

OECD Reviews of Regulatory Reform



# Philippines

## Regulatory Impact Assessment

2020



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# **Regulatory Impact Assessment in the Philippines**



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**Please cite this publication as:**

OECD/ADB (2020), “Regulatory Impact Assessment in the Philippines”, OECD, Paris.

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# Foreword

The Philippines economy is at a crucial stage of development. In 2016 President Duterte announced a 10-point socioeconomic plan for the Philippines. This plan, combined with the declared ambition to become a predominantly middle-class society by 2040, will require systemic reforms in the Philippines, including to policy design and delivery. Strengthening the overall regulatory regime is central to the government's plan. Improving the regulatory environment will help attract foreign investment and spur competition, thereby promoting sustainable development and a healthy and equitable economy.

Point 3 of the 10-point plan seeks to increase competitiveness and improve the ease of doing business. Pursuant to this, the Congress of the Philippines passed Republic Act 11032 (RA11032), to enhance the ease of doing business and the efficient delivery of government services. Integral to RA11032 was the creation of the Anti-Red Tape Authority (ARTA) established in the Office of the President as the central oversight body. ARTA has three principal functions: to continue previous work on increasing the ease of doing business, to improve government service delivery to citizens and business, and to evaluate the quality of regulatory impact assessments. The Government of the Philippines asked the OECD to assess the institutional arrangements under RA11032, with an eye to both the short- and medium-term needs of ARTA. Accordingly, this OECD regulatory scan focuses on ARTA's principal functions, as well as its position in the broader regulatory environment. It provides recommendations to assist the Philippines in embedding and improving its regulatory management system, with a specific focus on regulatory impact assessment.

The report is the result of broad consultation with various stakeholders from the Philippine government, research institutes, and the private sector, including during an OECD project mission to Manila in June 2019.

This report was approved by the OECD Regulatory Policy Committee at its 21st session which took place on 6-7 November 2019 and was prepared for publication by the OECD Secretariat.

# Acknowledgements

The OECD extends its gratitude to the Asian Development Bank for financing this scan report. Integral preparatory work was provided by Shelly Hsieh, Winona Bolislis, James Drummond, Faisal Naru, and Filippo Cavassini of the OECD Regulatory Policy Division. The report was substantially drafted by Paul Davidson (Chapters 1 and 3) and Xavier Bryant (Chapter 3) of the OECD, along with Ken Warwick (Chapter 4) and Leni Papa (Chapter 2). Jennifer Stein co-ordinated the editorial process of the report.

The report benefitted from the overall guidance of Nick Malyshev, Head of the OECD Regulatory Policy Division, under the leadership of Marcos Bonturi, Director of the OECD Public Governance Directorate. Substantial feedback received during the report was received from Nick Malyshev and Mike Pfister of the OECD Regulatory Policy Division; Dr. Gilberto Llanto, President of the Philippine Institute for Development Studies; Cristina Lozano, Senior Economist, Southeast Asia Public Management and Finance Sectors Division, Asian Development Bank; Roberto Martin N Galang, Senior Private Sector Specialist, Finance, Competitiveness and Innovation, International Finance Corporation; and members of the OECD Regulatory Policy Committee.

The OECD would like to thank the Philippine government agencies who contributed and participated in this project. The report benefitted from coordination support and feedback from the National Economic and Development Authority, and, particularly, Carlos Bernardo O. Abad Santos, Assistant Secretary; Thelma C. Manual, Director IV, Governance Staff; and Mitch Ardales, Program Officer. The OECD thanks the Anti-Red Tape Authority for its comments and inputs to the report, especially from Jeremiah B. Belgica, Director General; Ernesto V. Perez, Deputy Director General; and Carlemil Kennedy Jan C. Jacosalem, Program Officer, Better Regulations Office.

The OECD appreciates the responses from the following departments and agencies to an OECD questionnaire used in the production of this report: the Anti-Red Tape Authority; Congressional Policy and Budget Research Department, House of Representatives; Department of Agriculture, Food, Agriculture, and Fisheries Policy

Division, Policy Research Service; Department of Environment and Natural Resources, Mines and Geoscience Bureau - Mining Technology Division, Biodiversity Management Bureau, and Forest Management Bureau; Department of Labor and Employment, Bureau of Working Conditions; Department of Trade and Industry, Bureau of Trade and Industrial Policy Research; National Economic and Development Authority; Philippine Competition Commission; and the Securities and Exchange Commission.

The OECD would like to thank the following agencies' and organisations' for their participation in meetings and interviews to inform this report: the Anti-Red Tape Authority; Asian Development Bank; Ayala Corporation; Civil Service Commission; Congressional Policy and Budget Research Department of the House of Representatives; Department of the Interior and Local Government; Department of Labor and Employment; Department of Trade and Industry; Development Academy of the Philippines; Economic Planning Office of the Senate; National Economic and Development Authority; Philippine Competition Commission; and the USAID Project RESPOND by the University of Philippines, Public Administration Research & Extension Services Foundation, Inc.

# Table of contents

|   |    |
|---|----|
| Executive summary   | 8  |
| 1 Summary assessment and recommendations                            | 10 |
| Context   | 10 |
| Summary assessment  | 11 |
| 2 Institutional landscape of the Philippines                        | 17 |
| Institutional and regulatory environment of the Philippines         | 17 |
| Political commitment to good regulatory practices                   | 20 |
| 3 Ease of Doing Business  | 23 |
| Introduction  | 23 |
| Philippines ease of doing business reforms                          | 28 |
| 4 Regulatory impact assessment                                      | 45 |
| Introduction  | 45 |
| Institutional arrangements  | 47 |
| Embedding regulatory impact assessment: capacity and accountability | 60 |
| Proportionality   | 67 |
| Process and methodology   | 72 |
| Competition impact assessment                                       | 79 |
| Monitoring and evaluation   | 80 |
| References  | 87 |
| Annex A. Pathways to introduce RIA                                  | 95 |

## Tables

|   |    |
|---|----|
| Table 2.1. Types of Presidential subordinate regulations in the Philippines | 18 |
| Table 3.1. Different members of the NCC and the Council                     | 42 |
| Table 4.1. Key sectors addressed by the MGR Program                         | 61 |
| Table 4.2. Courses of the Development Academy of the Philippines on RIA     | 61 |

## Figures

|  |    |
|--|----|
| Figure 2.1. Primary legislative process in the Philippines | 17 |
|--|----|

## Boxes

|   |    |
|---|----|
| Box 2.1. President Duterte's 0 to 10-Point Socioeconomic Agenda   | 21 |
| Box 3.1. Key provisions of the Anti-Red Tape Act  | 29 |
| Box 3.2. Composition and function of the National Competitiveness Council   | 31 |
| Box 3.3. The Project Repeal Guidebook   | 34 |
| Box 3.4. Reforms introduced to improve the business environment   | 38 |
| Box 3.5. Evolution of regulatory oversight in the Philippines   | 40 |
| Box 3.6. Key provisions in improving service delivery under RA 11032  | 43 |
| Box 4.1. Introducing effective RIA  | 46 |
| Box 4.2. Changes in the coverage of RIA in the final version of the Implementing Rules and Regulations  | 48 |
| Box 4.3. Examples of good practice in consultations on regulatory impact analysis   | 52 |
| Box 4.4. OECD Draft Best Practice Principles on stakeholder engagement in regulatory policy   | 55 |
| Box 4.5. Quality criteria used by UK RPC in assessing RIAs  | 65 |
| Box 4.6. Examples of proportionality in the application of RIA  | 67 |
| Box 4.7. Process of regulatory impact assessment prescribed in the IRRs of the Ease of Doing Business and Efficient Government Service Delivery Act | 72 |
| Box 4.8. Behavioural insights and regulatory policy   | 78 |
| Box 4.9. Approaches to regulatory review and ex post evaluation   | 82 |



# Executive summary

Regulatory reform in the Philippines has historically focussed on improving the ease of doing business. The *Anti-Red Tape Act 2007* (RA 9485) applied broadly across the Philippines administration; however, its focus was largely limited to mandating fixed processing times and reducing opportunities for corruption. Broader considerations such as whether regulatory requirements were necessary and cost effective were not part of the Act's scope.

Successful reforms under programmes such as Project REPEAL began the more complex process of removing unnecessary regulatory burdens in many different policy areas. Institutions such as the National Economic and Development Authority and the National Competitiveness Council helped to improve the regulatory environment. The recent establishment of the Philippine Competition Commission also demonstrates a clear appetite to continue to improve.

However, other initiatives have been less successful, such as the stalled introduction of a Standard Cost Model to assess administrative burdens. Similarly, while a number of Philippine departments and agencies have undertaken training and piloting of regulatory impact assessment (RIA), momentum has not been sufficient for it take root within the broader administration.

The passage of the *Ease of Doing Business and Efficient Government Service Delivery Act* (RA 11032) in 2018 is an attempt to reboot and expand better regulation across the Philippines. A newly established body, the Anti-Red Tape Authority (ARTA), is at the heart of the reforms. It is responsible for further improving the ease of doing business, enhancing government service delivery to Philippine citizens and business, and assessing the quality of how regulations are designed and implemented across government (including local government units).

In order to execute its functions in these three distinct roles, ARTA will be required to perform a delicate balancing act. For instance, there is the potential for tension between a proposal to improve the ease of doing business that has wider social or

environmental consequences that may conflict with ARTA's RIA oversight role. That said, potential tensions could be reduced if government attitudes and approaches change in a way that encourages agencies to work with each other and with ARTA. To improve the ease of doing business, regulators need to adjust their approach. They will need to consider whether proposed regulations are in the public interest, which will require earlier and deeper engagement with affected parties, as well as weighing up a broader range of impacts than has been the case until now. In a similar vein, government agencies will need to better integrate user preferences into service delivery, which may well entail operational changes. The oversight role of ARTA is perhaps its most important. A balance will need to be found between scrutinising the quality of regulatory impact assessments and encouraging agencies to assess more comprehensively the potential impacts of regulatory proposals. In this regard, there are important legacy issues to confront, not least in terms of staff capacities, particularly as ARTA's oversight role matures. Despite these differences, one common element is that ARTA will have a pivotal educational role to play with government agencies and with the public more broadly.

Despite the passage of the Act and the creation of ARTA, a number of issues remain outstanding. Existing guidance material needs to be clarified in several places and a number of outstanding definitional and scope issues need to be resolved. ARTA's oversight powers remain unclear and it is not known how they will be used when government agencies submit regulatory proposals for scrutiny. ARTA itself still has to evolve into a centre of excellence for RIA, offering advice and training to government agencies as they build up their own RIA capacities. Alongside these changes, there remains unfinished business regarding the Philippines Standard Cost Model as well as an online database to provide businesses with licencing requirements. Such a database would also act as a conduit for improving consultation on proposed regulations.

Eventually ARTA will need to shepherd a gradual focus away from *ex post* evaluations and shift some of those resources towards *ex ante* impact assessment. A corollary is that ARTA needs to finalise the technical guidance and secure the necessary buy-in when rolling out RIA across government agencies. Over time, ARTA will be responsible for building capacities and holding workshops to help agencies improve the standards of their impact assessments.

The road to better regulation is winding, but is worth the investment. It will require strong leadership from within ARTA, as well as the support of both political and government actors. The establishment of ARTA was a significant step along the path to better regulation in the Philippines. The recommendations in this scan report provide some direction for the road ahead.

# 1 Summary assessment and recommendations

## Context

The importance of a strong regulatory environment and a stable investment climate to help foster a more competitive economy is well recognised. This is especially pertinent in the Philippines as it aims to enhance citizen and business trust and confidence. This focus allows the government to follow the strong tradition of export-led trade fuelled by foreign investment as a strong driver of growth similar to many South East Asian economies.

The Philippines has undertaken significant reforms to improve the ease of doing business such as the establishment of the Public-Private Sector Task Force on Philippine Competitiveness, coupled with ongoing efforts such as Project Repeal. The National Economic Development Agency, in particular, has invested substantial resources into the strategic development of regulatory policy in the Philippines. Together with efforts from a number of other government and co-ordinated entities, momentum for better regulation had attracted political attention. There is strong political support for improving the current regulatory environment as demonstrated by increased competitiveness and furthering the ease of doing business in President Duterte's 10-point socioeconomic agenda. Actions have followed the political lead—most recently demonstrated by the creation of the Anti-Red Tape Authority (ARTA). The passage of The Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (RA 11032) created ARTA and additionally aimed to improve the pace of the delivery of government services, reduce administrative burdens, and expedite business and non-business transactions with government. The Philippines currently finds itself at a fork in the road between continuing down the deregulatory path already trodden, and slowly transitioning towards a more comprehensive regulatory policy.

## Summary assessment

The ARTA was created in 2018, and became operational with the appointment of the Director General, Atty. Jeremiah Belgica, and the official signing of the Implementing Rules and Regulations of RA 11032 on 17 July 2019. ARTA will have a central role in improving the Filipino regulatory environment for the foreseeable future. Established in the Office of the President, it has three primary functions:

1. Taking over and continuing the work relating to improving the ease of doing business
2. Improving government service delivery, provide oversight and co-ordinating with covered agencies
3. As the central oversight body assessing the quality of regulatory impact assessments (RIAs) from national government agencies and local government units.

Prioritising and implementing these responsibilities will not be easy for ARTA. It will require ARTA to clearly articulate how it will deepen the government's regulatory reform strategy, deliver high quality and efficient government services, as well as develop a whole-of-government process for regulatory oversight and management.

One of ARTA's principal roles relates to ensuring agency compliance with the *Ease of Doing Business Act*. This role is historically important in the context of the original *Anti-Red Tape Act* and the creation of the Citizen's Charter in the Philippines. That said, it is important that this role is kept quite separate to the rest of its operations. ARTA's oversight and service delivery roles are more germane to facilitation and co-operation with involved agencies. This will require careful management by ARTA in terms of recruiting staff for these different roles and in terms of the attitudes and approaches it takes to government agencies under its quite varied roles.

Governments are generally becoming more citizen-centric. For example, improving government service delivery has increasingly become a focus for many OECD member countries in recent years. That said, the anticipated gains from improved service delivery (e.g. through the establishment of one-stop shops) can be limited if not implemented well. Recent research undertaken by the OECD has illustrated that governments still struggle to achieve this worthwhile goal. For instance, where government have operated in silos—rather than based on life events or journeys—anticipated benefits have not materialised. The existence of government silos are multifaceted and can arise because of historical legal developments in the structure of government, through to issues of co-operation and co-ordination across government entities.

Moreover, as the Philippines continues its efforts to implement service delivery reforms, it is important to first simplify regulatory requirements prior to the introduction of one-stop shops. This should go beyond, for instance, reducing the number of required signatories or legally prescribing maximum processing days associated with various administrative procedures. It should involve a wholesale assessment of whether regulations remain in the public interest; whether regulations achieve their objectives and goals; and whether the same outcomes can be achieved through alternative, lower cost, means. For the Philippines, such a process would further represent an opportunity to finalise the development of the Philippines Standard Cost Model, which then ought to be used to create a baseline against which future deregulatory actions can be measured.

Perhaps the most challenging task for ARTA will be developing an oversight function for regulatory quality and coherence. This includes establishing a regulatory impact assessment (RIA) framework for vetting regulatory proposals. It will need to expand upon historical capacity building efforts which over time will require a more coordinated and strengthened approach. Current guidance and training, while good, needs to be rationalised, and the links between RIA and policy development strengthened to ensure that RIA is not just a ‘tick the box’ exercise.

It is critical that ARTA issue guidance about its threshold test and proportionality, as well as exceptions and exemptions to RIA. It is welcome that the Implementing Rules and Regulations were signed into law in July 2019 after a hiatus lasting several months, although some important aspects of ARTA’s review role remain to be finalised. ARTA will need to clarify its “review” role in assessing regulatory proposals including the timing and consequences of its review. It would also be instructive for ARTA to explain under what circumstances RIAs will be passed onto Congress, and whether such impact assessments will be made public.

Securing the involvement and buy-in of Congress, line departments and other regulators will be critical in developing a whole-of-government approach to regulatory policy. The creation of a network of better regulation champions in departments, currently under consideration, would be a positive step in promoting the required cultural change.

There are various pathways that can lead to a gradual introduction of RIA. Indeed, the Philippines is already along this path, having undertaken various *ex post* reviews of the stock of regulation, and an aim to improve its World Bank *Doing Business* ranking, and through pilot RIA programs. ARTA now needs to develop RIA as a tool for *ex ante* assessment of regulatory proposals, and shift the emphasis from reducing regulatory burdens to using RIA as a tool for comparing benefits and costs and choosing between alternative options. The scope of RIA needs to cover the whole policy cycle

going beyond an appraisal of various regulatory proposals, to include the actual impact of regulations once implemented. To this end, the Philippines will need to continue to develop and implement its *ex ante* assessment framework, and at the same time ensure that the existing stock of regulation is appropriately reviewed to ensure that it remains in the public interest.

OECD experience shows that facilitating engagement of affected businesses and citizens at the outset has been crucial in gaining acceptance of burden reduction programs, and more broadly in improving the design of regulations. The National Competitiveness Council was an important conduit to facilitate stakeholder engagement in the design and review of laws in the Philippines. With its cessation and the creation of the Anti-Red Tape Ease of Doing Business Council, it is important that the new Council continues to perform this role as a conduit between affected parties and the government. Over time, stakeholder engagement in the Philippines needs to commence at a more nascent stage of policy development. One means of facilitating this is through regulatory agencies providing advanced notice of anticipated regulatory changes. This would have concomitant benefits to ARTA in terms of keeping track of foreseeable regulatory changes in the Philippines in order to help it better engage with regulatory agencies.

The establishment of the Congressional Oversight Committee on the Ease of Doing Business is a welcome development. Firstly, it is an important step in helping to bring regulatory policy into the political domain. Secondly, it helps to bring a level of scrutiny to regulatory proposals from the executive, and potentially over time may be responsible for extending RIA to laws created by Congress. It further helps to ensure that ARTA acts in accordance with its statutory obligations. That said, of concern is the fact that at present the Committee is scheduled to only last five years. This jeopardises the development of the above-mentioned goals. It is therefore appropriate to review the work of the Committee after the initial period, with a view to putting the Committee onto a more permanent footing, which would enhance its current standing and authority.

## Recommendations

### ***Ease of doing business***

Building upon previous work undertaken, a Philippine Standard Cost Model should be finalised and rolled out across government agencies.

Both the composition and mandate of the Anti-Red Tape Ease of Doing Business Council should be reviewed to ensure that previous momentum and support that existed under the NCC are not forfeit, after ARTA is fully operational.

At a minimum, the Congressional Oversight Committee on Ease of Doing Business should exist until July 2024, which is five years from the date of public release of the IRRs. A review should subsequently be undertaken with a view to establishing whether the Committee should continue beyond the initial five-year period.

The Philippines should diagnose previous successes and challenges from the establishment of other one-stop shops to inform its design and operation of the various one-stop shops required under RA 11032.

### ***Regulatory impact assessment***

Clarify the scope of RIA coverage in the Philippines and avoid being too ambitious in the first instance. Overtime, the Philippines should adopt a proportionate approach to RIA, based on current work of the OECD.

