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REGULATORY IMPACT ASSESSMENT IN SRI LANKA: THE BRIDGES THAT HAVE TO BE CROSSED

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INTRODUCTION[i]

The last few years have seen a marked shift in the thinking on regulation in Sri Lanka, with significant processes being initiated in the move towards multi-sector models of regulation. The adoption of this new genre of regulation is largely a response to weaknesses of regulatory governance evident in the prevailing sector-specific structures, which began with the liberalisation of 1977, with few positive results to show. The centralization of policy development functions under the prime minister with the change of regime in December 2001, and the establishment of a special unit directly reporting to the highest level of government – the Public Interest Program Unit (PIPU) – to solely address issues of competition and regulation, set out the institutional parameters for regulatory policy in Sri Lanka.

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

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

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

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

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

This new breed of regulatory agency must exist with substantial operational and financial autonomy. This will enable them to operate efficiently in an environment characterized by growing technical complexity, naturally leading to a rise in the number of interested

stakeholders; arbitrage conflicts and potential clash of interest with other government bodies; and, worst of all, the risk of regulatory capture, since the agencies repeatedly interact with a reduced number of private firms, which is usually characteristic of all sectors at the time regulatory bodies are established, i.e. at the time of liberalization of the sector. Clear separation of the policy-setting function and the implementation function, with political accountability for the former, and administrative/legal accountability for the latter, is a basic element of sound public administration and must be incorporated strongly into these new regulatory agencies.

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

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

- an economic evaluation of the regulation of the telecommunications sector, i.e. the sector-specific Telecommunications Regulatory Commission of Sri Lanka (TRC), its proposed successor the Information and Communications Commission of Sri Lanka (ICCSL) a multi-sector agency, as well as the likely effects of the Public Utilities Commission of Sri Lanka (PUCSL);
- analysis of the main challenges facing these agencies, thereby highlighting the lessons for other industries that are in the process of coming under the purview of one of the three proposed multi-sector regulatory agencies

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

The perspective in this study is informed by the idea that political institutions interact with regulatory processes and economic conditions in exacerbating or ameliorating the potential for administrative expropriation or manipulation, and hence determining the utilities' economic performance. Furthermore, for the evaluatory purposes summarised above, the

definition of RIA used is mentioned below, which is sufficiently broad so as not to restrict the analysis of this paper for the Sri Lankan situation.

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

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

METHODOLOGY AND LIMITATIONS

This paper was mainly researched through a series of both formal and informal interviews with a number of key individuals from the regulatory commissions under review as well as other key stakeholders. The questionnaire used in the formal interview is laid out in Annex 1, along with the covering note used. Other documents annexed are OECD Best Practice Guidelines – Annex 2 and A Proposed Framework for applying RIA – Annex 3.

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

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

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

A definition as constrained as this, especially when compared to the definition used by Norman Lee[2], did little to make the respondents aware of the breadth of activities that come under the heading of RIA. It is true that systematic processes are not used in Sri Lanka, but if not for the intervention of the interviewers who had to explain the breadth of RIA – that is to say that RIA does not merely have to follow a systematic process to be defined as such – the majority of the questions would have been left unanswered following from a negative response to the very first question which inquires whether RIA is used locally.

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

REGULATORY ENVIRONMENT IN SRI LANKA

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

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

The regulatory environment of Sri Lanka has been severely affected by this lack of a transparent published policy document promoting government wide regulatory reform or regulatory quality improvement. Even though as mentioned earlier, there does exist a special unit – PIPU – to deal with competition and regulation issues, initiated as a sunset entity at the time of the change of government in 2001, there is no explicit policy regarding regulatory reform. Without the proper initiative originating explicitly from the highest echelons of the political hierarchy there is hardly any chance of significant changes taking place within the current system, except through conditions imposed by international donor agencies[3].

Following from the absence of regulation policies the basic problem that plagues regulation in this country is the lack of any systematic process underlying the values and procedures that the agencies aim to carry out. For example, the relevant agency or industry specific legislation only recommends using consultation processes. While some degree of flexibility is vital to the functioning of the agency, this provision is too vague and leaves too much leeway in the hands of the commissioner, thus removing any possibility of making the process systematic and further worsening the problems of transparency and accountability.

