

REGULATION AND GOVERNANCE: Regulation in the Philippines, Prospects, Challenges, and Comparative Perspectives

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Philippine Institute for Development Studies
Surian sa mga Pag-aaral Pangkaunlaran ng Pilipinas

Outline of the Presentation

- I. The Need for Regulatory Quality
- II. Policy and Regulatory Reform and Challenges
- III. Establishing a Formal Regulatory Management System
- IV. Assessment of Philippine 'RMS'
- V. Recent PIDS Contribution to Improving Regulatory Frameworks:
RURB

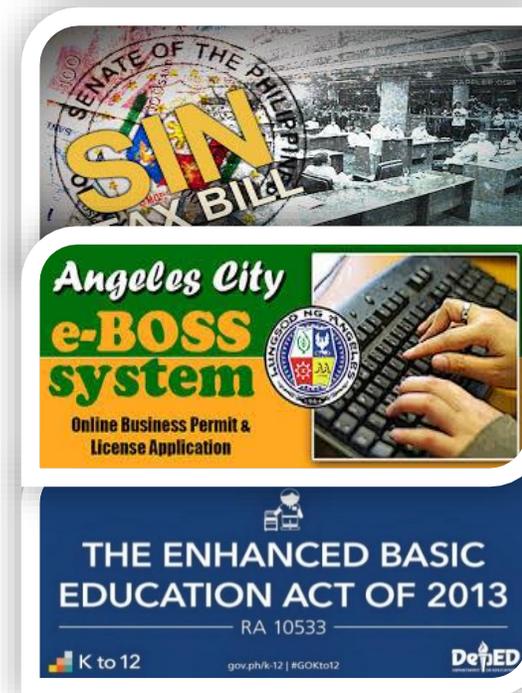
I. The Need for Regulatory Quality

What is Regulation?

- “promulgation of an **authoritative set of rules**, accompanied by some **mechanism**, typically a public agency, for monitoring and promoting compliance with these rules” (Baldwin, Scott and Hood 1998)
- “a **legal instrument** to give effect to a **government policy intervention**. The term used for legal instrument varies by jurisdiction but includes all primary laws, secondary regulations or tertiary rules” (Gill 2014)
- “any instrument by which governments, their subsidiary bodies, and supranational bodies [such as the EU or the WTO] set requirements on citizens and businesses that have legal force. The term may, thus, **encompass a wide range of instruments**: from primary laws and secondary regulations to implement primary laws, subordinate rules, administrative formalities and decisions that give effect to higher-level regulations (for example, the allocation of permits), and standards” (OECD 2010)

Why is there a need for good regulatory environment?

- Government use regulations to:
 - ✓ influence or direct cognitive and behavioural changes in consumers and firms
 - ✓ mediate diverse competing interests in complex, evolving societies
 - ✓ uphold public interest and the general welfare
 - ✓ address market failures to produce desirable social outcomes
- Poor regulatory environment
 - ✓ undermine business confidence and competitiveness
 - ✓ erodes public trust in government
 - ✓ encourages corruption in public institutions and public processes



Philippines' Commitment to Improve Overall Business and Economic Environment

- ❑ As signatory to the ASEAN Economic Community 2015, the Philippines has committed to **improve overall business and economic environment** to stimulate investments and growth with regulatory frameworks that are harmonized with that of other ASEAN Member States
- ❑ Fundamental action: Improvement of **domestic regulatory quality** and **coherence**



'Regulation' in Philippine Context

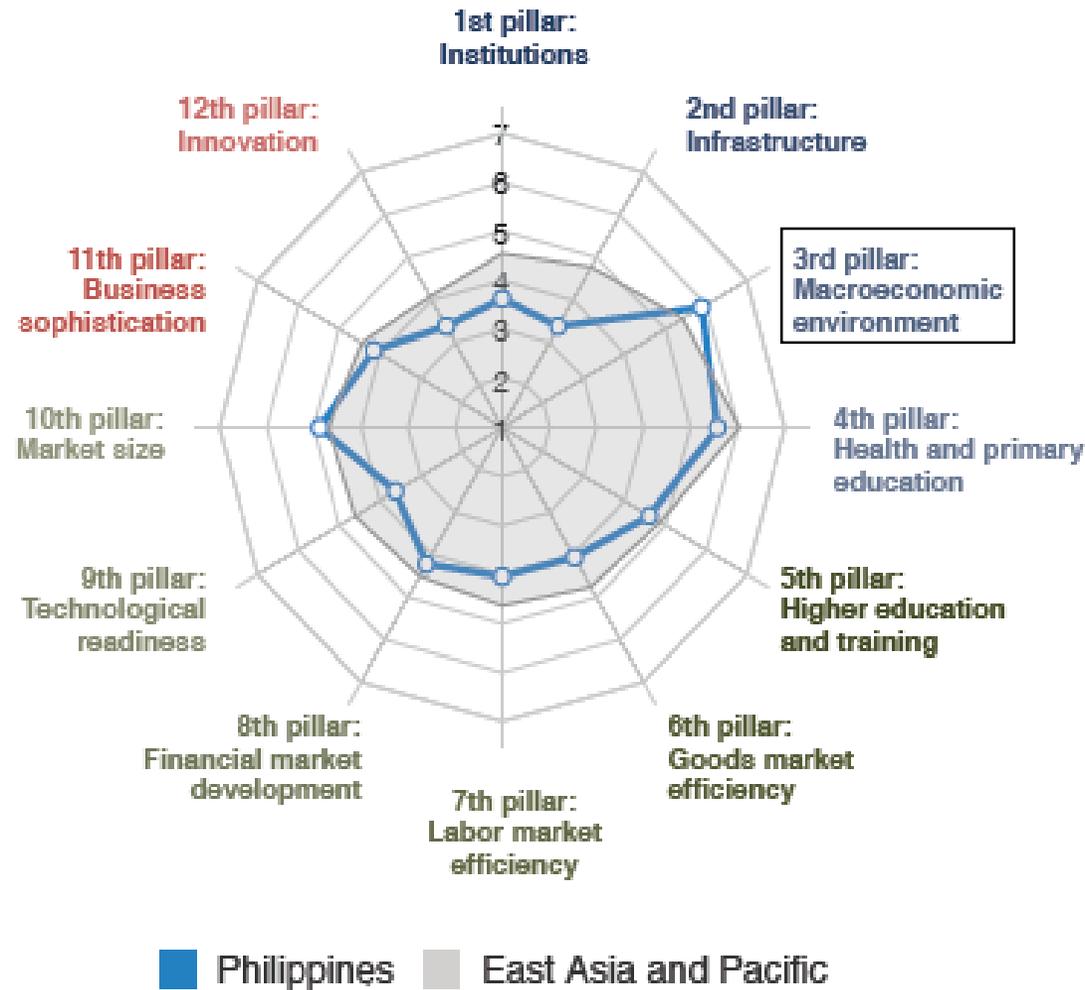
- Rules, permits, and licenses issued, controlled and implemented by the national government, local governments and regulatory bodies
- Regulations implemented by regulatory bodies as mandated by the laws, and local government permits and licenses
 - impact investment, production and consumption behavior on a daily basis
 - can be more easily modified or revoked by regulatory bodies

