

# REGULATORY REFORM AND BUREAUCRACY IN SOUTHEAST ASIA: VARIATIONS AND CONSEQUENCES

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## ABSTRACT

*Reform of government regulation of private business has been considered a cornerstone of good governance and a necessary condition for economic growth. Part of regulatory reform is reducing and streamlining administrative or procedural regulations imposed on business by government bureaucracies. Such regulations impose burdens on firms in terms of the time and effort required to file forms, delays in processing documents and applications and in granting approvals, transactional costs if charges are levied, and obstacles resulting from arbitrary decisions by government officials during the process. The article will consider the burdens on business caused by regulatory procedures imposed by bureaucracy in the countries of Southeast Asia, and how the reform of such procedures has varied across region, with a particular focus on certain key business functions, viz. starting a business, importing and exporting, paying taxes, and constructing a commercial building. The article will posit explanations of why such variation exists and will discuss links between reform of regulatory procedures and the level of social and economic development of a country. In conclusion, the scope for reform of regulatory procedures in those countries where they remain especially burdensome, will be examined, with consideration given to what reforms are necessary and feasible.*

## INTRODUCTION

The regulation of private business by the state involves imposing restrictions and compulsions on businesses to protect the public from the perceived social and economic harm of the free market such as negative externalities, informational imbalances and anti-competitive behavior (market failure). Examples, to name but a few, are price controls, trade permits, zoning restrictions, restrictions on lending, regulations to reduce pollution, and work safety stipulations (Baldwin & Cave, 1999, 9-17). Alongside such regulations (which may be referred to as substantive regulations), businesses are often obliged to follow a chain of bureaucratic procedural requirements in relation to key functions they undertake (administrative or procedural regulations), in some cases to determine compliance with a substantive regulation. Such procedural regulations may themselves create obstacles and inconvenience for businesses, and so contribute to their overall regulatory burden.

In recent years, it has been recognized that regulatory reform is crucial to economic and social development and a hallmark of good governance, not least in Southeast Asia. Regulatory reform involves: a) reducing the number of substantive regulations which impede business activity with no substantial benefit to the public or the economy (deregulation); b) creating new regulations which are beneficial to the public and the economy (reregulation). Equally important, regulatory reform necessitates streamlining the procedures and reducing the red tape which exist alongside and sometimes in

conjunction with a substantive regulation as mentioned above (procedural or administrative deregulation). This leads to a more efficient and less burdensome application of the procedural regulations, reducing the amount of time and effort business managers have to spend in ensuring compliance, avoiding undue delays in carrying out key business functions, and lowering the costs in the form of compulsory payments to be made in following the required procedures (Baldwin & Cave, 1999, 81, 82, 85; Hafeez, 2003, 5-8; OECD, 1997; Hopkins, 1992; Khan, 2000, 7). Linked to administrative deregulation are also reforms to make bureaucratic procedures clearer and more transparent, so reducing the discretionary and arbitrary power of officials.

In the last 10 to 15 years, as part of the policy to reform regulatory systems in Southeast Asia, reform of administrative procedures has also been undertaken. However, the extent of reform has varied across the region. Some countries have significantly streamlined procedures, reducing red tape, and cutting compliance costs, whilst ensuring that the procedures which remain are clear and transparent. Other countries by contrast have only taken initial steps to reform regulatory procedures, leaving scope for more far-reaching reforms. The article will examine the extent of the regulatory burden arising from bureaucratic processes affecting key business functions in the countries of Southeast Asia. It will distinguish those countries where major reform of procedural regulations has occurred from those where it has not. The article will consider why such variation exists and how it corresponds with differences in social and economic development of Southeast Asian states. In conclusion, the scope for reform of regulatory procedures in those countries where they remain numerous and unwieldy, will be examined, with consideration given to what reforms are necessary and feasible. Part of the evidence on regulatory procedures will be taken from the World Bank's database on regulations and its yearly surveys, *Doing Business*.

## **THE EXTENT AND BURDEN OF ADMINISTRATIVE REGULATION**

As part of the regulatory framework imposed by the state, businesses are obliged to adhere to a set of bureaucratic procedural requirements in respect of their key functions. – submitting forms and certificates to regulatory, licensing and other public authorities, undergoing inspections and valuations, and obtaining approvals from the authorities mentioned above (comprising licenses, permits, certificates, registrations and signatures). Some of the procedures are little more than formalities involving no major decisions though they can be time consuming and costly. Other procedures exist in order to determine if certain conditions have been fulfilled and may result in an application being rejected, an approval withheld, or an inspection test being failed. Such procedures are more than formalities and entail decisions by officials that affect the business. This is particularly so, as pointed out below, if procedures are unclear and opaque (Hafeez, 2003, 7).

The extent to which private firms are subject to procedural regulation can be measured in various ways depending upon the business activities being regulated. Common to most of them is the total list of steps involved: the number of procedures to be followed, documents and forms to be completed and submitted, approvals to be obtained, and inspections and valuations to be undertaken. A second common measure is the time taken for these activities to be completed whilst a third are the costs which

arise as a result of the fees and charges levied for any of these requirements. Using these measures, the extent and burden of procedural regulation in the various countries of Southeast Asia can be gauged.

