Effective regulation is vital for efficient delivery of utility services to consumers. It is also needed to keep the costs that consumers pay for utility services low and to attract private sector investment in new infrastructure development.

As a major player in infrastructure development in the Asia and Pacific region, the Asian Development Bank (ADB) has emphasized the need to establish the underlying policy, institutional, and regulatory frameworks. Those frameworks must operate effectively to improve the quantity and quality of physical infrastructure and the delivery of utility services.

Consistent with these goals, in December 2007, ADB approved a regional technical assistance on Enhancing Effective Regulation of Water and Energy Infrastructure and Utility Services (RETA 6424). RETA 6424 will examine regulatory reform experiences in Southeast Asian countries like Malaysia, the Philippines, and Thailand. It will also consider whether governments, investors, consumers, and citizens view those reforms as effective. Effectiveness will be considered in formal and informal terms: what exists on paper and what happens in practice.

Systematic comparative analysis of different developing member countries’ regulatory experiences can contribute practical improvements to infrastructure and utility service regulation and its reform in Asian developing countries

Regulatory Reforms: Mixed Results

Over the past two decades, many of ADB’s developing member countries (DMCs) have carried out reforms in infrastructure and utility service industries. Regulatory reforms have produced mixed results (see Box 1). Moreover, effective regulation is constrained by formal factors—lack of legal or regulatory framework; and informal factors—information asymmetry, market failure, political capture, weak capacity, and ineffective consumer participation.

Building on Past Work

In 1997, ADB conducted a regional technical assistance on Governance and Regulatory Regimes for Private Infrastructure Development (RETA 5758). It assessed the initial regulatory reforms and the impact of governance in Bangladesh, India, Indonesia, Malaysia, Pakistan, and the Philippines by preparing 12 case studies that considered the key elements of an effective governance framework. The elements of effective regulatory governance identified in RETA 5758 were expanded upon by academic and policy commentators (see Box 2).

Regulatory governance and regulatory substance must be considered in evaluating the effectiveness of a regulatory framework. Regulatory governance is the “how” of regulation—it deals with the legal design of the regulatory system, the institutional arrangements, and the process of regulatory decision making. Regulatory substance is the “what” of regulation—it involves decisions on tariffs, quality, accounting, investment, and social obligations.

The objective of good regulatory governance is good regulatory substance—to have competent and credible regulatory decisions. Regulatory governance and regulatory substance must both be considered in achieving effective regulation and regulatory reform.

Applying Lessons Learned

The lessons learned from RETA 5758 and the work done by ADB and others to date indicate the need for a systematic study of comparable Asian case studies of regulatory experiences that examines formal and informal attributes of regulatory systems in

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Box 1: Results of Regulatory Reform

<table>
<thead>
<tr>
<th>Successes</th>
<th>Challenges</th>
</tr>
</thead>
<tbody>
<tr>
<td>Independent regulators</td>
<td>Regulators not fully independent</td>
</tr>
<tr>
<td>Consumer participation</td>
<td>Continued high tariffs</td>
</tr>
<tr>
<td>Lowering tariff rates</td>
<td>Slow implementation of law and policy</td>
</tr>
<tr>
<td>Access to utility services</td>
<td></td>
</tr>
<tr>
<td>Sustainable practices</td>
<td></td>
</tr>
</tbody>
</table>

Box 2: Elements of Effective Regulatory Governance

- Clarity of roles and objectives
- Autonomy
- Participation
- Accountability
- Transparency
- Predictability
- Nondiscrimination
- Proportionality
- Requisite powers
- Appropriate institutional characteristics
- Integrity

ADB supports the development of policy, legal and institutional frameworks to foster economic activities and sustainable development. Law and policy reform activities are carried out in a range of areas, such as regulation and governance of infrastructure, including water and energy.
terms of their effectiveness. Systematic comparative analysis of different DMC regulatory experiences can contribute to practical improvements to infrastructure and utility service regulation and its reform in Asian developing countries. In doing so, ADB seeks to take the important academic and policy work that has been done and apply it to cases on the ground.

Generating Stakeholder Dialogue

RETA 6424 will engage regulators, poor consumers, and electricity generators in a dialogue on how regulation works in practice in Southeast Asian countries. Investigations into the impact of current regulatory practices on pro-poor, consumer protection, and environmental regulation will also be made. RETA 6424 will expand and deepen ADB's knowledge of infrastructure regulation as well as contribute to knowledge in the areas that are currently under-investigated, like the role of regulation in promoting sustainable development and in addressing the challenges posed by climate change (see Box 3). ADB will seek to share this knowledge within ADB, with Southeast Asian countries and other DMCs, and with other development partners.

<table>
<thead>
<tr>
<th>Box 3: Design Summary</th>
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</thead>
<tbody>
<tr>
<td><strong>Impact</strong></td>
</tr>
<tr>
<td><strong>Outcome</strong></td>
</tr>
<tr>
<td><strong>Outputs</strong></td>
</tr>
</tbody>
</table>

Regulatory Networks

RETA 6424 presents a diagnostic foundation to facilitate transnational regulatory networks and dialogues amongst energy and water regulators. ADB will seek to contribute to networks, such as the East Asia and Pacific Infrastructure Regulatory Forum and the Public-Private Infrastructure Advisory Facility, but will also explore the unique space for contributing to a specifically ASEAN energy network and ASEAN water regulatory network and encouraging linkages with ASEAN environmental regulators.

Moving Forward

Improved infrastructure and utility services are important for economic growth and can contribute to a better quality of life for the poor. The development of quality infrastructure and utility services needs an effective well-governed regulatory framework. That framework must be designed to satisfy the interests of policy investors, consumers and citizens, including the poor.7 Sustainable infrastructure and utility services that internalize their environmental costs and are affordable for consumers, can generate a return on investment for the investors and sustain added infrastructure investment for broader access for the poor that is crucial for developing countries. RETA 6424 will seek to advance these important issues.


