REGULATORY IMPACT ASSESSMENT: A TOOL FOR BETTER REGULATORY GOVERNANCE IN SRI LANKA?

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Foreword

The Public Enterprise Reform, Competition and Regulatory Policy Research Unit of the Institute of Policy Studies of Sri Lanka (IPS), with assistance from the Centre on Regulation and Competition, University of Manchester, UK, has been carrying out work on implementing a suitable framework for Regulatory Impact Assessment (RIA) in Sri Lanka. The initial stage of this work will culminate in the presentation of a Concept Paper, "Regulatory Impact Assessment - A Tool for Better Regulatory Governance in Sri Lanka?" to the government. Leading up to this, this Interim Paper has been produced to draw the views of stakeholders in the regulatory arena.

This Paper is the product of an informal working group convened by IPS with representatives from the public, private and non-governmental sectors. The members of the working group are:

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Section 1: Introduction and Rationale

A robust regulatory structure is a preliminary requirement in order 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. However, even as this country has moved along the path of economic reforms, priority has not been given to implementing a well-structured, independent regulatory mechanism in the country. The adverse consequences of such delays to the economy and society become a serious issue.

Heavier regulation is generally associated with greater inefficiency of public institutions, including corruption, but not with better quality of public or private goods. Hence it is a responsibility of the Government to ensure that regulations do not have a perverse effect on the economic and social goals of the country.

Most of the regulatory enactments passed by the Sri Lankan parliament have made provision for the Minister in charge of the particular subject to issue regulations from time to time. Even though such provisions may be an aspect of the system of representative democracy and democratic accountability, there is little or no systematic evaluation carried out by the political authority with a view to improving the efficiency and effectiveness of the regulation. However, according to international best practice, designing and structuring of regulations have to be done upon a careful evaluation of impacts that are likely to result.

Regulatory Impact Assessment (RIA) is a systematic process for assessing the significant impacts (positive and negative) of a regulatory measure. The assessment may relate to the likely impacts of a proposed regulation or the actual impacts of existing regulations. Hence, this is a tool that would be helpful in making policy decisions, to ascertain the impact of existing or proposed regulation and regulatory alternatives.

1.1 The realization of development goals requires that the activities pursued by economic actors – State or private sector – converge towards the attainment of *efficiency* with *equity*. Efficiency in this context is defined as the allocation of scarce resources in the most optimal manner to maximise returns, leading to improved economic growth. However, as empirical findings from around the world suggest, economic growth is sometimes accompanied by increased inequality. Hence the importance of ensuring *equity* – encompassing intra-generational equity (or "pro-poor" growth) and intergenerational equity, the two dimensions of sustainable development.

1.2 The existence of imperfect, incomplete or missing markets means that some form of intervention is required to ensure the attainment of efficiency. Furthermore, even efficient markets may require intervention to satisfy the requirements of equity. In

both cases the intervention is most often in the form of a *regulation*, broadly understood to mean laws, formal and informal orders and subordinate rules issued by all levels of government, and rules issued by self-regulatory bodies to whom governments have delegated regulatory powers (adapted from *Lee (2002)*.

1.3 Accordingly, regulations play a critical role in the attainment of development goals. In Sri Lanka, this has resulted in a vast body of regulations – economic, technical, social and environmental – being introduced over time. Yet, often such interventions have had unintended adverse impacts, have not realized the anticipated benefits, or have become unnecessarily burdensome. In such cases the regulatory process has not lived up to its critical role in promoting efficiency and equity. The following boxes provide illustrations drawn from diverse contexts.

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 has 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 for 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 whilst these changes are implemented.

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 licenses 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 US Dollars 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 ILAC provides an incentive to by-pass the authorized 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 by-pass. 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.

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&A's). 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 to be also 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 (eight altogether 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 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 ready made garment exports. The decision was justified on the basis that a separate Monopolies and M&A's Code would be enacted. However, this is yet to be done.

Presently, the "hole" in the current law regarding Monopolies and M&A 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&A's clause should have therefore been subject 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 Underlying the cases of unsatisfactory regulatory intervention has been the absence of a systematic approach to integrate efficiency and equity perspectives into the regulation-making process. The result has been a widening of the development deficit, an outcome that Sri Lanka cannot afford. It is therefore imperative that a consistent systematic, holistic approach to regulatory decision-making is adopted.