The chain of bureaucratic procedures that must be followed to enable a business function to be undertaken or to ensure that conditions mandated by a substantive regulation have been met can readily add to the burdens of a business, if unduly cumbersome and inefficiently administered. The procedures can encroach upon the time of business managers (such as the hours and days spent in obtaining advice, completing forms, submitting documents and visiting government departments), which increases if the services of notaries and lawyers are required. In addition, costs have to be borne if charges are levied for processing applications and paperwork, verifying documents, and undergoing inspections and valuations, with extra expenses if notaries and lawyers are engaged. Serious delays may occur in consequence of the time taken by regulatory, licensing and other public authorities in undertaking the required procedures. If complex and numerous, becoming a drain upon the time of managers, imposing extra costs, and creating undue delays, they may serve to prevent or discourage engagement in business activities. The upshot is to make businesses less efficient, competitive and profitable, with, what's more, significant disincentives to undertake further investment and expand the scale of operations.

A further concern is that administrative regulations, which otherwise should be straightforward, are not so due to their ambiguity. This allows officials of the relevant agency discretion to determine the conditions and actions required in following a procedure as well as the charges to be levied. Given the ambiguity, such discretion may be exercised arbitrarily to restrict or prohibit a business activity. To make matters worse, firms may not always be aware of how an unclear procedural regulation is interpreted, thereby increasing the chances of not meeting the conditions and completing the paperwork in accordance with the stipulations of the agency.

By way of example, the nature and consequences of unclear and opaque procedures in Vietnam have been repeatedly expressed by the Vietnam Chamber of Commerce and Industry in recent years through its regular bulletin. In one issue in 2006, it stated that "the decision to grant a license is heavily subject to the judgment of officials which increases the prospect for discretion" as result of the fact that "the criteria to grant a license are unclear." If an application is rejected, "the reasons given for refusal are unsubstantiated" (Vietnam Chamber of Commerce and Industry [VCCI], 2006a, 1). In the same vein, one Vietnamese bank official has pointed out the impact on businesses which, in trying to comply with administrative requirements, "are hassled or may be required by the licensing authorities to meet many other arbitrary conditions," and in consequence "may have to give up business opportunities" (VCCI, 2006a, 2). These observations are fairly typical of the business regulatory system of several countries in the region.

Thus, a key challenge facing governments in Southeast Asia is, alongside lessening unnecessary substantive regulations, to pursue administrative deregulation as well, so as reduce and simplify the lengthy and complex bureaucratic processes which businesses must follow. Equally important is to make regulatory procedures clearer and their application more transparent so as to reduce the arbitrary control of regulatory and

licensing authorities. However, in Southeast Asia, considerable differences remain in the extent to which states have undertaken reform of bureaucratic processes affecting businesses. This can be exemplified in four areas of business activity, as discussed below: starting a business, importing and exporting goods, paying taxes, and constructing a commercial building.

## **ADMINISTRATIVE REGULATIONS IN KEY ASPECTS OF BUSINESS IN SOUTHEAST ASIAN STATES**

### Starting a business

A key stage in business activity which is subject to administrative regulation is the setting up of an enterprise, the central requirement of which is its registration with its name and description entered into an official business registry. This is necessary, amongst other things, to accord the business legal status, to enable it to export and import goods, to obtain credit and acquire property, to facilitate the payment of taxes, to ensure proper enforcement of contracts, and to protect employees' rights (World Bank [WB], 2006a, 9-14). As shown in Table 1, in several countries of Southeast Asia, the procedural requirements in setting up a business are unwieldy, protracted and costly whilst in others the process has been reformed with the streamlining of procedures, which have become as a result more expeditious and less costly (Djankov et al, 2002, 1-37; Fonesca et al, 2001, 692-705).

The bureaucratic process for setting up a business in Indonesia is one of the most cumbersome and protracted in the region. 12 procedures must be followed before a company can become legally operational. The first of these is to ensure that another company is not using the same name. The standard form of the company deed must be obtained from the Ministry of Justice and Human Rights. After completion, it must then be verified by and submitted through a notary, in order to secure clearance for the company's name by the Ministry. Once this is done, the company can then reserve the name for itself. The next step is for the company founder to sign the deed of establishment before a notary, after which the company is obliged to apply for and obtain a taxpayer's registration number, a VAT collector number, and an entrepreneur tax identification number if it is a large company. Following this, the firm is required to obtain a domicile certificate from the local or municipal authority, and to open a bank account in the company's name with a deposit of the paid up capital reserve stipulated for a new business together with the submission to the bank of the company's articles of association and copies of ID cards of the proposed authorized signatories. Only after a bank account has been opened, with the requisite paid up capital, and a tax code number created, can the company apply for the approval of the deeds of establishment from the Ministry of Justice and Human Rights. After approval is given, the company can seek to be registered on the Company Register at the Ministry of Industry and Trade, and, providing there is no objection, it may then receive a business registration certificate (WB, 2006a; 2007).

Following registration, several important post-registration procedures must be followed. If the company is a non-facility trading company it must obtain a trading license also from the Ministry of Industry and Trade. If the company employs more than 10 employees and/or has a payroll bill of Rp1 million per month, it must next register with

the Ministry of Manpower and then subscribe to the social security scheme for its employees (WB, 2007).

According to the World Bank's survey, *Doing Business 2006*, the time taken in Indonesia to complete the administrative process described above, is estimated to range from 97 to 151 days. The period needed by the Ministry of Justice and Human Rights to grant approval for the deeds of establishment in itself is estimated at 22 days. The processes of business registration, tax registration, issue of a trading license, and registration with Ministry of Manpower each takes 14-15 days (WB, 2007).

