

Philippines: Developments in Regulatory Reform

1. Key features of Philippine regulatory reform

The Philippines' regulatory reform, designed to strengthen competitive markets in key sectors, started in the late 1980s in tandem with privatisation and liberalisation initiatives. Regulatory reforms were implemented in telecommunications, power, banking, insurance, finance, shipping and aviation, among others. There is no central body that reviews the appropriateness and impact of existing or future regulations in government. Regulatory reviews are undertaken by agencies responsible for specific sectors. The importance of having a comprehensive regulatory reform, however, is acknowledged to improve the economy's competitiveness.

1.1 Legislation, policy, and principles

The broad direction of the Philippines' regulatory reform is enshrined in the Constitution, which encourages competition for a healthier business environment. Sector-specific legislation focuses on enhancing competition, increasing efficiency, improving service delivery as well as ensuring public welfare, safety and environmental quality. The government focus is on policymaking and regulation, leaving operation and management mainly to the private sector.

1.2 Objectives of regulatory reform

The Medium Term Philippine Development Plan for 2004-2010 aims to improve the transparency, professionalism and efficiency of the sector regulatory system through a review and revision of the processes and procedures of regulatory agencies. Efforts are aimed at hastening reform to facilitate business, to attract more investments, sustain growth and generate new jobs. It is recognised that a well-designed and appropriate regulation can promote competitive and well-functioning markets, as well as stronger, sustainable economic performance in the region.

2. Mechanisms and institutions to oversee regulatory reform

2.1 Institutions

Numerous institutions have regulatory powers while several institutions have regulatory or review functions. Executive power is vested in the President while the legislative power is vested in the two Houses of Congress, i.e., the Senate and the House of Representatives. Congress approves legislation, implementing agencies issue rules and regulations, and the President issues Executive Orders and issuances. Moreover, regulatory boards have legislated powers to issue regulations and local government units have regulatory functions.

Regulation by Congress and the President is supplemented by regulations made by a range of independent agencies set up to regulate activity in specific areas such as telecommunications, energy, securities and water. These agencies exercise administrative and quasi-judicial functions, and are attached to cabinet departments or the office of the President. The functions of some of these agencies are illustrated below:

The National Telecommunications Commission plays the role of a regulator and quasi-judicial body. It adopts and promulgates guidelines, rules and regulations on the establishment, operation and maintenance of various telecommunications facilities and services as well as supervises, regulates and monitors the operation of public telecommunication and broadcast services.

The Energy Regulatory Commission performs quasi-judicial, quasi-legislative and administrative functions in the electricity industry. It is mandated with broad powers to regulate behaviour of participants in all sectors of the industry such as determination, setting and approval of tariffs in transmission and distribution sectors, and the approval or revocation of licenses of electric industry participants.

The Securities and Exchange Commission formulates policies and recommendations on issues concerning the securities market and has jurisdiction and supervision over all corporations, partnerships or associations. It prepares rules, regulations and orders, and issues cease-and-desist orders to prevent fraud or injury to the investing public.

The National Water Resources Board (NWRB) regulates, co-ordinates and formulates medium- and long-term policy on the water sector. It reviews and approves the appropriate water rates that are to be charged by waterworks operators. The present Water Code requires ground water users to secure permits from the NWRB with the exception of shallow wells for domestic purposes.

Local governments are also vested with regulatory authority such as business permits, licenses and business tax under the Local Government Code of 1991.

Meanwhile, the National Economic and Development Authority (NEDA) is the government's main agency for co-ordinating social and economic planning and policy. It is responsible for formulating the Medium Term Philippine Development Plan, which is subjected to multi-sectoral and regional consultations. Attached to the NEDA is the Tariff Commission that provides recommendations on tariff proposals based on its consultations with concerned agencies and stakeholders.

2.2 Awareness and support

The Medium Term Philippine Development Plan acknowledges that more bureaucratic reforms are needed to sustain economic growth and development. The Philippines' relatively low rankings in competitiveness surveys in recent years appropriately spurred efforts to accelerate business reform, including the reduction of red tape in all government agencies. All departments, bureaus, offices and other agencies in the executive branch, as well as government-owned and controlled corporations were directed to simplify rules, regulations and procedures and reduce reporting requirements imposed on business and industry. Local government units were also encouraged to adopt similar streamlining practices.

Efforts were likewise directed to eliminate fees and charges imposed on export clearances, inspection permits, certificate and other documentation requirements except those imposed by specific laws and to streamline documentation procedures. The issuance of additional administrative requirements was frozen, particularly with regard to business and investments, registration, immigration, customs and internal revenue procedures. In addition, all government agencies were directed to establish an ISO-aligned Quality Management System in conformance with the Philippine National Standards to enhance public sector performance. All these efforts were widely supported by the private sector.

