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Business registration pillars: Good regulatory practice for ASEAN

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JEL classification: D01, D21, D22, D73, H1, H32, L2, M13, N85, N80

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By Zoe Dayan and Winona Rei Bolislis

ABSTRACT

Business registration is crucial for ensuring accountable, transparent and viable business environments. By bringing businesses into the formal economy, governments are able to provide more strategic and targeted policies for businesses and consumers. The objective of this working paper is to look at the importance of business registration for governments, businesses and citizens. It explores the this issue through a series of case studies that support good practices in customer orientation and joined-up government. Each of the different case studies fall under a pillar that aims to support countries in the development of their business registration systems.

The paper also aims to provide policy directions for countries in Southeast Asia when developing modern business registration systems and provides some background for the development of ASEAN's regional business registration principles.

JEL classification: D01, D21, D22, D73, H1, H32, L2, M13, N85, N80

Key Words: Business registration, business entry, Micro, Small and Medium Size Enterprises, one-stop shops, Association of Southeast Asian Nations (ASEAN), Administrative reform

NOTE BY THE SECRETARIAT

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Firm creation is important for GDP growth and jobs. But micro, small- and medium-sized enterprises continue to start up and operate under sub-optimal conditions in economies around the world. Barriers associated with registration, 'Entry barriers', are one of the early constraints that aspiring entrepreneurs encounter while attempting to access the formal economy.

Why would a business register?

Registering a business provides it with formal protection of rights and removes the threat of penalties. It should make it easier to trade and grow, for instance by improving access to credit (banks will rarely lend to informal businesses) or government support.

Business registration, oftentimes in the form of incorporation, gives the business the characteristics of a legal entity. It limits the liability of shareholders and reduces the transactions costs of organizing commercial activity by giving the business a legal persona, providing assurance that contracts are enforceable. The articles of association and any associated memorandum achieve this and establish limited liability for company agents or entrepreneurs who engage in contracts on behalf of the company or enterprise. These articles are filed in the registry and shield those acting on behalf of the company or enterprise from personal liability.

Box 1. Registration reduces risk

In modern trade, transactions can be complex, involving dozens of steps and suppliers. The more complex and the longer the time frame over which it occurs, the greater the risk. Registration can reduce that risk.

For example, an importer of agricultural products in one country wishes to place an order with an exporter in another country, far away. Registration lets the importer find out that the company they are dealing with is in good standing and that the counterpart in the company with which they are dealing has the legal authority to commit to an export contract.

Each firm compares its perceived costs of being formal—including the burden of initial registration and ongoing costs (e.g., tax payments, licensing, labour law)—with its perceived benefits of being formal (e.g., access to larger contracts, banks, courts and government contracts, potential growth in productivity[1], reduced risk of fines and penalties). Businesses with larger efficient scales rationally register as they grow large enough to benefit from the formal institutions. The majority of microenterprises in most developing countries remain informal, despite more than a decade of reforms[2] aimed at making it easier and cheaper for them to formalize, because of the lack of intention or interest to grow. What, therefore, are the elements of business registration that can help motivate businesses to grow and why should this be important for governments?

[1] The Demand for, and Consequences of Formalisation among informal Firms in Sri Lanka, Mel, McKenzie , Woodruff March 2012 AIZ DP No.6442

[2] Entry Regulation and the Formalization of Microenterprises in Developing Countries Miriam Bruhn, David McKenzie World Bank Res Obs (2014) 29 (2): 186-201 and Informality revisited, World Development Volume 32, Issue 7, July 2004

Why governments want businesses to register?

Government wants new businesses to be created for many reasons. The effect of new business formation is to increase economic growth[3] by fostering firm productivity[4], increasing jobs[5] in the new and incumbent businesses, and raising profitability by reducing the transaction costs of doing business. The competition created lowers prices and drives innovation and technology adoption, creating a better range of products for consumers. Registration enables businesses to link into regional and global supply chains, with advantages of larger markets, access to finance and technology, and exposure to good business practice and skills.