In Vietnam, a start was made in 1999 to reducing bureaucratic procedures in starting a business as a result of the introduction of the Enterprise Law. This in part contributed to a surge in businesses entering the market. However, much remains to be done to fully streamline the business start-up process, despite the creation of the one stop shop arrangement as discussed below. The World Bank survey, *Doing Business 2006*, showed that there were 11 procedures which take on average 50 days with charges levied amounting to 51% of annual income per head. These must be followed sequentially and involve 3 departments: Department of Planning and Investment, Department of Public Security, and the Tax Department. According to another survey, establishing a business can take anything up to 260 days involving 13 procedures. The survey concluded that "administrative procedures (relating to a business start-up) are still the biggest barriers to an entrepreneur's chances of turning a business idea into a reality" (GTZ-CIEM, 2005; WB, 2006a, 13). These views have been repeatedly echoed by the Vietnam Chamber of Commerce and Industry, and local and foreign business managers. Illustrating the time wasted by business owners in meeting their procedural obligations when setting up a business, Van Quang Think of the Managing Consulting Group of Vietnam, stated in 2006:

In some provinces we have worked in, a person starting a business has to visit his local administrative authorities at least 13 times to complete the first three business establishment procedures. In one province, the staff of the relevant administrative agencies spend 27 days over 98 operational steps to process a business establishment application.... As a result business owners have to run around to fulfill several complicated procedures (VCCI, 2006b, 2).

Reflecting further the frustration of the business community at the impingements of petty officialdom, another business manager, Nguyen Anh Tuan of Bizconsult, referred to the way officials responsible for business registration "refuse to accept an application if minor information is missing. In many cases businesses have to wait seven days to be informed of just one minor mistake" (VCCI, 2006b, 2).

Cambodian entrepreneurs when starting a business too suffer from a surfeit of bureaucratic controls, which the government has pledged to eliminate (12 procedures must be followed with costs amounting to 173% of average income) (IMF, 2004a, 72). In Laos, when establishing a business 9 procedures are mandatory which costs the entrepreneur an amount equivalent to 15% of average income, and are the most protracted in Southeast Asia for business start ups extending over 198 days. On a brighter note, the World Bank's 2007 preliminary report on *Doing Business* has indicated the beginning of attempts in Laos to reduce the bureaucratic hurdles to market entry, although further and far-reaching reform is necessary (WB, 2006b, 4).

By contrast, in Singapore the number of procedures in starting a business is only 6, each taking one day at a cost of US\$229, less than 1% of average income. This equates with the average number of procedures in starting a business in OECD countries, which, however, require a longer time span (16 days) and greater cost (5% of average income) (World Bank, 2007; 2006a, 150). The approval of articles of association, and business registration with the Accounting and Corporate Regulatory Authority of Singapore (which was created in 2005 and incorporated the functions of the old Registry of Companies and Businesses) are compounded into one procedure taking about 3 days and are done on-line. Under the Companies (Amendment) Act, 2002, and Business Registration (Amendment) Act, 2002, the Registrar of Companies and Businesses no longer undertakes a pre-registration check for similar names. Under the same legislation, the applicant for registration need not submit any hardcopy forms, declarations and affidavits., nor will he/she be issued with a hard copy certificate of registration (Republic of Singapore, 2002a, ss. 8, 11; 2002b, ss. 7, 8, 16, 19, 14). As Lee Hsien Long, the Minister for Finance, when introducing the second reading of the Business Registration (Amendment) Bill, stated:

The proposed amendments in this Bill are expected to benefit business owners in terms of lower costs, more efficient service and greater convenience. It would also align RCB's (Registry of Companies and Businesses) practices with its counterparts in the US, UK and Australia, and allow RCB to provide better service to its customers (Singapore Parliament [SP], 2002, cols. 55, 65, 66).

This has been made possible by an on-line facility known as BizFile created in 2002, by which all company submissions, registrations, certifications, and declarations are undertaken electronically. One advantage is to allow businesses, according to Lee Hsien Loong, “same day incorporation, which has become the service standards that businessmen would expect” and “simplifies the filing and incorporation process” (SP, 2002, col. 59).

	No of procedures	Time taken (days)	Costs (% of income per head)
Cambodia	12	37	173
Indonesia	12	151	102
Laos	9	198	15
Malaysia	9	30	30.5
Philippines	11	48	20
Singapore	6	6	1
Thailand	8	33	6
Vietnam	11	50	51

Source: World Bank, 2007. The World Bank survey does not include Myanmar and Brunei.

The post registration procedures consist only of registering with the Inland Revenue Authority of Singapore (with respect to all taxes levied on the company and its employees) and Central Provident Fund Board, and subscribing to the Workmen's Compensation Insurance. These are undertaken on-line and each takes only one day. It may be noted that several of the procedures that are mandatory in Indonesia are either eliminated or undertaken simultaneously in Singapore. Retaining only necessary procedures, combining procedures, and using on-line facilities for every stage of the

process in starting an enterprise significantly enhances the efficiency of the process, minimizes the number of days required, and involves little cost.

### External trade

Importing and exporting goods in many states is subject to regulation, consisting of restrictions on what goods can be imported and exported (either through prohibition or quota restriction), and customs and other duties levied on them. Accompanying these restrictions are the procedures that must be followed to obtain an import or export permit and to clear customs. Various documents must be submitted identifying and describing the goods, including their volume and value, and specifying countries of origin and destination (WB, 2006a, 53-59). This may require verification through inspections and valuations at the seaport, airport and border crossing, giving rise to further paperwork and administration. Table 2 shows how much the countries of Southeast Asia have varied in reducing and streamlining administrative requirements relating to the issue of import and export permits and the clearance of customs, and the consequences in terms of costs and time.