Strengthen capability in the Congress in order to increase the scrutiny of the evidence base and the application of good regulatory practices at the primary legislation stage.

Clarify the coverage of the regulatory management system in respect of possible exemptions, the inclusion of “judicial, quasi-judicial, and legislative functions” and what constitutes a major proposal or one that places undue burdens; and finalise the proportionality rules and threshold parameters that govern what regulatory proposals ARTA will review.

ARTA needs to clarify its available sanctions and how it intends to use them when reviewing RISs submitted by government agencies.

Ensure that the regulatory management system is open and transparent, allowing time for consultation and publishing completed RIAs.

Building on PBRIS or other systems, Philippines agencies that are subject to the RIA requirements should produce a forward plan to alert stakeholders to upcoming

regulations and institute a process of advanced notice to assist ARTA in reviewing upcoming regulatory proposals.

Make consultation and stakeholder engagement an integral part of the regulatory policy cycle and follow the OECD best practice policy principles set out in Box 4.4.

Build on the progress already made, shifting the emphasis away from cost reduction and stock reviews to using RIA as a tool for *ex ante* assessment, considering both costs and benefits

Continue the gradual approach by concentrating on a few key institutions and major regulations for fuller *ex ante* RIA, focusing on the new flow of legislation, identifying some key pilots and seeking to score some early successes.

Make clear the responsibilities of all the main actors and agencies and ensure they are appropriately skilled.

Strengthen ARTA's independence as the oversight body and give it greater powers to require and enforce RIA.

Finalise and publish central RIA guidance. Departments and agencies should then adopt the guidance and commit to adhere to its main principles, although most departments and regulators will likely also find it necessary to supplement and adapt it to their own needs. The guidance should also include a single overarching RIA template and template guide so that all RIAs submitted to ARTA follow a consistent structure.

Establish Better Regulation Units or their equivalent as champions of RIA in all key departments and agencies in order to create a wider constituency for RIAs and GRPs and a network to promote culture change.

In order to avoid RIA becoming a sterile academic exercise in agencies and departments, ensure a close link between RIA and policy development and publicise and reward successful application of GRPs.

Develop ARTA as a centre of excellence in RIA by building capability, developing quality criteria for its review function and publishing the findings of its reviews.

Consider using the preliminary impact assessment model in order to filter out lower impact proposals not requiring a full RIA.

Drawing on the experience of other OECD countries and using earlier work in the Philippines on what constitutes major regulation as a starting point, finalise proportionality rules and threshold criteria and make them clear and transparent. Ensure that the pre-conditions for successful prioritisation are in place, in terms of training, co-ordination, planning, filter mechanisms and scrutiny.



Clarify the process set out in the IRRs to avoid any ambiguity over ARTA's role in determining the need for a full RIA and the RIAs that should be scrutinised. Providing assurance that proportionality is properly applied is an important part of ARTA's scrutiny role.

Recognising that not all RIAs require a full cost benefit analysis, encourage the current focus on costs and burden reduction to evolve over time to include more consideration of the benefits of regulation and the choice between competing options.

Build on earlier work on good practice in RIA to develop guidance on RIA content and methodology and the structure of a RIS.

Incorporate the ongoing work on business cost calculators into RIA methodology, building on earlier work on the Standard Cost Model. Develop the technical content of RIA guidance to include more sector- and country-specific parameter values and to say more about benefit assessment, wider impacts and alternative options.

Draw on experience of other countries in Behavioural Insights to develop a wider range of options for consideration in RIA.

Strengthen data strategies to make sure that relevant data is available for RIA and consider putting standardised RIA processes/templates online through the development of e-RIA.

Continue to integrate work on Competition Impact Assessment more closely with RIA.

Develop protocols and technical capabilities for ex post evaluation as well as *ex ante* assessment. Ensure that agencies are required to follow through on the findings of their reviews of the stock of regulation. Strengthen post-legislative scrutiny for measures not covered by ex-ante RIA and make greater use of sunset clauses.

Build in and embed evaluation in the regulatory policy cycle in line with the best practice principles.

Make a commitment to evaluate the RIA process itself and disseminate the lessons from evaluations of earlier pilot RIA initiatives. ARTA should also be evaluated in due course.

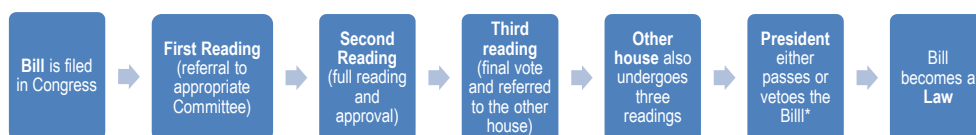
# 2 Institutional landscape of the Philippines

## Institutional and regulatory environment of the Philippines

The Philippines is a democratic and republican state with a legal system consisting of a blend of civil, common, and Islamic laws. Common law applies to government and corporate affairs such as insurance, labour, and finance. Civil and Islamic laws are frequently observed in areas referring to property, family, personal contract, and criminal law. The Philippines has a unitary and centralised government, with three equal branches: the legislative, the executive, and the judicial (ASEAN Law Association, 2015<sup>[1]</sup>).

The 1987 Constitution is the fundamental law of the Philippines. Laws are enacted by the Philippine Congress, which is composed of two chambers: the House of Representatives and the Senate. The executive branch, led by the President, implements these laws. Decisions of the Supreme Court, which apply and interpret laws, become jurisprudence and form part the legal system of the Philippines. The process for the introduction and passage of primary legislation is illustrated in Figure 2.1.

**Figure 2.1. Primary legislative process in the Philippines**



\*Congress may override the veto through a two-thirds majority vote of both houses, voting separately, to approve its enactment. Prior to the President's approval of the Bill, a Bicameral session will be conducted to reconcile the versions of the House and the Senate.

Between July 2017 to November 2018, 322 House Bills and 69 Senate Bills were enacted into law (Senate of the Philippines, 2019<sup>[2]</sup>).

### **Executive branch**

Subordinate regulations issued by the President are classified and denominated based on the source of authority and the purpose of the regulation. Table 2.1 describes the various forms of policies and regulations that can be issued by the President.

Departmental Secretaries, are authorised to “promulgate rules and regulations necessary to carry out department objectives, policies, functions, plans, programs and projects” and issue “administrative issuances necessary for the efficient administration of the offices under the Secretary and for proper execution of the laws relative thereto” (Office of the President, Philippines, 1987<sup>[3]</sup>). The head of a Bureau, which is any principal subdivision of a Department that performs a major function, may issue also its own memorandum circulars or orders to implement the laws relating to matters within their jurisdiction (Office of the President, Philippines, 1987<sup>[3]</sup>). These issuances may be overturned by the President who exercises administrative supervision and control over the Departments.

**Table 2.1. Types of Presidential subordinate regulations in the Philippines**

| Type of subordinate regulation | Description   |
|--------------------------------|---|
| Executive orders               | Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers  |
| Administrative orders          | Acts of the President which relate to a particular aspect of governmental operations in pursuance of his duties as administrative head  |
| Proclamations                  | Acts of the President fixing a date or declaring a status or condition of public moment or interest, upon the existence of which the operation of a specific law or regulation is made to depend. Proclamations hold the same force as executive orders |
| Memorandum orders              | Acts of the President on matters of administrative detail or of a subordinate or temporary interest which only concern a particular officer or office of the government   |
| Memorandum circulars           | Acts of the President on matters relating to internal administration, which the President desires to bring to the attention of all or some of the departments, agencies, bureaus, or offices of the government, for information or compliance           |
| General or special orders      | Acts and commands of the President within his capacity as commander-in-chief of the Armed Forces of the Philippines   |

Source: (OECD, 2018<sup>[4]</sup>); (Republic of the Philippines, 1987<sup>[5]</sup>).

## **Local government**

The different levels of local government units (LGUs)—*barangays*,<sup>1</sup> municipalities, cities and provinces may issue rules or regulations in the form of ordinances or regulations. These may also be done through executive orders, which are issued by the local chief executive (Llanto, 2015<sup>[6]</sup>; RA 11032, 2018<sup>[7]</sup>). Many of these focus on rules relating to permits and licenses (Llanto, 2015<sup>[6]</sup>)

## **Interaction between the executive and the legislative branches**

Under this system, the executive works closely with the legislative body in the introduction, modification, enactment, amendment, or abolition of an existing primary legislation law or regulation. Several offices operate to maintain the close relationship between the executive and legislative branches.

For example, the Senate has the Executive-Legislative Liaison Service, which looks after co-operation efforts with the executive branch in the formulation and implementation of bills. It also facilitates consensus building between the Senate and all departments of the executive branch as it relates to legislation (Senate of the Philippines, 2019<sup>[8]</sup>).

On the executive side, there is the Presidential Legislative Liaison Office, which promotes the legislative initiatives and other priority policy reform and development programs through collaboration with the two chambers of Congress (Presidential Legislative Liaison Office, 2019<sup>[9]</sup>).

Another co-ordination body is the inter-agency Legislative–Executive Development Advisory Council (LEDAC), which serves to integrate the legislative agenda with the national development plan. Led by the President and composed of cabinet members, members of the Senate, the House of Representatives, and representatives from the private sector, the LEDAC is tasked with generating the list of priority legislative measures that will be submitted to Congress. Congressional oversight committees may be created to monitor the implementation of certain laws.

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<sup>1</sup> A *barangay* is the smallest unit of government in the Philippines consisting of at least 2 000 inhabitants or 5 000 inhabitants in highly urbanised cities from: Local Government Code, Republic Act No. 7160. Local legislative power can also be exercised by the *sangguniang panlalawigan*, *panlungsod*, *bayan*, and *barangay* (Republic of the Philippines, 1991<sup>[82]</sup>).

## Political commitment to good regulatory practices

### **ASEAN**

The Philippines is a founding member of the Association of the Southeast Asian Nations (ASEAN). In the creation of a competitive, innovative, and dynamic ASEAN Economic Community, the ASEAN recognizes the need for “effective, efficient, coherent, and responsive regulations and good regulatory practice” (ASEAN, 2015<sub>[10]</sub>). Good regulatory practice is a cross-cutting theme for the economic integration and regulatory coherence amongst the ASEAN, as well as for ASEAN Member States’ structural and legal reforms. ASEAN countries recognise that the economic agenda must be premised on productivity-driven and inclusive growth, aided by good regulatory practice (ASEAN, 2015<sub>[10]</sub>).

### ***Ambisyon Natin 2040 (Our Ambition 2040)***

In 2015, the National Economic and Development Authority (NEDA) commissioned a nationwide study on the aspirations, values, and principles of the Filipino people. The survey undertaken for “Ambisyon Natin 2040” (Our Ambition 2040) established that Filipinos identified the ease and efficiency of government transactions as the second most important factor to achieve the goal of a predominantly a middle class society by 2040 (NEDA, 2016<sub>[11]</sub>).

In 2016, NEDA launched the Philippine Development Plan (PDP) 2017-2022, the first of four medium-term plans that will work towards realising the goals in Ambisyon Natin 2040. PDP 2017-2022 largely stems from the current administration’s 0+10 Point Socioeconomic Agenda (see Box 2.1), which identified the “increase[d] competitiveness and the ease of doing business” as a top agenda item.

The Development Plan identified several strategies to achieve the outcome of “seamless service delivery” (NEDA, 2017<sub>[12]</sub>). First was the adoption of a whole-of-government approach in delivering key services. In line with this, the government announced the implementation of initiatives in facilitating interoperability, unity, co-ordination, and simplification of transactions between agencies. This includes the creation of a National ID system to strengthen government service delivery. Second is the implementation of regulatory reforms through the modernisation of government regulatory processes, enhancement of Project Repeal (see Chapter 3), and the institutionalisation of the evidence-based methodology of regulatory impact assessments (RIA) to improve the quality of regulations.

In 2018, the administration leveraged its civil service performance incentive system (Performance-Based Incentive System or PBRIS) to further its advocacy for more efficient government processes (DBM, 2018<sup>[13]</sup>). This strategy required all government agencies to follow “Good Governance Conditions” for staff to be eligible for a performance-based bonus. Performance targets included measuring client satisfaction, and streamlining and improving the agency’s processes for critical services to reduce the compliance costs such as turnaround time, the number of signatures and required documents (DBM, 2019<sup>[14]</sup>).

### Box 2.1. President Duterte’s 0 to 10-Point Socioeconomic Agenda

In 2016, the administration of President Rodrigo Duterte announced a 10-point economic agenda that aimed to significantly reduce poverty and transform the Philippines into a middle-income economy by the end of 2022. Later at the 2017 World Economic Forum on ASEAN in Cambodia, the National Economic Development Authority’s (NEDA) Director-General, Ernesto Pernia declared that the country’s socio-economic agenda would all originate from point zero, the need for “peace and order”, which would be answered by the government’s war against criminality and drugs. Pernia went on to say that the president is “addressing the main bedrock of the 10-point economic agenda... Without this bedrock, it will be difficult for the economy to thrive and flourish”.

The complete 0 + 10-Point Socioeconomic Agenda crafted by NEDA is as follows:

0. Peace and Order
1. Continue and maintain current macroeconomic policies, including fiscal, monetary, and trade policies
2. Institute progressive tax reform and more effective tax collection, indexing taxes to inflation
3. Increase competitiveness and the ease of doing business
4. Accelerate annual infrastructure spending to account for 5 per cent of GDP, with Public-Private Partnerships playing a key role
5. Promote rural and value chain development toward increasing agricultural and rural enterprise productivity and rural tourism
6. Ensure security of land tenure to encourage investments, and address bottlenecks in land management and titling agencies

7. Invest in human capital development, including health and education systems, and match skills and training to meet the demand of businesses and the private sector
8. Promote science, technology, and the creative arts to enhance innovation and creative capacity towards self-sustaining, inclusive development
9. Improve social protection programs, including the government's Conditional Cash Transfer programme, to protect the poor against instability and economic shocks
10. Strengthen implementation of the Responsible Parenthood and Reproductive Health Law to enable especially poor couples to make informed choices on financial and family planning

Source: (De Vera, 2017<sup>[15]</sup>; The Manila Times, 2017<sup>[16]</sup>; Villalon, Pangilinan and Fernandez, 2018<sup>[17]</sup>).

# 3 Ease of Doing Business

## Introduction

### ***Benefits and costs of regulations***

Regulations govern the everyday life of business and citizens – they shape our safety, lifestyle and the functioning of our businesses, while also being essential instruments to achieve policy objectives such as inclusive growth and gender equality. The primary benefit of regulation is the improvement of societal welfare, largely from the enhancement of citizens' well-being through avenues such as improved health and a better environment. Other benefits from regulations include efficiency improvements, for example, from cost savings, better information availability, and enhanced product variety for consumers; as well as, wider macroeconomic gains; and other non-monetisable benefits, like social cohesion and the promotion of human rights (Renda, 2015<sub>[18]</sub>).

Better regulation enhances all these benefits. Furthermore, improved regulations can advance the rule of law, build trust and enhance transparency (OECD, 2018<sub>[4]</sub>). Reform can likewise improve burdensome, highly discretionary regulations that can be a source of corruption (OECD, 2007<sub>[19]</sub>; OECD, 2018<sub>[20]</sub>).

The benefits from better regulation are particularly significant for small business. The smaller the firm, because of the relatively fixed nature of regulatory costs, often the larger the regulatory burden. Policymakers can help SMEs and entrepreneurs both prosper in local communities as well as participate in international trade by making regulations easier to understand while simultaneously reducing the time and costs associated with compliance (OECD, 2018<sub>[21]</sub>). Small businesses, when in an environment that encourages competition and efficiency, can create jobs, innovate, generate income and improve overall wellbeing (OECD, 2018<sub>[4]</sub>). Furthermore, a higher quality regulatory environment can enable micro and small enterprises to enter the formal sector – leading to greater productivity and competitiveness as well as long-term welfare creation, economic stability and poverty reduction (OECD, 2007<sub>[19]</sub>).



However, regulations create a range of costs, particularly when too limited, poorly conceived, redundant, and incoherent. Businesses and citizens have been outspoken critiques of red tape and excessive regulation. Therefore, most OECD countries have made efforts to lower their regulatory burden, particularly in the interest of improving economic activity and the ease of doing business (EODB) (OECD, 2018<sup>[20]</sup>).

There have been a series of reforms to the business environment in the Philippines since the late 1980s notably, deregulation, privatisation and the breaking up of long standing monopolies under President Ramos in the 1990s (OECD, 2016<sup>[22]</sup>). More recently, the Aquino administration (2010-16) made efforts to increase transparency, improve public-private dialogue, and address corruption, in addition to further liberalisation and the introduction of a new Competition Act. These reforms have had a strong impact on the high growth rates experienced since 2010. However, regulation remains recognised as a barrier to investment, competition and economic growth (OECD, 2016<sup>[22]</sup>). The government, to address this issue, has recently made reforms to target burden reduction and the ease of doing business, which are outlined in this chapter.

### ***Regulatory reform***

The first step of regulatory reform, in many countries, including the Philippines, is to cut administrative red tape, particularly in the interest of business. Burden reduction programmes attempt to make government administration more responsive, transparent and efficient while aiming to provide services quicker and more effectively (OECD, 2018<sup>[4]</sup>). To substantiate these goals, governments, as an initial effort, have attempted to quantify the costs of regulations through measuring administration burdens using the Standard Cost Model (SCM) (Trnka and Thuerer, 2019<sup>[23]</sup>). The Philippines, in 2016, developed and pilot-tested a SCM as a critical component a national burden reduction and regulatory reform programme, Project Repeal. This project among other reform efforts are described later in this chapter.

The SCM was pioneered by the Netherlands in the 1990s and accompanied by a government commitment to reduce administrative burdens by 25 per cent within five years (OECD, 2010<sup>[24]</sup>). Many European governments, beginning with Denmark, the UK and the Czech Republic have used it as a pragmatic approach to begin to analyse the impact of regulations. Such efforts have the advantage of helping to establish a baseline cost, which can then serve as an indicator of the scale of the problem, a trigger for action and a metric for measuring progress. Administrative reduction programmes are now part of all OECD members' policy, and have often evolved into further regulatory reforms (OECD, 2010<sup>[24]</sup>).

Administrative reduction programmes and targets are politically attractive as reforms aimed at achieving the same policy goals with less administrative cost are relatively uncontroversial and appeal to businesses and citizens across the political spectrum. Furthermore, numerical reduction figures provide a measure of achievement that is reportable by the media and that politicians and government can use to promote their reforms and demonstrate progress, particularly to local business as well as international investors. There is a strong body of evidence, which connects regulatory reduction reforms with positive economic outcomes (OECD, 2010<sub>[24]</sub>; Parker and Kirkpatrick, 2012<sub>[25]</sub>). For example, the reduction goal of 25 per cent in the Netherlands was estimated to be equivalent to 3.6 per cent of Dutch GDP in 2002 (OECD, 2010<sub>[24]</sub>). However, the methodological approach to choosing costs and measuring social benefit is vital. For example, a Dutch Court of Audit report cast doubt on the concrete benefits achieved by the national reduction programme (Radaelli, 2007<sub>[26]</sub>; OECD, 2010<sub>[24]</sub>).