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

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

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

The regulatory structure and the composition of the regulatory body itself thus become critical to the evolution of competition in the industry. The regulatory body can either aggressively pursue pro-competitive policies or it can entrench the market power of the new private firm. If those who use their control over the state and the privatization process to extract rents can also control the composition and mandate of the regulatory body, there is a double dividend from the process: privatization is all the more privately profitable for politicians if it is followed by anti-competitive regulations. This suggests a motive for, and an explanation of, the reasons why governments, apparently committed to pursuing quite radical market-friendly policies shift their position from pro to anti competition in privatized industries – a scenario which epitomizes the Sri Lankan experience up to now.

Whilst the regulatory task of balancing conflicting stakeholder interests is difficult, even under the best of circumstances, the politicization of the regulatory process makes the regulatory authority more vulnerable to capture by particular players in the industry, and casts doubts on its impartiality. Of particular importance, which must be kept constantly at the

forefront of this study, are the problems that affect the agencies due to the overall non-conducive political atmosphere prevalent in the country, owing to the chief executive and legislature coming from different parties as well as the prominent vagaries of the political business cycle. Additionally, it is important to grasp that if one uses the "Performance criteria for a RIA system" (Deighton-Smith, 1997) (Annex 3.3), the only conclusion that follows is that RIA is not applied in Sri Lanka at any level, neither macro nor micro, and definitely not at any stage of the regulation procedure. And where some semblance does exist it is usually counter productive and merely an attempt to indicate that there are some measures of transparency and accountability being held up - a façade in every possible way.

ANALYSIS OF THE PUCSL AND THE TRC

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

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

The proposed multi-sector agency for telecom, broadcasting and related communication industries is the ICCSL. The breadth of its duties will be covered later in this section. However, at this juncture it is important to mention the incumbent regulator, the TRC, for the telecom sector and later on progress to the possible effects of the transformation of this agency into the ICCSL.

Legislation was introduced in 1996, by way of the Sri Lanka Telecommunications Act No.25 of 1991 as amended in 1996 (Sri Lanka Telecommunications (Amendment) Act No.27 of 1996), to convert the Office of the Director General of Telecommunications (ODGT) to the TRC. The single-person authority was replaced by a five member Commission comprising three part-time members, with security of tenure, and two *ex-officio* members. The part-time

members were drawn from the fields of law, finance, and management; the two *ex-officio* members were the Secretary of the Ministry, serving as Chairman, and the Director General of Telecommunications, serving as the Chief Executive Officer of the Commission.

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

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

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

One area where there has been a substantial improvement through recent legislation is the degree of institutional coordination between respective agencies, which was non-existent in

previous legislation and therein detrimental to their efficacy. There is to be written memoranda between the multi-sector commissions mentioned in this paper and the Central Environmental Authority, the Urban Development Authority and any other such regulatory body(ies) as designated by the Minister[4]. These memoranda would secure the co-operation and exchange of information between the Commissions and each of the other bodies, as well as secure consistency in the treatment of matters which come within the scope of the functions of the Commissions and each of the other bodies. However, given the political infighting, the resulting turf wars and the general saturation with poor governance, memoranda of understanding will not suffice and its real benefits may only be realised through proper implementation of the concept.

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

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

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

A summary of the agencies under review are presented in Tables 1 – 4.

Table 1: Regulatory agencies: summary data

	PUCSL	TRC	ICCSL (proposed)
Founding legal act	PUCSL Act, No.35 of 2002	Sri Lanka Telecommunications Act, No. 25 of 1991, as amended by the Sri Lanka Telecommunications (amendment) Act No. 27 of 1996	ICCSL Bill, Discussion Draft of 2003
Inception	March 2003	February 1998	-
Headquarters	Colombo	Colombo	-
Regional offices	No	No	-
Number of directors	5 Commissioners + Director General	Secretary to the Ministry (ex-officio Chairman), Directory General + 3 Commissioners	5 Commissioners + Director General
Criteria for appointment as Director General	Person with ability and integrity and having shown a capacity in addressing problems relating to, engineering, law, economics, business management, accountancy or administration	Discretion of the Minister	Person with ability and integrity and having shown a capacity in addressing problems relating to, communications, engineering, law, economics, business management, finance, accountancy, administration or consumer affairs.
Number of employees	-	204	-
Annual budget	-	Rupees 480 million	-
Source of funding	Levies charged under industry Acts & fees received for the grant or renewal of licenses under those Acts	Licensing fees	Levies charged under the Act (proposed)