II. Policy and Regulatory Reform Challenges

Policy and Regulatory Reform and Challenges

- **Big Policy Changes** in the late 1980s – 2000s
 - Greater openness of the economy and more vigorous trade liberalization started; reliance on private enterprises as the main engine of growth with government providing the proper policy and regulatory framework
 - Regulatory reforms strengthened the market-orientation and outward looking stance of the economy
 - Recent regulatory reforms: General Banking Law of 2000, Retail Trade Liberalization Act, Electric Power Industry Reform Act of 2001 [EPIRA]; devolution and decentralization of basic public service delivery to LGUs under the 1991 LGC; Anti-Red Tape Act of 2007
- **Regulatory reform momentum weakened**
 - Political uncertainty due to corruption, alleged poll rigging and other irregularities
 - Poor governance
 - Weaknesses and incompetence of institutions

Overview of Performance of the Philippines, Global Competitiveness Index 2016-2017

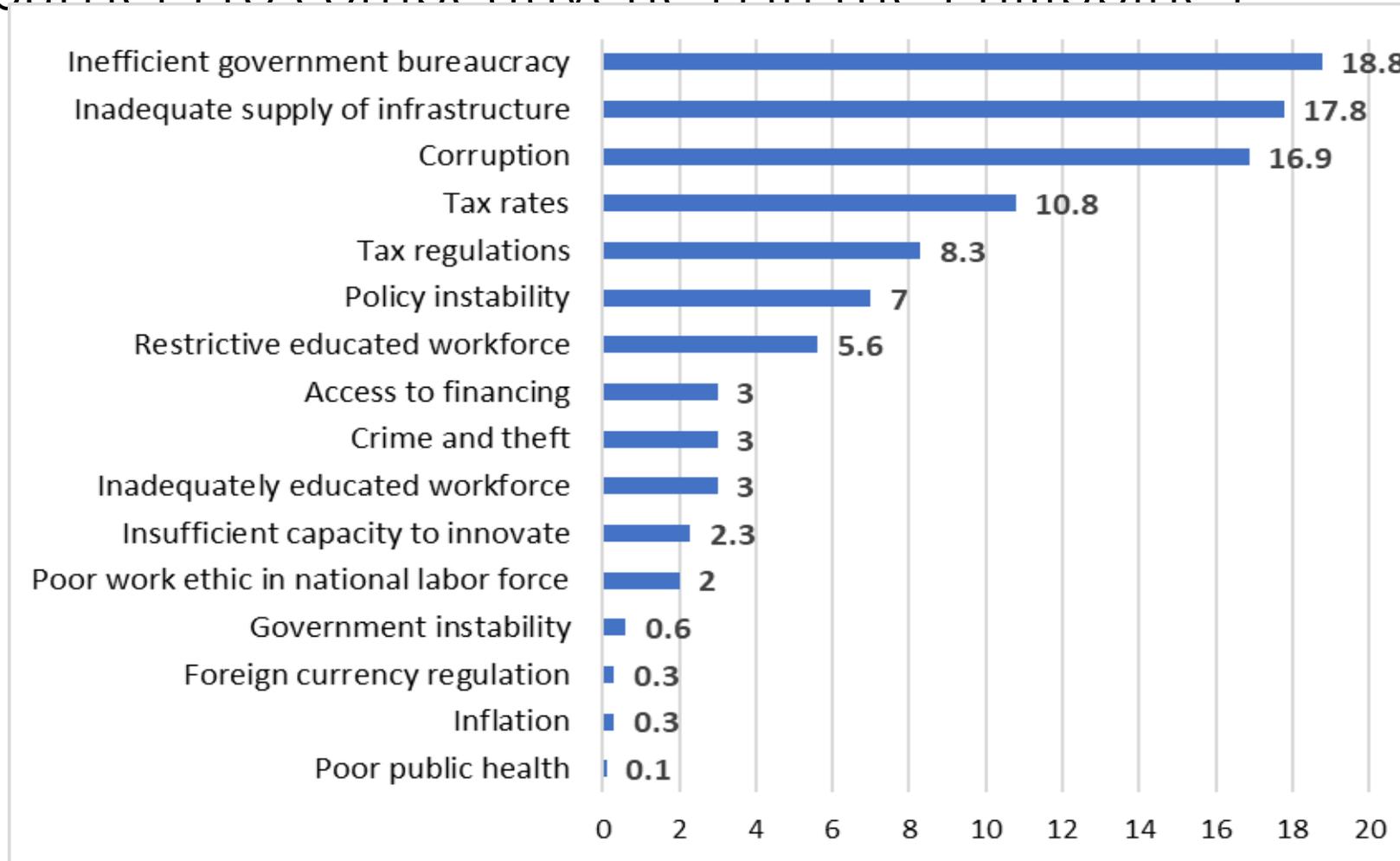


Global Competitiveness Index 2016 to 2017:

From 47th out of 140 economies, the Philippines' ranking went down to 57th out of 138 economies this year.