Administrative burden programmes can have the following issues that can inhibit their success. Firstly, regulation that is most irritating to its subjects may not be equivalent to what is determined quantitatively to be most burdensome. This gap in perception in what governments designate as an improvement from what a regulated individual experiences can be problematic for the interpreted success of the programme (OECD, 2010<sub>[24]</sub>). Secondly, while the absolute value of the burden reduction may seem impressive on a macro scale for a given jurisdiction, when expressed in the experience of an individual firm or citizen, the change may be marginal (OECD, 2010<sub>[24]</sub>). Thirdly, there is a risk that repeal initiatives will target obsolete, outdated or unenforced regulations. While removing these regulations is uncontroversial and can get a government closer to their reduction goals, the evidence is contradictory as to whether these cuts are beneficial (Trnka and Thuerer, 2019<sub>[23]</sub>; Renda, 2015<sub>[18]</sub>).

Primarily, however, the issue with administrative burden reduction programmes is that they do not necessarily consider the full social cost and benefit of regulations. Administrative burdens represent only a small proportion of the cost of regulations (OECD, 2010<sub>[24]</sub>). The full range of costs of regulations include: substantive compliance costs, government administrative and enforcement expenditure, financial expenses, indirect costs, opportunity costs, and macroeconomic ramifications. Compliance costs for businesses extend far beyond administrative burden (such as paperwork) and include expenses to comply, for example, with the use of equipment and labour (OECD, 2014<sub>[27]</sub>). When governments analysing the impacts of regulations disregard other costs (compliance, opportunity, etc.) beyond administrative burdens, they risk adopting regulations that are potentially more, not less, burdensome (Trnka and Thuerer, 2019<sub>[23]</sub>; Peacock, 2016<sub>[28]</sub>). For example, requiring producers to list a potentially harmful ingredient on a product, would likely create more burdensome

administrative information obligations. That being said it could be far less costly, economically, than a complete ban (OECD, 2010<sup>[24]</sup>).

The risk of administrative burdens programmes where the expected results are not fully realised can damage the credibility for future reforms with business and citizens. Therefore, efforts to reduce administrative burdens, cut red tape and improve the ease of doing business are often expanded to systematic efforts to create policies that are necessary and fit-for-purpose by, primarily, ensuring a solid base in evidence, thorough analysis of the benefits and costs of multiple regulatory or non-regulatory options; as well as through wide spread, open consultation (OECD, 2018<sup>[21]</sup>; Renda, 2015<sup>[18]</sup>). This rigorous assessment is termed a regulatory impact analysis (RIA), and is the subject of Chapter 4.

Local government involvement in regulatory reform can be a further consideration for governments reforming their regulatory systems because, despite national reforms, progress can be hampered by poor quality regulation or poor enforcement at the subnational level (OECD, 2010<sup>[24]</sup>). Furthermore, regulators at the subnational levels of government are usually the ones in regular contact with regulated subjects (OECD, 2010<sup>[24]</sup>). Past OECD research has indicated that Filipino local government units exert significant independence in their jurisdiction and struggle with resource and capacity constraints – adding to the complexity of the business environment and regulatory regime in the Philippines (OECD, 2016<sup>[22]</sup>).

Governments throughout the OECD have adopted specific methods to supplement and support administrative burden reduction programmes. For example, governments have codified and consolidated laws – regrouping existing legislation into a single code by cutting redundant components while retaining the substance of the law. Another example is the one-stop shop, designed to be a single entry point for firms or citizens attempting to do a certain procedure like, for example, registering a business. Specialised administrative procedures for particular target groups have also been effective in some jurisdictions, such as streamlined tax filing procedures for SMEs (OECD, 2018<sup>[4]</sup>). Additionally, in the last five years, there have been several OECD countries, including Canada, the United Kingdom, Korea, Germany and the United States, which have adopted one-in, x-out rules, or regulatory caps. However, these policies are by definition limited in nature. The rules do not necessarily take account of the inherent benefits of a new regulatory proposal. There is a risk that a potentially beneficial regulation is blocked due to resistance to sacrifice a previous regulation (Renda, 2015<sup>[18]</sup>; Trnka and Thuerer, 2019<sup>[23]</sup>). It also risks that officials will game the existing stock of regulatory provisions and eliminate outdated regulations that have little impact in order to introduce new regulations (Renda, 2015<sup>[18]</sup>). That said, most OECD countries have tended to match the impact of incoming regulations with the

impact of previous regulations that are planned to be cut, avoiding much of this risk (Trnka and Thuerer, 2019<sup>[23]</sup>; Peacock, 2016<sup>[28]</sup>).

### **World Bank Doing Business**

In an attempt to measure reforms in the ease of doing business, the *Doing Business* report and Ease of Doing Business (EODB) score were established by the World Bank in 2003. The indicator analyses the regulatory experience for small and medium-sized businesses in 190 countries around the world. While, the *Doing Business* initiative is often associated with cutting red tape, the quality of regulation and protection afforded to certain market participants are metrics that are influential in the score (World Bank, 2018<sup>[29]</sup>). Countries across the globe have used the EODB score to benchmark their reforms, including Georgia, Yemen, Portugal, Mauritius and El Salvador (Doshi, Kelley and Simmons, 2019<sup>[30]</sup>). According to the (World Bank, 2019<sup>[31]</sup>), of the 3,800 regulatory reforms recorded since 2003, *Doing Business* has informed a significant 1,316 reforms. The Philippines, for example, has a goal to be in the top 20 per cent of the ranking by 2020 (DTI, 2018<sup>[32]</sup>). As of 2019, the Philippines ranks 95<sup>th</sup> of 190 economies (World Bank, 2019<sup>[31]</sup>).

Since its inception, the World Bank has reported that the business environment for SMEs across the globe has improved; it took 20 days to register a business and cost 23 per cent of the average income per capita to start a business in 2018 versus 47 days and 76 per cent of per capita income in 2006 (World Bank, 2018<sup>[29]</sup>). However, whether these measured improvements have bettered social welfare is more difficult to discern, especially when looking at government's reforms on a case-by-case basis.

The EODB score measures 10 areas in 2019. These areas are: starting a business, dealing with construction permits, paying taxes, trading across borders, registering a property, getting electricity, enforcing contracts, protecting minority investors, and getting credit and resolving insolvency. The World Bank has provided evidence that improvement in most of these areas has a positive relationship with economic success.

### **Limitations**

As the *Doing Business* ranking and publication are closely tied to the regulatory reform agendas of many countries, especially in the early stages of their regulatory development, it is important to discuss the limitations of their applicability. As a World Bank panel evaluating the project found, 7 of 10 indicators imply less regulation is superior, which may not be the case for individual firms nor the macro economy as a whole (World Bank, 2013<sup>[33]</sup>). This can be problematic, as discussed previously, when

policy programs, in the interest of promoting business, cut regulations but do so without analysis of the effects on societal welfare (Renda, 2015<sup>[18]</sup>).

The current EODB index is a simple average between the 10 measured areas and therefore each section has the same weight on an economy's final score (World Bank, 2013<sup>[33]</sup>). Countries can thus target areas where they perform badly on the score, however, these areas may not be where reforms would result in the greatest improvement of welfare. Furthermore, the rankings can be quite sensitive to small changes in score depending on the relative position of an economy (World Bank, 2018<sup>[29]</sup>). Therefore, reforms in certain categories may reflect a large jump in relative rankings despite limited reforms (World Bank, 2018<sup>[29]</sup>).

As is common with aggregate indicators, their interpretation is very closely tied to the method of data collection and its sample. Furthermore, indicators, like the EODB score, only measure symptoms of issues but do not necessarily identify the root cause of a certain level of performance. The EODB survey is administered to more than 15,000 local experts across the world who work on a day to day basis with regulations. However, the questions do not necessarily evaluate implementation efforts nor the extent of success or failure of reforms (World Bank, 2013<sup>[33]</sup>; World Bank, 2008<sup>[34]</sup>; World Bank, 2019<sup>[31]</sup>). Furthermore, the survey asks questions about a limited subset of businesses to ensure comparability. However, this may not be representative of the business environment in its entirety. The "starting a business" component of the survey, for example, assumes that respondents are limited liability companies, have between 10 to 50 employees and have office space of about 900 square feet (World Bank, 2019<sup>[35]</sup>).

Lastly, the EODB score is commonly used by governments to attract international business. Despite the *Doing Business* ranking being useful for foreign investors to understand the domestic policy environment for small business, the publication does not measure the regulatory experience of international enterprises in a country nor its general investment environment. Furthermore, EODB does not measure numerous other factors that could affect a country's appeal to investors. It does not measure the underlying quality of the institutions and financial system in a country nor its economic and political stability (World Bank, 2019<sup>[31]</sup>).

## Philippines ease of doing business reforms

### ***Commencement of the ease of doing business programs***

Since as early as 2005, the Philippines has had a formalised basis for improving the regulatory environment for business. The Arroyo administration issued a series of

Executive Orders directing executive agencies to simplify rules and reporting requirements, with a view to improving the overall business environment. The Public-Private Sector Task Force on Philippine Competitiveness was created during this period and attached to the Office of the President. The Task Force was designed to promote and develop a national competitiveness agenda across the Philippines. The Task Force comprised the Department Secretaries of Trade and Industry, Finance, Transportation and Communications, Education, the Director General of the National Economic and Development Authority (NEDA), and three business sector representatives. The Secretary of Trade and Industry and a business sector representative were appointed the Co-Chairs of the Task Force.

### ***The Anti-Red Tape Act***

In 2007, Republic Act No. 9485 (the “Anti-Red Tape Act”) was passed by the Philippines Congress. The Act had broad application to most entities within the Philippines administration. However, its scope was quite narrow—it primarily related to mandating fixed processing times, rather than an assessment of whether the regulatory requirements themselves remained appropriate (Box 3.1). The narrow focus of the Anti-Red Tape Act reflected the operational realities of receiving government services in the Philippines.

#### **Box 3.1. Key provisions of the Anti-Red Tape Act**

The Anti-Red Tape Act applied to all national and local government units including government owned or controlled corporations that provide frontline services. Legislative, judicial, and quasi-judicial functions were exempted from the Act.

The Act classified certain transactions as either simple or complex according to the length of processing time required. The total number of signatures for specified documentary procedures were also limited in the Act.

The Act created the Citizen’s Charter, which was to be prominently placed across all government service delivery offices. Government agencies were required to provide the following information:

- Applicable procedures in availing a service
- The responsible personnel for every step in the regulatory process
- The maximum permissible time for officers to complete relevant application processes

- Providing information to applicants about the types of documents that may be needed
- The amount of any necessary fees
- Procedures for filing complaints and feedback

The Civil Service Commission, Office of the Ombudsman, the Presidential Anti-Graft Commission, and the Development Academy of the Philippines (DAP) were responsible for ensuring agency compliance with the Citizen's Charter, which included both civil and criminal penalties for infringements of the Act.

Sources: (Republic of the Philippines, 2007<sup>[36]</sup>; Schaefer, 2018<sup>[37]</sup>; World Bank, 2007<sup>[38]</sup>).

At that time it was not uncommon for so-called 'fixers' to be hired effectively as intermediaries in order to expedite some applications, to the detriment of others (Schaefer, 2018<sup>[37]</sup>). There were related concerns about graft and corruption from the use of these intermediaries and the Act therefore provided for potential civil and criminal liability for those involved.

At the centre of the Anti-Red Tape Act was the introduction of the Citizen's Charter, which built upon earlier models introduced by countries such as the UK and others. The purpose of the Charter was to bring a more citizen-centric approach to service delivery in the Philippines, and at the same time attempt to reduce opportunities for corruption. In practice, the Act required agencies to establish their own service standards. The Civil Service Commission (CSC) was responsible for overseeing the implementation and performance of service standards, in co-ordination with the Development Academy of the Philippines (DAP). Together, the two entities were responsible for the production of the 'report card survey' which was to include feedback on:

- how provisions of the respective Citizen's Charters were adhered to
- overall agency performance
- information and/or estimates of hidden costs incurred when accessing government frontline services, including but not limited to bribes and payments to fixers.

Results from the report card survey were included in agency annual reports. The CSC and some agencies publish the results of the report card survey on their websites as well. CSC's 2017 report card survey showed that over 80 per cent of the offices surveyed passed (CSC, 2018<sup>[39]</sup>).

Several studies investigated the implementation of the Citizen's Charter and identified problems. For instance, one study found that both the Bureau of Customs and the Development Corporation in the Clark Freeport Zone (an economically important area for the Philippines) did not comply with required procedural information for filing complaints, and failed to provide contact numbers to facilitate the provision of feedback (De Leon, 2016<sup>[40]</sup>). A review of the creation of Charters in a number of local government areas found that their development suffered from a lack of stakeholder involvement, that there were inconsistencies in information provision, and an overall lack of tailoring to local needs (Saguin, 2015<sup>[41]</sup>).

The next substantive change took place in 2011 with the renaming of the Task Force to the National Competitiveness Council (NCC). Its mandate and composition remained the same as was under the Task Force (Box 3.2). The NCC established the Regional Competitiveness Council, the creation of a Cities and Municipalities Competitiveness Index, and independent reviews of customer satisfaction with business permit application processes (NEDA, 2017<sup>[42]</sup>). In 2016, the NCC launched Project Repeal—a program to encourage agencies to amend, repeal, consolidate, or delist regulations that were deemed unnecessary (discussed below). The NCC was restructured to form the Anti-Red Tape Council with the passing of the Ease of Doing Business Act in 2018 (see below).

### Box 3.2. Composition and function of the National Competitiveness Council

The NCC was co-chaired by the Department of Trade and Industry Secretary and a representative of the business sector. Its membership composed five other members of the private sector and the cabinet secretaries of the Department of Finance, Department of Energy, Department of Tourism, Department of Education, and the National Economic and Development Authority.

To meet its goal of improving the competitiveness of the Philippine business sector, the NCC had the following powers functions:

- Serve as the primary collection point of investor issues that need to be addressed in order to improve international competitiveness in the industry, services, and agricultural sectors
- Advise the President on policy matters affecting the competitiveness of the business sector
- Provide inputs to the Philippine Development Plan, Philippine Investments Priority Plan, and the Philippine Exports Priority Plan



- Co-ordinate, monitor, and ensure the implementation of key policy improvement processes identified as being closely associated with international competitiveness
- Recommend to Congress, through the Economic Development Cluster, proposed legislations that may contribute to competitiveness
- Co-ordinate with the Local Government Units (LGUs), through the local government leagues, to ensure that the policies and standards, plans and budgets of LGUs are supportive of the thrusts of the Action Agenda
- Co-ordinate with concerned agencies for the generation of resources, both governmental and non-governmental, local, national and international, as may be appropriate, in support of the Action Agenda
- Act as the primary body that will strategise and execute steps to improve the country's international competitiveness ranking
- Perform such other powers and functions as may be necessary or as may be assigned by the President

Source: (Republic of the Philippines, 2011<sup>[43]</sup>).

### ***Increasing Competitiveness for Inclusive Growth (ICIG) programme***

In 2012, the Department of Finance and Asian Development Bank launched the Increasing Competitiveness for Inclusive Growth (ICIG) program (ADB, 2014<sup>[44]</sup>). It comprised initiatives aimed at improving the investment climate, labour market inclusiveness, and competitiveness of selected sectors in the Philippines. The program also saw the introduction of the first Regulatory Impact Assessments (RIA) in the Philippines. The ICIG program ran until 2015, and was co-ordinated by NEDA, and the respective Departments of Justice, Tourism, and Labour and Employment. These agencies each played important roles in the program:

- In the absence of a government office at that time that could initiate whole-of-government regulatory reform initiatives, NEDA through its Governance Staff, shepherded the conduct of capacity-building activities to promote RIA and to sustain interest in the importance of these initiatives.
- The Department of Justice established the Office for Competition. Although the main function of the Office was to offer advisory opinions on competition matters, it established a number of working groups and the Sector Regulators Council. With the commencement of the Philippine Competition Act in 2015

— and the establishment of the Philippine Competition Commission (PCC) as its enforcement agency — these roles were transferred to the PCC.

- Staff at both the Departments of Tourism (DOT) and of Labour and Employment (DOLE) were the beneficiaries of technical capacity training on RIAs, and went on to conduct a series of pilot RIAs (ADB, 2016<sup>[45]</sup>).

The programme focused on logistics, infrastructure and tourism in response to private sector demand for structural reforms in areas that had strong growth potential. The pilot application of RIA in the departments of tourism, and labour and employment eventually led both departments to endorse RIA work plans in the years 2013 and 2014 and produce RIA manuals. By the end of the programme, DOT had completed four Regulatory Impact Statements (RISs), related to scuba diving regulations, cost recovery of hotels, simplification of travel tax administration, and guidelines on marine wildlife tourism. DOLE produced eight RISs, involving regulations related to security of tenure, employment insurance, labour market tests, a magna carta for seafarers, apprenticeships, private recruitment and placement agencies, employment of students and the public employment service office (OECD, 2018<sup>[21]</sup>). Some successful reforms were introduced (such as a limited ‘open skies’ aviation policy, and measures to ease congestion at port infrastructure), yet an evaluation by the ADB also recognised that further reform efforts were needed (ADB, 2016<sup>[45]</sup>).

The ADB evaluation highlighted that the pilot agencies recognised RIA to be “highly useful” as it relates to both individual policies as well as to entire programs. It also noted that progress achieved under the program included the development of manuals and publishing guidelines as well as a template for preliminary impact assessments (PIAs), RISs, and regulatory impact summaries. However the evaluation also noted that “the institutionalization process will require further efforts particularly to increase appreciation and capacity building across agencies other than the pilot agencies” (ADB, 2016<sup>[45]</sup>). Furthermore, an IFC-World Bank assessment in 2018 concluded that the pilot RIAs had not been utilised in the revision of actual regulations while changes in DOLE leadership led to the suspension of DOLE’s RIA programme. Stakeholder consultation undertaken as part of this review indicated that embedding RIA in agencies remains problematic and that appetite for it has stalled.

Independently of the ICIG programme, the Department of Agriculture’s Bureau of Agriculture and Fisheries Standards (DA-BAFS) developed its own draft manual in 2015 based on DOT’s RIA manual. However, ultimately the DA-BAFS did not follow through with the full implementation of the RIA process and guidelines they had developed.

## ***Project Repeal and further reforms***

Project Repeal commenced in 2016 and was led by the NCC and the Department of Trade and Industry (DTI). Project Repeal had the following objectives, to:

- improve the country's global competitiveness and investment climate through the review of irrelevant and unnecessary laws imposed on businesses, government agencies, and citizens
- repeal or amend irrelevant, unnecessary, and excessive regulations in order to lower cost of compliance and operations for businesses and the government
- institutionalise a regulatory management system in the Philippines that is evidence-based and systematic
- involve the public in its initiatives in order to democratise regulatory reform (ARTA, 2018<sup>[46]</sup>).

## ***Project Repeal Guidebook***

Perhaps most importantly from a regulatory policy perspective, Project Repeal also resulted in the creation of the Project Repeal Guidebook (Box 3.3). The guidebook provided initial information to regulatory agencies about the regulation-making process, in addition to the processes to undertake in relation to the regulatory stock. While the stock of laws are obviously an important source of regulatory burden, the flow of new laws can also have undesirable consequences on the regulatory environment.