Source: authors' elaboration

Table 2: Regulatory rationale & agency powers

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

Source: authors' elaboration

Table 3: Formal safeguards of regulatory agencies

	PUCSL	TRCSL	ICCSL
Legal mandate (freedom from ministerial control)	Yes	No	Yes
Criteria for appointment of commissioners	At least three of the members must be qualified in engineering, law, or management. Conflict of interest rules are specified.	Secretary to the Minister, who shall be Chairman. Other members must be qualified in law, finance or management. There are no conflict of interest rules.	At least three of the members must be qualified in engineering, law, or management. Conflict of interest rules are specified.
Appointment process	Directive of the Minister following approval of the Constitutional Council	Solely on the directive of the Minister	Directive of the Minister following approval of the Constitutional Council
Staggered terms	Yes	No	Yes
Length of mandate	5 years	3 years	5 years
Terms of removal	Based on grounds of diminished financial or mental capacity or a failure to discharge duties or disqualification to be a member. Requires parliamentary approval.	At the discretion of the Minister	Based on grounds of diminished financial or mental capacity or a failure to discharge duties or disqualification to be a member. Requires parliamentary approval.
Quarantine	For three years a member of the commission cannot acquire, hold or maintain, directly or indirectly any office, employment, consultancy arrangement or business in Sri Lanka where he/she may be liable to use/disclose information acquired by him/her in the existence, performance and discharge of the powers, duties and functions of the commission.	None	For three years a member of the commission cannot acquire, hold or maintain, directly or indirectly any office, employment, consultancy arrangement or business in Sri Lanka where he/she may be liable to use/disclose information acquired by him/her in the existence, performance and discharge of the powers, duties and functions of the commission.
Exemptions from civil service salary rules	Yes	Yes	Yes

Source: authors' elaboration

Table 4: Accountability of regulatory agencies

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

Source: authors' elaboration

PUCSL

State-owned enterprises are the main (and sometimes only) provider of the services in the sectors that will come under the purview of the PUCSL, thus the government's direct role as investor and indirect role as regulator gives rise to a conflict of interest. In addition, directives of the minister, even though limited in new legislation, must be accommodated by the agency. Direct interference of a particular minister is limited from the policy angle since policy guidelines must originate from the Cabinet of Ministers. But this proactive measure is compromised under section 40 of the PUCSL Act, No.35 of 2002[5]:

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

Though the safeguard of the order having to be gazetted is praise-worthy it is hard to imagine the necessity of such a section since the technicalities of the issues involved are undoubtedly beyond the scope of the relevant minister. Thus this section unnecessarily allows ministerial interference in the activities of the PUCSL, thereby jeopardising the possibility of impartial rulings.

Indicative of the lackadaisical efforts of the regulators in Sri Lanka in general and the PUCSL specifically, the regulatory manual, as necessitated by the PUCSL Act to be completed within six months of the establishment of the commission, has still not been drafted even though it has been in excess of four months since the agency's inception. Furthermore, the drafting of the manual is to be outsourced to a foreign consultancy firm, highlighting the lack of local expertise, but more important are the potential losses, economic and otherwise, if the proposed regulatory system is poorly geared to the Sri Lankan context. While it is understood that there is no choice except to outsource the drafting of the regulatory manual, what is most important to note at this juncture is the inefficiency of the PUCSL in handling this matter. With very little time left to meet its deadline, it goes without saying that the manual that will come into effect in September will be poorly geared to the needs of the country and merely adopted so as to keep in line with the stipulated deadline[6]. As for the actual outsourcing of the

manual this too should come under scrutiny because the TRC went through a similar process a few years ago and surely they could have been consulted by the PUCSL so as to build upon the knowledge already gained through the consultations carried out at that time[7].