1.5 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 to the exclusion of equity.

1.6 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, as with any other technique, is not a substitute for decision making – what it is, is a powerful tool to improve the quality of regulatory governance.

1.7 RIA may broadly be described as **a process used to assess the likely consequences of proposed regulation, and the actual consequences of existing regulations, to assist those engaged in planning, approving and implementing improvements to regulatory systems** *(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 various stakeholders in society. The other key feature of RIA is the promotion of widespread consultation (including public consultation) in the decision making process.

1.8 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. 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.

1.9 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 captured 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

The cases where regulators have in Sri Lanka 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 attained. 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. Having considered 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.

Three fixed access operators were invited to respond to the submissions at the conclusion of the first phase 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 hearing.

Having considered 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 29th March 1999.

1.10 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. The following Section looks briefly at how RIA has been applied in other countries before going on to propose a suitable governance/ implementation framework for RIA in Sri Lanka in Section 3. The final Section proposes a pilot study to take the process forward from this document.

Section 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 needed 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 burdens on businesses or stifle 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 the 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. Otherwise it is usually preferable to leave market failures to be corrected by the market itself, rather than imposing bad regulations.

2.3 Regulation must be well designed, effectively implemented and properly enforced if it is to yield the greatest 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, to be addressed correctly defined?***
- ***Is the Government action justified to deal with this problem?***
- ***Is regulation the best form of government action?***
- ***Is there a legal basis for regulation?***
- ***What is the appropriate level(s) of government for this action?***
- ***Do the benefits of regulation justify the costs?***
- ***Is the distribution of effects across society transparent?***
- ***Is the regulation clear, consistent, comprehensible and accessible to users?***
- ***Have all interested parties had the opportunity to present their views?***
- ***How will compliance be achieved?***

This checklist forms 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. (Annex 1 reproduces more OECD best practices.)

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 the 2000 version of its RIA guidelines, stressing that an RIA is an integral part of the policy development process as well as that it is 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: Building 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 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 is operating today in essentially the same form. He accomplished this by issuing an 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. When President Clinton took office, he issued E.O. 12866 which streamlined the process and increased the public consultation and transparency requirements.

2.8 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 Sri Lanka, considering the volume of legislation and

regulations introduced in the era of State intervention that still prevail, a process of simplification is a timely requirement.

2.9 In Mexico, RIA accompanied the process of regulatory simplification, becoming from 1996 onwards a legal requirement under the Federal Administration Procedure Law for all new regulations that had an impact on business. Implemented through the 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.

2.10 In the developing country context, economic growth is usually underpinned by foreign direct investment. Regulatory simplification, as described in the preceding paragraph, helps to 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.

2.11 The Basic Act requires that all new government regulations be preceded by a regulatory impact analysis, which has to be reviewed by the Regulatory Reform Committee (RRC), a top-level body directly responsible to the President, before the regulation can be passed. Furthermore it provides for the re-examination and rationalization of existing regulations. Here again the RRC is invested with a major role. In order to carry out its functions effectively the RRC has been vested with several powers, including that of returning regulations for redrafting or requiring further information.

Section 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. (*Id.*)

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. (*Id.*)

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 international best practice briefly reviewed in the previous Section, and further detailed in Annex 1, provide useful insights for the development of a suitable RIA implementation framework for Sri Lanka. Of course, these practices have to be adapted to 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*, referred to as 'building an effective regulatory management system' based on international best practice. This would require taking the actions described in the following paragraphs.

3.8 To begin with, RIA needs to be driven at the highest political levels. Of the three tiers of government – central, provincial and local – it is proposed that in the short to medium time frame RIA should first be introduced at the central level in view of the wider impact of regulatory decision making at this level. In view of RIA's applicability to the entire range of regulation-making by government, and more specifically its commitment towards the efficient and equitable allocation of scarce resources, it is recommended that the Ministry of Finance take on the role of providing the necessary leadership for RIA.

3.9 The first and most important requirement is to provide the legal basis for these institutional arrangements by way of a Cabinet decision to establish a core RIA unit within the Ministry of Finance. The unit's mandate 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 which will in turn carry out RIAs. The institutional arrangements should address the desired organizational structure, appointment procedures, relationship with line ministries and regulatory agencies as well as its reporting and accountability requirements.

