Independence, Accountability and Conflict of Interest:
The Case of Regulatory Agencies and the Regulatory Challenge Facing Developing Countries

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1. INTRODUCTION

One of the major institutional challenges facing developing countries to date is the building of a credible and effective regulatory agency. The increasing participation of the private sector in, and the gradual withdrawal of the public sector from, regulated industries, such as those involving electricity, water, transport and telecommunications services, calls for the establishment of a regulatory agency that will set rules to promote and protect market competition and to ensure public access to such services according to established universal service goals.

The mandate of a regulatory body is indeed extremely demanding both in terms of its *technical capacity* and *administrative integrity*. Regulating the private sector is no easy task as the regulator consistently faces informational disadvantages. Vital first-hand business information, such as actual production and investment costs, actual capacity constraints, and technological alternatives and limitations, are in private hands. Hence, technical acumen is required for a regulatory body to be able to handle these informational asymmetries and thereby avoid being outmaneuvered by the private businesses that it regulates.

At the same time, as a quasi-judiciary body whose mandate is to protect the public interest by setting complex rules to govern businesses (often large and influential), the integrity of such a regulatory body is at stake. The regulator's job involves mainly balancing private and public interests. Businesses need to remain commercially viable, and to expand and innovate, while citizens need affordable and accessible services. These two opposing interests sometimes clash, as in the case of pricing, leaving the regulatory body as the arbitrator. Because the regulator walks a fine line between accommodating the private sector's business objectives and protecting the public's interests, its integrity is constantly challenged.

Unfortunately, both technical capability and administrative integrity can be extremely difficult to build for countries with limited regulatory experience. First, concerning technical capability, the pool of qualified persons suited for a regulatory job is extremely limited. This is because, prior to the establishment of a full-fledged regulatory body, most developing countries would have relied on state enterprises to perform regulatory functions. As service providers themselves, they would have been the only public body sufficiently knowledgeable about the regulated business. Although the function of price regulation, a potentially politically sensitive issue, may be retained by government administration, most other technical regulations, such as technical standards, service quality, and capacity oversight, often would have resided within the ambit of the state enterprise operating in the relevant sector. As a result of all these factors, regulatory skills within the state bureaucracy will remain clearly deficient.

The absence of a proper regulatory regime also deprives the judiciary, academia and the private sector of fundamental knowledge and understanding of regulatory issues and rules. Unlike developed countries, developing countries do not have access to pools of qualified outsiders, such as economists from academic institutions or lawyers from private law firms, who have been involved in regulatory legal cases. Hence, one of the most daunting tasks in the process of setting up a regulatory body is finding qualified persons to be regulatory commissioners.

While there is a vast pool of literature on regulatory institutional design, most studies draw from the experiences of developed countries, where there is no cause for concern about the supply of qualified regulatory experts. As a result, policy discussion in such

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settings is normally concentrated solely on building institutional integrity.

This paper examines the extent to which the conventional regulatory institutional designs advocated in most studies are practical in the context of a developing country facing a shortage of qualified regulatory experts. The paper draws mainly on a work by Buckley et al. (2008). The "Best Practice Checklist" in that work's chapter entitled "Regulation and the Government Role" provides a very clear and concise summary of key institutional features of an ideal regulatory agency. Although the book concerns regulation specifically in the broadcasting industry, the proposed institutional design is applicable to similar agencies in other regulated sectors, such as transport, telecom, energy and water.

It is hoped that the issues discussed in this paper will be of some relevance to those involved in the design of a regulatory institution in their respective countries and that the recommendations made here will be of some practical use to policy makers in other developing countries that face a similar institutional environment.