* Despite strong macroeconomic fundamentals

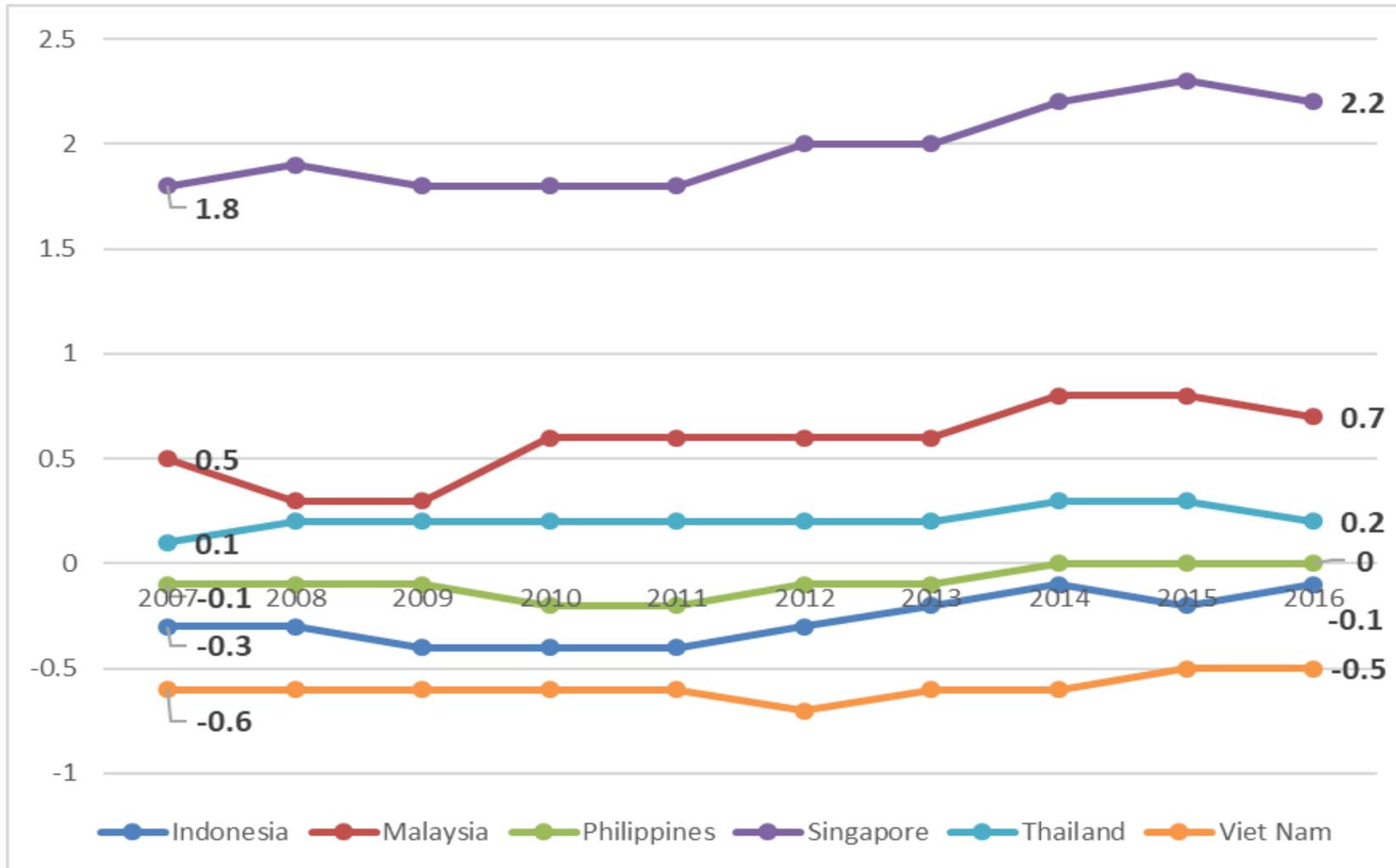
Inefficient government bureaucracy, lack of infrastructure, and corruption remain as the main barriers to competitiveness in the Philippines



Source: World Economic Forum, Executive Opinion Survey 2016

Note: From the list of factors, respondents to the World Economic Forum's Executive Opinion Survey were asked to select the five most problematic factors for doing business in their country and to rank them between 1 (most problematic) and 5. The score corresponds to the responses weighted according to their rankings.

Regulatory Quality, ASEAN Member States (2007 to 2016)



Note: *Governance Score (-2.5 to +2.5)

Source: World Bank's Worldwide Governance Indicators (WGI) project

Government and private sector reform efforts

- Administrative Order No. 38, series of 2013, which created an inter-agency task force, chaired by National Competitiveness Council to initiate, implement and monitor Ease of Doing Business (EODB) reforms

DB Report	Indicator	Reform
DB 2017	Dealing with Construction Permits	The Philippines made dealing with construction permits easier by increasing the transparency of its building regulations.
	Paying Taxes	The Philippines made paying taxes easier by introducing an online system for filing and paying health contributions and by allowing for the online corporate income tax and VAT returns to be completed offline.
DB 2016	Starting a Business	The Philippines made starting a business easier by streamlining communications between the Securities and Exchange Commission and the Social Security System and thereby expediting the process of issuing an employer registration number.
DB 2015	Trading Across Borders	Truck ban in Manila created logjam in the ports [immediate reform issue requiring action]

Source: <http://www.doingbusiness.org/reforms/overview/economy/Philippines>

Project Repeal:

The Philippine Red-Tape Challenge (1)

- Government-wide regulatory reform initiative launched on 13 June 2016 to “review outdated, burdensome, and unnecessary laws/issuances imposed on businesses and citizens that affect the country’s global competitiveness ranking and investment climate”
- **Objectives:** (1) Crowdsourcing proposals; (2) Establish Repeal System; (3) Cut Regulatory Cost
- **Scope:**

Amendment	Addition, deletion and/or change of certain provisions of a rule or regulation
Consolidation	Integration of multiple, similar regulations into one legal document
Delisting	Removal of invalid rules and regulations from an agency’s website and roster of active issuances
Repeal	Full elimination of a rule/issuance because it has been deemed no longer necessary

Project Repeal: The Philippine Red-Tape Challenge (2)

Some updates:

- During the first repeal day, 3,777 rules were either repealed or delisted from agency websites and record books
- A total of 4,837 policy issuances has already been reviewed and are currently in different stages in the repeal process
- Involves a total of 86 government line agencies and instrumentalities
- Collaborated with the Commission on Higher Education (CHED) and signed a Memorandum of Agreement (MoA) last 15 June 2017.
- Currently, the Project is collaborating with 61 priority agencies in time for the 3rd Project Repeal Day scheduled on 15 December of this year.