Good registration is also an important step in the broader promotion of an accountable, transparent, efficient, and predictable regulatory business operating environment, often implemented by different licensing and inspection authorities and tax and custom administrations.

Informal employment is positively correlated with poverty and low-level of development. 60-80% of micro, small, and medium enterprises (MSMEs) in developing countries are informal (IFC 2014). They are typically three-person enterprises or smaller (McKenzie and Bruhn 2013). For instance, 90% of informal firms in Sri Lanka are sole trader enterprises (De Mel et. al. 2013). In the 43 developing and transition economies for which ILO data is available on the share of the workforce in informal sector enterprises, the main job of a third (31%) of the non-agricultural workforce is in an informal sector enterprise[6]. In Cambodia in 2013, under half of agro-enterprises had any degree of formality[7].

Bringing businesses into the formal economy is an entry point for fair taxation, protection of employees, other business licensing and investor protection (e.g. disqualification of insolvent directors, share registration). Expanding the tax base allows government to pursue these and other policy objectives. Registration also provides valuable data for policy development.

Conversely, excessively cumbersome regulation for start-ups is associated with higher levels of corruption and informality[8]. There is also some evidence that FDI crowds out domestic investment in countries with entry regulation cost above a certain level[9]. Making the business exit process more cost-effective can also facilitate a more efficient allocation of capital and labour in different sectors. Job losses due to failing firms should be outweighed by jobs created.

- *Lower barriers to start-up are associated with a smaller informal sector.*
- *Lower costs of entry encourage entrepreneurship, enhance firm productivity and reduce corruption.*
- *Simple start-up translates into greater employment opportunities*

[3] Investigating the anatomy of the employment effect of new business formation
Michael Fritsch, Florian Noseleit Camb J Econ (2012) 37 (2): 349-377.

[4] Informality has a negative impact on productivity, accounting for nearly 50 percent of the overall productivity gap between countries, such as Portugal, Turkey, and the United States (Farrell 2004). Using WBES, La Porta and Shleifer (2008) find that formal firms have substantially higher productivity levels than informal firms

[5] Ayyagari et. al. (2013) have demonstrated zero growth of employment of informal businesses over its life-cycle vis-à- vis a two- to four-fold increase of employment in the formal sector in India

[6] Tackling enterprises operating in the informal sector in developing and transition economies: a critical evaluation of the neo-liberal policy approach Williams Journal of Global Entrepreneurship Research 2014

[7] Study on Access to Financial Services for Small and Medium Agribusiness Enterprises in Cambodia Prepared for The World Bank, Feb 2013 BDLINK Cambodia in association with Agrifood Consulting International

[8] Motta, Marialisa, Ana Maria Oviedo and Massimiliano Santini. 2010. “An Open Door for Firms: The Impact of Business Entry Reforms.” Viewpoint 323, World Bank Group, Washington, DC.

[9] Munemo, J. Rev World Econ (2014) 150: 745. doi:10.1007/s10290-014-0189-2

Reforms to increase registration

Starting up a business has usually involved 3 phases of interaction with regulatory requirements:

- pre-registration – e.g. name check, prepare company statutes, deposit capital
- registration – procedures at the registry and announcement
- post-registration – e.g. acquiring company books and seal, registration with tax and labour authorities, other permits/licenses and related inspections

Klapper and Love (2010)[10] find that a more than 40% reduction in procedures and 50% in costs and time are needed to have a significantly increase registrations. Other studies show that these can increase registration by up to 20%. Countries with weaker business environments require relatively larger reforms in order increase registration. Multiple reforms make more impact. It is beneficial to make entry regulation simple but it will not increase formal registration if tax rates or other regulations are onerous.[11]

Box 2. . Increasing registration by entry regulation reform in Portugal

In 2005 Portugal created its 'On the Spot Firm' programme (*Empresa na Hora*). These were One Stop Shops implementing simplified incorporation procedures (standard, pre-approved articles, pre-defined names and eliminated registration of company books and public deeds) with significantly reduced administrative fees.