2. ON INDEPENDENCE

2.1 Prescription for Establishing Institutional Independence

Independence features most prominently in the existing literature on regulatory institutional design. Independence, which also implies impartiality, refers to autonomy from both politics and the private sector. The following is a quotation cited in Buckley et al. (2008):

> *Regulation of broadcasting should be the responsibility of an independent regulatory body established on a statutory basis with powers and duties set out explicitly in the law. The independence and institutional autonomy of the regulatory body should be adequately and explicitly protected from interference, particularly interference of a political or economic nature.*

In addition to administrative autonomy, financial independence is also required in order to ensure that regulators are truly free of political influence when performing their duties. Independent regulatory agencies should be sure that they will be supplied with a reliable source of income provided under law and sufficient in amount for performing their tasks, as expressed in the following quote from the same source as above:

> *Regulatory bodies responsible for broadcasting should be ensured a reliable and recurrent income provided in law and sufficient to carry out their activities effectively and without interference.*

The ensuring sections of the paper will examine in detail the issues concerning both structural and financial independence.

2.1.1 Structural Independence

What is required for an organization to be autonomous from politics? As an administrative body, a regulatory agency must set rules according to policies prescribed by the executive branch of government, but that does not give politicians or the government the right to meddle with its operational and administrative activities. Frequently, the policy prescription for shielding a regulatory body from political meddling involves granting the power to appoint and dismiss commissioners to a multi-party body such as parliament, rather than to a minister or the cabinet. The diversity of interests among the members of parliament, which comprises people from the ruling party, the opposition party and the senate, can ensure proper checks and balances in the appointment and dismissal of a regulatory commissioner.

The independence of a regulatory agency from the private sector that it regulates is an issue that deserves special attention in developing countries, where conflict of interest rules and standards normally are relatively weak. The policy prescription for avoiding "regulatory capture," a term describing a situation in which a regulatory agency acts in favor of the private interests that it regulates, usually includes the requirement that commissioners do not hold any financial interest in the regulated industry. Certain countries also bar former executives and officers of a regulatory agency from accepting positions in any regulated business, or from representing a person before the particular regulatory agency, for a specific period of time after such persons have left office.

2.1.2 Financial Independence

As mentioned previously, financial independence is a prerequisite for achieving institutional autonomy. In order to ensure the financial independence of a regulatory body, funding for the operation of the regulatory body frequently comes from the application of a licensing fee or an explicit "tax" imposed on the license holders, often calculated as a percentage of the total revenue figure.

2.2 Building Institutional Independence in Developing Countries

Independence is as desirable a quality for a regulatory body in developing countries as it is in developed economies not only because it ensures greater distance between regulators and politicians, but also because the structural separation from the government implies a break away from inefficient state bureaucracy. This is indeed good news for the regulatory agency, as

bureaucratic red tape can be crippling. Unattractive pay for civil servants would deny the agency the qualified professionals it needs. In addition, stringent procurement rules could turn what appears to be a simple process, such as outsourcing, into an administrative nightmare. Further, the highly political budgeting process may undermine the regulatory agency's struggle to distance itself from politics. Thus, statutory independence provides not only administrative autonomy, but also administrative efficiency to boot.

However, any policy prescription for establishing independence that concentrates on the issue of the appointment and dismissal of commissioners overlooks more fundamental problems that developing countries would have to overcome beforehand. Developing countries face additional fundamental problems in mobilizing qualified candidates and ensuring an efficient and transparent nomination and selection process. Indeed, it would be futile to discuss who should appoint or dismiss commissioners when there are no qualified candidates, and the nomination and selection process is not above board. These issues will be discussed in detail below.

2.2.1 Getting the Right Persons on Board

Mobilizing qualified persons to be candidates for the positions of regulatory commissioner is a fundamental problem often faced by developing countries. This is because, as a public organization, a regulatory body may be subject to certain salary constraints in order to keep the pay scale somewhat aligned with that of other public agencies.

In addition to the relatively unattractive pay, potential political interference and strict conflict of interest rules designed to ensure the transparency and integrity of commissioners, such as prohibiting them from taking jobs in the industry they previously regulated once they have left office until a certain number of years have elapsed, the requirement that commissioners rid themselves of all financial interests in the regulated businesses, mandatory disclosure of their assets and wealth, etc., can add to the long list of reasons why one would choose not to apply to be a regulatory commissioner.