### **Box 3.3. The Project Repeal Guidebook**

The Guidebook was designed as the primary source of information and guidance for agencies in the process of managing and simplifying existing regulations. The overall objective of the simplification was to provide government services more efficiently and to improve the ease of doing business.

The Guidebook highlighted eight central elements:

1. *Citizen Participation* — including stakeholders in the regulatory process via information campaigns, public consultations, partnerships for joint implementation, and representation in policy making bodies
2. *Team Formation* — within each agency technical working groups should be established to provide a stocktake exercise to assess current

regulatory burdens, as well as to engage with stakeholders, maintain an agency database, and co-ordinate activities with ARTA

3. *Stocktaking of Laws and Issuances* — involves creating an inventory of all issuances, as well as an assessment of their impact and relevance
4. *Review of Laws and Issuances* — consists of a two-pass assessment of issuances viable for repeal, amendment, or streamlining on a principle-based approach to selecting regulations for review
5. *Adopt Policy Options* — the options were to either repeal, amend, consolidate, or retain each issuance
6. *Monitoring and evaluation* — track intended outputs and outcomes from regulatory changes to improve the regulatory environment
7. *Capacity Assessment and Capacity Building* — commence information sessions on Project Repeal, and pre-emptively identify areas for improvement relating to business and administrative processes
8. *Digitisation and use of Information Communication Technology (ICT)* — use government websites as the repository for all issuances, and databases must be searchable, accessible, complete, up to date, and compatible with mobile phones

The Guidebook provides small case studies and gives suggestions about how agency action can be established and co-ordinated across government.

Source: (ARTA, 2018<sup>[46]</sup>).

### ***Philippine Standard Cost Model***

The Philippine Standard Cost Model was pursued to credibly quantify or estimate any compliance and administrative costs that arise from regulations. In 2016, Project Repeal secured funding from the British Embassy of Manila for its development and pilot-testing. The design of a Standard Cost Model was seen as a critical component of Project Repeal. This was because it would help to solidify gains already made under the project, as well as the fact that the tool would be used to measure the ultimate impacts for improving the Philippine's competitiveness rankings, and specifically those relating to the World Bank Ease of Doing Business indicators (NCC, 2017<sup>[47]</sup>). Following a series of technical workshops and consultations, the structure of the model and some key cost parameters for the Philippines were agreed.

The project completion report from 2017 highlighted the draft SCM to be used. It was reported that there were two training workshops which were to introduce participants to the principles, concepts, models, and uses of the SCM, as well as its importance to the reform initiatives of the Philippines (NCC, 2017<sub>[47]</sub>). While the broad design captures the international SCM design characteristics, the international standard also calls for the tailoring of the SCM to unique domestic factors (SCM Network, 2015<sub>[48]</sub>). Stakeholder consultation undertaken as part of devising the SCM did attempt to tailor some of the criteria to local Philippine factors. For example, it was considered that the labour cost assumption should be equivalent to the prevailing minimum wage, and the original assumption for the costs of overheads was deemed to be too low and ought to be increased. Feedback received from large businesses was that agencies should look beyond the quantification of administrative costs and also capture the actual costs imposed by existing regulations to include matters such as the opportunity costs, substantive compliance costs, and direct financial costs. MSME stakeholders that were consulted opined that the SCM may not be the best tool to quantify the impacts of regulatory reforms, but it can at least provide an indicative figure as to the burdens imposed (NCC, 2017<sub>[47]</sub>). As part of piloting the SCM, feedback was received that a manual should be developed outlining the steps involved in applying the SCM both as an *ex ante* and as an *ex post* assessment tool.

Despite the seemingly strong support, technical workshops, rounds of stakeholder engagement, and piloting, the draft SCM and the project have since been discontinued. However, at the time of the Project Completion Report (NCC, 2017<sub>[47]</sub>), a large amount of follow-up work remained to be completed in terms of training, development of a manual, mainstreaming the use of the PHSCM and rolling it out to cover other agencies and types of regulation. This represents a lost opportunity for the Philippines to provide a baseline assessment against which the successes of Project Repeal could have been measured. The experiences from a number of OECD countries is that providing a baseline assessment has been integral in establishing as well as maintaining both political support and support across government for regulatory burden reduction programs. Moreover still, the development and implementation of the SCM across governments has also been an important forbearer to the later development of formal regulatory impact assessment processes and regulatory management systems more broadly. The enactment of the Ease of Doing Business Act in 2018 (see below) and the establishment of the Anti-Red Tape Authority present another opportunity to finalise the development of a SCM in the Philippines with a view to creating a baseline assessment of regulatory burdens. This may also help to maintain the appetite for the continuation of Project Repeal more broadly both within and outside of government.

**Recommendation: Building upon previous work undertaken, a Philippine Standard Cost Model should be finalised and rolled out across government agencies.**

### ***Other aspects of Project Repeal***

One of the main programs instituted under Project Repeal was a series of Repeal Days where irrelevant and unnecessary laws were removed. At its outset, eight agencies were involved, but by the end of 2018, more than 60 agencies had participated in the program. There were more than 6,000 issuances assessed under the program, of which only around 10 per cent were either amended or retained — the rest were mainly either repealed or delisted.

Project Repeal was responsible for commencing work on Philippine Business Regulations Information System (PBRIS), an online system for recording information on business regulations in the Philippines. PBRIS was created to fulfil the requirement of RA 11032 that ARTA should ensure the dissemination of, and public access to, information on the regulatory management system and changes in subordinate regulations relevant to business. However, according to the brochure provided to the OECD review team on PBRIS, the facility for the public to view proposed secondary regulations and provide comments remains under development. It is understood that the PBRIS will be transferred to ARTA once operational.

### ***Modernising Government Regulations (MGR) programme***

In 2016, the Development Academy of the Philippines (DAP), the Department of Budget and Management, and NEDA launched the Modernising Government Regulations (MGR) Program to help improve regulatory quality in the country. It is considered a priority project of the National Economic Development Authority (NEDA) under the Philippine Development Plan 2017-2022.

The objectives of the program are to:

- Improve the economic environment and governance by aiding the development of regulatory management practices
- Address redundant regulations or processes that create irrelevant burdens on citizens and businesses
- Promote a culture of systematic analysis, through the institutionalised use of RIAs, and the development of a Quality Regulatory Management System or a standardised set of policies and procedures that will ensure good regulatory practices in government

- Design a Philippine Business Regulations Information System (PBRIS) that can serve as a library for information dissemination and public consultations (see above) (DAP, 2016<sup>[49]</sup>; Almonte, 2017<sup>[50]</sup>).

The program has a strong capacity-building component, which is described below in Chapter 4 (Abanto, 2019<sup>[51]</sup>).

### **Other highlighted business reforms**

Building on the reforms introduced under the Anti-Red Tape Act, various initiatives have been undertaken to improve the business environment in the Philippines. In particular, two initiatives relating to starting a business and streamlining licences and permits have the goal of reducing government-processing times, whilst a third aims to improve the provision of information (Box 3.4).

The OECD has long-recognised administrative simplification as an important means of improving the regulatory environment (e.g. (OECD, 2003<sup>[52]</sup>), (OECD, 2006<sup>[53]</sup>), (OECD, 2010<sup>[24]</sup>)). Additionally, work is currently being undertaken to devise a set of best practice principles in a range of important areas including RIA and one-stop shops. These documents are aimed at assisting countries to better adhere to the *OECD 2012 Recommendation on Regulatory Policy and Governance* (OECD, 2012<sup>[54]</sup>).

#### **Box 3.4. Reforms introduced to improve the business environment**

Various initiatives have been undertaken to improve the business environment in the Philippines.

##### **Starting a business**

- Full operationalisation of the company registration system in November 2017, an online registration for companies operated by the Securities Commission.
- Setting up of an enhanced one-stop shop from January 2018 in Quezon City, Metro Manila, which co-locates all concerned units or offices in one facility, including the Business Permits and Licensing Office, the Zoning Office, the Treasurer's Office, and the Bureau of Fire Protection.
- Institutionalising a single window transaction project through the Bureau of Internal Revenue, where applicants can submit documents and be issued the Certificate of Registration and Authority to Print.

These measures are expected to reduce procedures for starting a business from 16 to 10 days and the processing time from 28 to 16 days.

### **Streamlining licenses and permits**

The government aims to streamline the issuance of business permits and licensing through amendments to the Anti-Red Tape Act (ARTA), via the Ease of Doing Business and Efficient Government Service Delivery Act, and through improvements in the issuance of construction permits. In relation to construction permits, some measures taken include: 1) an establishment of a one-stop-shop for construction-related permits in Quezon City, Metro Manila; and 2) making business clearance a post-requirement. These measures are expected to reduce the procedures related to this transaction from 8 to 23 days and the processing time from 122 to 36 days.

Source: (OECD, 2018<sup>[21]</sup>).

## ***The Ease of Doing Business and Efficient Government Service Delivery Act***

The Ease of Doing Business and Efficient Government Service Delivery Act of 2018 (RA 11032) amended the Anti-Red Tape Act in a number of important ways. It established:

- A formal requirement for government agencies to conduct RIA
- New bodies:
  - A formal oversight body to assess the quality of individual impact assessments, called the Anti-Red Tape Authority (ARTA)
  - The Anti-Red Tape Ease of Doing Business Council (“the Council”) as the policy and advisory body to ARTA
  - The Congressional Oversight Committee on Ease of Doing Business (“the Committee”) to monitor the implementation of RA 11032
- That ARTA would be responsible for continuing to implement the mandate under the Anti-Red Tape Act relating to the ease of doing business
- That ARTA would be responsible for implementing improved service delivery across government.

RA 11032 formalised a legislative requirement for government agencies to conduct RIA when proposing regulations. The Act provides that it covers “all government office and agencies including local government units, government-owned or –controlled



corporations and other government instrumentalities... that provide services concerning business and non-business related transactions”. RA 11032 captures a broader range of government agencies than were previously subject to the Anti-Red Tape Act.

The Act defines a regulation as “any legal instrument that gives effect to a government policy intervention and includes licensing, imposing information obligation, compliance to standards or payment of any form of fee, levy, charge, or any other statutory and regulatory requirements necessary to carry out activity”. Chapter 4 covers the scope and application of RIA to government agencies in the Philippines.

### ***Anti-Red Tape Authority (ARTA)***

RA 11032 created three new bodies: ARTA, the Council, and the Committee. Between them, these three entities are responsible for the better regulation agenda as it is currently understood in the Philippines.

RA 11032 prescribes that ARTA has 13 formal responsibilities. They can be summarised as:

- Continuing to implement the mandate from the Anti-Red Tape Act (which primarily involves investigating complaints about processing times), as amended by RA 11032. In addition, this now involves providing recommendations to improve the business environment, improving information dissemination, and an overarching role of ensuring that RA 11032 is implemented as intended
- An oversight role both in relation to the scope of agencies covered, and in relation to proposed new regulations
- A support role characterised by providing training to agencies, and preparing guidance material and technical assistance when required

Both ARTA’s roles as an oversight body and as a support to agencies are discussed in greater detail in Chapter 4. It should be noted that previous attempts to create an oversight body in the Philippines had up until this point been unsuccessful (Box 3.5).

#### **Box 3.5. Evolution of regulatory oversight in the Philippines**

Before 2018, there was no easily identified central body for co-ordinating regulatory reform in the Philippines. Instead, various national and local government units carried out their respective regulatory reform programs

according to their mandate. The Philippine Institute for Development Studies cites that there were, at one point, as many as 60 different regulatory agencies in the country, but there was no central mechanism to review these agencies' respective regulations for coherence or consistency.

Several attempts have been made to identify a central body for regulatory oversight in the Philippines. In 2008, the Philippine government partnered with the Asian Development Bank to assess the current institutional framework and consider the creation of an Office of Best Regulatory Practice. However, following the assessment, various issues and challenges in co-ordination made it unfeasible to create a new body.

Ten years later, the ASEAN SME Policy Index 2018 identified the National Competitiveness Council (NCC) as the main oversight body for regulatory reform in the Philippines. In 2011 it was mandated that the NCC “coordinate, monitor, and ensure implementation of key policy improvements”, but the NCC did not exist as an oversight body for regulatory reforms, in general. Still, the NCC was the primary body that was tasked to “strategize and execute” initiatives for improving international competitiveness.

Sources: (OECD, 2018<sup>[4]</sup>; OECD/ERIA, 2018<sup>[55]</sup>; Republic of the Philippines, 2011<sup>[43]</sup>; Llanto, 2015<sup>[6]</sup>).

What is worth noting here is how these three functions have the potential to overlap in a number of dimensions. For example, ARTA has the power to “implement various ease of doing business and anti-red tape reform initiatives aimed at improving the ranking of the Philippines”, yet is also required to “review proposed major regulations of government agencies, using submitted regulatory impact assessments, subject to proportionality rules...” The IRRs provide that the proportionality rules “are rules which require the balancing of risks and benefits against costs of supervision and enforcement of the regulation”. It is entirely possible to have a scenario where officers at ARTA identify an initiative that improves the World Bank ranking of the Philippines, which also contains a range of other (potentially large) costs and risks. How ARTA will balance these potentially conflicting objectives is not yet clear as no additional information is provided in either RA 11032 or the IRRs. That said, at this stage, the risk of such an occurrence in the Philippines is perhaps relatively low given its current pathways towards RIA (see Chapter 4).

ARTA has a role in monitoring compliance with RA 11032 in two respects. Firstly, with regards to potential issues surrounding government processing delays, and secondly in relation to ensuring that covered entities abide by the Act. On the first matter, it appears that ARTA will perform a similar role in concert to that which was previously

the responsibility of the Civil Service Commission and the Ombudsman. These two entities will still have ongoing roles in ensuring compliance with RA 11032.

### ***Anti-Red Tape Ease of Doing Business Council***

RA 11032 established the Anti-Red Tape Ease of Doing Business Council (“the Council”) as the policy and advisory body to ARTA. The Council is to replace the former NCC, although the compositions are different (Table 3.1).

**Table 3.1. Different members of the NCC and the Council**

| National Competitiveness Council (NCC)  | Anti-Red Tape Ease of Doing Business Council (the Council)   |
|---|--|
| The NCC comprised the Department Secretaries of Trade and Industry, Finance, Transportation and Communications, Education, the Director General of the National Economic Development Authority (NEDA), and three business sector representatives. The Secretary of Trade and Industry and a business sector representative were appointed the Co-Chairs of the NCC. | The Council comprised the Department Secretaries of Trade and Industry, Finance, Information and Communications Technology, Interior and Local Government, the Director General of ARTA, and two business sector representatives. The Secretary of Trade and Industry is the Chairperson, with the Director General of ARTA as the Vice-Chairperson. |

The change in composition may affect the way the Council operates vis-à-vis how the NCC operated, although this is yet to be seen. Consultations undertaken in the context of this review indicated that the NCC had been an important conduit between the government and private enterprise, allowing for a two-way engagement in the identification of issues and for the dissemination of solutions and information more generally. To ensure that previous momentum and goodwill are not forfeit, both the composition and the mandate of the Council should be reviewed, once ARTA has had time to become fully operational.

**Recommendation: Both the composition and mandate of the Anti-Red Tape Ease of Doing Business Council should be reviewed to ensure that previous momentum and support that existed under the NCC are not forfeit, after ARTA is fully operational.**

### ***Congressional Oversight Committee on Ease of Doing Business***

RA 11032 established a Congressional Oversight Committee on Ease of Doing Business (“the Committee”). The Committee is to comprise five members from the Philippines Senate and House of Representatives, respectively. The purpose of the Committee is to monitor the implementation of RA 11032, according to its statutory objectives. However, the Act prescribes that the Committee shall cease to exist after five years. The rationale for the cessation of the Committee is not immediately clear.

It should be noted that the Act had been passed for over one year prior to the announcement of the Director General of ARTA, and the associated promulgation of the Implementing Rules and Regulations (IRRs). As such, it would appear that at the minimum the Committee should exist for five years from the date of the release of the IRRs. A review could then be undertaken with a view to establishing whether the Committee should continue beyond the initial five year period. It is recognised that if the Committee were to be extended this would require an amendment to RA 11032.

ARTA and the Committee are responsible for meeting the objectives and monitoring the implementation of RA 11032, respectively. RA 11032 provides for either the establishment or streamlining of government service delivery in a number of areas (Box 3.6).

**Recommendation: At a minimum, the Congressional Oversight Committee on Ease of Doing Business should exist until July 2024, which is five years from the date of public release of the IRRs. A review should subsequently be undertaken with a view to establishing whether the Committee should continue beyond the initial five year period.**

### Box 3.6. Key provisions in improving service delivery under RA 11032

RA 11032 provides that local government units (LGUs) are to establish:

- A single or unified business application form for processing new applications across a range of local government services
- A business one-stop shop (BOSS) within three years of the commencement of the Act to receive and process various applications
- A means to ensure that a range of other business-related regulatory requirements (e.g. sanitary permits, environmental and agricultural clearances) can be issued together with the business permit.

Under the Act, the Department of Information and Communications Technology is responsible for:

- Establishing a central business portal which will house business application data issued by LGUs
- Creating the Philippine Business Databank within one year of the commencement of the Act which will permit national government agencies and LGUs to access relevant information about business entities for verification and validation purposes

- Creating, in conjunction with ARTA, a fast and reliable interconnectivity infrastructure with the purpose of expediting the processing of various types of applications.

The Act provides for expedited processing and streamlined procedures for various required fire permits.

Source: (RA 11032, 2018<sup>[7]</sup>).

The OECD is currently in the process of devising a set of best practice principles for the creation, operation, and improvement of both business and citizen one-stop shops. The current overarching draft principles — based on a series of case studies from OECD member countries — state that one-stop shops ought to form part of broader administrative simplification strategies, be user-centred, and based on so-called ‘life events’ such as buying a house, having a child, and establishing or winding up a business.

It appears that the current government agencies involved are appropriate bodies to create one-stop shops in the Philippines given their focus on reducing unnecessary administrative burdens. That said, it will need broader government involvement over time as it is centrally important that any adoption of a particular one-stop shop is based on what benefits users. To accurately ascertain this, it is necessary to understand the way in which citizens and businesses currently interact with government. While reducing administrative burdens on business (and citizens) is certainly one rationale for introducing one-stop shops, it is not necessarily the only one. One-stop shops also force often disparate areas of government to come together to reach a common objective, thus breaking down individual silos. In turn, however this raises issues around the flexibility of existing legal frameworks in terms of both the design and operation of one-stop shops. Without the ability to, for example, collect and disseminate information on a shared basis, opportunities to maximise the potential benefits of one-stop shops may be lost. As such, co-ordination and collaboration across government is therefore essential. Additional clarification is needed to ensure that the introduction of the one-stop shops are likely to be successful in the Philippines. The Philippines does have experience in establishing one-stop shops in various areas such as to improve land registration procedures and various housing title and transfer rules. It may be instructive to investigate both the challenges and successes of these one-stop shops to ascertain the salient features that could be incorporated into the various one-stop shops that are required under RA 11032.

