

Chapter 3: Best Practice Regulations and Regulatory Burdens

3.0 Best Practice Regulations and Regulatory Burdens

This chapter discusses the concepts of regulation, the costs associated with regulations and how to identify necessary and unnecessary regulatory burdens. It complements the broad purpose of the review which is to identify unnecessary regulatory burdens affecting businesses in Malaysia and suggest ways to reduce them.

3.1 What is Regulation?

For the purpose of these references, regulation is defined broadly to include all written legal and quasi-legal instruments ranging over primary legislation, secondary instruments, guidelines, circulars, codes, standards and others. The conditions contained in licences, permits, consents, registration requirements and leases are also under review where they impose a compliance burden on businesses.

As well as the content of written regulations, the way they are implemented, administered and enforced can also significantly impact on compliance burdens for businesses and the effectiveness of regulations. Hence, the delivery of regulation is also under review.

The MPC is assessing both written regulation and the administration and enforcement of the regulation. Hence, participants have been able to raise concerns about any aspect of the regulatory framework.

3.2 Cost of Regulation

There are many different sorts of costs which may be imposed by regulation in order to achieve policy objectives. The costs impact variously on businesses, employees, consumers and governments. What is important is that the total benefits accrued from achieving the regulatory objectives must be greater than the

total costs of the regulation. Regulations can adversely impact on businesses in various ways. Most fall under the following four categories of costs:

- administrative and operational requirements, such as:
 - reporting, record keeping
 - getting legal advice, training
- requirements on the way goods are produced or services supplied, such as:
 - prescriptions on production methods
 - occupational registration requirements, requiring professionals to use particular techniques
- requirements on the characteristics of what is produced or supplied, such as:
 - being required to provide air bags in all motor vehicles
 - requiring teachers or trainers to cover particular topics
- lost production and marketing opportunities due to prohibitions, such as:
 - when certain products or services are banned

The direct costs of complying with regulations can include the time taken to comply with regulations, the need for additional staffing, the development and implementation of new information technology and reporting systems, paying for external advice, education, advertising, and accommodation and travel costs. Compliance costs also impact indirectly on the community, by changing pricing and distorting resource allocation, impacting on international trade and delaying the introduction of new products or services.

In an international study in 1998, the OECD estimated from survey responses that taxation, employment and environmental regulation imposed over \$17 billion (2.9 per cent of GDP) in direct regulatory compliance costs on small and medium-sized businesses in Australia.

The more advanced countries like Australia have taken measures to improve the cost-effectiveness of regulations and to reduce compliance burdens and red-tape. These measures include:

- increased adoption of performance-based regulation
- the consideration and adoption of implementation options that minimize red-tape
- the improvement of regulatory services through the employment of new technology

- increased electronic publication of regulatory information
- licence reform and reduction
- streamlining government paperwork requirements
- privatization of certification functions
- business focus groups and pilot test programs

3.3 What are Unnecessary Regulatory Burdens?

Some regulatory costs are inevitable in order to achieve the benefits which the regulation brings. High quality regulation is both effective in addressing an identifiable problem or objective and efficient in terms of minimizing unnecessary compliance and other costs imposed on business and the community. The best regulations achieve their objectives and at the same time deliver the greatest net benefit to the community. By contrast, poor quality regulation may not achieve its objectives and can impose unnecessary costs, impede innovation, or create unnecessary barriers to trade, investment and economic efficiency. Given the pervasiveness of regulations, it is not surprising that regulation and red-tape continue to impose significant compliance costs (Argy and Johnson, 2003)¹.

There are sound reasons for much regulation. It can reflect and enforce the community's values and rights of individuals. It can reduce risks to people's health and safety (such as through consumer policy), address discrimination (such as an equal opportunity laws), and protect the environment from overuse or degradation. Regulation is also part of the institutional architecture for markets to work efficiently, including by establishing property rights and enforcing contracts.

Much regulation is aimed at addressing market failures — asymmetric information, monopoly power; externalities and public goods. Market failures can reduce productivity, result in over- or under-production of particular products, services or side-effects (such as pollution) relative to community preferences, and distort consumption and production decisions. Regulation can also reduce social and environmental risks. However, regulation to correct these market failures or to

¹ Argy, Steven and Johnson, Matthew (2003) *Mechanisms for Improving Quality of Regulations: Australia in an International Context*, Staff Research Paper, Australia Government Productivity Commission

address risks, still needs to be efficient and effective, and the benefits of such corrections need to outweigh the costs of implementing and complying with the regulation. In addressing market failures, policy makers should be wary of creating government failures.