These constraints are particularly binding for a "full time" commissioner, because that person would have to give up his or her highly paid job and professional independence to assume the position of a regulatory commissioner, which is vulnerable to political interference and is characterized by unattractive pay. Certain countries that may have been accustomed to having high-profile part-time commissioners performing regulatory functions may suddenly find themselves deprived of candidates of comparable caliber once the position becomes a full-time job.

In sum, to ensure that a regulatory commissioner's job is sufficiently worthwhile to attract highly qualified candidates from the private sector, commissioners need to be (a) properly protected from political interference so that they would be able to perform their tasks professionally, and (b) properly compensated for all employment and investment restrictions imposed during and after their employment. However, even when the pay is sufficiently attractive to qualified candidates, developing countries may face another hurdle: whether to allow those who are involved with the regulated businesses to become candidates for the position of commissioner. Most regulatory commissioners in developed countries comprise economists and lawyers from academic institutions or private law firms, but such candidates are often not available in developing countries for the reasons explained previously.

In prescribing the characteristics and qualifications of a candidate, one may face a dilemma. Technical qualifications tend to favor "insiders," i.e., former employees who are familiar with the regulatory workings of their former employers, or even former executives from the regulated businesses. The requirements of integrity and impartiality, on the other hand, would tend to favor "outsiders" or non-interested parties who had not had any commercial involvement with the regulated business. The question of whether to compromise integrity for technical competence always weighs heavily on policy makers.

Skeptics would say that business ties can never really be severed, meaning that commissioners with a background in the regulated businesses can never be impartial as they are predispositioned to take the viewpoint of the private sector. At the same time, pragmatists would reckon that, with the pool of persons possessing technical and practical knowledge about the regulated industry, being limited, it might not be wise to exclude such qualified persons altogether. (In this regard, the author shares this skepticism, but yields to practicality.) A possible compromise between integrity and technical competence would be to impose less stringent qualifications for eligible applicants in order to ensure a sufficient pool of candidates with the required technical expertise, but to compensate for the relatively lax *ex ante* conflict-of-interest standard by imposing strict *ex post* conflict-of-interest rules, transparency rules and other rules to ensure the integrity and impartiality of those commissioners who had past business ties with the regulated entities.

2.2.2 Selecting the Nominating Body

If it is supposed for a moment that there are now many qualified applicants for the position of regulatory commissioner, the next challenge would be how to design the nomination procedures and select the best candidate from among the applicants. Since good nomination procedures beget good candidates, the importance of the nomination process should never be underestimated. The problem is who, or what organizations, should be responsible for the nomination and selection of candidates for commissioner.

Thailand has explored different innovative processes for the selection of members of nomination committees. In the case of telecom commissioners, different stakeholder groups, namely, professional associations, academics and consumer groups, were asked to elect their own representatives to become members of the nomination committee, which was responsible for screening and interviewing applicants and submitting a short-list of candidates, half of whom the senate would select and appoint as commissioners.

While the model appears to be democratic conceptually, in practice, the process was plagued with all sorts of problems. Private interests, with subtle political backing, appear to have been able to exert extensive influence on the process. For example, the selection of candidates in a "consumer group" was subject to what may be described as "block votes," as more organized business interest groups, declaring themselves to be consumers of telecom services, were able to dominate the election of the group's representation on the nomination committee concerned by sheer number of votes. Less organized and more limited in number, "genuine" consumer groups were not able to mobilize a sufficient number of their peers to match the number of votes of the business group. In fact, certain business interest groups disguised themselves as consumer organizations before the selection took place, simply by registering as not-for-profit entities mandated to oversee consumer interests.

A similar problem occurred in the selection process among academic institutions. Reputable academic institutions were – again, perhaps intentionally – disqualified to register votes owing to overly restrictive eligibility criteria. The selection process among the professional associations was also alleged to have been captured by private interests.

Indeed, all these improper developments did not escape the attention of the media, and thus, the public. The government at the time, which included prominent individuals from the telecom sector, seemed to have turned a blind eye to these problems and continued to endorse the tarnished process.

Owing to the opaque selection process, the senate, the members of which at the time had been appointed rather than elected, refused to proceed with the selection of commissioners from the list of names proposed by the nomination committee. As a result, the selection process, which dragged on for years, was marred by various accusations of corruption and bribery that allegedly had been paid to facilitate cronyism and patronage.