**Recommendation: The Philippines should diagnose previous successes and challenges from the establishment of other one-stop shops to inform its design and operation of the various one-stop shops required under RA 11032.**

# 4 Regulatory impact assessment

## Introduction

Regulatory impact analysis (RIA) provides a critical tool to ensure greater quality of government intervention. It encourages policymakers to think about the impacts of their interventions, helps avoid unintended consequences, and provides a framework for balancing the benefits of regulation against its costs. In addition, documentation and publication of the evidence and analysis to support interventions enhances transparency and accountability in the policymaking process. RIA also helps policymakers decide whether and how to regulate to achieve public policy goals, by critically examining the impacts and the consequences of different policy options.

Policymakers can also use RIA to defend decisions *not* to intervene in markets where the costs of doing so outweigh the benefits. When governments do regulate, RIA helps by highlighting the benefits that the regulation is designed to achieve – something that is often overlooked by those bearing the costs. Implementing a functioning RIA framework is therefore a tool for securing not only ‘deregulation’ but also more systemic ‘better regulation’.

There are many examples of good practice and positive progress in RIA in the Philippines. Policymakers have gained expertise through earlier reform initiatives such as Project Repeal and pilot RIAs in some departments (see Chapter 3). The World Bank, Asian Development Bank and bilateral donors have been active in providing or funding RIA training. DAP, NEDA and, more recently, ARTA have been delivering or developing training, as well as drafting guidance for a fully-fledged RIA system. The creation of ARTA as the central oversight body attached to the President’s Office, is also a welcome development, providing a focal point for advice on RIA, control of the RIA process and scrutiny of regulatory impact statements (RISs).

The country, however, is still at an early stage. A 2016 joint study (Intal Jr and Gill, 2016<sup>[56]</sup>) concluded that the Philippines still has much to improve in developing a formal regulatory management system. In the terminology of that study, the Philippines is still at the “starter” or “informal” stage, where practices are *ad hoc* and different agencies have their own procedures for regulatory management. While progress is evident in some other areas of regulatory management, the use of RIA as a regulatory management tool is still at best patchy and inconsistent. Although many regulatory bodies have undertaken RIA training and used a form of RIA in reviewing the stock of regulation, very few have yet to apply it as an *ex ante* assessment tool. There is scope, therefore, for the Philippines to take a significant step forwards in its use of RIA and so improve regulatory quality.

OECD published guidance in the 1990s (OECD, 1997<sup>[57]</sup>) which is still apposite today for a country like the Philippines at this stage in the development of its regulatory management system. The guidance set out ten key principles in introducing effective RIA (see Box 4.1). A later document on building the institutional framework for RIA (OECD, 2008<sup>[58]</sup>) expanded on the 1997 guidance, with specific reference to developing countries.

#### Box 4.1. Introducing effective RIA

The following key elements are based on good practices identified in OECD countries:

1. Maximise political commitment to RIA
2. Allocate responsibilities for RIA programme elements carefully
3. Train the regulators
4. Use a consistent but flexible analytical method
5. Develop and implement data collection strategies
6. Target RIA efforts
7. Integrate RIA with the policy-making process, beginning as early as possible
8. Communicate the results
9. Involve the public extensively
10. Apply RIA to existing as well as new regulation

Source: (OECD, 1997<sup>[57]</sup>).

More recently, the OECD is developing best practice policy principles for RIA (OECD, 2019<sup>[59]</sup>), one of a series of best practice documents that elaborate on the *2012 Recommendation of the Council on Regulatory Policy and Governance* (OECD, 2012<sup>[54]</sup>). The principles in the guidance are set out in five sections:

- Commitment and buy-in for RIA;
- Governance of RIA – having the right set up or system design;
- Embedding RIA through strengthening capacity and accountability of the administration;
- Targeted and appropriate RIA methodology; and
- Continuous evaluation and improvement of RIA

This chapter follows the same basic structure. Section 1 describes the institutional arrangements designed to build commitment and buy-in. In Section 2, the importance of embedding RIA, in particular through capacity building and accountability, is emphasised. Section 3 discusses the arrangements to ensure proportionality in the implementation of RIA, while Section 4 reviews other aspects of RIA methodology and process as applied in the Philippines. Section 5 describes the link between competition impact assessment (CIA) and RIA. Finally, Section 6 discusses monitoring, evaluation and process improvement. Recommendations are highlighted in bold throughout the text.

## Institutional arrangements

The IRRs (The Implementing Rules and Regulations of Republic Act 11032, 2019<sup>[60]</sup>) set out the institutional arrangements for RIA in the Philippines. The Guidelines define RIA as “a tool to design and evaluate policies, laws, and regulations that are targeted, proportionate, accountable, transparent and consistent”. RIA involves a “systematic process that examines the expected consequences of a range of alternative policy options that could be used to address a particular policy problem or issue” including evidence-based information to decision makers, regulators and stakeholders.

### **Coverage of RIA**

RIA is expected to apply to regulatory decisions made by the Executive including the Office of the President, Government departments, line agencies and national government regulatory agencies. Local Government Units and their sub-agencies are also part of the national RIA process.



Rule II, Section 1 of the IRRs (The Implementing Rules and Regulations of Republic Act 11032, 2019<sup>[60]</sup>) states that RA 11032 will apply to “all government offices and agencies in the Executive Department ... that provide services covering business-related and non-business transactions.” As discussed more fully in Box 4.2, this definition of the coverage of RIA differs from that in RA 11032. Moreover, the list of other exclusions seems to have been considerably shortened compared with earlier drafts of the IRRs (The Implementing Rules and Regulations of Republic Act 11032, 2019<sup>[60]</sup>). That would seem to suggest that RIA is intended to apply much more broadly. If so, the coverage will be unusually comprehensive, which brings the advantage of wider engagement but also carries the risk that the scope becomes too ambitious. For example, tax measures or conditions attaching to grants are rarely subject to RIA in other jurisdictions. Other exclusions also seemed reasonable and similar with other countries. As a first step in developing a more systematic RIA regime, it seemed a practical place to start. Clarification of the coverage is essential.

**Recommendation: Clarify the scope of RIA coverage in the Philippines and avoid being too ambitious in the first instance. Overtime, the Philippines should adopt a proportionate approach to RIA, based on current work of the OECD.**

### Box 4.2. Changes in the coverage of RIA in the final version of the Implementing Rules and Regulations

#### Exclusions

Laws passed by Congress and regulations by agencies which perform “judicial, quasi-judicial, and legislative functions” were originally explicitly excluded from the coverage of RA 11032. The final version of the IRRs no longer makes that exclusion explicit, potentially an important change.

Other exclusions have been removed from the final IRRs. Specifically, the original IRRs drafted and published provided that the RIA process should not apply to the following categories:

- programmes, projects and activities of the government, including any grant, loan or partnership with international or local development partners (e.g. World Bank and United Nations)
- taxation measures that are intended purely for revenue-raising purposes
- rearrangements of functions within the government
- regulations for specific individuals already enjoying some form of benefits

- exceptional circumstances such as national emergencies and sudden environmental, health, and security crisis
- other analogous circumstances

These exclusions no longer appear in the version of the IRRs signed off in July 2019.

### Thresholds

In the draft version of the IRRs, RIA would apply to “existing regulations or regulatory changes that have a significant impact on stakeholders.” In contrast, the new definition includes “major” new or existing regulations as well as those which are “outdated, redundant and [add] undue burden to the transacting public”.

Source: (ARTA, 2019<sup>[61]</sup>).

Primary legislation, however, remains outside the requirement for RIA and scrutiny. This is potentially an important exclusion as good regulatory practices should be built into the legislative process as early as possible. This can be more difficult in countries where primary legislation granting enabling powers to regulators originates in the parliament. There are, however, some examples of good practice in the scrutiny of RIA in parliament in other countries (e.g. France, EU, Korea, United States, albeit in very different ways). In the Philippines, the Congressional Policy and Budget Research Department confirmed that impact assessment does take place and staff have had training. Training has also taken place in the Senate but the Senate Economic Planning Office told the OECD mission that they wanted to strengthen their capacity to conduct RIAs themselves in order to enhance transparency and credibility and improve the scrutiny of departmental analysis.

**Recommendation: Strengthen capability in the Congress in order to increase the scrutiny of the evidence base and the application of good regulatory practices at the primary legislation stage.**

### *Thresholds for RIA*

In common with most other countries using RIA, the Philippines does not expect that RIA will be required for every single legislative measure regardless of the expected impact. Again, the specification of the threshold has changed in the final version of the IRRs compared with earlier versions (Box 4.2) and needs to be clarified. Moreover, however the threshold is specified, the IRRs did not establish any indicators for the “significance” of regulatory impacts or what constitutes a major regulation. They

only indicated that ARTA should prepare regulatory management manuals that would include proportionality rules and threshold parameters. These still need to be determined.

**Draft recommendation: Clarify the coverage of the regulatory management system in respect of possible exemptions, the inclusion of “judicial, quasi-judicial, and legislative functions” and what constitutes a major proposal or one that places undue burdens; and finalise the proportionality rules and threshold parameters that govern what regulatory proposals ARTA will review.**

### ***Oversight of RIA and quality control***

ARTA has been designated as the oversight body for RIA in the Philippines. Oversight bodies for regulation in other OECD countries have a range of functions, including quality control of the RIA process, scrutiny of RIAs, co-ordination across departments and regulators, evaluation of the implementation of regulatory policy tools and guidance. Some oversight bodies also have responsibility for reviewing the stock of regulation, systematic improvement of the regulatory policy framework, scrutiny of the legal quality of regulation, and training.

Oversight bodies vary in the mechanisms they have available for quality control of the RIA process. These can range from providing advice and support in the preparation of RIAs, through formal opinions (either confidential or published) on the quality of impact assessments, to a sanctioning power. The sanction can be either “hard” or “soft”, i.e. the body can prevent the regulation advancing to the next stage of the process until either a positive opinion is obtained (‘hard’) or the negative opinion is overruled by a higher authority (‘soft’).

ARTA’s quality control mechanisms as an oversight body can be classified as, at best, “soft” based on the OECD categorisation (OECD, 2018<sup>[21]</sup>). ARTA has the authority to “approve or disapprove the RIS” submitted by an agency. However, a negative review or disapproval of a RIS will not trigger a specific process requiring regulators to revise their RIS. The review team heard from stakeholders that general civil service rules relating to negligence in the performance of official duties may lead to sanctions against civil servants. That said, it seems unlikely that a civil servant would be disciplined for a poor quality RIA. It will be important to clarify ARTA’s available sanctions, and how it will use them in practice.

**Recommendation: ARTA needs to clarify its available sanctions and how it intends to use them when reviewing RISs submitted by government agencies.**

## **Consultation on RIA**

Good quality policy design recognises the importance of political and stakeholder engagement. Effective consultation with all stakeholders needs to be an integral part of RIA. RIA processes have – or should have – a close link with general consultation processes for the development of new regulations.

NEDA and ARTA have shown they recognise the value of effective consultation. In particular, NEDA (2015<sup>[62]</sup>) has set out how comments and feedback from affected stakeholders can assist with:

- ensuring that the problem has been fully understood by all parties
- ensuring all practical policy options have been considered and providing a wider range of perspectives;
- confirming the accuracy of the assessment of costs and benefits (particularly business compliance costs); and
- checking whether or not the proposed option is likely to work in practice — for example, whether there are implementation barriers, enforcement issues or potential unintended consequences that may have been overlooked.

Stakeholder consultation also helps affected groups feel more engaged, promoting greater understanding of the reason for intervention and potentially enhancing rates of compliance by increasing stakeholder acceptance of the regulation if it is ultimately adopted.

Under the guidelines prepared for earlier pilot RIA initiatives in the Philippines, regulators should ensure that there has been adequate consultation with affected stakeholders to support the informed completion of the RIA. This means that affected stakeholders, wherever possible, should be provided with advanced notice of upcoming consultation activities and that a minimum period (30 days was suggested) is allowed for all public consultation on RIS documents. The guidelines also state that, where approved for release, all final RIS documents should be published on the pilot department's website and that the online register on the department's website should list all approved regulations in order to facilitate public access and availability.

These are sound principles which should be adopted in the full rollout of RIA in the Philippines. More generally, the OECD (2017<sup>[63]</sup>) has encouraged the principle that governments should consult on all aspects of impact assessment analysis and use RIAs as part of the consultation process. The OECD advocates close co-operation with stakeholders when defining the problem that is to be solved by a new regulation, setting its objectives, identifying various alternative solutions (including non-regulatory ones) and assessing potential impacts of these alternatives, as well as when

designing potential implementation mechanisms. In other words, every single phase of the RIA process requires input from interested parties.

At the same time, it is advisable to provide as much information on a given regulation as possible when engaging stakeholders, especially the reasons for adopting such regulation, underlying analyses and the results of preceding consultations with stakeholders. Whenever a RIA has been conducted, it should be published together with the draft regulation, because it usually contains valuable information on what alternatives have been considered and what were the reasons for choosing the selected option. Box 4.3 gives some examples of good practice in consultations on RIA in Canada and Mexico.

**Recommendation: Ensure that the regulatory management system is open and transparent, allowing time for consultation and publishing completed RIAs.**

#### Box 4.3. Examples of good practice in consultations on regulatory impact analysis

In Canada, a variety of methods are used to involve stakeholders in consultations on RIAs. They include the use of emails, phone calls, third-party facilitated sessions, roundtable meetings and online consultations before the RIA is drafted. Regulatory proposals and their accompanying RIA are then pre-published in the Canada Gazette for public consultation. Stakeholders can highlight concerns regarding methodology or distributional impacts (e.g. undue burden placed on one region or industry) or submit alternative analyses. Departments and agencies must summarise the comments received, explain how stakeholder concerns were addressed, and provide the rationale for the regulatory organisation's response in the final RIA.

In Mexico, stakeholders are invited to comment on draft regulatory proposals and the accompanying RIA after they are submitted to the Federal Commission for Regulatory Improvement (COFEMER) for scrutiny. The general public can comment through a COFEMER consultation portal or send comments via e-mail, fax or letters. Consultations must be open for at least 30 working days; in practice, much longer consultation periods are the norm. COFEMER also uses other means to consult with stakeholders. These include advisory groups, media and social networks to diffuse the regulatory proposals and promote participation. Stakeholder comments are published on the COFEMER website and are required to be taken into account by COFEMER and the agency sponsoring the regulation.

Source: (OECD, 2016<sup>[22]</sup>; OECD, 2017<sup>[63]</sup>).

## **Forward planning of RIAs**

Consultation will be more effective and the RIA process easier for the centre to manage if there is a clear forward plan for the flow of major RIAs. Ideally, RIA should be fully integrated with other regulatory management tools and should be implemented in the context of the Regulatory Governance Cycle. In other words, *ex ante* RIA should be one stage in a policy cycle that starts with *ex post* assessment of previous or existing policies, continues with *ex ante* assessment and also includes monitoring, data collection and evaluation indicators. Awareness of the entirety of the policy cycle is very important for a government that considers the introduction of RIA. Successful implementation of RIA is much more difficult without a functioning legislation planning system. This usually also includes regulatory agencies providing public information about expected regulations that will be made over a defined period of time. There are currently 21 OECD countries that have regulatory agencies provide a form of public advanced notice about forthcoming regulatory proposals.

There is no equivalent as yet in the Philippines. The Government does set out its forward legislative agenda in the Philippine Development Plan (PDP). The current version, the PDP 2017-2022 (NEDA, 2017), takes the current administration's 0+10 Point Socioeconomic Agenda as its starting point. However, while the forward agenda helpfully provides the framework for planned legislation, it does not constitute a detailed implementation schedule or forward plan for all upcoming major regulations.

The Implementing Rules and Regulations for ARTA set out the process to be followed for RIAs, including the requirement that all government agencies should give notice to ARTA of every formulation, modification and repeal of regulations. Such notification will be helpful in allowing the authority to keep track of upcoming regulation and plan its work. How this will happen in practice is not elaborated on, although it is understood that NEDA has recently advised ARTA of the need to define a clear regulatory management framework to assist their work in this area. It would be even more effective if the notifications provided to ARTA could be collated as a forward plan, published and made available to all stakeholders.

Of course, such a program is not designed to be exhaustive and unforeseen regulations are required from time to time. The objective is that a majority of regulations are transparently put forward ahead of their potential design. Such a process has also helped to improve stakeholder engagement (discussed above) in a number of OECD countries via the earlier identification of potential regulatory changes. The process of advanced notice helps to alert stakeholders to relevant potential regulatory changes earlier in their development. In turn this helps to facilitate a discussion between the proposing agency and the affected members of society to improve the design of any potential regulation from the outset.

In time, this facility may be provided by the planned Philippines Business Registration Information System (PBRIS), a web-based system for recording accessible information on business regulations in the Philippines, as described in Chapter 3.

**Recommendation: Building on PBRIS or other systems, Philippines agencies subject to RIA should produce a forward plan to alert stakeholders to upcoming regulations and institute a process of advanced notice to assist ARTA in reviewing upcoming regulatory proposals.**

### ***Consultation and stakeholder engagement in the wider context***

Consultation and forward planning of RIAs should be part of a wider commitment to openness and transparency in the development of regulatory policy. Stakeholder engagement is integral to all stages of the Regulatory Governance Cycle. The OECD (2012<sup>[54]</sup>) *Recommendation of the Council on Regulatory Policy and Governance* stipulates that countries should "...adhere to principles of open government, including transparency and participation in the regulatory process to ensure that regulation serves the public interest and is informed by the legitimate needs of those interested in and affected by regulation. This includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis. Governments should ensure that regulations are comprehensible and clear and that parties can easily understand their rights and obligations."

Through stakeholder engagement, regulators gain knowledge of the regulated sector and the businesses and citizens affected, helping them regulate more effectively. There are of course some risks in close engagement. Recognising these risks, the OECD Principles also stress the importance of avoiding capture and conflicts of interest and guarding against pressures from special interests.

The *APEC-OECD Integrated Checklist on Regulatory Reform* (OECD, 2008<sup>[64]</sup>) also mentions the importance of transparency, openness and inclusiveness in the regulation-making process and the accessibility of regulations. In particular, the checklist encourages governments to establish effective public consultation mechanisms and procedures (including prior notification, as appropriate) and to ensure these mechanisms allow sufficient access for all interested parties, including foreign stakeholders.

The OECD has drafted a comprehensive set of best practice principles for effective stakeholder engagement (OECD, 2017<sup>[63]</sup>), the main themes of which are summarised in Box 4.4. While the Philippines has established good practice in some areas, for example in establishing ARTA and setting out principles on the importance of

consultation (see above), more needs to be done to strengthen existing consultation mechanisms and practices in line with the OECD's detailed guidelines. Stakeholder consultation tends to happen at a late stage, after the production of a draft law, rather than at a more nascent stage of policy development where stakeholders can provide input into whether there is a public policy problem, as well as alternative solutions (including non-regulatory options).