Importers and exporters in Cambodia encounter a high degree of government bureaucracy in relation to trade permits and customs levies and clearance, resulting in serious delays (which is only exceeded in Laos where the situation is distorted by the fact that it is landlocked and extra paperwork and approvals are required for transshipment). In Cambodia, 8 documents have to be processed to allow goods to be exported and 12 to allow goods to be imported, necessitating respectively 10 and 18 approvals and taking 43 and 55 days (WB, 2007). The IMF has brought attention to these impediments to the facilitation of trade in Cambodia. In a recent study, it noted that “trade facilitation practices stand out as having high official and unofficial costs,” and lead to “delays, uncertainty and discretion for clearance procedures”(IMF 2004a, 49). This has contributed significantly to the “excess transaction costs (in time and money)” which overall Cambodian firms incur in dealing with government agencies. In response, the Cambodian government is currently focusing on reforms “to modernize and streamline customs procedures ... to enhance trade facilitation.” The priority is centered on “decreasing the total import and export transaction costs [and] decreasing the overall time it takes to import and export products” (IMF, 2004a, 70; IMF, 2004b, 24).

Philippines has in recent years significantly streamlined the procedures governing import permits and customs clearance. Contributing to this was the recent introduction of transactional valuations (the price paid by the importer to the exporter plus handling and shipment costs), rather than the valuations undertaken by the customs authorities themselves, the ending of pre-shipment inspections at the country of origin, the use of customs and permit audits of goods on a selective basis and only after they have reached the importer (known as back-end audits). This, together with the adoption of on-line permit and customs clearance, cuts down the documents that have to be submitted, reduces the delay in securing clearance and costs incurred in obtaining permits (Clarete, 2004).

Singapore is exemplary in having adopted an effective system to facilitate trade, partly attributed to minimizing administrative requirements for imports and exports. 5

documents are necessary for imports and 6 for exports, with 2 signatures of approval in each case; the entire process taking only 3-6 days. The documents are a bill of lading, cargo manifest, packing list, commercial invoice, certificate of origin (for imports), customs export declaration form and shipping note (the last two for exports). The administrative process compares favorably with that in OECD countries. The number of documents is similar to the average total needed in foreign trading in OECD countries, but the time taken up for processing is much less and the processing costs are more than a half (WB, 2007; WB, 2006a, 150).

**Table 2. Regulatory process for importing and exporting**

	Number of documents to be submitted for permit and customs		Number of signatures needed before issue of permit and customs clearance		Time taken to obtain permits and clearance (days)	
	Export	Import	Export	Import	Export	Import
Cambodia	8	12	10	18	43	55
Indonesia	7	10	3	6	25	30
Laos	12	16	17	28	66	78
Malaysia	6	12	3	5	20	22
Philippines	6	8	5	7	19	22
Singapore	5	6	2	2	6	8
Thailand	9	14	10	10	23	25
Vietnam	6	9	12	15	35	36

Source: World Bank, 2007.

### Paying taxes

Part of the regulatory framework are the tax obligations imposed on businesses, the bulk of which comprise corporate tax, sales and value added taxes withheld from the consumer but paid by businesses, social security contributions and property tax. The focus here is not on the amount of tax that has to be paid by a business but on the procedural burden that falls on firms in meeting their tax obligations. This is reflected in the total of tax payments a firm is required to make, which is determined both by the number of taxes levied and also the number of times payment must be made during the year. Equally important is the amount of time businesses have to put aside to prepare, file and pay (or withhold) taxes. Preparation time includes the hours spent to collect all information necessary to compute the tax payable. This includes time spent on keeping separate accounting books for tax purposes, completing all the tax forms and making all necessary calculations. Payment time is the hours needed to make the payment on-line or at the tax office, and if the latter the waiting time when visiting a tax office (WB, 2006a, 45-52). The data on the number of tax payments required and time taken to file tax returns in the various countries of Southeast Asia is given in Table 3.

The greatest number of tax payment transactions are recorded in the Philippines and Indonesia (more than 50), with Thailand and Malaysia also requiring large numbers of tax payments from businesses. In terms of hours spent in collecting information and filing returns visiting tax offices, the greatest burden falls on Vietnamese businesses (over 1,000 hours per year) followed by Indonesia (just over 570 hours). Again Singapore stands out with relatively few tax payments (16), necessitating only 30 hours to be spent in collecting information and filing returns. The more streamlined procedure and less time-consuming tasks in filing tax returns and making payments are partly the product of a simplified business tax system and the extensive provision of on-line filing

of tax returns and payment of tax liabilities. The procedural requirements for tax payment by businesses in Singapore is just slightly above the average for OECD countries which is 15 procedures taking 203 hours (WB, 2006a, 129, 137, 146, 150, 155, 160).

In such countries as Indonesia, the Philippines and Vietnam, the administrative burden in making several tax payments even for the same tax and spending time in collecting records and completing returns, falls heaviest on small and medium enterprises, which may not be conversant with all the minutiae of tax regulations and not able to hire tax accountants or employ finance officers.