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 will need to be staffed with adequate expertise in such areas as economics, engineering, law and environment, and be provided training in keeping with international best practice. 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).

3.11 The first task of the RIA unit will be to formulate an RIA template to guide the decision makers. Initially RIA may be confined to regulations where the likely positive and negative impacts or distributional effects are the most significant. This can be given effect to by adopting screening criteria based on the estimated impacts on government revenue or expenditure, costs or benefits to the private sector, number of jobs affected, etc. 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

3.12 Once the RIA unit has formulated the RIA template and screening criteria, a Public Finance Circular should be issued requiring all Secretaries to Ministries, Heads of Departments and Chairmen of Authorities that exercise regulatory powers to undertake an RIA before enacting any new regulation that meets the predetermined screening criteria. The RIA unit will be entrusted the oversight 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 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 publicise the RIA, as well as its opinion thereon.

3.13 Other important, ongoing functions for the RIA unit will be to:

- Develop and implement data collection strategies, clarifying quality standards for acceptable data and suggest strategies for collecting high quality data at minimum cost within time constraints. Data relating to the costs and benefits of alternative courses of action are the heart of RIA. At the beginning, most of the relevant data may be qualitative rather than quantitative.

- Establish systems for collecting information on the impacts of new regulations, once they have entered into force. This will help to 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 the skills required to do high quality RIA.

3.14 In the **medium to long term**, based on the experience gained, RIA should be progressively introduced to the provincial and local levels of government. The central RIA unit can play the lead role in driving this process.

3.15 The scope of RIA should also be expanded at this stage 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. Furthermore in the medium run RIA should be extended to reviewing and updating existing regulations with a view to simplification of administrative formalities and addressing existing regulatory failures.

3.16 The central RIA unit will have to develop on the work it started in the short/medium term. A specific priority will be to continue to improve on the quality of data for the analysis component of RIA. The goal should be to enable monetized comparison of all costs and benefits – quantitative and qualitative – associated with the given options.

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, possibly 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, review by the RIA unit, 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

Section 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. The 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 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 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 this exercise 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 Ministerial representatives. For this to be effectively done, a pilot RIA will be undertaken with opinion leaders as stakeholders on a topical regulation.

4.5 It is proposed that the findings of the pilot RIA should be discussed for its pros and cons during the engagement with the Government. The Government would then be 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 to identify key bottleneck resource issues and competency development areas in the future for full implementation of RIA.

4.6 The following 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
- A practical application could also help build awareness and a support network for RIA among government officials as well as other resource persons

- The final pilot case can also be used to drum up external support and raise awareness – for example it can be used as a case study to explain the RIA process and findings to the media rather than trying to feed in a theory

4.7 The following downside issues may have to be overcome:

- A full-scale RIA – given bureaucratic red tape and distractions – may take longer than anticipated and could also be more difficult to finalise if the requisite data is not readily available
- Also, a successful pilot does not guarantee any changes or buy-in from influential constituencies within the establishment

4.8 Sri Lanka sees more proposals getting shelved than implemented. So perhaps the need is to be more innovative about how the RIA idea is packaged and presented. Presenting RIA only to the government and waiting for acceptance from the top alone may go the same way as so many other good proposals. Undertaking the pilot RIA will be beneficial in this regard, as it can be used for:

- Building political and government administration-level support
- Building surround pressure – the pilot case can be used to apply pressure from various different points. For example, through the media, to build bottom-up public support and awareness, using regulatory experts for expert opinions in favour of RIA, using NGOs like Transparency International to demand greater transparency of regulations, and using UN and lending agencies to suggest greater accountability via the RIA process. By using different stakeholders, the case for RIA can be built from different angles.
- Media buy-in would be easier, as it would not be the case of feeding the same news story repeatedly, but different stories on the same concept

4.9 The following may be suggested as possible cases for piloting RIA:

- Amendments to the VAT
- Amendments to the Tobacco Tax Act
- Cess on vehicles imports
- Private Health Services Bill (being drafted)
- Price control formula on drugs
- Calling Party Pays Tariff

References

ADB (1999). Governance: Sound Development Management, Asian Development Bank.