**Recommendation: Make consultation and stakeholder engagement an integral part of the regulatory policy cycle and follow the OECD best practice principles set out in Box 4.4.**

#### Box 4.4. OECD Draft Best Practice Principles on stakeholder engagement in regulatory policy

- Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place.
- Mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy should be established.
- Governments should co-operate with stakeholders on reviewing existing and developing new regulations.
- Governments should actively engage all relevant stakeholders during the regulation-making process and designing consultation processes to:
  - Maximise the quality of the information received, and
  - Maximise its effectiveness
- Governments should consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing or reviewing regulations
- Governments should make available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data.
- Governments should consult on all aspects of impact assessment analysis and use impact assessments as part of the consultation process.
- Governments should structure reviews of regulations around the needs of those affected by regulation, co-operating with them through the design



and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals.

- Governments should regularly evaluate both their stakeholder engagement policy and individual engagement activities towards achieving their goals.
- All regulations should be easily accessible by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.
- Governments should have a policy that requires regulatory texts to be drafted using plain language. They should also provide clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations.

Source: Adapted from OECD (2017<sup>[63]</sup>).

## **Governance of RIA and its rollout**

### *Pathways to RIA*

Governments considering the introduction of a RIA system need to decide whether to implement RIA at once or gradually. Once the basic preconditions are met or at least planned, there are several different possible pathways for the gradual introduction of RIA (Renda, 2015<sup>[18]</sup>)<sup>2</sup>:

1. A pilot phase, then the institutionalisation of RIA for all regulations or all major ones;
2. Starting with a simplified methodology, and then expand;
3. Starting from some institutions, and then expand RIA to others;
4. Starting from major regulatory proposals and then lower the threshold to cover less significant regulations;
5. Starting with binding regulation and then moving to soft law;
6. Starting with single- or multi-criteria qualitative analysis, and then gradually moving to quantitative analysis (CBA or other);
7. From concentrated RIA expertise to more distributed responsibilities.

<sup>2</sup> For more detail on these pathways, see Annex A.

The Philippines is still at an early stage along its pathway to RIA. Previous reform initiatives have piloted RIA (**Pathway 1**), although this has more often taken the form of an *ex post* review of the stock rather than *ex ante* assessment. In line with **Pathway 2**, the early RIAs also tended to emphasise the use of the Standard Cost Model, widely seen as a less intrusive methodology and a precursor to fuller analysis of costs and benefits, though the experience of other countries suggests that the transition from one to the other is not without challenge. The focus of these earlier initiatives was on a few key departments (**Pathway 3**), but ARTA's latest initiative envisages a more ambitious concerted approach across all departments and regulatory agencies.

The current RIA drive is intended to be targeted, in line with **Pathway 4**, on major regulatory proposals (see below for how this proportionality might be applied), as is the case for a number of other administrations, for example the European Union, Australia, Ireland and United Kingdom. **Pathway 5**, moving from binding regulation to soft law, seems less relevant for the Philippines at its current stage, although it may be useful for the authorities to consider in due course how forms of soft law such as codes of conduct or other means of self- or co-regulation might be encouraged more in the future.

It is also recognised in the Philippines that full CBA may not be possible for all regulatory proposals, particularly in the early stages. For that reason, in line with **Pathway 6**, the Philippine authorities acknowledge that there may be a role for other techniques such as cost effectiveness analysis, multi-criteria analysis (which should be used with care) and even more qualitative forms of assessment. Finally, the Philippines has made some progress along the axis of more distributed expertise (**Pathway 7**), with plans to develop Better Regulation Units in departments and departmental training programmes designed to spread understanding and expertise from the centre (ARTA, NEDA, DAP) more widely amongst departments and regulators. The scale, however, of the capacity building challenge that remains should not be underestimated.

### *Evolution of RIA in the Philippines*

As already indicated, the focus of regulatory reform so far in the Philippines has been on the stock of regulation, through initiatives such as Project Repeal. These efforts should continue and could be strengthened, for example by making more systematic the methods used for selecting sectors for review.

There is also an important potential link between RIA and the measurement of administrative burdens (see Chapter 3). However, as the country progresses to the next stage of its regulatory management system, the authorities also need to develop

RIA as a tool for *ex ante* assessment. The application of RIA to proposed new regulations and regulatory changes is recognised in the definition of the scope of RIA in the IRRs for ARTA: "... the Authority requires all agencies to conduct a Regulatory Impact Assessment for the purpose of reviewing, simplifying, modifying, modernising regulations, laws, issuances and ordinance to reduce regulatory burden and cost. All agencies shall conduct a RIA for all its [sic] proposed major regulations subject to proportionality rules. It shall likewise apply to existing regulations or regulatory changes that are outdated, redundant, and adds [sic] undue regulatory burden to the transacting public" (The Implementing Rules and Regulations of Republic Act 11032, 2019<sup>[60]</sup>).

It is noteworthy here that the emphasis is on reducing regulatory burden and cost, rather than balancing costs and benefits and choosing between alternative options, which should be one of the main purposes of RIA. While a focus on avoiding unnecessary admin burdens and business cost when regulating is laudable, particularly in the early stages of regulatory reform, RIA is most powerful when it is used as a tool for comparing benefits and costs between options and choosing the most suitable.

The challenge for the Philippines will be to build on the work already undertaken in key departments and move it from a focus on the reduction of burdens of existing regulation using the SCM to a more comprehensive cost benefit analysis of new regulation or regulatory changes. The progress that has been made along the various "pathways" identified is a good start. Looking forward, it may be prudent to continue the gradual approach. For example, the focus could be on a few key institutions and major regulations, using these as pilots to help develop and disseminate expertise and become a model for the application of a more broadly based *ex ante* RIA system.

**Recommendation: Build on the progress already made, shifting the emphasis away from cost reduction and stock reviews to using RIA as a tool for *ex ante* assessment, considering both costs and benefits**

**Recommendation: Continue the gradual approach by concentrating on a few key institutions and major regulations for fuller *ex ante* RIA, focusing on the new flow of legislation, identifying some key pilots and seeking to score some early successes.**

### ***Allocation of responsibilities***

As part of the institutional design and governance system, responsibilities for RIA programme elements have to be allocated carefully. Guidance, support, scrutiny and co-ordination sit naturally at the centre in ARTA, though other agencies may have a

role, for example in training. Departments and agencies that develop regulatory proposals should be the ones responsible for the preparation of RIA. This can be done either in-house or by external consultants.

Whichever option is chosen, both the centre of government and line departments need to acquire the necessary skill sets and develop core teams that are “cross-functional” in nature, i.e. involving individuals with different backgrounds and skills. This helps ensure that RIAs are balanced and informed by a diverse range of expertise. Appointing sub-units with RIA expertise within relevant ministries or departments can prove helpful, as it concentrates the need for advanced skills in the hands of a few experts in each administration. Ideally, these units should consist of suitably trained staff from within the department in order to promote knowledge transfer and buy-in. In turn, the oversight body will need staff with the right skills to ensure that it has the strength and capability to challenge the conclusions that departmental experts have reached.

**Recommendation: Make clear the responsibilities of all the main actors and agencies and ensure they are appropriately skilled.**

### ***Effective regulatory oversight***

In line with OECD recommendations, the Philippines has created an oversight body, ARTA, at the centre of government, helping to ensure that regulation serves whole-of-government policy. Its authority and mandate are set out in the Implementing Rules and Regulations (IRRs). The IRRs also specify the mandate of the Ease of Doing Business and Anti Red Tape Council (‘the Council’), which acts as the policy and advisory policy for ARTA (see Chapter 3). ARTA’s position at the centre of Government rather than in a line department is an advantage. However, as an agency under the Office of President and subject to the steer of the Council, ARTA does not enjoy the same statutory independence from political influence as do oversight bodies in some other countries. It will therefore be important to ensure that it has the powers to require an RIA and that its decisions on RIAs are firmly based on an objective assessment of the evidence and on due process.

**Recommendation: Strengthen ARTA’s independence as the oversight body and give it greater powers to require and enforce RIA.**

## Embedding regulatory impact assessment: capacity and accountability

Embedding RIA into the existing policymaking and decision-making processes is important. If RIA is a “stand alone” initiative that is not integral to the regulatory policy cycle, it will have limited, if any, effect on regulatory design and outcomes, or on societal welfare. Success also depends on the capabilities of those who have to implement RIA, including expertise in the techniques of RIA and a shared appreciation of the benefits. A successful RIA system, therefore, requires complementary capacity building measures, including training and guidance, a whole-of-government approach with relatively limited exclusions, supportive departmental structures and appropriate expertise and process in the oversight bodies.

### ***RIA training and guidance***

The OECD mission learned that many activities have already taken place or are under way in the Philippines to deliver RIA training and develop guidance. Initiatives include those led by NEDA, NCC, DAP, ARTA and other departments and agencies. Under the auspices of IFC-World Bank, regulatory simplification exercises, including RIA, were also conducted in the Department of Trade and Industry (DTI) and some its agencies and regional offices, in the Land Transportation and Franchising Bureau and the Food and Drug Authority. Technical assistance has also been provided by the ADB, Canada, UK Prosperity Fund, USAID “RESPOND” programme, and others.

### ***Capacity building under the MGR Program***

Perhaps the most significant of these initiatives takes place under the auspices of the MGR Programme (see Chapter 3). Under the programme, the DAP is responsible for providing capacity building under the program through a series of workshops, aimed at both national government agencies and local government units. Every year, DAP consults NEDA on the selection of five key industries that will be prioritised for its RIA training workshops. The workshops focus on instilling the importance of good regulatory practices in respective agencies, with a specific focus on RIA. The topics for the workshops are decided in consultation with NEDA, and are selected as areas with growth potential and/or potential regulatory issues. The areas addressed since 2016 are listed in Table 4.1. Generally, the industries are chosen based on an assessment of their potential to grow or to become problematic (DAP, 2019<sup>[65]</sup>).

**Table 4.1. Key sectors addressed by the MGR Program**

| Year | Selected sectors   |
|------|--|
| 2016 | Food Production; Food Service; Tourism; Transportation (except for the aviation sector)        |
| 2017 | Housing; Logistics; Public Transportation; Chemicals; Power                                    |
| 2018 | Health; Construction; Retail of Consumer Goods; Renewable Energy; Deepening studies of tourism |
| 2019 | Finance; Mining; Education; Insurance; Water Utility   |

Notes: Normal studies result in mapping and identification of regulations. Whereas, deepening studies refer to utilising RIA to review existing regulations.

Source: (DAP, 2019<sup>[66]</sup>).

Once the areas are identified, agencies apply to join the RIA training workshops. Agencies submit a Summary of Selected Proposed Regulations to review under the program. DAP thereafter selects appropriate agencies to include within a given year (DAP, 2016<sup>[49]</sup>). The training leads participating agencies through the completion of a regulatory impact statement for selected sectors of the economy, though with an emphasis on *ex post* rather than *ex ante* review.

The RIA training program has three courses that familiarise government regulators with the concept of regulatory reviews and teach them evidence-based methods such as compliance cost analysis and cost-benefit analysis (Table 4.2).

**Table 4.2. Courses of the Development Academy of the Philippines on RIA**

| Course type                                | Course specifics  |
|--|---|
| Basic course on RIA                        | <ul style="list-style-type: none"> <li>• Teaches the importance of RIA in creating new regulations</li> <li>• Lays out the process for conducting RIA</li> <li>• Discusses possible action plans and implementation</li> </ul>  |
| Advanced course on RIA                     | <ul style="list-style-type: none"> <li>• Studies completed on RIAs of agencies</li> <li>• Compliance cost measures</li> <li>• Existing and proposed regulations that are subjected to <i>ex post</i> and <i>ex ante</i> RIA</li> <li>• Regulatory Impact Statements (RISs) are developed after the OECD's template</li> </ul> |
| Technical assistance on development of RIS | <ul style="list-style-type: none"> <li>• The DAP assists in the further development of an initial RIS</li> <li>• The draft RIS is analysed for areas and opportunities for improvement</li> </ul>   |

Source: (DAP, 2016<sup>[49]</sup>).

Upon completion of all three courses, each government agency will have compiled a regulatory impact statement (RIS). DAP provides participating agencies with RIA and RIS templates for both their basic and advanced courses on RIA (DAP, 2019<sup>[67]</sup>; DAP, 2019<sup>[66]</sup>). This document can eventually be used in the development of an agency's regulatory management system (RMS) that institutionalises good regulatory practices in government through a standardised set of policies and procedures (Erasga, 2018<sup>[68]</sup>).

By 2018, 72 government agencies had completed these RIA Training Workshops (Abanto, 2019<sup>[51]</sup>). ARTA reports, based on data provided by DAP, that the DAP has managed to train at least 15 representatives from the local government units of Baguio, Makati, Mandaluyong, and Quezon City (OECD, 2018<sup>[69]</sup>). Currently, the program does not prescribe a formal framework for the selection and prioritisation of regulations for agencies to include in RIA. Consequently, DAP usually finds agencies bring forth regulations that are hard to implement. Furthermore, the DAP noted that issues do not need to be acted upon by agencies (DAP, 2019). If the programme and associated training is to continue, it would seem appropriate to have agencies act on identified problems to help build reform momentum (Abanto, 2019<sup>[51]</sup>; DAP, 2019<sup>[65]</sup>).

The World Bank provided ARTA with RIA training material and organised RIA workshops for the Department of Trade and Industry (DTI). However, the World Bank decided not to take forward the design and development of more in-depth manuals and training materials when they discovered that the DAP has its own procedures and manuals that were sufficient for use in the Philippines and needed only limited modifications. The OECD review team has also seen copies of the training materials used by DAP and drafts of RIA guidance manuals and agrees that the material is of good quality. NEDA has drafted an as-yet-unpublished RIA manual which includes much excellent material and guidance on RIA. Departmental guidance made available to the OECD team also appears to provide a reasonable basis for departmental RIAs but are not as detailed or as soundly based as the work undertaken by NEDA and ARTA on the general manual.

DAP's RIA training workshops have now been adopted by ARTA's Regulatory Management Training Division as part of its new capacity building programme. ARTA is also now leading the work on the RIA manual previously undertaken in NEDA.

In addition to capacity building through MGR training and development of a guidance manual, capacity building in the Philippines has also received a boost from the early pilot RIA initiatives (see Chapter 3). There are several examples of pilot RIA projects that have been undertaken in other developing and emerging countries. Some of the conclusions drawn from an earlier OECD study of these pilots (OECD, 2008<sup>[58]</sup>) are that:

- there is no single model to implement RIA and each system's specificities need to be properly addressed;
- there are economies of scale when developing RIA as synergies come when experience accumulates;
- international co-operation brings expertise, consolidated guidance and helps to move forward with reform; and
- strong political and technical support are key elements to succeed in permanently integrating RIA in the policy-making process.

These findings can help inform the next steps in the Philippines. It appears that the Philippines have benefited from a large number of technical assistance projects and pilot RIA initiatives and that there is no shortage of good guidance. However, there is a pressing need to consolidate and rationalise the existing guidance and build on the earlier initiatives by developing from pilot projects to a more fully-fledged system.

**Recommendation: Finalise and publish central RIA guidance. Departments and agencies should then adopt the guidance and commit to adhere to its main principles, although most departments and regulators will likely also find it necessary to supplement and adapt it to their own needs. The guidance should also include a single overarching RIA template and template guide so that all RIAs submitted to ARTA follow a consistent structure.**

A key concern reported as part of this scan report by the World Bank from working with the Philippines on RIA guidance and from RIA workshops is that they are being conducted more as an academic exercise rather than for regulatory improvements. The World Bank stated that they had not seen a single instance where the RIA led to an actual reform, whether large or small. The World Bank consider that there is a need to agree on a strategy for persuading departments and agencies to implement the reform suggestions that emerge during the RIA process. This should apply both to reviews of the existing stock and to the appraisal of new regulation.

### ***Structures in departments and agencies***

Another important step in building capacity is to create a wider constituency for RIAs and good regulatory practice in departments through anti-red tape units or, preferably, better regulation units in departments and agencies. The task of the unit would be to act as a champion for RIA within its organisation, by advocating, supporting and helping to embed RIA best practice through advice and guidance and liaison with ARTA on training and general questions of methodology and process. In order to operate effectively, better regulation units need to have staff members who combine



a thorough understanding of the RIA process with good communication and networking skills to liaise with staff in their agency and with ARTA.

Rodrigo (2005<sup>[70]</sup>) emphasises that, from the experience of OECD countries, successful integration of RIA into the government policy process in developing countries requires a significant cultural change among regulators, politicians, interest groups and the public. As a result, introducing and embedding RIA is a long-term process that requires consistent, sustained support and political commitment.

**Recommendation: Establish Better Regulation Units or their equivalent as champions of RIA in all key departments and agencies in order to create a wider constituency for RIAs and GRPs and a network to promote culture change.**

Departmental accountability and performance-oriented arrangements, implemented in accordance with the legal and administrative system of the Philippines, can also help build capacity and drive culture change. Drawing on international experience (OECD, 2019<sup>[59]</sup>), such arrangements might include, for example

- specifying the name of the responsible person for every regulatory proposal that is tabled by government and published online;
- sign-off of RIA statements by responsible ministers/high-level officials/heads of administrative authorities;
- including the evaluation of RIA work as an element in the evaluation of the performance civil servants;
- specifying that skills in RIA are an element to be considered for career promotion to specific high-responsibility positions in the administration.

**Recommendation: In order to avoid RIA becoming a sterile academic exercise in agencies and departments, ensure a close link between RIA and policy development and publicise and reward successful application of GRPs.**

### ***Expertise and process in oversight bodies***

ARTA needs to build capacity too. This will include strengthening capability in techniques of cost-benefit analysis and RIA. The authority will also need to develop processes and expertise in reviewing and assessing the RISs submitted by regulators and build up experience and case histories in these assessments. It would be helpful if ARTA's review of a RIS were made public, through for example the publication of a formal opinion explaining the reasons why a particular RIS was approved or not and highlighting good practice.

### Box 4.5. Quality criteria used by UK RPC in assessing RIAs

#### **Don't presume regulation is the answer**

- Has a market failure or regulatory failure been clearly identified?
- Have non-regulatory alternatives been considered?
- Has the ability to correct the causes of market failure been clearly demonstrated?

#### **Take time and effort to consider all the options**

- Have a sufficiently wide range of options been taken forward
- Has any option been ruled out of detailed appraisal without substantive reasoning?

#### **Make sure you have substantive evidence**

- How does the market currently work and what are the observed problems
- Have public consultation responses helped inform the estimates of impacts?
- Have other relevant departments or public bodies been involved?

#### **Produce reliable estimates of costs and benefits**

- Have all impacts been identified, including any unintended consequences?
- Have all costs been valued at their opportunity costs?
- Has the correct 'do-nothing' scenario been established?
- Have the appropriate time period and discount rate been used to calculate NPV?
- Is it easy to see what are the most important risks and uncertainties?

#### **Assess non-monetary impacts thoroughly**

- Have non-monetised impacts been assessed in accordance with common techniques?
- Are these non-monetised impacts clearly and systematically presented?
- Have issues of public risk been taken into account?

### Explain and present results clearly

- Is it clear who will benefit and who will bear the cost, when and by how much?
- Does the IA reference the source of data, research and evidence and show its robustness?

### Understand the real cost to business of regulation

- Is the policy in scope of any ‘One-in, one-out’ or other offsetting policy?
- Has the Equivalent Annual Net Cost to Business (or an equivalent standard measure of business impact) been robustly calculated?