**Table 3. Regulatory process in paying taxes**

	No of tax payments	No of hours business spent in filing tax return		No of tax payments	No of hours business spent in filing tax return
Cambodia	27	121	Philippines	59	94
Indonesia	52	576	Singapore	16	30
Laos	31	180	Thailand	46	104
Malaysia	35	190	Vietnam	32	1,050

Source: World Bank, 2007.

#### Procedural regulations in constructing a commercial building

The construction industry is a sector of the economy where regulation is an obvious necessity. This is to ensure that a building is sound and durable and therefore is safe to occupy and use, does not utilize excessive land space (where land is scarce), and conforms with land zoning and environmental stipulations. As with other substantive regulations, bureaucratic procedures must be followed to ensure or determine compliance (WB, 2006a, 15-20). As shown in Table 4, significant variations exist across Southeast Asia in relation to the number and complexity of administrative procedures imposed on the construction industry and the resultant transactional costs and expenditure of time.

The most numerous and tortuous procedures are recorded in Cambodia. Here 28 must be completed before a building can become fully operational. To acquire a building permit from the municipal authority (for a smaller building), and the Ministry of Land Management, Urban Planning, and Construction (for a larger one) entails the submission, review and approval of 11 documents at the commune (sangkat), district, municipal and in some cases central government levels. 9 of these are the building plans for the different facets of the building and site. Once a permit has been granted, the company must notify the district and sangkat authorities. At the completion of the different stages in the process of construction, the company must inform the Ministry so that an inspection can be undertaken (e.g. when the foundation works are completed or the walls erected). Altogether 7 inspections are carried out. Three further inspections must be undertaken before each of the main utility services are provided. The time taken to process the documents and give approvals is estimated at 181 days. It takes on average 30 days to obtain a certificate from the district governor prior to applying for a building permit, and another 30 days to obtain the permit from the municipal authority or from the Ministry. A further 56 days should be allowed before electricity and other utility connections are made. What's more, the transactional costs

incurred are just over US\$6,230 (most of which is the cost of acquiring the building permit), more than 16 times average income per capita. This is no small sum for a small construction contractor struggling to get on his feet.

In several other Southeast Asian countries, a lengthy and similar sequence of bureaucratic procedures has to be followed in the construction of a commercial building – in Laos, Malaysia, Philippines and Indonesia, the number of procedures range between 19 and 25. The time taken to complete these procedures ranges between 192 days (Laos) and 281 days (Malaysia).

In Singapore and Thailand, the bureaucratic system regulating the construction industry is much less complex, more expeditious and significantly less costly. In Thailand, 9 procedures have to be followed in the construction of a commercial building, extending over 123 days with a cost of only 11% of average income, whilst in Singapore there are 11 procedures taking 129 days at a cost of 22% of average income. These figures are even slightly below the OECD average of 14 procedures in constructing a commercial building taking 150 hours (WB, 2006a, 150, 155; 2007).

The difference between these two countries and Cambodia and other countries characterized by complex, drawn out and costly procedures in the construction sector is the minimal involvement or non-involvement of sub-national entities, and the absence of repeat inspections at the different stages in the process of construction. In fact, once a building permit has been granted, there is no inspection until the building is complete. In other words, the government agencies in Singapore and Thailand responsible for construction matters do not engage in undue interference in a building project once it is underway (although in Singapore more emphasis is now given to work safety checks).

	Procedures	Time (days)	Cost (% of income per capita)
Cambodia	28	181	1,640
Indonesia	19	224	311
Laos	24	192	204
Malaysia	25	281	78
Philippines	23	197	113
Singapore	11	129	22
Thailand	9	127	11
Vietnam	14	133	56

Source: World Bank, 2007.

The overall scale of administrative regulations for business activities in Southeast Asian states

The countries of the region may be divided into two groups in the extent to which bureaucratic procedures impinge upon business activity. This may be adduced from the World Bank's governance indicator on regulatory quality, in part reflecting procedural regulations, and the measure of red tape provided by Forbes Media. Both measures are available as percentile rankings within a list that covers nearly all countries, which are given in Table 5.

In one group, consisting of Singapore, Malaysia, Thailand and Brunei, bureaucratic procedures and red tape have been significantly streamlined with resultant reduction of transaction costs and minimizing of delays, as well as restricting opportunities for arbitrary decisions by officials. In the other group, comprising Cambodia, Indonesia, Laos, Myanmar, Philippines, and Vietnam, administrative regulations remain numerous and burdensome, although limited and incipient efforts have been made to reduce bureaucratic requirements on businesses. The worst examples are Myanmar with a regulatory quality measure at the 2<sup>nd</sup> percentile and Laos with a red tape measure ranking at the 1<sup>st</sup> percentile. In Cambodia which has a percentile rank of 11 for red tape, the World Bank has reported that “the formal private sector faces a myriad transaction costs and barriers to establishment and operation” (IMF, 2004a, 49, 69). In Vietnam, which has higher percentile scores for both red tape and regulatory quality, bureaucratic procedures continue to seriously hamper private firms, despite the implementation of the one stop shop arrangement, as discussed below. According to the Vietnam Chamber of Commerce and Industry in 2006, “the business community considers the widespread use of increasing business licenses and conditions to be a major barrier to doing business, increasing entry and operational costs as well as the freedom to do business. Although many business licenses have been abolished, a number of new licenses have been issued and many abolished licenses reintroduced in a different form.” (VCCI, 2006a, 1) These together with “a large volume of unwritten conditions” have imposed “heavy burdens on businesses” (VCCI, 2006a, 1). The tendency to reintroduce regulations has been noted too in a recent IMF survey of Vietnam (IMF, 2006a, 66). Even in the Philippines, with higher red tape and regulatory quality percentile rankings than the countries mentioned above, the investment climate is considered by the IMF as being undermined by excessive bureaucracy and the need to address this issue through simplifying procedures has been highlighted in the Medium-Term Philippine Development Plan, 2004-2010 (IMF, 2004c, 15, 20).