Regulation can also be used to protect some producers at a cost to others, favour the use of some resources relative to others, and/or benefit some consumers over others. In some cases such changes are intentional and desirable – for example, to look after vulnerable consumers and the environment to encourage longer-term sustainability. However, in other cases, there may be no merit in this - the costs imposed can be considerable and not justified by the benefits.

3.4 Sources of Unnecessary Regulatory Burden

Regulatory burdens are often necessary for government to achieve national policy objectives. However, when regulations are poorly written or enforced or inefficiently implemented, regulatory burdens will exceed what is necessary to achieve desired objectives, giving rise to “unnecessary regulatory burdens”²

Unnecessary burdens might arise from:

1. excessive coverage by a regulation – where the regulation affects more economic activity than was intended or needed to achieve its objective (includes ‘regulatory creep’)
2. subject-specific regulation that covers much the same issues as other generic regulation
3. prescriptive regulation that unduly limits flexibility such as preventing businesses from:
 - using the best technology
 - making product changes to meet consumer demand
 - meeting the underlying objectives of regulation in different ways
4. overly complex regulation
5. unwieldy licence application and approval processes, excessive time delays in obtaining responses and decisions from regulators
6. requests to provide more information than needed
7. requests to provide the same information more than once
8. rules or enforcement approaches that inadvertently result in business operating in less efficient ways

² Malaysia Productivity Corporation (2014), Handbook on Reducing Unnecessary Regulatory Burdens: Core Concept, Available at: <http://www.mpc.gov.my/> [Accessed on 30 March 2014]

9. unnecessarily invasive regulator behavior, such as overly frequent inspections
10. an overlap or conflict in the activities of different regulators
11. inconsistent application or interpretation of regulation by regulators

The MPC has sought insights from businesses and other interested parties about how the regulation of employment imposes unnecessary burdens on business.

3.5 Best Practice Regulation

The MPC has published a set of principles that may help to assess the quality of regulations and identify the unnecessary burdens on business as listed in box 3.1.

Box 3.1 : Six Core Principles for Assessing Regulation and its Administration

Regulations that conform to best practice design standards are characterized by the following six principles and features.

- **Principle 1**
Have a proportionate and targeted response to the risk being addressed.
- **Principle 2**
Minimize adverse side-effects to only those necessary to achieve regulatory objectives at least cost.
- **Principle 3**
Have a responsive approach to incentivize compliance with regulation.
- **Principle 4**
Ensure all written regulations are consistent and that regulators interpret and apply them consistently. Avoid duplication and overlap of regulations and regulators.
- **Principle 5**
Adopt transparency criteria, so interested parties are regularly consulted, it is clear to businesses what their legal obligations are, and all regulations are easily accessed by everyone.
- **Principle 6**
Accountability so that businesses can seek explanations of decisions made by regulators, as well as appeal them and there are probity provisions in order to reduce corruption.

Source: MPC (2014)

These principles guided the MPC's identification of various key indicators of well-written regulations (Box 3-2).

Box 3.2 : Well-Written Regulations

According to the MPC, well-written regulations are unlikely to impose unnecessary burdens on business. Indicators of these include:

- i. the requirements placed on business are proportionate to the risk being regulated, in particular low risks are not addressed by imposing onerous requirements
- ii. the regulations make appropriate use of prescriptive, performance, in-principle and process-based requirements
- iii. the regulatory requirements are the minimum necessary to effectively achieve the objective(s) of the regulation
- iv. in line with responsive regulation, the regulations provide an adequate range of enforcement instruments to allow regulators some flexibility in addressing non-compliance
- v. the regulations are consistent with other regulations and do not create conflict or duplication
- vi. the regulations are transparent, communicated effectively and readily accessible by everyone
- vii. the regulation place accountability requirements on the regulator such as reporting, appeal and review provisions including some that address probity.

Source: MPC 2014³

Regulations that have been formulated through Regulatory Impact Assessment (RIA) are likely to reflect the indicators listed above. However, not many of the current regulations have undergone the RIA process. This makes it important to have ex-post regulatory reviews of unnecessary burdens on businesses to assess the practicality of the regulations, help to improve them and most importantly reduce the burdens on business³.

A regulator plays an important role in regulatory regimes by encouraging compliance through education and advice, as well as enforcing laws and regulations through disciplinary means³. Enforcing regulations, however, with established principles of good practices can enhance regulatory practices to achieve policy objectives. The box below indicates the indicators of good quality implementation of regulation. These indicators also reflect the Principles for Assessing Regulation and its Administration (Box 3-1).