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

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

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

Even though this does point towards a form of *ex post* RIA, the decision to carry it out is still left in the hands of the Commissioner, thus there is no endorsement of a systematic process. Furthermore, international benchmarking is actually rejected by RIA, which is based more on own practice, but with some view to the 'best practice' guidelines[8] of OECD countries. Thus, this initiative is actually a move in the wrong direction. Benchmarking should not be viewed as an end to the need for impact assessment, either *ex ante* or *ex post*. The inherent problems of benchmarking, such as choosing appropriate standards, as well as enforcement issues etc, are only part of the problem with benchmarking. Once cost-benefit analyses are opted against in favour of benchmarking a serious problem that arises is the misallocation of funds due to misconstrued priorities. For example, giving access to clean safe water to those currently deprived of such, may not require water connections being supplied to each and every house in a particular village but merely the provision of a few stand pipes that can cost-effectively serve a particular group of people. A similar argument can be applied to the provision of communication services to particular areas. This is not to say that this is the best option, but merely aims to indicate the need for a quantified cost-benefit analysis at various stages of the regulatory process.

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

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

Although there is some indication that RIA methodology may be applied, the point of contention here is that it is a mere recommendation with no emphasis on the extent of consultation or the stages at which it should be used. A similar clause exists in the draft legislation for the ICCSL. The flexibility afforded to the commission on this point, as well as others, is understandably important to ensure the smooth and expedient functioning of the agency. However, this leeway is far in excess of that which can guarantee a systematic process to the functioning of the agency. Thus even if it is envisaged for the regulatory manual to address the issue of a systematic process there is nothing to guide the structure of the system and unfortunately it may purely turn out to be a reflection of the processes already in use with maybe only marginal improvements.

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

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

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

The prognosis for the PUCSL is not all negative but at this point in its life, so soon after its inception, one must be aware of the fact that it has to constantly fight off political capture from all sides and hopefully find and then stay along a path of good governance, with maximum adherence to transparency, thereby giving meaning to the avenues of accountability that have been ensconced in the PUCSL Act.

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

Firstly, the industry acts, those already certified or still being drafted, are severely inconsistent with the Constitution of Sri Lanka, which unambiguously advocates and enforces the devolution of power to the local government bodies, as well as stipulating that these powers cannot be reduced or removed. The provisions in the Electricity Reform Act (No.28

of 2002), the draft Water Services Reform Act and the draft Petroleum Reform Act all are in conflict with the Constitution by vesting certain powers in the PUCSL which in effect deprive the relevant local authorities of the power to carry out their functions. Probably the most significant example in this problem is the centralisation of licensing functions with the PUCSL, whereas such powers should be vested with the relevant local authorities, the omission of which will deprive these bodies of their due revenue.

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

Secondly, there has been insufficient importance placed on certain aspects of the functions of the PUCSL within the electricity reform and water services acts. Specifically, there seems to be a skewed understanding of the intricacies of the sectors under reform. The reforms initiated by the Electricity Reform Act, for example, envisage a situation where the sector will be made up of a competitive pool of generators, a monopsonist transmission company and a competitive pool of distributors. However, distributors are the only group that is subject to any form of penalty based on the idea that they are only ones in direct contact with the end user and therefore any compliant must reflect a fault of theirs. This unfairly exonerates both the generation companies and the transmission company. Clearly this grave oversight on the part of the regulators deserves immediate rectification. A similar situation has arisen with the draft Water Services Reform Act, where once again there has been a desegregation of the distributors and the storage facilities (canals, rivers, reservoirs etc) followed by faulting the distributors for any shortfall in service, both quality and access, both of which may result from problems well beyond the control of the distributors such as a drought.

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

TRC

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

The TRC is supposed to look at all the functions and activities relevant to the telecommunications sector and to check whether they comply with the statute and license requirements. The main areas of focus are: whether the operator license conditions are adhered to; monitoring the implementation of conditions given in orders issued by the Commission; monitoring whether the directions of the Commission are fulfilled by the relevant parties; and monitoring whether the provisions of the Telecommunications Act are violated.

Under the existing legislation, the line Minister can issue “general or specific” directions with which the Commission must comply. Moreover, while the TRC can recommend the issuing of telecom licenses to the Minister, he/she can reject these recommendations, with reasons, and give out licenses at his/her discretion. In the area of tariff control however, the TRC has more discretion with the mandate to determine tariffs in consultation with the Minister.

One of the major problems that beset the TRC at its very outset was that the practice of hiring the bureaucracy from state-owned enterprises did little to foster the development of

independent and autonomous capacities within the regulatory body. The absorption of several former employees of the incumbent operator has also led to the perception, among private investors, that the crux of the regulatory game concerned political issues and not the creation of the economic incentives necessary to create a competitive market. Even though the TRC did get an infusion of new blood in 1998, any benefit was short lived because political interference over the next few years in favour of the incumbent greatly affected its effectiveness, and thereby its legitimacy in the public eye.