Reviewed Policy Issuances: Some examples



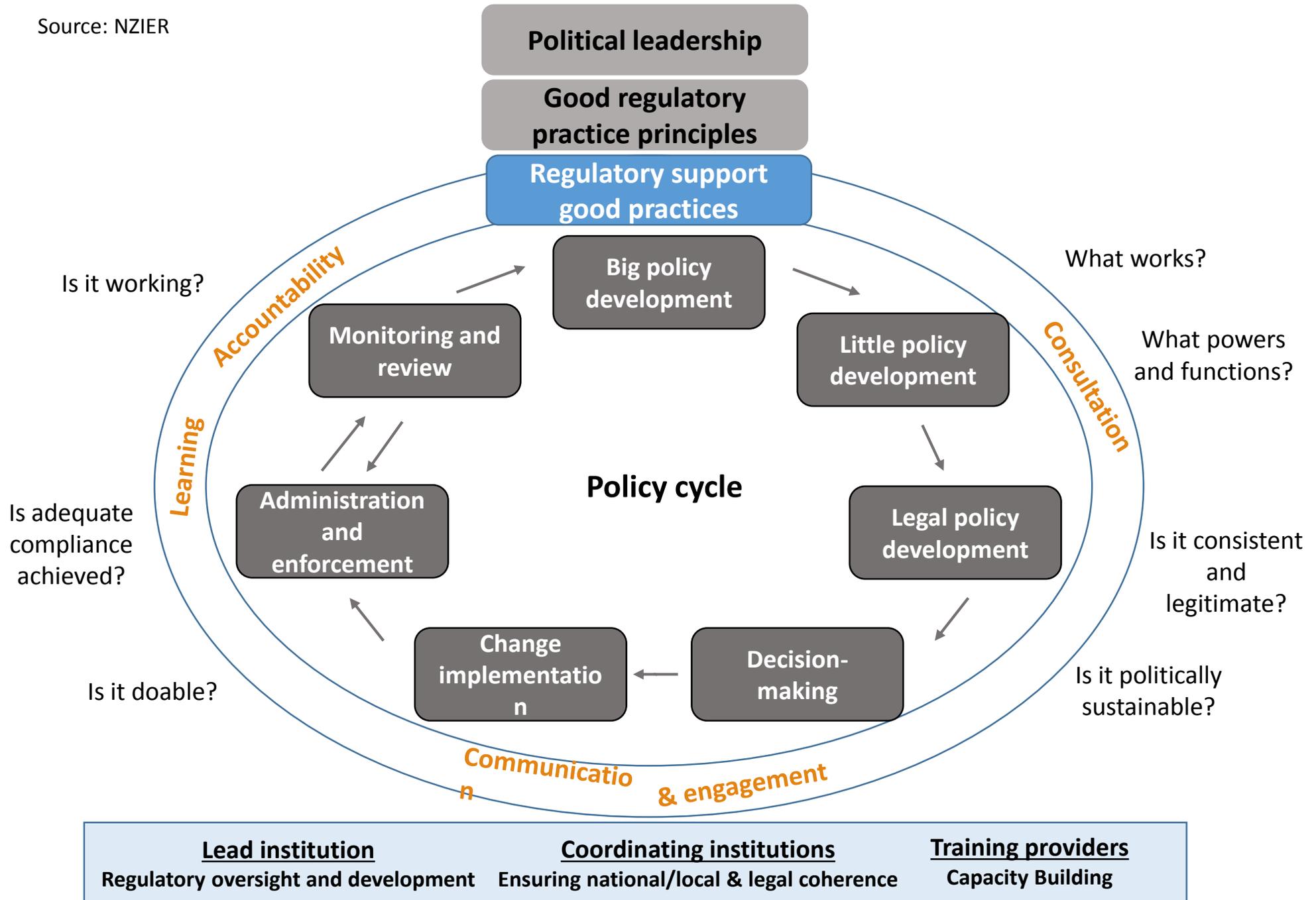
- The Land Transportation Office (LTO) amended Administrative Order 2016-034 that extended the driver and conductor licenses validation to five (5) years and the Citizen Charter for Driver Licensing Transactions that reduced processing time in applying driver's license from 10 hours down to 6.8 hours.
- The Tourism Infrastructure and Enterprise Zone Authority (TIEZA) issued Memorandum Circular No.1 s. 2016 removing the Php200.00 processing fee for the issuance of Travel Tax Certificate, whether for exemption, reduce rate or for refund.
- The Department of Trade and Industry (DTI), Department of Interior and Local Government (DILG), and the Department of Information and Communications Technology (DICT) issued Joint Memorandum Circular 2016-01 enjoining all cities and municipalities in adhering to the revised standards in the processing of business permits and licenses to a maximum of 2 days.