Disillusioned by the stakeholders model and weary of overwhelming business influence, the search for an optimal nomination procedure ended at the doorstep of the state bureaucracy. The composition of the nomination committee, prescribed in subsequent laws establishing the regulatory agency for the energy and insurance industries, comprised almost entirely "retired" high-level bureaucrats, such as permanent secretaries and directors-general. It was believed that such retired high-profile officials would be somewhat knowledgeable of the regulatory issues at hand and at the same time free from both political and economic interests. Therefore, they would be impartial and objective in nominating candidates for the position of commissioner. Unfortunately, but not unexpectedly, the nomination committee which was dominated by ex-bureaucrats tended to favor candidates who were like themselves – bureaucrats. Moreover, as a minister would hand pick the retired officers, he/she would be certain to choose those that would be more likely to fulfill his/her wishes.

A possible alternative to the failed stakeholders and retired bureaucrat approaches would be to designate institutions that would be made responsible for proposing the members of the nomination committee. For example, the Thai Public Broadcasting Act 2008 prescribes precise institutions or organizations, from which would come members of the committee responsible for the nomination of the board of directors of the Thai Public Broadcasting. They consisted of the head of relevant non-profit organizations with a reputable track record, such as the National Press Council of Thailand, Thai Broadcast Journalist Association, Council of the Mass Communication Faculty Members of Thailand, and the Consumer Council of Thailand. However, while this approach still relied on the discretion of the legislators to "pick and choose" appropriate institutions, at least the qualifications and the credibility of the designated institutions could be openly debated before the promulgation of the law. This approach would hold each institution responsible for its own nomination of a commissioner.

Thailand's experience illustrates the difficulty in establishing a good nomination committee in the presence of political and business interference. Perhaps the major concern is not so much whether the nomination body should comprise representatives of the private sector, bureaucrats, academics, professional associations or NGOs, but how to ensure a fair and open nomination procedure. For example, the qualifications of candidates and the criteria for selecting candidates for nomination among the pool of applicants need to be spelled out clearly in order to minimize administrative discretion. At the same time, relevant information about the candidates' profile and qualifications, and potential conflicts of interest as well as the detailed steps of the screening process for nomination would need to be disclosed to the public.

2.2.3 Appointment and Dismissal of Commissioners

The proposal to designate parliament as the body empowered to appoint and dismiss regulatory commissioners in order to avoid political interference is conceptually sound. The diversity of interest groups in parliament and the better exposure of the matter through the media would help in scrutinizing the process better.

However, the effectiveness of parliament in holding a regulatory body accountable for its performance would depend on its political structure. Sometimes parliament is dominated by the ruling party because the senate is closely aligned with the government. As a result, the government that holds a majority position in the house of representatives will always be able to secure the majority or even super-majority of votes in parliament on any matter, including the appointment or dismissal of a commissioner. For example, in Thailand senators are prohibited by law from being affiliated with any political party, but in practice many of them are spouses, siblings or children of members of parliament. This is because voters cannot distinguish the role of a senator from that of an MP, and would thus not hesitate to select candidates from the same family for both houses of parliament.

The case in point shows that one should not expect too much from parliament in ensuring the fair and proper appointment and dismissal of commissioners. Perhaps greater effort should be channeled toward establishing procedures that would take place before the ultimate appointment or dismissal vote. For example, if the law allows dismissal on the basis of "misconduct," then it would be necessary to have clear guidelines or rules concerning what constitutes such an action. A parliamentary vote for dismissal could also be preceded by an examination, conducted by a small advisory group, of the grounds for dismissal. The panel would advise parliament whether, in its view, grounds for dismissal were present.

3. BUILDING ACCOUNTABILITY

Given that much of the existing literature advocates institutional independence as the most prominent feature of an ideal regulatory agency, there could be a tendency to "overshoot" the drive for independence – independence could become an end in itself, rather than the means to achieve an effective and impartial regulatory regime. Preoccupation with independence could cause policy makers to overlook other essential features of a regulatory agency, such as accountability.