**Table 5. Red tape and regulatory quality**

	Red tape: percentile score in 2006	Regulatory quality: percentile score in 2005		Red tape: percentile score in 2006	Regulatory quality percentile score in 2005
Brunei	N/A	77	Myanmar	N/A	2
Cambodia	11	27	Philippines	34	52
Indonesia	4	37	Singapore	95	99
Laos	1	11	Thailand	65	64
Malaysia	71	67	Vietnam	31	26

Source: World Bank, 2006c; Forbes Media, 2006.

## **REASONS FOR THE FAILURE TO REFORM ADMINISTRATIVE REGULATIONS**

It is noticeable that in most countries of Southeast Asia market reforms have been implemented to liberalize their economies, providing more opportunities for the private sector to expand. This has entailed, amongst other things, removing restrictions on enterprise formation, especially in sectors where government monopolies had existed, lessening controls over property acquisition, reducing impediments to foreign

investment, and lowering trade barriers. Yet economic reform has in some cases not been accompanied by a commensurate degree of reform of bureaucratic procedures entailing reducing and simplifying procedures and making them more precise and transparent.

Various reasons may be posited why reform of administrative regulations has not kept in step with economic deregulation. The most significant is bureaucratic self-interest, measured in terms of power, private remuneration, agency budgets and jobs or career opportunities (Baldwin & Cave, 1999, 5-7). Whilst the policy to lessen or abolish direct economic restrictions over business is one decided by the government itself, bureaucratic procedures to which business must adhere, are a matter for government administrators. The liberalization of the economy allowing the private sector to expand and generate more wealth, represents a shift in the balance of power within the society. The power of bureaucratic elites is, therefore, increasingly rivaled by the rising influence of independent and wealthy business leaders. The continuation or creation of complex and ill-defined procedures entailing multiple approvals and inspections, and allowing scope for arbitrary decisions, helps bureaucratic elites to retain some of their power and status.

A further advantage to the bureaucrat is the opportunity for rent seeking. To expedite otherwise protracted procedures, and to obtain a registration, license or permit, or to pass an inspection test (which could be refused or failed for a purely technical or minor reason), a private business may have little choice but to resort to bribery. It is noticeable how many procedures, identified in the World Bank survey *Doing Business*, mentioned above, necessitated “unofficial” payments, often determined by “negotiation.” This occurred either when no official charge was levied or as an addition to an existing charge. Moreover, when official charges were levied, part of the revenue generated could be readily embezzled. For this reason, it was financially rewarding to the bureaucracy to retain as many bureaucratic steps as possible in regulating different aspects of a business activity. Indonesia is an example, where illegal taxes and charges have to be paid to secure both central and local government approvals. The IMF has observed that “illegal fees are a major problem of doing business in Indonesia and decentralization has exacerbated this problem.” Moreover, “extortion by customs and tax officials is increasingly cited as a problem” (IMF, 2006b, 4; 2004d, 19).

Besides, a plethora of procedures necessitating a good deal of time-consuming work in processing documents, verifying records, conducting inspections and valuations, issuing licenses, permits and certificates, hearing appeals etc., safeguards employment in government administration. The need for a management structure to supervise and direct such work and provide policy input, ensures possibilities of career advancement. In addition, the manpower and resources needed to undertake the procedures mentioned above enables agencies to maximize their budgets (Niskanen, 1971).

Another reason for the failure to reform regulatory procedures is the continuance of a traditional bureaucratic culture in several countries of Southeast Asia, which espouses rules, procedures and paperwork, hierarchical control, and rigid divisions of responsibility. Such a traditional mind-set in ministries and other agencies of the state bureaucracy responsible for regulation and licensing, is often accompanied by their ability to pursue their own policies, independently of the executive and legislature, as

well as the sovereign law. The upshot is that progress in lightening the regulatory burden upon business is frustrated despite the good intentions of government leaders. An example is the Task Force set up by the Vietnamese government in 2000 with the remit to radically reduce bureaucratic control of the business sector. According to one member:

The Task Force had to discuss the details of each and every term in the licenses with all of the Ministries and try to convince them to cancel some terms, but in the end, most of the Ministries did not agree. Ministries have great power and if they do not approve the cancellation of licenses, ultimately the Task Force cannot do anything (VCCI, 2006a, 3).

The failure to streamline and reduce unnecessary and cumbersome procedures that regulate businesses may also be attributed to a lack of coordination and information sharing amongst government agencies, especially in the case of separate procedures which require the same or overlapping information. This has meant that such procedures have to be repeated time and again, which otherwise could be compounded into a single procedure (de Sa, 2005, 13-16). An example are the various procedures required in a business start-up, the main ones being the approval of the articles of association, the registration of the business, tax registration and issue of a tax code number, and incorporation into employees' social security scheme, all of which can be consolidated into one procedure, as pointed out below (WB, 2006a, 9-14). Of course, it can be argued that the impediment to coordination and information sharing is bureaucratic self-interest mentioned above, since the number of tasks involved would decrease and with it the opportunities for rent seeking, the exercise of arbitrary power, and the reason to retain jobs which otherwise would not be needed.