III. Establishing a Formal Regulatory System

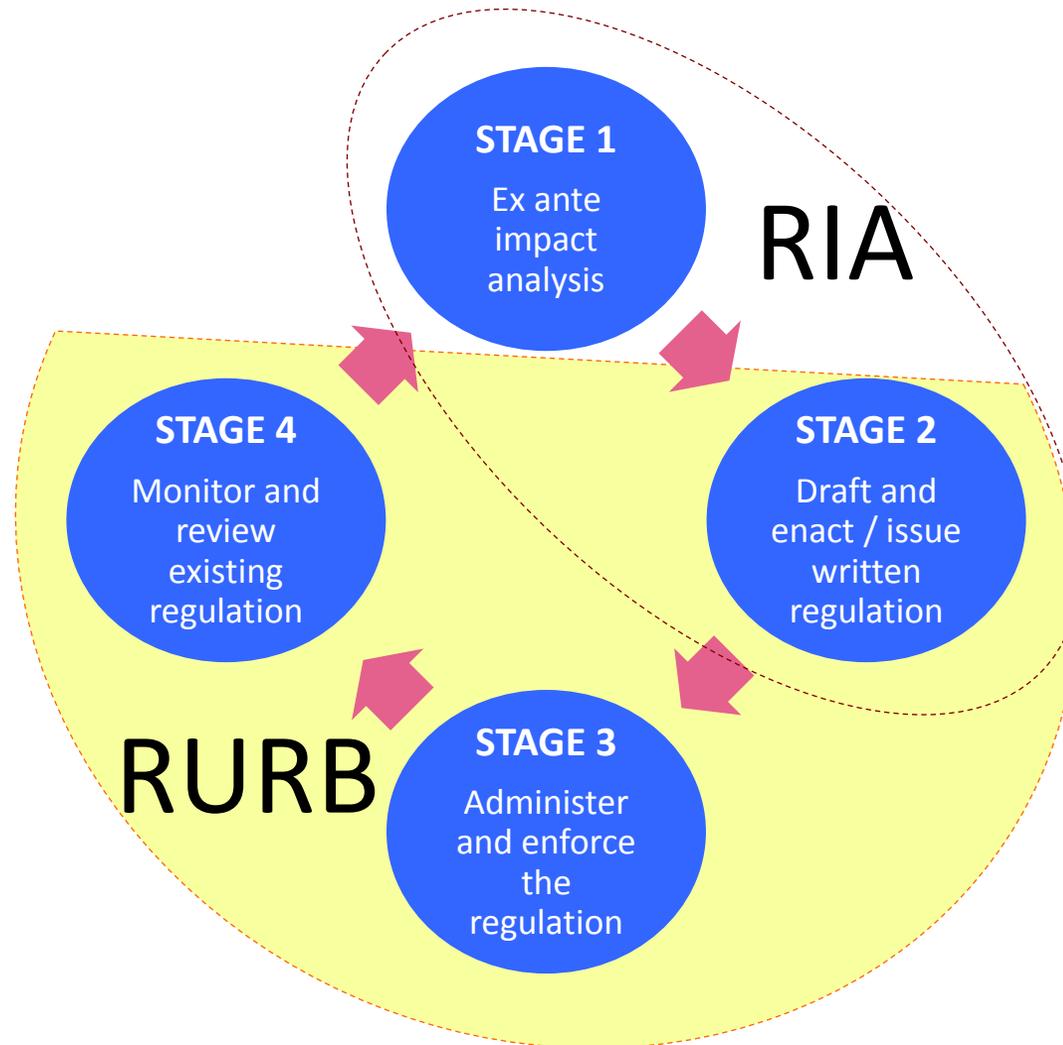
Establishing a Formal Regulatory System

- ❑ OECD has pioneered on reforming regulatory policies and practices
- ❑ A formal Regulatory Management System [RMS] can help with:
 - ✓ reduction of regulatory burden on citizens and firms
 - ✓ improvement of regulatory quality
 - ✓ identification of best choice of policy options
- ❑ Comprised of four elements:
 1. regulatory quality tools
 2. regulatory processes
 3. regulatory institutions
 4. regulatory policies