In 2007, the legislature enacted the Red Tape Regulatory Act, which required all government agencies, including local government units, to streamline frontline services and devise a Citizens Charter that would contain steps and procedures for persons availing themselves of frontline services and the guaranteed performance level that should be expected for that service. Government agencies were also required to seek clearance from the NEDA before any new fees or increase in existing fees could be imposed.

The National Competitiveness Council (NCC), a public-private sector task force is working closely with the government to encourage competitiveness and pursue meaningful and effective legal, regulatory, institutional, procedural and other appropriate reforms. The NCC is tasked with developing strategies for improving the competitiveness of the Philippine economy. One of the action points in the National Competitiveness Agenda is the proposed institutionalisation of the Regulatory Impact Assessment

(RIA). A draft action plan to adopt and institutionalise the RIA has been formulated following the conduct of a study assessing the required framework for its institutionalisation.

2.3 Transparency and predictability

The Philippines maintains transparency in all its actions as part of the democratic process. Agencies are required to develop regulations through a consultation process, often involving public hearings. In most cases, this ensures some transparency in the process of developing new regulations. The private sector and civil society have representation in certain government councils/committees.

Legislation and regulations are widely publicised. Laws, rules and regulations must be published in national newspapers of general circulation and in the Official Gazette before taking effect. Concerned agencies also maintain information on laws, and rules and regulations in published documents and on their websites.

3. Improving the quality of regulation

3.1 Regulatory tools, systems and processes for improving the quality of new regulations (Flow and Stock)

The Philippines acknowledges the benefits of RIA for policy formulation. However, there is no existing institutional framework to ensure its effectiveness and sustainability. While the existing regulatory system is strong with regards to transparency and the role of quasi-independent bodies with policy and regulatory review powers, weaknesses are inherent in the current system. Overlap of regulatory functions between national government agencies, and a lack of systematic consideration of the regulatory impact of proposals is evident. Decentralisation of regulatory functions to local government units has resulted in proliferation of sub-national regulations. While all local governments share the same legal and institutional framework, they interpret and implement national regulations differently.

In view of this, the Asian Development Bank was requested to carry out an assessment of the institutional framework required to ensure that RIA is institutionalised within the executive branch of government and to map out a strategy, including options for an Office of Best Regulatory Practice. Based on the study, a proposed work programme was prepared that includes advocacy of the RIA among government agencies.

4. Future challenges and lessons learned in promoting regulatory reform

4.1 Lessons learned in promoting regulatory reform and major progress in the past five years

The potential for rapid growth from successful reform is illustrated by the experience of deregulating telecommunications in the 1990s, which not only transformed the industry from single-operator dominance to one of competitive, dynamism and vastly improved service levels. It has facilitated the growth of call centres, business processing offices and other IT-enabled services, as well as helped reduced transaction costs for remittances.

The regulatory framework for the effective conduct of banking supervision has also been strengthened, and efforts to strengthen corporate governance, risk management and capital adequacy in commercial banks have progressed. Regulations are now closer to international standards and regulatory policies are more responsive to the growing sophistication and globalisation of the banking industry.

Competition in the power sector was forged with the inception of a wholesale electricity spot market (WESM), which commenced business in Luzon in June 2006. Under WESM, buyers and suppliers trade electricity as a commodity.

Several areas of business registration were reformed, resulting in improved regulations for protecting investors, and streamlined administrative barriers to trading. Nevertheless, there is still much to be done on the ease of doing business in the Philippines, particularly on starting and winding up a business.

4.2 *Future challenges*

The Philippines fully appreciates the need for more regulatory reform in order to further reduce burdens on the private sector. Additional deregulation and regulatory reform is necessary, not only to make the domestic economy more competitive and open to domestic and foreign firms, but also to increase the competitiveness of Philippine SMEs, that may face more difficulties in fulfilling regulatory requirements than a large domestic or foreign firm.

In the infrastructure sectors, studies note that while deregulation and entry liberalisation are powerful instruments to discipline incumbent monopolies, these policies are not sufficient to ensure that markets perform efficiently. In the absence of clear rules and appropriate regulatory framework, as well as efficient regulators, effective competition cannot be guaranteed.

Broad public support through education programmes for a comprehensive regulatory framework is needed. While the Philippines has initiated many market-oriented reforms, much remains to be done in terms of legislating effective rules and regulations, as well as in creating efficient institutions.