It is most important to recognize that, like two sides of a weighing scale, greater independence or autonomy should always be balanced by more rigorous accountability rules. If an agency is granted the freedom to make decisions, it should also be held responsible for the decisions made. As some experts have stated: "*Accountability is what makes delegated authority legitimate; without accountability, there is nothing to prevent abuse*."[1] After all, regulatory commissioners are unelected officials. They still need to be accountable to the public, or their representatives in parliament. Independence does not imply administrative freedom that borders on impunity.

Unfortunately, ensuring accountability in a regulatory body is a matter no less complex than building institutional independence. This is because accountability involves detailed procedural designs, whereas independence can be had with a simple legal institutional design. The next section explores in detail how accountability can be built into a regulatory body.

3.1 Transparency and Consultation

> *In exercising regulatory powers over broadcasting, regulatory bodies should be required by law to operate openly and transparently and to facilitate public participation in their affairs, including through public consultation on their policies and procedures. All decisions of regulatory bodies should be accompanied by written reasons.* [2]

Information disclosure: Since the notion that every citizen has the right to access public information often is new or still non-existent in developing countries, most regulatory agencies cannot be expected to be beacons of transparency, in particular when certain agencies carry the legacy of state bureaucracy. However, there is no need to despair since, to some extent, information disclosure can be legislated. Hence, efforts should be made in prescribing detailed disclosure requirements, be they the notification of a new regulatory rule, detailed records of the decisions made, the terms and conditions of every license issued, etc., in particular in the absence of a public information act that guarantees public access to documents and information in the possession of state agencies. It is most important that, in order to ensure compliance, failure to observe the information disclosure requirements as stipulated in the law should be subject to legal sanctions.

Consultation: Public consultation has made its way well into the Thai bureaucracy, but mostly in form and not so much in substance, that is, consultation sessions are provided for stakeholders to express their concerns and opinions, but nothing much may result from those sessions. Questions raised during such a session may never be answered and comments may never be incorporated into subsequent revisions of the proposed rule. This is often the case if the legal obligation of a regulatory body is only to provide a forum to "hear out" the concerns of stakeholders, but not necessarily to "do" anything about them. Public hearings in such an environment serve only to legitimize a regulatory body's rules and decisions that in reality had already been made beforehand.

A bona fide public hearing procedure requires the regulatory body to properly inform stakeholders of the issues at hand and provide them with all the relevant documents and information concerned. All the comments made need to be recorded, published and

responded to. Second or even third rounds of comments on the responses are necessary if concerns not yet addressed or clarified still exist. Finally, detailed explanations are required in order to justify the ultimate regulation passed or decision made.

3.2 Public Accountability

> *Any public body that exercises regulatory powers in broadcasting should be subject to judicial oversight and should be formally accountable to the public through a multiparty body such as the parliament or a parliamentary committee, in which all major parties are represented. The regulatory body should be required by law to publish an annual report.*[3]

Regarding the issue of public accountability, the author believes that the law should require more than just an annual report to be published in order for the agency concerned to be accountable to the public. Without a detailed prescription of its content, an annual report may not contain any useful information need for making it possible to assess the performance of a regulatory body. Hence, it is imperative that the regulatory body's performance be subject to thorough supervision by the body to which it is accountable, such as the parliament. However, on this point one should not put too high hopes on the ability of parliament to scrutinize a regulator's performance. Unlike a ministry, which is a government organization, parliament in many developing countries often faces budgetary constraints and lacks proper technical support. Most parliamentary committees rely on outside expert members to perform the task at hand without a proper secretariat to provide the necessary background information and preliminary analysis to facilitate the committees' work.

Perhaps the assessment of a regulator's performance could be outsourced to a third party, at the expense of the regulatory agency itself if the parliament lacks financial resources. In Thailand, the performance of state-owned enterprises and public organizations is already assessed by private agencies. It may be necessary to stipulate in the law that a certain amount of the annual proceeds from licensing fees or regulatory tax collection be reserved for the expenses associated with the performance assessment consultancy to be undertaken by parliament.