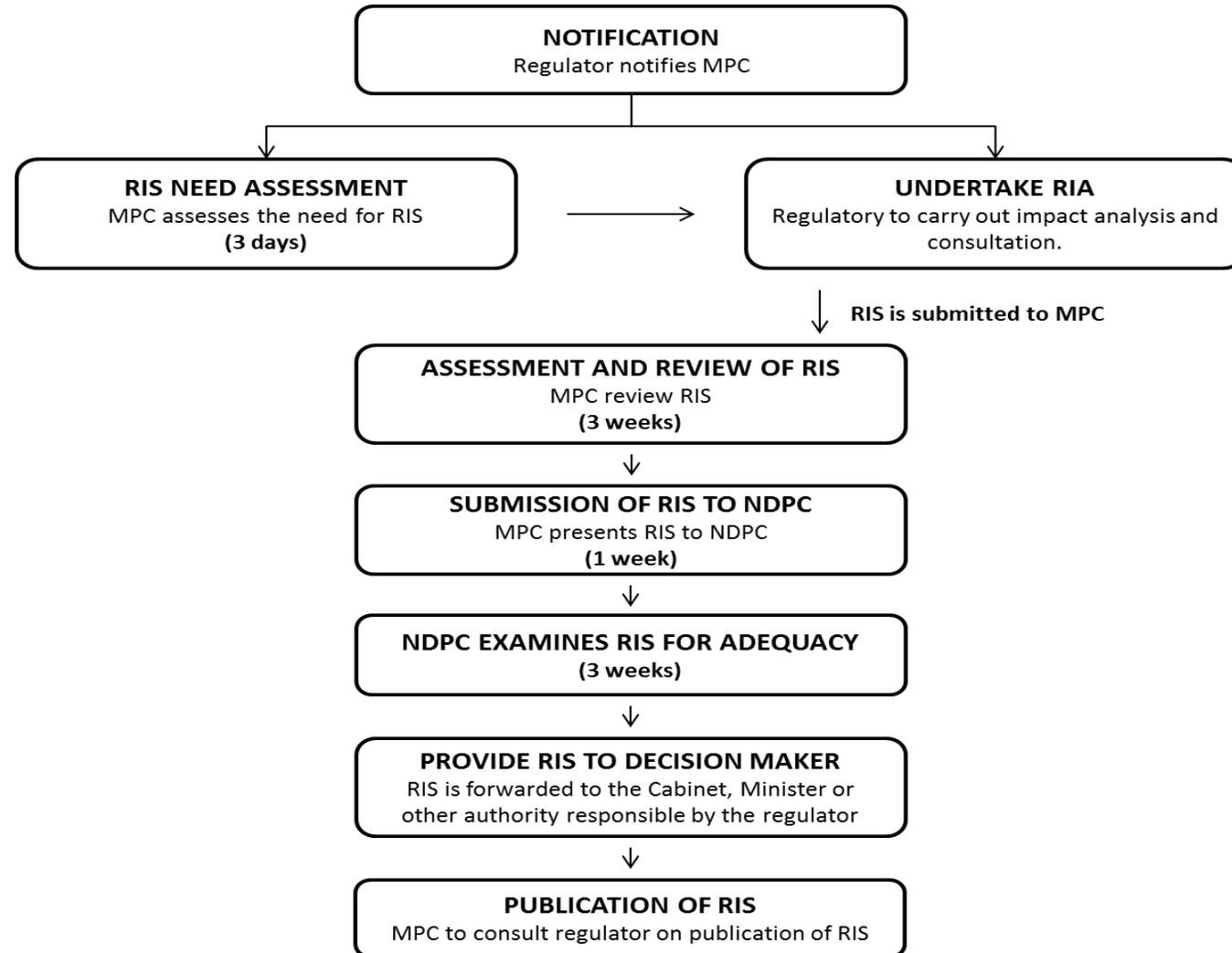
Source: NZIER



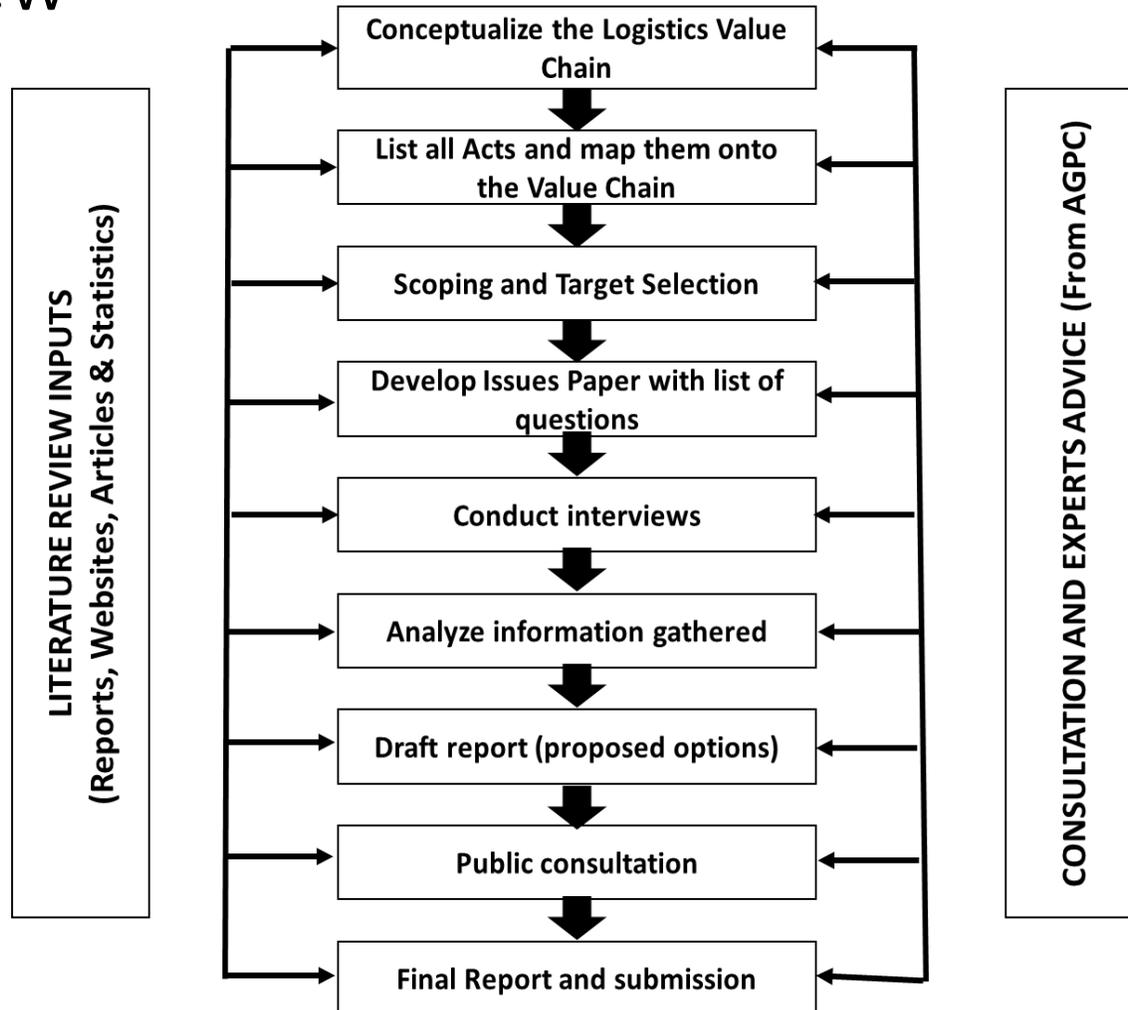
Stages Involved in Analyzing Regulations