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

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

- universal accessibility to basic telephone service at affordable prices;
- equitable treatment of subscribers in terms of service, irrespective of the operator providing it;
- opportunity for telephone companies to earn a reasonable return on their investments and to develop their networks in regional and remote areas while providing customers with efficient and good quality service;
- generation of healthy competition among telephone companies avoiding unfair and anti-competitive practices;
- development of networks and widespread availability of new technology and innovative services to respond to the needs of business and residential customers; and,

- facilitation of the introduction of new services and appropriate technologies to encourage growth and convergence of telecommunications, broadcasting and information technology in order to provide a better service to consumers.

(Source: Ramasundara, 2002)

These objectives, though not explicitly stated, are clearly ones that the TRC was committed to through their overriding objectives of furthering competition and thereby the creation of a level playing field for all operators. However, the actual experience has been quite different with much favouritism being bestowed upon the incumbent operator for various reasons, with obvious detriment to the sector and the legitimacy of the TRC. The ICCSL Bill will, if passed in parliament, ameliorate the ambiguity concerning the actual functions of the regulatory body by explicitly outlining the functions that it will have to fulfil, as specified under Chapter IV Section 19 of the Bill[9]. This is a much needed step towards ensuring the transparency of the regulatory body.

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

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

bias towards corporate customers – where lower end subscribers pay more for each call – there has been a significant drop in international calling charges from the beginning of this year, a drop in rates per call equivalent to approximately 66%.

Even though the TRC did have adequate powers to gather information from any operator for various reasons at its discretion, it lacked the officials with the required competency and experience to ascertain the precise information required in the correct formats, and the frequency with which to obtain them. This followed on into the problems of analyzing and using the information, once received, for monitoring the performance of operators so that appropriate corrective actions to problems can be taken. Presently, different divisions of the TRC are seeking the same information in different formats. Information furnished is not properly analysed and in most cases, no further action is taken (*Ramasundara, 2002*). The ICCSL Bill has incorporated substantial widening of powers with regard to obtaining information from operators. This combined with the possibility of employing a highly qualified and capable staff, due to salary scales that will be comparable to the private sector, will ensure that the ICCSL will be at a distinct advantage in comparison to the TRC when it comes to discharging its duties[10]. With effect to the reasons mentioned here, the ICCSL will also be better equipped to enforce license conditions and penalties for violation of license conditions, where provisions to deal with such are explicitly stated in the Bill.

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

Like the PUCSL, the TRC does function with a significant degree of financial autonomy. This has been addressed and improved in the ICCSL Bill, where the accountability and transparency of the proposed agency has been delineated along the lines similar to the PUCSL, i.e. through the functioning of an independent fund, submission of annual accounts for auditing as well as an annual report for scrutiny by the Minister and Parliament. One significant improvement over the PUCSL is the requirement of the ICCSL to submit a budget no later than 90 days before the start of a new financial year. This budget will be subjected to Parliament approval, following which the agency is not allowed to exceed the approved budget by ten percent.

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

Furthermore, the non-application of assessment procedures (RIA or otherwise) to all cases of regulation similarly indicates the lack of systematic processes in the regulation undertaken by the TRC. Currently the only form of impact assessment is based on an analysis of prices and quality of service. As mentioned earlier the current pricing system is unfavourable to the consumers who are most in need of affordable communication methods. But even though there has been a significant improvement of the quality of service in the industry this improvement has merely be centred in major cities, where the installation of new phones can take place within a short number of hours. “Rural” areas are still starved of communication services. The measure taken by the TRC to alter this was a fine of US$80,000 for the more recent entrants if they do not adhere to stipulations laying out the required levels of

penetration into underserved areas[11]. However, the fee was too low and the operators merely opted to pay the fine and not invest in developing the communication infrastructure in these areas.

Nevertheless, there have been some major developments in the telecommunications sector over the last year. Two of these stand out: namely a proper interconnection framework and the open licensing policy for external gateway operators. In the latter, licenses are being issued to all who fulfil stated criteria, without numerical limit. A non-discriminatory interconnection framework is also being established that will allow all operators to function on a level playing field. Furthermore, given the ineffective previous attempt to increase investment in underserved areas there is to be set up a fund, called the "Viswa Grama", which will channel a levy placed on each incoming international minute, to those service providers who begin serving the underserved areas. Other developments include a proposed international short code auction, an investigation of the monopoly of undersea cables, the implementation of a "Calling-Party-Pays" regime for mobile phones and the completion of the numbering plan implementation which is transforming the current system into one based on a 10-digit number system.