Besides performance assessment, the author would also propose that regulatory agencies be required to conduct a regulatory impact assessment (RIA) for each and every rule they propose, not only to be able to hold the agencies accountable for the rules made, but also to ensure the soundness of those rules. The following are key characteristics of RIA adapted from the Organisation for Economic Co-operation and Development (OECD).[4]

- *Statement of problem:* why regulation is required
- *Definition of alternative remedies:* the possibility of voluntary approaches or the use of economic incentives in place of mandatory rules
- *Estimation of cost and benefit of the regulation:* benefits should be quantified in monetary terms, while costs should be opportunity costs not expenditures
- *Assessment of other economic impacts:* effects on competition, on small firms, and on new investment
- *Identification of winners and losers:* this can help prevent patronage
- *Communication with the public* (already discussed previously)
- *A clear choice of the preferred alternative:* a statement defending that choice
- *Provision for a plan for ex post analysis and regulatory outcomes:* information for performance assessment. Collection of supporting data to permit benchmarking is required.

3.3 Financial Accountability

> *Regulatory bodies responsible for broadcasting should be ensured a reliable and recurrent income provided in law and sufficient to carry out their activities effectively and without interference.*[5]

As mentioned previously, financial independence is a prerequisite for institutional autonomy. In order to ensure the financial independence of a regulatory body, funding for the operation of the regulatory body often comes from licensing fees or an explicit "tax" imposed on the licensees, calculated as a percentage of the revenue of the license holder.

While financial independence can certainly help protect the regulatory body from political influences, it may also reduce the regulatory body's accountability to the public. With secured sources of income, the regulatory body need not respond so much to the government, the parliament or the public in general. Moreover, in most countries, off-budget spending is subject to much less administrative scrutiny than budgetary spending. Therefore, financial independence should not be taken as freedom to set and spend a budget without proper scrutiny and accountability. Moreover, in cases where the regulatory body's revenue is derived from license fees or an explicit tax, it does not mean that the regulatory body can also set the license fees, or the tax rate itself since that would raise conflict-of-interest problems.[6]

The annual budget of the regulatory body would need to be approved by parliament, or the body to which it is accountable, even if it does not require a budget allocation. It should be noted that, with an own secured source of revenue, a regulatory agency need not comply with conventional budget allocation and expenditure rules to which other government agencies are subjected. Therefore, specific procedures would be required to ensure the financial accountability of the regulatory agency.

An independent regulatory agency also requires more stringent financial auditing than conventional government agencies because it can set its own salary and benefit scale for employees and design its own procurement rules. To ensure that administrative flexibility fosters efficiency rather than invites abuse, the regulator's detailed expenditure should be thoroughly audited, reported to the parliament and disclosed to the public.

4. ESTABLISHING INTERNAL CONTROLS

As a state body, a regulatory agency is governed by the country's administrative law, which lays down principles and rules to ensure transparency, fairness and due process in government administration. These often include information-disclosure rules, conflict-of-interest rules, and communication rules, among others. Unfortunately, in many developing countries, such general administrative rules are either weak or inadequate in ensuring good governance in the administration of public functions, in which case it is necessary to prescribe additional procedural rules as part of the specific law establishing the regulatory agency in order to ensure its integrity. Here, the author draws on the experiences of countries with a long history of state regulation.

4.1 Communication Rules

Few developing countries recognize the importance of formalizing their communication rules. For example, regulatory commissioners deliberating the case of a business dispute that has far-reaching financial implications for private businesses should not be able to arrange private meetings with the parties concerned. If the rule does not prohibit such meetings, then at least it should require that the events be reported and that all information and documents obtained from those meetings be officially documented. In the absence of clear communication rules, the commissioners and officers of the regulatory agency are susceptible to lobbying and potential corruption. For example, the Federal Communications Commission (FCC) of the United States classifies communication rules according to the nature of the issue being deliberated. Certain issues that require confidentiality are exempted from the rules, meaning that there are no restrictions on the format of communicating with external parties. Others that are not confidential do allow private communication with external parties, but the records of the meetings and all the documents submitted must be disclosed to the public within a week. There are also restricted proceedings whereby all communication channels must be public and pre-announced. Such restrictive proceedings often apply to dispute settlement cases where both parties need to be equally informed of all the issues discussed and information exchanged between the FCC and the other party.

