

CHARACTERISTICS OF EFFECTIVE REGULATORS

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Those who have studied the history and evolution of regulatory policy are familiar with the 10 key principles for the independent economic regulator as outlined by the World Bank:¹

1. **Independence.** "... regulators should, by law, be free to make decisions within the scope of their authority without having to obtain prior approval from other officials or agencies of government. They need to be adequately insulated from short-term political pressure."
2. **Accountability.** "Regulators need to be held accountable for their actions."
3. **Transparency and Public Participation.** "The entire regulatory process must be fair and impartial and open to extensive and meaningful opportunity for public participation."
4. **Predictability.** "The regulatory system should provide reasonable ... certainty as to the principles and rules that will be followed within the overall regulatory framework."
5. **Clarity of Roles.** "The role of the regulatory agency should be carefully defined in law."
6. **Completeness and Clarity of Rules.** "The regulatory system, through laws and agency rules, should provide all stakeholders with clear and complete timely advance notice of the principles, guidelines, expectations, and responsibilities, consequences of misbehavior, and objectives that will be pursued in carrying out regulatory activities."
7. **Proportionality.** "Regulatory intervention in the sector should be proportionate to the challenges the regulators are addressing."
8. **Requisite Powers.** "Regulatory agencies should, under the law, possess all powers required to perform their mission."



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¹ Brown, Ashley C., Jon Stern and Bernard Tenenbaum, *Handbook for Evaluating Infrastructure Regulatory Systems*, The World Bank, 2006, pp. 59-63.

9. **Appropriate Institutional Characteristics.** “Regulatory agencies must be able to consistently perform professionally, competently and thoroughly...”
10. **Integrity.** “Strict rules covering the behavior of decision makers should be in place so as to preclude improprieties or any conduct appearing to be improper.”

Not to detract from that list—which sets laudable standards to be followed by regulatory authorities—it must be noted that these parameters describe an organization, but not necessarily the people who work there, and must exercise leadership over its functioning. It is important to remember that the essence of good regulation is neither its enabling legislation nor the guidance of best practices, but it is the team of individuals—commissioners and staff members—whose personal commitment to the aforementioned standards ensures good regulation and the sustainability of regulated entities. This personal commitment reflects *inter alia* the following characteristics that enable the regulatory authority to be effective in undertaking its critical responsibilities: accessibility, reliability, flexibility, creativity, and courage.



Accessibility

Legislation (or other directive) establishes the regulatory authority to serve an important role in a country’s economic life, and those who take on the duty of regulators are cognizant of this important responsibility. However, in the early days of establishing a regulatory authority, there is sometimes a tendency toward organization with the objective of compartmentalized achievement. This may be the case when the new regulatory authority is intended to be an “independent” organization, which is a laudable objective—but an intention that may be confused with isolation. An effective regulator is, therefore, one whose door is open, literally as well as figuratively to the views of others.

It is well established that stakeholders should have meaningful access to their regulatory authorities through (a) petitions for regulatory actions (e.g., licenses, tariffs and tariff adjustments, other decisions), and (b) comments upon proposed regulatory actions. Public meetings on regulatory matters, convened at convenient venues throughout the country for the express purpose of providing an opportunity for the public to see the regulatory process in action and gain greater respect for its institutional value, help to achieve the objective of institutional access. Perhaps not so well established, but certainly an objective of the effective regulator, is the need for the regulator to be proactive in creating opportunities to listen to and consider the views of stakeholders not only during the process of formulating regulatory decisions, but throughout the year to learn more about the regulated sector, the concerns of its participants, and their plans for the future.

Reliability

The effective regulatory authority must gain the confidence of stakeholders that as an institution it will reliably undertake its responsibilities. Issues brought to the attention of the regulators and their staffs must be addressed in a timely and a professional manner. Extant rules and regulations must be followed. Work will be undertaken expeditiously. Dates for regulatory proceedings will be adhered to. In short, each member of the regulatory team helps to build confidence in the regulatory process by focusing on the objective of achieving an effective conclusion to each matter brought before the authority.

