.

Article 31 (Secretariat of the Committee)

- (1) A specialized secretariat shall be in place to take care of the Committee's tasks.
- (2) The Committee may designate an expert research organization to support its specialized review tasks.

Article 32 (Public Servant Status in Punishment)

The members on the Committee, expert members, and researchers who are not public servants are regarded as public servants in application of punishment according to criminal and other Acts.

Article 33 (Organization and Management)

Matters pertaining to the organization and management of the Committee other than those stated in this Act shall be determined by the Presidential Decree.

Chapter 5: Supplementary Rules

Article 34 (Inspection and Evaluation of Regulatory Improvements)

- (1) The Committee shall confirm and inspect improvements and status of regulations of each administrative agency for effective improvement of regulations.
- (2) The Committee shall report to the President and the State Council after evaluating the results of confirmation and inspection according to Paragraph (1).
- (3) The Committee may make requests to appropriate expert agencies to conduct public opinion surveys for objective confirmation, inspection and evaluation according to Paragraphs (1) and (2).
- (4) If the Committee judges that regulatory improvements have been passive or not implemented properly through its confirmation, inspection and evaluation according to Paragraphs (1) and (2), it may offer suggestions on the necessary corrective measures to the President.

Article 35 (White Paper on Regulatory Reform)

The Committee shall annually publish and promulgate a white paper regarding the status of major governmental regulatory reform issues.

Article 36 (Administrative Support, etc.)

The Minister of Government Administration shall study the regulation-related system and provide the necessary support for the management of the Committee.

Article 37 (Responsibilities of Public Servants)

- (1) Public servants shall not be subject to disadvantageous measures or unfair treatment because of any effects which they cause in the course of active performance of any activities for improving regulations, if not on purpose or with any gross negligence.
- (2) The head of a central administrative agency shall award or grant preferential treatment in personnel management to public servants who have made outstanding contributions in pursuit of regulatory improvement.

Addendum

Article 1 (Enforcement Date)

This Act enters into force within a one-year period from the date of promulgation, as decided by the President.

Article 2 (Abolishment of Other Acts)

Act No. 4735 Administrative Regulation Management Act is abolished.

Article 3 (Special Case for Independent Improvement of Existing Regulations at the Time of Act Implementation)

- (1) The head of a central administrative agency shall draw up and implement a year-by-year plan for improvement of all regulations under his jurisdiction at the time of this Act's implementation before December 31 of the fifth year from the implementation of the Act, according to the Presidential Decree. This take the place of independent improvement of existing regulations according to Article 19.
- (2) The head of a central administrative agency shall submit the(sic).

Article 4 (Re-examination of directives and public notices)

- (1) The head of a central administrative agency or a local government shall re-examine within one year after implementation of this Act the regulations defined in the directives, rules, guidelines, and public notices that are being implemented to determine whether they are based on Acts and regulations, ordinance, or rules, according to Article 4.
- (2) After the re-examination according to Paragraph (1), the head of a central administrative agency or a local government shall abolish without delay or define the basis in relevant Acts and regulations, ordinances or rules for regulations defined in directives, rules, or guidelines that are not based on Acts and regulations, ordinances, or rules as according to Article 1.

Article 5 (Revising other Acts and Subordinate Statutes)

Some parts of the Act on Special Measures for Deregulation of Restricted Corporate Activities shall be revised as follows:

In Article 3, “provision in other Acts and subordinate statutes” is revised to “provision in other Acts and subordinate statutes (with the exception of the Framework Act on Administrative Regulation).”

In Article 42, “shall undergo review of the Committee on Deregulation of Restricted Corporate Activities according to Article 61” is revised to “shall undergo prior consultation with the Minister of Trade, Industry and Energy.”

In Subparagraph 3 of Article 62, the phrase “establish or revise” is replaced by “revise,” in Subparagraph 5 of the same Article “administrative regulations” is revised to “administrative regulations on corporate activities,” and Paragraph (2) is written into the same Article as follows:

(2) The Committee shall notify the Regulatory Reform Committee in advance, of issues on improvement of Acts, and regulations or systems pertaining to administrative regulation, according to inspection and review provisions in Subparagraphs 1, 2 and 3 of Paragraph (1). The Regulatory Reform Committee shall decide whether to conduct a review of the issue, and notify the Committee of its decision without delay. In this case, the Committee, without delay, shall refer that issue to the Regulatory Reform Committee for review, by affixing relevant documents.

Source: United Nations Online Network in Public Administration and Finance
<http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan009448.pdf>
[Accessed: 18 April 2005].