Communication rules are something still alien to state agencies and government officials in most developing countries, such that their implementation may take time. Regulatory agencies make an ideal institution for the introduction of this rule as part of the quest for better governance in public agencies.

4.2 Conflict-of-Interest Rule

The nomination and the selection processes of commissioners are normally designed to preclude candidates with potential conflict-of-interest issues. In other words, elected commissioners are normally required to rid themselves of all financial interests in the regulated industry, be they financial investment or executive positions in the regulated business. However, such measures may not be sufficient, as conflict-of-interest issues may arise during the course of the commissioners' duties. For example, a commissioner or an officer may have a close relative who is an executive in a company that had applied for an operating license. In such a case, there should be a clear procedure for determining the steps that the individual must take in dealing with the conflict-of-interest problem. Initially, he or she may be required to consult an ethics officer. If there are reasons for concern, the ethics officer or committee may decide on the proper remedy to be taken. The individual may be required to "recuse" himself or herself, or withdraw entirely from the application assessment procedure by not attending meetings and not receiving any documents related to the case. In addition, the person should "distance" himself or herself to the extent possible by, for example, avoiding discussing the matter with colleagues while the application is still under consideration. In cases where the individual has financial interests in the business in question, divestiture or the transfer of the particular financial interest to a blind trust may be required.

4.3 Post-employment Rule

Certain countries prohibit former commissioners and high-ranking officials in a regulatory agency from accepting positions in a regulated company for a certain number of years after leaving office in order to ensure against patronage. While such a restriction on post employment is conceptually sound, it may produce unintended adverse results. As mentioned previously,

the remuneration rates for commissioners in most developing countries are likely to be rather unattractive. Thus, any restriction on future employment opportunities would render the regulatory job even less attractive to potential candidates. Therefore, post-employment restrictions may be desirable but they need to be properly compensated for by, say, higher pay during the person's term in office.

4.4 Rule-making Procedure

A regulatory body's main responsibility is to pass regulatory rules aimed at ensuring fair and free competition in the market and ensuring public access to affordable services according to a specified universal service goal. Because such rules have significant implications for both private businesses and consumers, as well as the industry as a whole, rule-making procedures should be as transparent, subjective and predictable as possible.

Unfortunately, such rules are often left to be determined by the commissioners rather than written into law. The law may make public hearings or consultation mandatory, but it rarely goes into sufficient detail about rule-making procedures to ensure transparency, predictability and subjectivity. The author believes that, in countries where state rules are often made without sound economic analysis and without proper assessment of their potential impacts on various stakeholders, it is of the utmost importance to legislate rule-making procedures. Also, it is worthwhile to contemplate having a RIA scheme to ensure the soundness of the rules passed by the regulatory body, as discussed previously.

5. CONCLUSION

Building the credibility of a new regulatory agency is a Herculean task in a country with little regulatory experience and where political and business interests penetrate broadly and deeply into state administration. The lack of qualified persons makes the task even more difficult as such a country could not impose excessively stringent rules that, while serving to ensure the integrity and accountability of the regulatory agency, might shun potential regulators.

Under such an unfavorable circumstance, greater effort should be channeled toward establishing clear, effective and transparent procedures that would ensure the integrity of key processes, such as the formation of a nomination committee, the selection of candidates and the appointment and dismissal of commissioners. The same applies to the administration of the regulatory body itself.

In sum, rigorous conflict-of-interest rules, *ex-parte* rules or accountability schemes are the pillars of a successful regulatory agency.

ENDNOTES

1 Monks and Minow (1991, 75).

2 Buckley et al. (2008).

3 Ibid.

4 OECD (2004).

5 Buckley et al., op. cit.

6 The Thai National Telecommunications Commission is authorized to set license fees and universal service contribution fees calculated as a percentage of annual revenue of the license holder itself.

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