However, there is abundant anecdotal evidence to demonstrate the contrary view, and unfortunately, there is a common perception of regulatory bureaucrats who idle away their working day shepherding bundles of papers from desk to desk. Each person who takes on the responsibility of working within the regulatory authority must be proactive in correcting this perception, and in becoming a more reliable and efficient professional. This builds confidence in the regulatory authority that is essential in supporting the growth and development of the sector under regulation. Furthermore, those of the regulatory authority who are leaders must do their utmost to ensure subordinates are motivated to meet (and exceed) standards of reliability required of the authority.

Flexibility

Events and economic situations evolve and the regulator should be prepared to adapt regulations and processes to meet evolving needs. To be clear, “flexibility” does not mean a willingness to make *ad hoc* changes to rules and regulations simply for the sake of expediency. It certainly does not mean a willingness to cut corners for special interests. Flexibility does mean that regulations and processes should be reviewed continuously to ensure they are still appropriate for the current economic environment.

Here, too, there is ample anecdotal evidence of regulators who are content with dogmatic adherence to established rules and regulations regardless of their outcomes in an evolving environment. Changes to established procedures can only be made through processes available by law or regulation, but the regulator cannot hide behind these procedures as an excuse for not proposing and working to implement improvements to practices that were developed in, and reflective of, other economic conditions.

Creativity

The regulatory authority is not a policymaking organization. That role is the responsibility of the executive and legislative branches of government. However, the regulatory organization can—owing to the often extensive experience of its commissioners and staffs with organizations and participants in the regulated sector—provide valuable input into the policymaking environment. An important and ongoing role of the regulator is the identification of critical issues and the collaborative development of solutions that will make the regulatory environment more efficient and more relevant for national economic development.

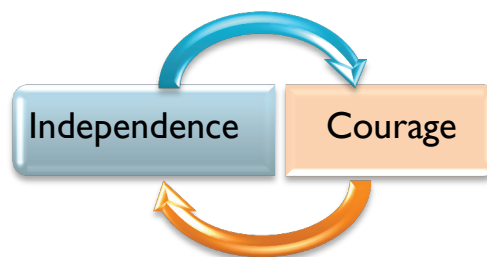
Training is an important component in developing the characteristic of creativity. The regulatory authority—as any good business organization—should have a professional development plan for each of its staff members that include opportunities to expand their knowledge base about regulation and related economic themes, and to learn from the experience of peer groups through interactions with other regulators in neighboring countries.

Courageous

Finally, but perhaps most importantly, the regulator must be willing to undertake his/her proper, professional responsibilities even when it is inconvenient to do so. The effective regulator needs to be courageous in taking regulatory decisions and the responsibility for doing so. This quality links directly to the first of the aforementioned standards, independence, and serves as the first line of defense for the overall viability of the regulatory process.

Nevertheless, regulators need to seek input from stakeholders and respect the opinions of all who intervene in regulatory matters, and decisions must be made based upon evidence that is presented in public forums for reasoned consideration. Although this principle sounds simple to follow, it is far from unheard of for those in positions of authority to “reach out” to regulators within their purview for the express purpose of influencing regulatory decisions. These interventions contravene the standards and spirit of good regulatory practice and may violate laws and regulations, but more to the point are challenges upon those who are recipients of this unwarranted “guidance”. Thus, it is the courage of the individual regulator to stand firm against outside influences even though such defiance may entail a personal cost (lawful or otherwise).

The standards discussed above are nice words that describe an optimal regulatory environment. We know, of course, that regulation is a function of government and despite any safeguards enshrined in enabling legislations must function within a political environment. It remains those who undertake regulatory responsibilities with a vision of the regulator’s proper role in the economic development of his/her nation that must strive purposefully to take ownership of those characteristics that exemplify integrity and ensure the effective implementation of regulatory processes.



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