Regulatory Impact Statement Process, Malaysia



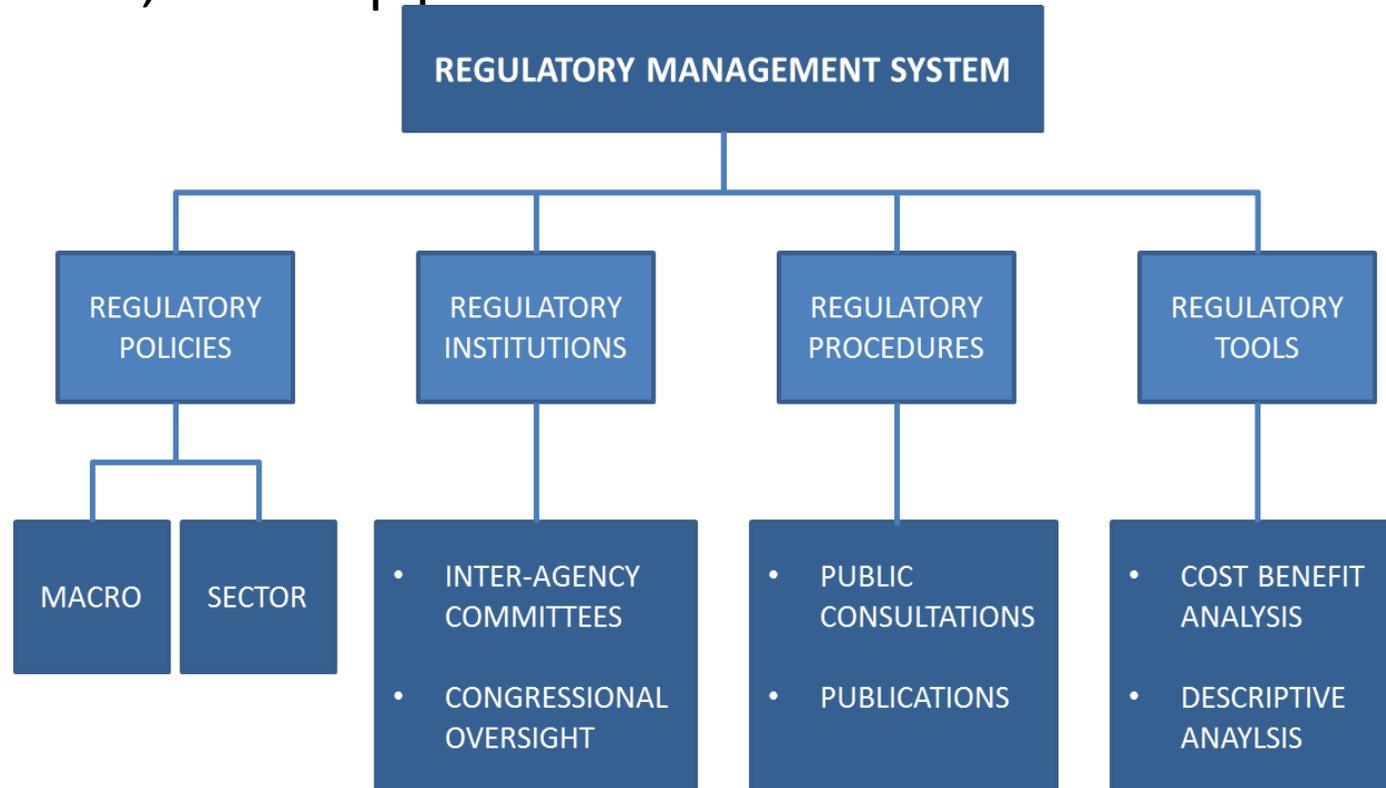
Malaysia Productivity Corporation's (MPC) Study Process Review



- RURB is the process of identifying regulatory burdens, suggesting solutions and then presenting them to regulators backed by evidence.
- All written regulation and its administration may be subjected to RURB process to ensure regulatory quality.

IV. Assessment of Philippine 'RMS'

Elements of a “Regulatory Management System,” Philippines



NATIONAL COMPETITIVENESS COUNCIL

Philippine 'Regulatory Management System'

- ❑ The nearest Philippine equivalent to a *formal regulatory policy statement* is government's declaration of national competitiveness as a goal through Executive Order No. 571, s. 2006 → **Public-Private Task Force on Philippine Competitiveness** to promote and develop national competitiveness
- ❑ Philippine regulators are neither required to undertake regulatory impact analysis nor issue regulatory impact statements
- ❑ Most common tools used in assessing the effect of regulatory changes: descriptive analysis and standard cost-benefit analysis
 - However, results are neither published nor made available to the wider public

Assessment of Philippine 'RMS' (1)

☑ On **Regulatory Policy**:

- Philippine regulatory framework includes market-friendly regulations, rules, laws, administrative and executive orders that try to provide the policy and regulatory environment as well as incentives for increased private participation in the marketplace
- Cutting red tape, tackling regulatory inflation, and applying Scott Jacob's idea of a "regulatory guillotine"

☑ On **Regulatory Institutions**:

- Regulatory institutions cover various sectors, e.g., banking, telecommunications, energy, water, while government departments [ministries] also discharge regulatory functions, e.g., Department of the Environment and Natural Resources in charge of environmental laws and regulations
- Critical issue: inability of regulatory institutions, including some government departments to translate regulations into efficient regulatory outcomes
- bad governance and inefficiencies in institutions tend to blunt reform efforts and weaken the positive impact of regulatory reforms

Assessment of Philippine 'RMS' (2)

- Creation of a central oversight body will largely depend on the commitment and decision of the political leadership
- a more fundamental issue: lack of political will and commitment of a compromised leadership to reform
- ☑ On **Policy dialogues, notifications:**
 - Policy dialogues, notification on proposed regulatory changes, consultations and even workshops are standard procedures in the process of changing or introducing new regulation in the Philippines
 - However, procedures occur on a sectoral basis
 - No mechanism for national government-local government coordination on regulatory impositions

Assessment of Philippine 'RMS' (3)

☒ On **Regulatory Impact Analysis**:

- pilot project in DOLE, DOT, NEDA
- not standard practice in the country to subject existing or proposed regulation to regulatory impact analysis but some form of *ex ante* descriptive analysis of the effect of proposed regulatory changes

Challenges to the creation of formal RMS in the Philippines

- ❑ Inadequate skills and knowledge in analyzing the impacts of regulations
- ❑ Weak coordination across ministries in the development and assessment of laws and regulations
- ❑ Weak interface between government and business in regulatory development and implementation, e. g., poor consultation practices and access to regulatory information
- ❑ No strong central oversight body or institutional mechanism that systematically coordinates, checks for consistency and reviews efforts on new regulations or amendments to existing regulations contemplated by different regulators
- ❑ regulatory bodies function as regulatory silos