Lee (2002). Developing and Applying Regulatory Impact Assessment Methodologies in Low and Middle Income Countries, Centre on Regulation and Competition Working Paper Series No. 30, University of Manchester, Manchester.

OECD (1995). Recommendation on Improving the Quality of Government Regulation, OECD, Paris.

Wanasinghe (2001). The Implications of the Changing Role of Governance in Sri Lanka, Governance Series No. 7, Institute of Policy Studies, Sri Lanka.

Annex 1: Selected International Best Practice Literature

A1.1 OECD 'Best Practices' Guidance

A1.1.1 Good practices for improving the capacities of national administrations to assure high quality regulation

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

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

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

B. IMPROVING THE QUALITY OF NEW REGULATIONS

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

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

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

Source: OECD Report on Regulatory Reform (1997), cited in *Lee (2002)*

A1.1.2 Checklist of regulatory quality techniques

Managing Regulatory Systems

- Establish a system for tracking and registering existing laws and regulations, and for planning future laws and regulations
- Establish responsibility for improvement at the ministerial or prime minister's level

- Establish a central oversight body
- Establish a high-level advisory commission
- Develop a standardised "checklist" for regulatory decision-making in the ministries
- Adopt an administrative procedure law
- Establish a system of regulatory analysis
- Establish mechanisms for public consultation and participation
- Conduct systematic reviews of existing regulations
- Promote cultural change within bureaucracies

Ensuring Public Consultation and Participation

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

Ensuring Legal and Technical Quality

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

Assessing Costs and Economic Effects

- Require impact analysis of the costs and benefits of proposed laws and regulations
- Establish a central economic analysis unit
- Establish an economic analysis capability in regulatory programmes
- Integrate economic analysis into the legislative and regulatory process
- Assessing Compliance and Implementation Requirements
- Include implementability and enforceability criteria in drafting directives for legal instruments
- Develop systematic compliance strategies
- Use an implementation assessment checklist
- Require explicit parliamentary consideration and approval of resources required for implementation
- Apply project planning and management techniques
- Educate and involve the decision-makers
- Organise training sessions for ministry staff on implementation assessment
- Strengthen common elements of regulatory system

- Ease implementation problems by slowing the pace of new regulation

Communicating and Codifying Laws

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

Source: OECD (1994) Improving the Quality of Laws and Regulations, pp. 14-15, cited in *Lee (2002)*

A1.1.3 Performance criteria for an RIA system

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

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

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

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

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

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

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

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

Source: Deighton-Smith, Regulatory impact analysis: best practices in OECD countries in OECD (1997), op. cit. p.213, cited in *Lee (2002)*

A1.1.4 Getting maximum benefit from RIA: best practices

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

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

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

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

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

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

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

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

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

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

Source: Deighton-Smith, Regulatory impact analysis: best practices in OECD countries in OECD (1997), op. cit., p. 215, cited in *Lee (2002)*

A1.1.5 The 1996 Arrow principles: ten elements of high quality analysis

1. Each analysis contains a useful comparison of favourable and unfavourable effects of proposed regulation, with
    a) primary focus on estimates of overall benefits and costs, and
    b) secondary focus on distributional consequences, that is, on

2. impacts on particular segments of society as well as on
    a) ii) issues of equity within and across generations

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

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

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

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

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

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

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

10. All analyses use the same common core set of assumptions such as the social discount rate, the value of reducing risks of accidents and premature death (expressed as number of life-years extended), and the value of other improvements in health. Where alternative values appear more suitable, the analyses indicate how outcomes differ from those that emerge using the common core values.
    a) Future benefits and costs are discounted to present values using a range of discount rates chosen to reflect how individuals trade off current for future consumption rather than the rates of return on private investment.

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

11. A standard format is used to summarise each analysis, highlighting:
    a) the net present value of benefits and costs of both the preferred and the main alternative options,

    b) notable features of the stream of these benefits and costs,

    c) key assumptions employed, with a list of factors that have and have not been quantified, and

    d) incremental net benefits of each regulatory alternative.

Source: Arrow et al., 1996 (quoted in OECD, 1997, pp. 126-127), cited in *Lee (2002)*

A1.2 Basic Act on Administrative Regulations, Act No. 5368, 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 method s, 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 followings.
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 regulations 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 the 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 regulations 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 followings.
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 day 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 labor 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 y

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 followed.
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.

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