Source: (UK Regulatory Policy Committee, 2014<sup>[71]</sup>).

In reviewing RIAs submitted to the Authority, ARTA may find it helpful to establish quality criteria such as those adopted by oversight bodies in other countries. For example, the UK Regulatory Policy Committee (RPC) has used a seven-point checklist to assess the RIAs it reviews (Box 4.5).

In addition to establishing quality criteria, ARTA should also aim to establish itself as a “Centre of Excellence” for RIA. To some extent, NEDA and DAP already fulfil this function, but ARTA as the central oversight body should also play a pivotal role. For example, in some OECD countries, experts from the centre may be seconded to ministries requiring specific support on an *ad hoc* basis. Or experts at the centre compile a “good practice library” as part of the overall capacity-building programme, as well as acting as a source of expertise for improving the design and functioning of the regulatory management system.

The OECD team learned that a Better Regulation Office has been established within ARTA to this effect, with the following functions:

- Recommend policies, processes and systems to improve regulatory management to increase the productivity, efficiency, and effectiveness of business permitting and licensing agencies for both business and non-business transactions in government services
- Review proposed major regulations of government agencies, using submitted regulatory impact assessments

- In co-ordination with the Regulatory Management and Training Division, prepare regulatory management manuals for all government agencies and/or instrumentalities including the LGUs
- Ensure the dissemination of and public access to information on regulatory management system and changes in laws and regulations relevant to the public through the PBRIS

**Recommendation: Develop ARTA as a centre of excellence in RIA by building capability, developing quality criteria for its review function and publishing the findings of its reviews.**

## Proportionality

Although the system of impact assessment should be as inclusive as possible, not every policy proposal or regulation needs the same amount of analysis. The authorities should aim to optimise the use of available human resources for analysing new regulations and the effect of the regulatory stock. More complicated proposals with higher and broader impacts should be prioritised. For these proposals, more systematic analysis and greater consideration of changes to improve the regulation are more likely to generate benefits for citizens.

### *Proportionality rules in OECD countries*

Several OECD countries have recognised the trade-off between system effectiveness and quality on the one hand, and seeking a full scope of application on the other. They have thus limited the types of government initiatives for which a RIA is required or opted for a threshold test or a tiered approach that progressively tailors the depth and type of the analysis carried out.

#### Box 4.6. Examples of proportionality in the application of RIA

**Canada** applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The development of a Triage Statement (low, medium, high impact) early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA. Also, when there is an immediate and serious risk to the health and safety of Canadians, their

security, the environment, or the economy, the Triage Statement may be omitted and an expedited RIA process may be allowed.

**Mexico** operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulations. Regulators and line ministries must demonstrate zero compliance costs in order to be exempt from RIA. Otherwise, a RIA must be carried out. Ordinarily, RIAs require a second test – qualitative and quantitative – what Mexico calls a “calculator for impact differentiation”, where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

The **United States** operates a quantitative test to decide to apply RIA for subordinate regulation. Executive Order 12866 requires a full RIA for economically significant regulations. The threshold for “economically significant” regulations (which are a subset of all “significant” regulations) is set out in Section 3(f)(1) of Executive Order 12866: “Have an annual effect on the economy of USD 100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities”.

In the **United Kingdom**, only measures with an annual cost to business equivalent to plus or minus £5 million a year are subject to independent scrutiny and counted in the Government’s Business Impact Target. For measures below this, departments are expected to undertake proportionate cost benefit analysis and demonstrate that the measure falls below the threshold. Guidance is also published on proportionality for measures above the threshold.

The **European Commission** has a proportionate analysis approach to regulation. Impact assessments are prepared for Commission initiatives that are expected to have significant direct economic, social or environmental impacts. The Commission Secretariat generally decides whether or not this threshold is met on the basis of a reasoned proposal made by the lead service. Results are published in a roadmap.

Source: (OECD, 2015<sup>[72]</sup>).

As Box 4.6 illustrates, many countries operate or have operated a two-stage system involving some kind of threshold test (for example, Canada, Korea, Mexico, Netherlands, Switzerland, United Kingdom, United States).<sup>3</sup> In addition, many countries, even if they do not have a threshold test, adopt a general principle of proportionate analysis (such as that adopted by the European Commission) under which the depth of analysis required is commensurate with the significance of the impacts of the policy options.

Experience from OECD countries suggests, more generally, that the workability, effectiveness and sustainability of any RIA system are enhanced if the authorities are realistic about the scope of application of RIA, the type of analysis required and the pace with which RIA is rolled out. This particularly holds for relatively young RIA systems that have not yet reached “cruising speed”. Sometimes an excessively ambitious scope of application might be counterproductive when the aim is to lower the transaction costs of introducing and mainstreaming a new regulatory practice while maintaining adequate quality standards. Moreover, an ambitious scope may make it more difficult for the oversight body to do its work, since it is virtually impossible to track and effectively scrutinise many hundreds of RIAs every year.

### ***Guidance on proportionality in the United Kingdom***

The UK oversight body has recently issued guidance (RPC, 2019<sup>[73]</sup>) on proportionality in impact assessment, suggesting the following list of factors should be considered in deciding what resources should be devoted to a full RIA, beyond the *de minimis* threshold:

- the size of the expected impact (net cost to business or NPV to society);
- the size of the regulated market and the number of entities affected;
- whether the measure changes existing requirements in a fundamental way;
- how many different factors need to be considered to understand the impact of the measure;
- the risk of the measure not meeting its objectives;
- whether the measure is likely to have disproportionate impact on one group of businesses (such as small businesses, or businesses in one sector); and
- whether the measure is novel or contentious.

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<sup>3</sup> (OECD, 2006<sup>[53]</sup>); (OECD, 2019<sup>[59]</sup>) and Box 2.1.

The UK guidance goes on to suggest that RIAs should be classified into high, moderate and low impact according to the criteria set out above and then analytical resources committed accordingly. For a low impact measure the guidance indicates that a light touch review would be appropriate, subject to minimum standard, and the RPC is likely to be more sympathetic to arguments based on resource constraints. For a moderate impact policy, the RPC expects to see a more detailed and evidenced IA and is less likely to be sympathetic to arguments based on resource constraints. For high impact measures, the Committee would expect to see an IA with a thorough approach and would not generally be sympathetic to arguments based on resource constraints<sup>4</sup>.

### ***Applying the proportionality principle in the Philippines***

The Philippines authorities understand the need for proportionality and recognise that it is not always necessary or desirable to have a full RIA or full cost-benefit analysis. However, the OECD review team found that there is a demand for guidance on what constitutes “major regulation” and on proportionality generally.<sup>5</sup> This is ultimately a task for ARTA. RA 11032 provides that, while all proposed regulations are in principle subject to RIA, proportionality rules to be determined by the Authority are to be followed. The IRRs do not define what constitutes “major regulation” or state what threshold parameters should be used.

One possible first stage process, under consideration in NEDA before the creation of ARTA and part of the earlier RIA pilot, would be for a department or agency proposing a new regulation or regulatory change within the scope of RA 11032 to prepare a preliminary impact assessment (PIA), to be submitted to ARTA as the oversight body, who would then assess whether the regulation had significant implications for business or could otherwise be described as ‘major’. As originally envisaged, the PIA would contain four sections: a brief statement of the policy issue or problem; the government’s policy objectives in addressing the problem; a list of policy options for achieving the objectives; and a brief analysis of the impacts on business of the regulatory options under consideration (NEDA, 2015<sub>[62]</sub>).

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<sup>4</sup> More detail on what the Committee expect to see for each type of measure can be found in (RPC, 2019<sub>[73]</sub>).

<sup>5</sup> The focus in this section is on proportionality in the application of RIA. Proportionality may also be important in other aspects of the regulatory management system, for example in balancing the risks and benefits against the costs of supervision and enforcement of regulation.

Such a system would have merits provided it is applied in a flexible and proportionate way. For the oversight body, a requirement for a PIA is a useful discipline and a means of checking that measures with significant impacts do not escape scrutiny. For the regulator, early identification of the main impacts of a proposal can help with policy development and highlight any design issues. However, a PIA requirement should not become over-burdensome with extensive PIAs being prepared for quite minor measures. Nor should the PIA become a full RIA requiring duplication of effort, either for the regulator or the oversight body.

**Recommendation: Consider using the preliminary impact assessment model in order to filter out lower impact proposals not requiring a full RIA.**

### ***A possible approach***

Early consideration of proportionality rules in the Philippines suggested that major regulatory proposals requiring a full cost-benefit analysis might include those that (NEDA, 2015<sup>[62]</sup>):

- have substantial or widespread impacts on the economy; or
- affect a large number of businesses, community organisations or individuals; or
- impose substantial compliance costs on businesses or community organisations; or
- face widespread and determined opposition among stakeholders or the broader public.

Less significant regulatory proposals would not require such a high level of detail. They would, however, still be expected to provide an analysis of the policy options to a level of detail that enables a sound assessment to be made of the relative merits of the various options, even if in some cases the analysis is mainly qualitative.

The list proposed by NEDA is similar to that set out above as being used in the United Kingdom (RPC, 2019<sup>[73]</sup>). It is a good starting point but the details would still need to be formalised. In the long term that may require agreement to be reached on the relevant criteria, parameters and thresholds. But in the short to medium term, before moving to a fully-fledged formal system, it may be prudent to start small with a simple set of guidelines and a focus on a few key regulations. A gradual and flexible approach to introducing systematic RIA for key measures might well be more helpful in building confidence, expertise and embedding the system longer term than a more ambitious and more prescriptive approach rigidly applied.



It should be noted, finally, that successful implementation of an effective set of proportionality rules also requires several preconditions being in place — reasonably strong centralised co-ordination and training; systematic planning and prioritisation of the flow of new regulation and the associated impact assessments; effective scrutiny and oversight and appropriate checklists; and filters to screen relevant proposals.

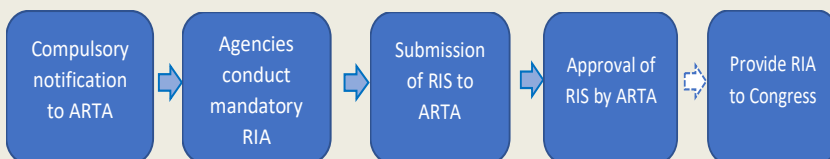
**Recommendation: Drawing on the experience of other OECD countries and using earlier work in the Philippines on what constitutes major regulation as a starting point, finalise proportionality rules and threshold criteria and make them clear and transparent. Ensure that the pre-conditions for successful prioritisation are in place, in terms of training, co-ordination, planning, filter mechanisms and scrutiny.**

## Process and methodology

The implementing rules and regulations for ARTA (The Implementing Rules and Regulations of Republic Act 11032, 2019<sup>[60]</sup>) set out the process to be followed for RIA and the preparation of RISs (Box 4.7). The full process covers all proposed major regulations and existing regulations that are outdated or redundant or add undue regulatory burden. Each regulator is required to conduct an RIA and draft a RIS, setting out the analysis in a clear concise and structured framework. ARTA is then required to review the quality of the RIA, specifically “in order to avoid the overlapping of regulations across agencies and to reduce the regulatory burden and cost”.

### Box 4.7. Process of regulatory impact assessment prescribed in the IRRs of the Ease of Doing Business and Efficient Government Service Delivery Act

The process of mandatory RIAs prescribed in Republic Act 11032 entails four required stages and one optional procedure. The entire process is discussed below:



***Compulsory notification:***

All government agencies covered under Section 3 of the Act must notify ARTA of every formulation, modification, and repeal of regulations. A rationale for the existing and proposed regulations must be included. All documents used in conducting research for the existing and proposed regulations must also be submitted.

***Required regulatory impact assessment (RIA):***

All government agencies covered under Section 3 of the Act must conduct a RIA. These agencies are also required to conduct consultations to ensure the quality of a regulation. The regulatory agency must properly disseminate the result of a regulation's RIA as a feedback and feedforward mechanism.

***Submission of regulatory impact statements (RIS) to ARTA:***

The resulting documents from the RIA, known as regulatory impact statements (RIS), should be submitted to ARTA for review. ARTA has the discretion to organise meetings for the purpose of reviewing the results of the RIA if needed.

***ARTA approves RIS:***

ARTA may approve or disapprove the resulting RIS of any regulations based on the results of their review.

***ARTA provides RIA to Congress (optional)***

ARTA, if it deems necessary, may forward the RIA and the results of their review to Congress for appropriate action.

Source: (The Implementing Rules and Regulations of Republic Act 11032, 2019<sup>(60)</sup>).

All new regulations within the scope of RA 11032 or changes to existing regulations will require notification to ARTA. Although not explicit in the IRRs, it is expected that ARTA will then determine whether further RIA and a RIS are required. It is also expected, though again not explicit in the process set out in the IRRs, that ARTA would review the RIS, at least for the purposes of avoiding overlap and minimising the regulatory burden. The methodology to be followed is still being finalised, although guidance has been drafted in NEDA and versions were made available to departments involved in earlier RIA pilot schemes. Responsibility now rests with ARTA for the production of agreed guidance on the exact process and methodology to be followed.

**Recommendation: Clarify the process set out in the IRRs to avoid any ambiguity over ARTA’s role in determining the need for a full RIA and the RIAs that should be scrutinised. Providing assurance that proportionality is properly applied is an important part of ARTA’s scrutiny role.**

### ***RIA methodology***

There is no “one size fits all” when it comes to RIA methodology. Several RIA methods are commonly used in OECD countries (Rodrigo, 2005<sup>[70]</sup>; OECD, 2008<sup>[58]</sup>). These include: formal cost-benefit analysis, cost effectiveness or cost/output analysis, socioeconomic impact analysis, risk-risk analysis, consequence analysis, compliance cost analysis and business impact tests. Some countries use other quantitative and qualitative methods, multi-criteria analysis, or partial and general equilibrium analysis, as well as assessing direct and indirect effects.

In the early stages of the development of a RIA system, it is usual to give more attention to an assessment of costs, as appears to be the case in the Philippines, based on the wording of the IRRs and the early experience with RIA pilots. However, benefits should ideally also be included in the assessment in order to demonstrate that the costs of a proposal are justified and to help choose between alternative approaches. Moreover, the oversight body should ideally judge the RIS on the basis of the quality of the assessment overall, including benefits, not just the need to avoid overlap and reduce costs. Generally, the inclusion of benefits will make the analysis more complicated, and the job of the oversight body more difficult, since benefits are invariably more difficult to measure. But the aim should be to make the consideration of benefits as well as costs an integral part of the regulatory management system.

It is recognised that RIA efforts should be scaled to the specific capacities of a country, especially given the scarce government resources to collect and analyse required data. This, however, does not mean that RIA efforts are futile in circumstances where resources are scarce, rather the contrary, since RIA is more about the process of asking the right questions to the right people (and thus creating a framework for regulatory policymaking) than a process of preparing technically precise estimates of impact.

In terms of the choice of analytical methods used to conduct RIA, international experience shows that there is a growing tendency towards empirically-based approaches. A number of countries carry out full cost-benefit analysis but it is recognised that this method is resource-intensive. A preliminary screening process, as has been considered for the Philippines, is useful to identify which regulations should be subject to full RIA and warrant more effort.

Even for regulations subject to full CBA, it will rarely be possible to quantify or monetise everything. A range of impacts that are not easy to measure in quantitative terms but are nonetheless important should be taken into consideration. It may be possible to identify proxies in order to value options in a RIA. But even if this is not possible, cost-benefit analysis can still provide a useful accounting framework. Any good RIA should at least set out a structured list of the main impacts of each option considered and provide some discussion of the comparative impacts across different options and the relative balance of costs and benefits for each.

**Recommendation: Recognising that not all RIAs require a full cost benefit analysis, encourage the current focus on costs and burden reduction to evolve over time to include more consideration of the benefits of regulation and the choice between competing options.**

### ***What the RIA should cover***

The guidelines drawn up for earlier pilot RIA initiatives in the Philippines provide a useful basis on which to build. Unpublished documents shared with the OECD review team suggest that good guidance has already been prepared on RIA process and methodology. For example, the guidelines for pilot RIA initiatives in DOLE and other departments set out the following principles of good practice in regulatory impact assessment, drawing on earlier OECD work and guidance from NEDA:

1. Establish clear reasons why Government needs to take action to address the problem;
2. Examine the benefits and costs of a range of different policy options to address the problem including regulatory and non-regulatory approaches;
3. Adopt the policy option that provides the greatest net benefit to the community;
4. Ensure that the regulation does not restrict competition unless the benefits from the restriction outweigh the costs or there is no other way to achieve the policy objectives;
5. Provide support and guidance to both regulators and parties required to comply with the regulation to ensure the policy objectives and regulatory requirements are clearly understood and met;
6. Review the regulation regularly to ensure it remains relevant and effective over time;
7. Consult in a meaningful and effective way with key stakeholders at all stages during the development and review of the regulation;
8. Ensure that the regulatory action by the Government is proportionate and effective to the significance of the problem being addressed.

Draft guidance is also available on the eight essential elements of a Regulatory Impact Statement, the main document produced during in the RIA process, namely: policy problem and the need for government action, policy objectives, policy options, assessing impacts of policy options, consultation, recommended option, implementation and review.

Suitable templates have also been drawn up with this structure. The first four elements of the RIS might also serve as the basis for a preliminary problem statement or PIA at the time the regulation is first submitted to ARTA.

**Recommendation: Build on earlier work on good practice in RIA to develop guidance on RIA content and methodology and the structure of a RIS.**

While the basic draft seems to be a good starting point, the technical content of the draft guidelines seen by the OECD review team could be enhanced. What technical content there is draws heavily on the International SCM Manual (SCM Network, 2015<sup>[48]</sup>) and other generic sources and there is a need to supplement it with more sector-specific and country-specific material (see Chapter 3).

Further work is also needed to embed the principles set out in the guidance. For example, it would appear from the evidence of RIAs seen by the OECD review team that, while there are some examples of good practice, many of the RISs from pilot exercises fall short of what would normally be expected. Often, there is little more than a description of the problem and the measure proposed to address it, with very limited discussion of the market failure being addressed. Those that do attempt quantification focus almost exclusively on the cost side and in particular on costs to government and the cost of licensing or permits to business. This would suggest that improved guidance is needed on benefit estimation and the wider impacts of regulatory proposals.

Moreover, while there is some good guidance available already on option generation, including non-regulatory options, in the draft guidance manuals, there still does not seem to be enough emphasis on this in the work of departments/agencies. In some of the RIAs seen by the OECD review team, the main reason given for choice between options was speed of implementation rather than a consideration of the balance of costs and benefits.

**Recommendation: Incorporate the ongoing work on business cost calculators into RIA methodology, building on earlier work on the Standard Cost Model. Develop the technical content of RIA guidance to include more sector- and country-specific parameter values and to say more about benefit assessment, wider impacts and alternative options.**

## ***Use of behavioural insights***

The use of behavioural insights (BI) might help the Philippine authorities generate a wider range of options for policy development and RIA. Insights based on lessons from the behavioural and social sciences are being applied at an increasing pace by public bodies around the world (OECD, 2018<sub>[20]</sub>). The BI methodology, which challenges established assumptions about rationality and uses experimentation and piloting to provide evidence of actual real-world behaviours, helps policymakers develop innovative approaches to designing and implementing policies, Box 4.8 gives examples of where the use of behavioural insights has led to non-regulatory options being chosen in other countries.