V. Recent PIDS contribution to improving regulatory frameworks

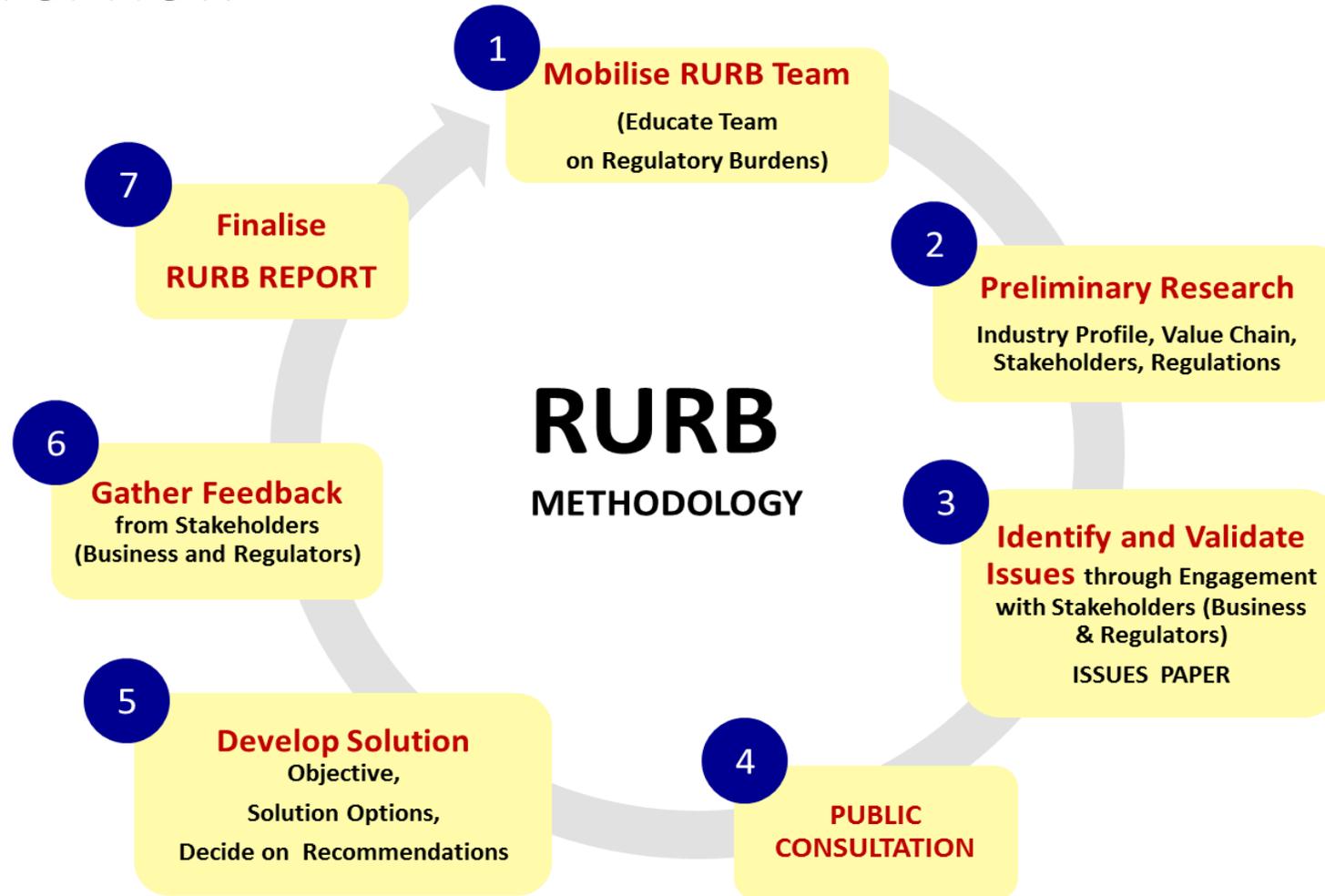
Regulatory Burdens

1. Often regulations have legitimate social, economic or environmental objectives
2. However, regulations create **unnecessary burdens** on business where they are:
 - *poorly designed*
 - *poorly administered and enforced*

What are the adverse impacts?

- administrative and operational costs
 - reporting, record keeping, publications and documentation
 - education and consulting costs required to interpret legislation and guidelines
- changing the way products are produced or services are provided?
- changing the characteristics of what is produced?
- lost production and marketing opportunities?

Reducing Unnecessary Regulatory Burden: A Brief Overview



An Example: Reducing Unnecessary Regulatory Burden: The Philippine Tuna Industry

- *“Overall, the study showed the important steps in assessing existing or current regulations with an industry’s value chain providing a practical framework for the exercise. The strong participation of the business firms during the informed regulatory conversation (IRC) signals the interest in having a more formal but practical mechanism to enable them to engage with the regulators and resolve regulatory issues and challenges affecting the industry.”*

Other PIDS studies on regulation

- Manalili, N., et al. (2017). “Scoping study on reducing unnecessary regulatory burdens in the Philippine food manufacturing industry,” Philippine Institute for Development Studies Discussion Paper Series No. 2017-23. Quezon City, Philippines: PIDS.
- Serafica, R. (2016). *Sustaining the competitiveness of Philippines services*. Philippine Journal of Development, Volumes 41 & 42, Numbers 1 and 2. Quezon City, Philippines: PIDS.
- Serafica, R. (forthcoming). “Regulatory measures affecting services trade and investment: Distribution, multimodal transport, and logistics services,” Quezon City, Philippines: PIDS.

6. Policy Recommendations (1)

- ❑ The government should exercise **firm leadership** and **political will** in reducing regulatory burden and improving regulatory quality.
- ❑ It can start by **establishing a formal RMS**. It can start by issuing an Executive Order announcing RIA as a whole-of-government policy, and not for sector regulators alone.
- ❑ The government should identify or constitute **a central oversight body that will oversee the implementation of a formal RMS**. It can establish an institution such as the contemplated Office of Regulatory Practice that will oversee the conduct of RIA in national government regulatory agencies and the issuance of regulatory impact statements.

6. Policy Recommendations (2)

- ❑ Regulatory agencies should **build capacity in undertaking RIA and formulating regulatory impact statements**.
- ❑ The **role, mandate, and stock of regulations** of regulatory agencies should be reviewed to **reduce regulatory burden**.
- ❑ Government oversight agencies [e.g., NEDA] should **ensure a more intensive involvement of the private sector, civil society, academe, research institutions, and media** in regulatory reform.
- ❑ **Research institutions** such as the Philippine Institute for Development Studies should **intensify its efforts** in conducting impact assessment studies, especially those bearing on regulations.



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