³ Ian Bickerdyke, Ralph Lattimore, Reducing Regulatory Burden: Does Firm Size matters?, Industry Commission Australia, Staff Research Paper, December 1997

Box 3.3 : Key Indicators of Good Performance by Regulators

Based on Parker (2000), the MPC (2014) listed 10 indicators that describe a well performing regulator:-

- i. uses risk analysis to identify areas of intrinsically potentially high adverse impacts and/or possible low compliance (in line with principle 1)
- ii. maximizes the potential for voluntary compliance (in line with principles 2 and 3)
- iii. uses a range of enforcement instruments flexibly in order to respond to different types of non-compliance – responsive regulation (in line with principle 3)
- iv. applies regulations consistently across businesses and industry sectors (in line with principle 4)
- v. has no duplication and overlap of its responsibilities with those of other regulators (in line with principle 4)
- vi. has sufficient transparency to enable business to know the requirements of the law (in line with principle 5)
- vii. maintains an ongoing dialogue between government and the business community (in line with principle 5)
- viii. has sufficient accountability to enable business to question and appeal decisions and to address possible cases of corruption (in line with principle 6)
- ix. monitors compliance in order to assess the effectiveness of enforcement activities
- x. is adequately resourced and has the skills to be able to fulfill its responsibilities

Source: MPC, 2014⁴

3.6 Medical Professionals' Issues/Complaints raised by various stakeholders

Through letter submissions and stakeholder's consultation, the team was advised of various employment regulations which impose significant burdens on businesses. These were further substantiated through the interviews with 3 associations namely Malaysian Medical Association, Malaysian Dental Association and Malaysian Pharmaceutical Society. Primary research was extended to 4 private practices across all sectors in the country (specifically the team visited a private clinic which has been in operations for more than 20 years in the Klang Valley, two dentists operating two separate private practices, the Head of Pharmaceutical Department of a large private hospital in Kuala and the Manager of Nurses and Midwives of a small private hospital in Selangor. The team obtained various feedbacks during the engagements. Table 3-1 below lists the issues/complaints raised by various stakeholders

⁴ Malaysia Productivity Corporation (2014), Handbook on Reducing Unnecessary Regulatory Burdens: Core Concept.

Table 3.1 : Issues/Complaints raised by various stakeholders

Categories	Issues/Complaints
<p>Regulatory Burdens</p>	<ol style="list-style-type: none"> 1) Personal Data Protection Act (PDPA) that burdens doctors to register as data user and comply with the annual fees of the Act 2) No coordination in management of the Disposal for Clinical Wastes 3) Third party involvement that constraints doctor practice example Department of Environment (DoE) and Local Council 4) The requirement for maternity centres to have an in-house anaesthetist and a paediatrician 5) The specified number of official daily visits to patient by doctor during hospitalisation 6) Inconsistencies and lack of coordination between ministries such as MOE and MOH 7) The burdens in complying with Annual Practicing Certificate (APC) 8) The burden in renewal of licensing for private hospital 9) Inefficiencies in labelling of medicines (supplement against medicine) 10) The lack of private colleges that have their own hospital for training has resulted in low quality of houseman 11) The intervention of insurance companies/ Medical Care Organization(MCO) in practice of private medical practitioner 12) The regulation for foreign specialist to practice in Malaysia 13) Restrictions for place of practice for pharmacists (only one place of practice for pharmacist) 14) Stringent restrictions to advertisement of services
<p>Regulations/ Policies</p>	<ol style="list-style-type: none"> 1) Burden to medical professional in complying with GST 2) Disparity of salary between private and public medical practitioners
<p>Others</p>	<ol style="list-style-type: none"> 1) The requirement by insurance companies that forces medical practitioners to register with certain bank as a condition to remain as panel doctors 2) The separation of rules between doctor and pharmacist 3) The shortage in the supplies of specific specialisation of dentist to meet the health tourism plan 4) Joint Commission International (JCI) not effective in Malaysia 5) Not enough exposure on Health Tourism in Malaysia by medical professional

In completing this report, emphasis will only be given to issues arising from current regulations, including by-laws, circulars, orders and guidelines related to the practice

of medical professionals in Malaysia. These issues will be discussed in greater length in Chapter 5, 6 and 7. Some of the listed issues were not pursued due to the following reasons:

- i. The issue focuses entirely on policy, not on the burdens placed to achieve the policy and nothing could be done to solve it unless there's a change in the policy itself. This falls out of the scope of this review which only looks into reducing regulatory burdens (Reducing Unnecessary Regulatory Burden).
- ii. Some of the issues are already under review or have been reviewed by other Government Ministries or Agencies
- iii. Some of the issues are not being pursued due to lack of information to verify the complaints.

The issues that are being reviewed by the team are grouped under the stages of the Employment Value-Chain (i.e. Hiring, During Employment and Separation). This value-chain is covered thoroughly in Chapter 4. Figure 3-1 provides an overview of the issues being pursued under the review.

Figure 3.1: Issues under review

