

Good Regulatory Practice - Malaysia's Experience

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Framework of Technical Regulation In Malaysia

1. Technical regulations are usually developed as subsidiary legislation under laws approved by the elected members of the National Parliament.
2. These laws authorize government to issue regulations for the for the purpose of implementation.
3. The processes that government uses to develop regulations are determined by elected political leaders.

Malaysian Regulatory Process

1. The process has evolved over time.
2. Based on practice and administrative decisions; - has not been codified into laws.
3. Responsibility distributed to individual ministries.
4. System for inter-governmental consultation.
5. Cabinet approval generally sought, although legal authority rests with Ministers.
6. Public/Stakeholder consultation process is decided by agencies responsible but is not mandated by law.

Status Technical Regulation in Malaysia

1. Malaysia has a collection of technical regulations comprising of :
 - i. Regulations inherited from the pre-independence (before 1957) period that are still in force in some sectors, and
 - ii. A range of regulations that have been developed in reaction arising concerns.
2. Update of technical regulation often lags changing needs- creating a concern of obsolete legislation.
3. Increasing recognition of need by economic planners of impact of inappropriate regulation as a barrier to attract investment and productivity improvements.
4. Difficulties to regulate effectively and in time: Technology changes growth in trade, gaps and overlaps in legal and administrative systems
5. Global competition in investment and trade: Positive impact of regulatory reform and deregulation.

RECOGNITION for the need for review of Regulations by Government

The Way Forward (Vision 2020)

Extract from Vision 2020 - Economic Planning Unit

“The process of deregulation will continue. There can be no doubt that regulations are an essential part of the governance of society, of which the economy is a part. What is not required is over regulation although it may not be easy to decide when the Government is over regulating.

Wisdom lies of course in the **ability to distinguish between those laws and regulations which are productive of our societal objectives and those that are not;** and it lies in making the right judgements with regard to the trade-offs. In this light and given the fact that there are clear areas of unproductive regulation which need to be phased out, you can expect the process of productive deregulation to continue.”

9th Malaysia Plan 2006-2010 - Chapter 26

“26 During the Ninth Plan period, weaknesses in the delivery of services will be addressed to reduce the cost of doing business. Steps will be taken to enhance the public sector delivery system by improving the administrative machinery at the district level, providing more service channels, **reviewing and simplifying rules, regulations and work procedures as well as expediting the issuance of licenses, permits and approvals for trade, investment and commercial activities.** The strategic thrusts to enhance the delivery of public services are:

- *providing efficient and multi-channel **Government-customer interface and simplifying systems and work procedures;***
- *reviewing and streamlining regulatory requirements;*
- *conducting dialogues with the private sector to support economic growth and competitiveness.*

Recognition of need for GRP

9th Malaysia Plan 2006-2010 -Chapter 26 -2

26.32 Statutes and regulations will be reviewed to further simplify and eliminate cumbersome regulations and procedures. More self-regulation approaches will be considered to ensure faster approvals for business permits and licences **while promoting greater transparency.** Efforts will also be undertaken to empower professional bodies to monitor and certify compliance with administrative and statutory provisions. **Similarly, more disclosure-based regulations will be adopted to promote transparency as well as to expedite approvals, permits and licenses for various commercial transactions.** While easing the regulatory and licensing application procedures through this approach, the Government will ensure stringent enforcement of penalties for wrongful disclosure and non-compliance

Government intention to review regulations

9th Malaysia Plan 2006-2010 -Chapter 26 - 3

Public-Private Sector Collaboration

26.45 The Government will also seek to further enhance the level of consultation with the private sector on new policy initiatives and legislation that impact their activities. In this regard, the Government will, wherever possible, publish and make available to the private sector proposed policy initiatives and draft legislation for comments and inputs. The Government will also continue to leverage on the expertise, knowledge and experience of the private sector in further upgrading its service delivery mechanism. Private sector feedback on impediments to service delivery will continue to be utilised to assess existing levels of service delivery and provide more efficient and effective services.

**Government intention to improve
transparency**

Minimum Process Steps

1	Proposal	Developed by Ministry/Agency Responsible
2	Ministry agreement to proceed	Minister has final authority under Malaysian law
3	Cabinet Paper	Usual practice to obtain overall agreement
4	Inter-Ministry consultation	To obtain views of affected ministries/agencies
5	Development of regulation	Drafting by ministry officials, consultation.
6	Finalization/approval by AG's Chambers & Minister	All drafts vetted by legal experts, Minister's authority
7	Publication in Gazette	Implementation date fixed

GRP tools to enhance Malaysian practice

ISSUES

- Adequately defining the problem.
- Consultation (of all affected parties)
- Alternatives considered ? Best approach selected?
- Ensuring announcement early enough for implementation
- Fulfilling WTO/TBT obligations
- Dealing with Obsolete/outdated regulations

Evaluation

Strengths

- Basic process in place
- General recognition of the need to improve

Potential Improvements with GRP

- Consultation and transparency
- Early circulation/announcement
- Preparation for Implementation
- Clarification of objectives/problem
- Impact analysis
- Regulatory initiatives not to be based on narrow objectives of one agency

Recent Developments

Some initiatives of individual ministries and agencies

Positive developments

- Increased transparency by some ministries- publication of drafts on websites and invitation for comments
- Information dissemination and consultation with interested groups noted (Health & Water authorities)
- Concept of self-regulation in the Communications & Multimedia Act

Current Challenge is to broaden benefits to all agencies

Some Current Initiatives on GRP

Translating Intentions to Plans and Actions

Some Recent Initiatives

- Development of “*Guidance for government referencing voluntary standards in regulations*”
- Ad-hoc Coordinating Committee for implementing mandatory standards
- Establishment of a national level central coordinating committee with the role to manage implementation and review of Technical Regulations

Concluding Remarks – Challenges Ahead

A BUILDING A REGULATORY MANAGEMENT SYSTEM

B IMPROVING THE QUALITY OF NEW REGULATIONS

C UPGRADING THE QUALITY OF EXISTING REGULATIONS

- Awareness and understanding at policy and decision making levels
- Political will – final decisions are made by political leaders
- Knowledge and skills of regulatory agencies and legal fraternity
- Over-coming fear of unknown & institutional habits
- Removing and overcoming obstacles in current systems and procedures with regard to transparency and other hindrances.

Thank you for your attention