The lack of reform of regulatory procedures affecting business can also be attributed to the decentralization of administration. In countries such as Cambodia, Indonesia, Philippines, and Laos, regional, district and village authorities have become part of the chain of the procedures, partly as a way of assigning to them a role in matters affecting local interests and the local economy. But if two, or as in some cases three levels of government are involved, the number of procedures is multiplied. In Cambodia, three levels of government play a role in the building approval process significantly extending the chain of procedures. In Indonesia, 21 regulations related to the hiring of labor, administered by regional governments, have been recently revoked by the Minister for Internal Affairs because of the impediments to hiring they had created (IMF, 2004e, 4).

## **THE LINK BETWEEN REFORM OF ADMINISTRATIVE REGULATIONS AND ECONOMIC AND SOCIAL DEVELOPMENT**

By comparing the foregoing tables and table 6 below, it can be adduced that the extent of administrative regulation imposed on businesses, or conversely the extent of reform to reduce and simplify such regulation, varies according to the level of economic and social development of a country measured by the Human Development Index score, and GDP per head at purchasing power parity (PPP). The region can be divided into two groups according to these measures. As shown in Table 6, in the more developed group (comprising Thailand, Malaysia, Brunei and Singapore), the HDI score is above .75

out of 1, and the GDP per head is above \$8,000, with global rankings for each country with respect to both measures within the first 75 out of 177 countries. In these countries, regulatory reform has been noticeable and administrative regulations impose at most limited obstacles to business activity. The second and less developed group in the region (comprising Myanmar, Laos, Vietnam, Cambodia, Indonesia and the Philippines) is marked by HDI scores and GDP per head below (in some cases well below) the thresholds indicated above. Here, business continues to be heavily regulated by bureaucratic procedures with only limited and halting progress in implementing reform. The distinction applies to both administrative regulation of specific aspects of business activity, as shown in Tables 1-4 (e.g. forming a business and trading), and the overall level of administrative regulation and red tape as shown in Table 5.

**Table 6. Measures of social and economic development of Southeast Asian states**

	HDI in 2006		GDP per head in 2006	
	Score (0-1)	Ranking (out of 177 countries) *	US\$ at PPP	Ranking (out of 177 countries) *
Brunei	.871	34	19,210	36
Cambodia	.583	129	2,423	122
Indonesia	.711	108	3,609	113
Laos	.553	133	1,954	134
Malaysia	.805	61	10,276	57
Myanmar	.581	130	1,027	158
Philippines	.763	84	4,614	100
Singapore	.916	25	28,077	21
Thailand	.784	74	8,090	65
Vietnam	.709	109	2,745	118

\* The ranking is in descending order so that the highest ranked country is 1 and the lowest is 177.

Source: UNDP, 2007.

Given the correspondence between the level of development and the reform of the regulatory system which minimizes bureaucratic restrictions on business, the question arises whether the former is the determinant or consequence of the latter. The answer is probably both.

On the one hand, regulatory reform removes many of the bureaucratic impediments to engaging in business activity and doing what is necessary to enable companies to grow and become profitable. Owners and managers are no longer faced with the difficulties of dealing with numerous, complex and opaque procedures. Furthermore, onerous transactional costs and protracted delays are avoided with less opportunity for bureaucrats to make arbitrary decisions that frustrate what businesses can do. This ensures an environment much more conducive to business growth, employment creation, and a wider public revenue base, leading to improved living standards and public services.

On the other hand, it could be argued that regulatory reform that reduces bureaucratic impediments is a consequence (and not just a determinant) of social and economic development. In the group of countries with a higher HDI index score and GDP per head, the business sector is already well established. Business leaders, occupying positions of influence, may more effectively lobby policy makers to implement measure that reduce and simplify administrative regulations. Moreover, policy makers

themselves may pursue opportunities to build up their own business interests as owners, shareholders and partners, and therefore may become more sympathetic to calls for deregulation. Besides, the capital resources and greater technical expertise generated by economic development facilitates the adoption and use of IT systems providing on-line services which play an important role in reducing and simplifying procedures, an example being the on-line one stop shop.

## CONCLUSION – SCOPE FOR REFORM

The foregoing analysis shows significant variation in the burdens on the business sector imposed by bureaucratic procedural regulations within Southeast Asia. In some countries, the burden is light, viz. Singapore followed by Thailand and Malaysia. In other countries (Laos, Vietnam, Cambodia, Indonesia and to some extent the Philippines), bureaucratic procedures continue to weigh heavily upon private firms and impede business activity. The former group of countries provide examples of what can be done to reform bureaucratic procedures, which can provide precedents for the others to follow.

One reform is to identify different regulatory procedures which draw upon a large amount of identical information. As mentioned above, the procedures could then be conjoined either through the amalgamation of the administrative units responsible for the procedures or by the automatic dissemination of such information once received to the other responsible agencies. This could be achieved by the creation of a central processing agency based on the one stop shop (sometimes called one stop one stamp or single access point) concept (de Sa, 2005, 15-16). Such an agency could itself be responsible for issuing a range of related licenses, permits and registrations, or by combining the separate procedures where feasible, granting simply one umbrella approval subsuming different requirements. Alternatively it could disseminate the information it receives to other relevant agencies for the granting of permits, licenses and registrations, and so act as a single access point feeding other agencies. The various procedures could be then undertaken simultaneously (IMF, 2004e, 13-14).