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

A further exposition of some of the answers elicited through the questionnaire is unfortunately unwarranted due to the significant differences that permeate the very essence of the answers. There was disagreement with regard to whether or not there are "explicit published policies promoting regulatory reform or regulatory quality improvement in specific

sectors" and whether or not there is "a dedicated body (or bodies) responsible for encouraging and monitoring regulatory reform or regulatory quality in the national administration." There is also disagreement on whether RIA is applied to social regulation. However, a point which does warrant mention is that there was complete agreement on whether costs and benefits of regulation are assessed. Costs and benefits are assessed but never quantified.

CHALLENGES AND OPTIONS

There are four main problems that have contributed to the poor performance of regulation in Sri Lanka:

1. regulatory capture;
2. insufficient coordination between different agencies;
3. unclear definition of their respective competencies; and
4. inadequacies in design of antitrust legislation.

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

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

Either way, there are considerable improvements being established for the overall benefit of the country, as outlined within this paper. Each of the above mentioned inadequacies have been dealt with in new legislation – not to the best possible extent, but with definite

improvements over previous legislation, which should translate into a better era of regulation in Sri Lanka.

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

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

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

Of equal importance, is the efficiency of the new agencies. There are problems of actually realizing the promised savings from the common supply of regulation to the different sectors. Unless several infrastructure sectors are reformed simultaneously, a multi-sector regulatory agency would not be created from scratch, but would have to be the result of merging several existing agencies. In the prevailing political and legal environment, it is not possible to

dismiss employees in the course of such a merger (Samarajiva, 2002). This would negate the realization of the hoped for economies of regulation. In addition, a merger of two going concerns would create significant morale problems in the status- and turf- oriented Sri Lanka bureaucratic culture.

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

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

But even though this was a component of the functioning of the TRC the benefits were not forthcoming and have only been partially realised now, seemingly due to various pressure to perform rather than any internal incentive. Such pressure could be seen from two fronts: one being the necessity to show some substantial achievements prior to the adoption of the

ICCSL, and secondly, government policies to significantly liberalise the sector. The regulatory mechanisms of the multi-sector agencies will hopefully not need such external pressure to ensure that it functions effectively.

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

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

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

themselves to monitor these indicators with a significant proportion of their annual report given to the elucidation of these values.

Additionally, the regulatory body should not be allowed to run away from issues. Being the regulator of the sector, it should be accountable and should take action to create an environment for consultations, provide correct interpretations of license conditions which are complex due to the nature of the technicalities involved, make firm determinations wherever required and take appropriate action for the enforcement of decisions. The absence of a proper regulatory mechanism leads to prolonged litigation among competitors and due to the complex nature of these issues, the judicial system finds it extremely difficult to resolve them in time, which contributes to the detriment of the overall development of the sector (Ramasundara, 2002).

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

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

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

OECD Regulatory Quality Checklist:

- Is the problem, to be addressed, correctly defined?
- Is the government action justified to deal with this problem?
- Is regulation the best form of government action?

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

Source: OECD (1995)

Overall it is plain to see that noteworthy steps are being taken to improve the regulatory system in Sri Lanka. The fact that the ICCSL Bill is more extensive in its dealings with certain issues, such as the accountability of the agency, in comparison to the PUCSL Act, is indicative of the gains derived from learning by doing. Over the long term, enhancing policy coherence and credibility through returning decision-making powers to the regulatory agencies, consolidating the sources of rule-making, and achieving higher coordination capabilities are all factors that cannot be overstressed.

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

The first barrier which must be broken is the mindset of the individuals involved in the actual processes of regulation-making. Once this is done the so called resource constraints will no longer be perceived as such and therefore RIA can be adopted in a format relevant to the Sri Lankan context. Thus the need for capacity building, though obvious, is a requirement which

must be addressed now. The need is not merely one to improve capacity building in the country in adherence with RIA but to construct it from scratch. A series of seminars, similar to the ones conducted in the Philippines and Malaysia, is undoubtedly the only way to begin this process. Such seminars should be conducted on two levels. First with the actual regulators to give them an understanding of the processes covered by RIA. Second, awareness of such should also be created among the stakeholders who stand to benefit from improved regulatory procedures, namely the relevant operators as well as consumer groups.