**Recommendation: Draw on experience of other countries in Behavioural Insights to develop a wider range of options for consideration in RIA.**

## ***Data strategies and process improvement***

The OECD review team noted that data strategies for *ex ante* and *ex post* impact assessment of regulations are relatively undeveloped. Ensuring the right data is available to undertake RIA is essential but so far capacity building has devoted comparatively little attention to some of the core data challenges in the regulatory process, namely data collection and validation and the know-how to quantify impacts.

FAAs the RIA system matures and rolls out in the Philippines, the authorities should also consider putting as much as possible of the RIA process and associated templates online. For example, the UK makes available to departments and regulators an electronic template for RIA and an Excel spreadsheet calculator for undertaking cost-benefit analysis in the format required for the regulatory management system there. In order to increase the quality of RIA and reduce the burden of preparing RIA statements, Korea launched in July 2015 an e-RIA system, allowing RIAs to be drafted and processed online and providing public officials with the data necessary for cost-benefit analysis (OECD, 2017<sub>[74]</sub>).

**Recommendation: Strengthen data strategies to make sure that relevant data is available for RIA and consider putting standardised RIA processes/templates online through the development of e-RIA.**

### Box 4.8. Behavioural insights and regulatory policy

#### Italy: Improving energy efficiency with better consumption data

The Italian energy, water and waste regulator (ARERA) conducted experiments to discover how individuals react to different types of feedback on their energy use. They found that continuous feedback was extremely useful, and that feedback should show energy consumption in terms of financial cost and not a scientific measure (e.g. British Thermal Units, or BTUs). Furthermore, highlighting the costs of inefficient use was also helpful. As a result, ARERA changed the design of energy bills to display consumption data more simply and clearly.

#### Costa Rica: Reducing water consumption

Belén, Costa Rica tested the effects of social norms as well as plan-making as motivations to reduce water consumption in nearly 6 000 homes. Results showed that residents who were shown a comparison of their consumption against their neighbourhood and prompted to make a plan to reduce consumption reduced their water consumption by 4 to 5 per cent.

#### Colombia: Strengthening consumer protection in telecommunications

The OECD worked with the Colombian Comisión de Regulación de Comunicaciones (CRC) to help strengthen the consumer protection regime in the Colombian communications market. The CRC conducted 25 consumer psychology exercises between 2013 and 2014 across the country. An OECD team of international experts examined the data and provided recommendations for improving consumer decision making and welfare. The report (OECD, 2016<sup>[75]</sup>) recommended using a mix of behaviourally-informed regulation and non-regulatory tools to shape incentives in four areas – information provision, customer service, managing consumption and bundled services. Based on the OECD recommendations, the CRC undertook further research and experimentation and adopted a new behaviourally-informed consumer protection regime in 2017.

Source: Based on (OECD, 2016<sup>[75]</sup>; OECD, 2017<sup>[76]</sup>; OECD, 2018<sup>[21]</sup>).

## Competition impact assessment

It would also appear that the process of competition impact assessment (CIA) needs to be more fully linked with RIA. Independently of RA 11032, the Philippine Competition Commission (PCC) is working with APEC to develop a manual for the assessment of the impact of regulations on competition. The draft manual follows the APEC-OECD Framework on Competition Assessment (APEC, 2017<sup>[77]</sup>), which in turn adopts the principles recommended in the OECD's Competition Toolkit (OECD, 2017<sup>[78]</sup>).

This manual, which is expected to be finalised in 2019, is being pilot-tested by the Centre for Competition Policy of the University of East Anglia with the Philippines' Food and Drug Authority (FDA), Maritime Industry Authority (MARINA), Department of Health (DOH), and the Civil Aeronautics Board (CAB). Using the draft manual, the pilot test participants undertake a competition impact assessment by reviewing potentially anticompetitive laws and regulations and proposing concrete alternatives to the identified restrictions. As with the RIA pilots, participants are not obligated to act on any findings derived from the process.

Apart from the APEC competition assessment manual, the PCC is also developing its own CIA guidelines, based on the principles contained in OECD's Competition Assessment Toolkit and the World Bank's Markets and Competition Policy Assessment Toolkit. The PCC plans to first use the guidelines internally, for its review of the laws and regulations that are referred to it. The PCC aims to eventually publish the guidelines for use by other regulators. There is a recognition that the guidelines ought to be aligned with the future APEC competition assessment manual.

There is as yet no law expressly requiring Philippine government agencies to conduct a CIA. PCC currently reviews laws or regulations that were voluntarily referred from Congress or other government agencies. PCC may also proactively select draft Bills or regulations for a CIA, if they are related to the priority sectors identified by PCC. The PCC, which is mandated to review government restrictions and regulations that undermine competition, has the power to advocate procompetitive policies and advise government agencies and issue advisory opinions and guidelines on competition matters. However, the PCC has requested for the issuance of an Executive Order which would require all relevant laws, policies, rules and regulations to be reviewed to determine whether they restrict, prevent or lessen competition. ARTA is currently considering the incorporation of a competition assessment into its RIA guidelines. This would be consistent with established practice in some OECD countries (e.g. Australia, Mexico). Further discussions and a Memorandum of Agreement between the PCC and ARTA are expected.



**Recommendation: Continue to integrate work on Competition Impact Assessment more closely with RIA.**

## Monitoring and evaluation

Ideally, any RIA system should have an in-built monitoring, evaluation and refinement mechanism in place. The scope of RIA analysis should cover the whole policy cycle not just an appraisal of options before the legislation is enacted (*ex ante*), but also checking the real impact of adopted regulations after their implementation (*ex post*). Interim evaluation should also be undertaken if the regulation as enacted is significantly different from that originally proposed and subject to *ex ante* RIA.

*Ex post* evaluation is an important tool for holding governments to account and helping justify their intervention in the marketplace. It may also improve the quality of future regulations by suggesting necessary refinements and informing future *ex ante* RIAs by gathering data and providing feedback. *Ex post* evaluation is also particularly important where regulations are adopted without having first undergone *ex ante* RIA, for example in cases of emergency or other exceptional circumstances. Furthermore, and particularly relevant in the case of the Philippines, post-implementation reviews of deregulatory initiatives to cut red tape may be useful for avoiding the resurgence of regulation.

For interim and *ex post* evaluation to be effective, appropriate data on the impact of regulations must be collected from the outset. Regulators should therefore consider data requirements and monitoring procedures at an early stage in the design and development of new regulation. It will then be easier to measure and monitor the achievement of regulatory goals. Ideally, this requires data that reflects regulatory outcomes, not just inputs or outputs, to be collected.

### **OECD country experience of evaluation**

There are many ways of approaching *ex post* reviews and evaluation (see Box 4.9 and the OECD has created a set of Best Practice Principles on Reviewing the Stock of Regulation (OECD, 2019<sup>[79]</sup>). An OECD survey (OECD, 2015<sup>[72]</sup>) found that the importance of evaluating policies and regulatory interventions is generally appreciated among OECD governments and parliaments, even though many countries still have a long way to go in the practice of evaluation. The survey showed that, between 2012 and 2015, 30 countries conducted some sort of *ex post* evaluation of existing regulations, whether or not there was a mandatory requirement to do so. The survey also found that most OECD countries have systematically adopted *ex post* evaluation

for new primary and subordinate legislation and have some measure of transparency, although there is still much scope for improvement in the way evaluation requirements and systems are used.

Examples of recent evaluation initiatives in OECD countries include the following (OECD, 2018<sup>[21]</sup>):

- **Austria** has introduced mandatory *ex post* evaluation for major laws and regulations.
- **Denmark** has introduced several principle-based *ex post* reviews, for example on the overlaps between local, regional and federal regulation, and the Danish Business Forum now conducts in-depth reviews of regulations in different policy areas.
- **France** has engaged in important simplification efforts, including a public stocktake exercise, and has released in 2017 new guidelines for the evaluation of public policies.
- **Italy** introduced a new set of procedures for *ex post* evaluation, including criteria to select major laws and regulations, and strengthened its institutional settings.
- **Japan** introduced a threshold test for *ex post* evaluation and improved its methodology and oversight of *ex post* evaluation.
- **Korea** has recently subjected its *ex post* evaluation system to its *ex ante* RIA requirements, started a series of in-depth reviews of regulations in specific policy areas, made *ex post* evaluations publicly available, introduced quality control and publishes now every year a report on the performance of the *ex post* evaluation system.
- The **United States** has introduced a stock-flow linkage rule and the Office of Information and Regulatory Affairs (OIRA) has issued guidance to implement this rule, requiring *ex post* evaluation of regulations. OIRA also reviews the quality of *ex post* evaluations.

### Box 4.9. Approaches to regulatory review and ex post evaluation

An Australian Productivity Commission (2011<sub>[80]</sub>) study lists the following main approaches:

#### Stock management approaches

- Regulator-based strategies – using mechanisms such as performance indicators and complaint monitoring as the basis for periodic reviews and consultation as part of a continuous improvement programme.
- Stock-flow linkage rules – constraining the flow of new regulation through rules and procedures linking to the existing stock, for example “regulatory budget” and the “one-in X-out” approaches.
- Red tape reduction targets – require regulators to reduce existing compliance costs or admin burdens by a certain percentage or value within a specified period.

#### Programmed review mechanisms

- Sunsetting – provides for an automatic annulment of a statutory act after a certain period (typically five to ten years), unless keeping the act in the books is explicitly justified through ex post review
- “Process failure” post implementation reviews (PIR) (for example in Australia) – a “fail-safe” mechanism under which ex post evaluation is required on any regulation that should have been subject to an *ex ante* impact assessment.
- *Ex post* review requirements in new regulation – setting out how the regulation in question will be subsequently evaluated.

#### *Ad hoc* and special purpose reviews

- “Stocktakes” of burdens on business – prompted by business suggestions and complaints about regulation that imposes excessive compliance costs or other problems.
- “Principles-based” review strategies – applying a guiding principle to screen all regulation for reform – for instance removal of all statutory provisions impeding competition.

- Benchmarking – potentially providing useful information on comparative performance, leading practices and models for reform across jurisdictions and levels of government.
- “In-depth” reviews – assessing the appropriateness, effectiveness and efficiency of regulation in a major area within a wider policy context that may include other forms of intervention.

Sources: (OECD, 2015<sup>[72]</sup>; OECD, 2019<sup>[59]</sup>).

## ***Evaluation in the Philippines***

In the Philippines, there are some provisions in place for post-legislative scrutiny. For primary legislation, the Congress, through its committees, has oversight responsibilities to determine whether the implementation of laws and programmes within their jurisdictions is in accordance with the intent of Congress and whether they should be continued, curtailed or eliminated.

For subordinate regulations, government departments and agencies do not generally have a standard procedure for their organisations to review and evaluate their regulations on their own accord. Often, government agencies evaluate their own regulations only on an *ad hoc* basis, for example in response to public complaints or controversy. Initiatives such as Project Repeal and the MGR programme have promoted a more systematic approach to reviewing the stock of regulation (see Chapter 3). Through its MGR Program, DAP aims eventually to create a standard mechanism for reviews that will automatically prompt agencies to review their practices and regulations at the first instance that a regulation may not be working.

ARTA acknowledges that, even where *ex post* evaluation occurs, government agencies are not required to follow through with findings that may result from their review of regulations (OECD, 2018<sup>[69]</sup>). With the lack of any formal or standardised *ex post* evaluation protocols in the Philippines, the “lifecycle” of regulations in the country is demonstrably incomplete. The legislative process focuses on getting laws and issuances approved and implemented. However, there are few mechanisms to monitor enforcement and systematically analyse results brought about by these regulations.

In addition to the lack of evaluation, many regulations exist without provisions for a “sunset clause”, which means that regulations have no pre-determined restrictions on the period of validity and implementation (Abanto, 2019<sup>[51]</sup>). The lack of a “sunset

clause” means that some regulations become unnecessary or obsolete while new ones continue to be implemented, adding to the cost and complexity of regulation.

**Recommendation: Develop protocols and technical capabilities for *ex post* evaluation as well as *ex ante* assessment. Ensure that agencies are required to follow through on the findings of their reviews of the stock of regulation. Strengthen post-legislative scrutiny for measures not covered by *ex ante* RIA and make greater use of sunset clauses.**

### ***Core principles for regulatory evaluation***

There is a need in the Philippines to plan evaluation more systematically and embed it into the policy cycle. Allio (2015<sup>[81]</sup>), in a review for the OECD, sets out a number of core principles and good practices which, taken together, may help increase the chances of introducing and mainstreaming a well-performing regulatory *ex post* evaluation system:

- **Prioritising and sequencing.** Evaluations should focus on solving contemporary problems. This implies prioritising and sequencing in order to make the most efficient use of analytical resources and avoid potential “evaluation fatigue”. Consultation can greatly assist in the prioritisation process. Efforts in the analysis should be proportionate.
- **Planning and embedding evaluation into the policy cycle.** Retrospective analysis should be fully integrated into the policymaking process. Ideally, no new regulatory initiative should be adopted unless it is preceded by a retrospective analysis. To ensure this, a close link should be formally established between the *ex ante* and the *ex post* phases of the Regulatory Impact Analysis process. A calendar of planned evaluations should be discussed with stakeholders and published regularly. This helps structure evaluation activity and increases transparency and accountability.
- **Constructing a comprehensive assessment.** Move away from an incremental assessment of the impact of individual regulations to a more holistic assessment. This includes assessing the impact of regulations together with other policy tools. Understanding the nature of wider regulatory impacts is also important.
- **Promoting the creation of an “evaluation function”.** *Ex post* evaluation should be integral to the policy-making process and part of the analytical and evidence base brought to bear in policy design and implementation.

- **Building adequate organisational and administrative capacity to support such an evaluation function.** This should include developing a cadre of staff with appropriate skills and the provision of procedural and methodological guidelines for evaluation. Establishing quality standards and a “good practice library” can further facilitate institutional learning. Organisationally, a central co-ordinating team in the oversight body coupled with a network of evaluation units in departments is a way of mainstreaming good evaluation practice.
- **Leveraging stakeholder engagement.** Effective consultation is necessary to ensure that reviews are effective and credible publicly and build on the knowledge and capacity of different stakeholders. They can be involved both in the process of identifying areas that may require reform and during the actual review process.
- **Ensuring high levels of transparency and accountability.** Retrospective analyses should be open and transparent, in order to facilitate communication and maximise the credibility of the review. Timely publication and ease of access are crucial. Independent bodies should conduct periodic appraisals and parliaments should hold the executive accountable for evaluation.

**Recommendation: Build in and embed evaluation in the regulatory policy cycle in line with the OECD best practice principles**

### ***System evaluation issues***

In addition to evaluating individual regulations, the RIA process itself should be evaluated at some stage down the line. Measuring and demonstrating the added value of RIA is helpful both for process improvement and for maintaining sustainable commitment to RIA. The OECD mission team understands that some evaluations have already been undertaken of the pilot RIA schemes in the Philippines. For example, a Canadian-funded consultancy report submitted to the ADB on the pilot RIA initiatives carried out in DOLE identified issues to be addressed relating to data, analytical skills, leadership and co-ordination in the department's RIA programme. While lessons have no doubt been learnt within DOLE, publication of the report would bring greater transparency and enable the learning points to be shared more widely across Government.

Finally, ARTA itself should be evaluated in due course, as well as the impact of the RIA system generally on the quality of regulatory decisions. Systematic evaluation of the performance of the regulatory oversight bodies that co-ordinate and supervise the regulatory governance cycle and oversee the quality of RIAs is also important. Such an evaluation process could contribute to the understanding of emerging problems and suggest ways to improve the practice of regulatory oversight. The Congressional

Oversight Committee would appear to be well-placed to perform this role (see Chapter 3).

**Recommendation: Make a commitment to evaluate the RIA process itself and disseminate the lessons from evaluations of earlier pilot RIA initiatives. ARTA should also be evaluated in due course.**

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# Annex A. Pathways to introduce RIA

The following is based on (Renda, 2015<sup>[18]</sup>).

**Path 1. A pilot phase, then the institutionalisation of RIA for all regulations.** This has been a largely recurrent way of seeking the introduction of RIA. However, many countries have failed to capitalise on the pilot phase towards a more general application of RIA as a mandatory administrative requirement.

**Path 2. Starting with the least intrusive methodology, and then expand.** For example, the measurement of administrative burdens through the Standard Cost Model (SCM) is widely seen as a less intrusive method to assess a specific set of impacts of legislation, since the measurement phase is mostly left to external consultants, and no major revolutions in the administrative culture of civil servants are needed in order to bring clear results. That said, the move from the SCM towards a more complete RIA system might take years and a careful management of expectations inside and outside of the administration.

**Path 3. Starting from some institutions, and then expand RIA to others.** Government might decide to introduce RIA – whether complete or limited to specific tests e.g. administrative burdens – by looking at the administrations in which the most advanced skills and the most concentrated external stakeholders are located. This would typically be a department or minister in charge of business regulation, of retail trade.

**Path 4. Start from major regulatory proposals and then lower the threshold to cover less significant regulations.** The European Commission launched its IA system in 2000 by focusing (after two years of pilot phase) at all major proposals included in its yearly work programme. The requirement to carry out an impact assessment relies on whether initiatives are envisaged to have significant economic, social or environmental impacts. Over the years, the system has been gradually extended to cover major delegated and implementing acts (subordinate legislation). On average, around 100 impact assessments have been produced over the past years.



**Path 5. Starting with binding regulation and the moving to soft-law.** Some countries have realised after years of implementation of the RIA system that soft law, private standards, self- and co-regulation are sometimes more important than traditional, command and control legislation in terms of impacts on the economy and on the incentives of economic agents.

**Path 6. Starting with single- or multi-criteria qualitative analysis, and then gradually moving to quantitative analysis (CBA or other).** When a country lacks specific quantitative skills that would enable cost-benefit analysis or similar, this does not mean that no RIA can be introduced, or that RIA will ultimately lose its “scientific” appeal. As a matter of fact, the scientific nature of RIA is highly contestable and challenged in many jurisdictions: this is why adopting a general procedure based on qualitative analysis and requiring administrations to motivate the adoption of a specific course of action as opposed to available alternatives in words or through qualitative-quantitative analysis (e.g. scorecards) is a very valuable step in the introduction of RIA. With the right governance and institutional settings, the move towards more evidence-based, quantitative analysis (if needed) will be dictated, over time, by the need to make the case for regulation against counter-analyses provided by stakeholders, experts or other institutions.

**Path 7. From concentrated RIA expertise to more distributed responsibilities.** An administration might well lack RIA skills, and the gap might be difficult to fill in the short term. That said, many governments can rely on public or private institutions that can assist in the performance of specific calculations, thus supporting regulatory proposals with evidence. Likewise, some countries have started piloting RIA by training a limited number of employees in the central oversight body, and have then moved towards the appointment of contact persons or reference units for RIA in each of the departments with regulatory power.

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OECD work on regulatory policy: <http://oe.cd/regpol>

Anti-Red Tape Authority of the Philippines  
Office of the President <http://arta.gov.ph/>

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