The one stop shop concept has been applied in Singapore with the BizFile on-line facility mentioned earlier. Even amongst the countries in which the regulatory burden is still excessive, the idea has found favor. In Vietnam it has been applied to tax administration and to most central government agencies at the provincial levels. In Laos and Indonesia, new or proposed investment and enterprise laws have provide a framework for the one stop shop arrangement, whilst in Cambodia, it is envisaged that the Council for the Development of Cambodia that oversees investment will assume such a role (WB, 2004, 63, 79).

To create an effective one stop shop system depends on a thorough analysis to identify in what procedures there is a duplication and correspondence of information, and no less, a willingness of different agencies to overcome institutional rivalry and self-protection, permitting the merging of functions and sharing of information. It is also necessary to ensure that staff in the central processing agency are competent enough and see themselves as having the authority to make decisions in relation to various

business functions (da Sa, 2005, 18-19). These requirements though have hindered the further development of the one stop shop system in Vietnam. One businessman in Vietnam has stated that despite the implementation of the one stop shop system, “businesses still have to go through too many doors” and that staff responsible in provincial agencies practicing the one stop shop approach “lack sufficient competence to provide businesses with the appropriate guidance [and] tend to be rigid when dealing with businesses” (VCCI, 2006, 2).

Equally important in reducing the burden imposed by bureaucratic procedures on private firms is the introduction of on-line applications, processing and clearance. In consequence, applications and information can be readily submitted by firms to regulatory and licensing authorities, and clarification sought on how a procedure should be followed. With the relevant software, applications can be quickly processed, and the checks, verification, categorization and calculations can be done accurately with the minimum of effort and time. A related benefit of an on-line system is to allow large amounts of data to be stored and retrieved. This is invaluable in enabling not only checks and verification, but in allowing the merger of procedures which draw upon similar or overlapping information and in automatically disseminating information to other agencies to enable them to undertake procedures for which they are responsible simultaneously without further action by the firm. Thus on-line systems are particularly useful in establishing the one stop shop and single access point arrangement, and in minimizing inconvenience, delays, costs and arbitrary controls suffered by private business in dealing with the public bureaucracy.

A key constraint impeding the advancement of on-line systems is the deficiency in technical know-how and hardware capacity in the less developed countries of the region (de Sa, 2005,18). In 2004, the Cambodian government announced its intention to adopt an on-line system for customs clearance and trade data gathering, based on a single interface between importers and customs officials, known as the Automated System of Customs Data (ASYCUDA). As yet it has not been able to implement it, perhaps due to a lack of technical know-how and appropriate hardware capacity (UNCTAD, 2007). Equally important is a commitment to make best use of on-line systems, when fully operational, to reduce bureaucratic obstacles. Vietnam for example has used a variant of ASYCUDA for several years, yet its trade facilitation system is still characterized by a maze of procedures, delays in clearances and the issue of permits, and substantial transaction costs for importers and exporters (see Table 2) (UNCTAD, 2007). Lack of commitment may further explain Cambodia’s delay in implementing ASYCUDA since the minimizing of contact between importers and officials reduces the opportunity for rent seeking.

Even without a one stop shop system, single access point and on-line processes, much time could be saved by the simple expedient of switching from a sequential to a simultaneous ordering of procedures wherever possible, especially when they are not inter-dependent. Sequential ordering of procedures has significantly contributed to the protraction of time in meeting bureaucratic requirements.

Another reform to lighten the bureaucratic load upon business is to change where appropriate from ex-ante to ex-post controls. The business activity, instead of being stalled until all processes have been complete, may be allowed on a provisional basis,

during which time the firm concerned will be subject to the necessary procedures, checks and inspections leading to final approval or clearance (de Sa, 2005, 15). This is exemplified by the ex-post or back-end customs clearance used by the Philippines customs authority mentioned above.

Also necessary in many of the countries of Southeast Asia is a regulatory watchdog or overseeing body which has the power to vet each new regulation and procedure in terms of the extra burdens imposed on business balanced against benefits to the community and economy. The essential value of such a body would depend on its power to veto a proposed regulation or procedure where it has not been demonstrated that the potential benefits outweigh the additional burdens. This prompted one Vietnamese business leader to propose a “an independent committee” before which “regulators are required to prove the need and effectiveness of their regulations, [and] if they fail, those regulations should be abolished” (VCCI, 2006a, 4). In fact, in Vietnam one of the implementing decrees currently being drafted under the Enterprise Law of 2005, on state management of business licenses, proposes to create two regulatory overseeing bodies: National Council for Business Licenses, based on one already established in South Korea, and the Registration Office for Business Licenses. The first of these bodies will “oversee the procedures for business license issuance and to control the quality of the licenses to ensure they are justified and effective.” The second body “would be responsible for ensuring that information on businesses licenses and conditions is transparent and easily accessible to businesses and the public.” Within this remit will be the power “to review the current stock of businesses licenses and to control the flow of new ones” (VCCI, 2006a, 4; de Sa, 2005, 19).

Equally important would be the creation of an appeals system. This would enable businesses collectively through their various associations to appeal against a new but potentially burdensome and inconvenient regulatory procedure. Within such an appeals system there would exist opportunities for individual firms to seek redress in the face of adverse decisions, undue delay and additional and unnecessary costs. The power to adjudicate in both cases could be vested in the regulatory overlord mentioned above.

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