While the situation is much too premature to think about formulating a RIA framework for Sri Lanka, it is definitely the second stage of the transformation process. Admittedly, only once there has been a significant development through the proposed seminars will there be any meaningful discussion on this issue. However, if one were to wait until that point to formulate a framework the momentum may be irreparably lost for the foreseeable future. Thus this process must coincide with the seminars so that proposed frameworks can be at least discussed without too much of a gap between the discussions and the seminars. The best starting point seems to be the framework that is included as Annex 4. To extensively quote the authors of that framework:

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

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

[1] The views expressed in this chapter are those of the authors and do not necessarily represent those of the Institute of Policy Studies.
[2] Please refer to page 5 of this paper for the definition.
[3] However, this too does not seem to be forthcoming. See page 29 of this report.
[4] There is also provision for concurrent jurisdiction with the Consumer Affairs Authority on competition related matters.
[5] Available online at: http://www.pucsl.gov.lk/PUCSL.pdf
[6] At the time of writing there was some indication that the regulatory manual may only be fully functional two months after the stipulated deadline.
[7] The regulatory manual for the TRC never came into effect, with the consultants report merely being filed away.
[8] Annex 2.
[9] Available online at: http://www.pucsl.gov.lk/iccsd.pdf
[10] The TRC did have a similar allowance to accommodate non-civil service salary scales. However, its perception, among the stakeholders, as merely another bureaucratic organization, deterred many professionals from joining its ranks.
[11] "Underserved" is used in place of "rural" because there are legal connotations pertaining to the definition of rural areas, which can include urban areas as well – the definition of rural is merely a geographical one pertaining to the jurisdiction of a certain type of local government body. This problem is set to seriously jeopardize the functioning of the PUCSL due to a clash of

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Annex 1: Questionnaire

Regulatory Impact Assessment Questionnaire

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

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

2. Definitions of key terms used in the questionnaire are as follows:

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

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

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

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

……..
……..
…….

1 Assessment of Regulatory Impacts

1.1 Is RIA undertaken before a new regulation is adopted:

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

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

- is RIA required by law?

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

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

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

1.2 Is RIA applied in the following areas?:

- economic regulation

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

- social regulation

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

- environmental regulation

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

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

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

1.4 Are there Guidelines on how RIA should be undertaken?

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

1.5 Where RIAs have been undertaken:

- have they assessed the costs (only) of regulation?

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

- have they assessed the benefits and costs of regulation?

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

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

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

1.6 Where benefits or costs are assessed are they quantified?

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

1.6 Are RIA documents publicly available?

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

1.7 Is RIA used:

- to assess (ex ante) regulation proposals?

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

- to evaluate (ex post) regulation outcomes?

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

2 Consultation and Participation

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

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

In some cases of proposed regulators

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

- Is consultation required by law?

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

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

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

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

  - prior to outline proposals being made?

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

  - prior to detailed proposals being made?

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

  - after detailed proposals are made?

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

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

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

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

3 Overall Strategy for Regulatory Reform

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

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

If yes:

- does it establish explicit objectives of reform?

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

- does it set out explicit principles of good regulation?

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

- In what year was the policy introduced _____

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

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

If yes:

- Have there been any independent regulators?

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

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

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

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

If yes:

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

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

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

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

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

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

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

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

If yes:

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

1.5 Are you familiar with the OECD guidelines on RIA?

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

1.6 Is your country is approach to regulatory impact assessment modelled on the approach recommended by the OECD:

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

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

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

If yes, which country ……..

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

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

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

4.0 **Name and Address** :……
……..

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

Annex 2: OECD 'Best Practices' Guidance

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

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

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

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

B. IMPROVING THE QUALITY OF NEW REGULATIONS

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

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

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

Source: OECD Report on Regulatory Reform, 1997.

2.2 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: SIGMA, 1994, Improving the Quality of Laws and Regulations, pp. 14-15.

2.3 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 (1997b), op. cit. p.213.

2.4 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 responsibility 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 (1997b), op. cit., p. 215.

2.5 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).

Annex 3: A proposed framework for applying RIA

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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