The time taken to register was reduced from several months to as little as 1 hour and the cost from EUR2000 to under EUR400. Offices were opened across the country. At registration, the business received a corporate taxpayer number, social security number, commercial registration and a declaration of business situation.

In the short run, there were increased registration of small business - (0-5 employees) by 17% and 7 new jobs were created per 100,000 inhabitants. However, because of the reduction in costs, among the additional firms that entered were more 'marginal' businesses and were operated by entrepreneurs with limited experience and are using lower types of technologies, which were then less likely to survive in the long run.

If barriers are reduced, then more marginal firms will register and an increased rate of failure should be expected. Churn can be a measure of effective reallocation of resources in the economy.

Increased enforcement of rules can also drive up registration as the perceived costs of informality rise. In Sri Lanka[12] in 2008, less than 0.5% of unregistered micro firms reported paying a fine, penalty or bribe in the last year because of their unregistered status. Fewer than 10% reported interaction with officials at all in the past year. In experiment, a small incentive dramatically increased registration rates. The most common concerns were about becoming liable for tax and labour regulations, about which the owners knew very little. For most, registration made no impact on their profitability (they were below the tax threshold) or use of bank accounts or loans, participation in government programs or receipt of government contracts.

Although there is a fiscal benefit from the registration of larger informal firms, it is unclear whether there is a public rationale for attempting to formalize subsistence enterprises.

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[10] Klapper, Leora, and Inessa Love. 2010. "The Impact of Business Environment Reforms on New Firm Registration." World Bank Policy Research Working Paper No. 5493

11 Evidence from Mexico, Entry Regulation and Business Start-ups, Kaplan, Piedra, Seira, WB Policy Research Working Paper 4322, Aug 2007)

[12] The Demand for, and Consequences of Formalisation among informal Firms in Sri Lanka, Mel, McKenzie , Woodruff March 2012 AIZ DP No.6442

What is a business register?

A registry is where the laws governing the formation of companies or enterprises, the creation and enforcement of contracts and the formalization of collecting and storing of essential information on which economic activity is based intersect. The register may also include non-incorporated businesses, such as sole traders/proprietorships, partnerships or other legal forms.

A registry typically contains answers to questions such as, ‘Who makes the decisions in a company or enterprise and benefits from them?’ i.e. who are the shareholders, the directors and the beneficial owners, ‘Who has the legal authority to enter into contracts on behalf of the company or enterprise?’, and ‘At what address should legal notices be served?’

Specific national requirements vary considerably, reflecting the local legal and administrative context (e.g. local/ national responsibilities), how far compliance is expected or approval required in advance.

I. GOOD PRACTICE IN CUSTOMER ORIENTATION

Customer orientation is an approach in which objectives are defined around satisfying the customers, registering businesses, while achieving the policy objective of high registration compliance to enable sustainable economic growth.

It means arranging processes around the needs of new businesses rather than the ease of existing agency structures. Institutions, laws and procedures may all need to be changed to make the new processes effective and efficient. Agencies will need to work with businesses and organisations skilled in business support to understand what a business needs, when it needs it, and provide it in the way that is simplest and cheapest for the business.

As a new business needs to interact with many areas of government policy – company law, taxation, labour law and employee protection to name but a few, this means that many public laws and functions are relevant. This goes far beyond the Ministry responsible for commerce and requires close interaction with relevant ministries and stakeholders. It is undeniably difficult and risky to change everything at once. As a result, most countries make improvements on a step-by-step basis.

Business should be able to expect:

- a reduction or elimination of capital deposit requirements
- a review of historical requirements
- a goal-based approach to company or enterprise formation and termination, with simple standard models
- to eliminate duplication of information obligations
- easy access to clear, accurate information about what is required
- a simple and practical process to follow
- transparent service standards (speed, timeliness, feedback and redress)
- incentives aligned to promote compliance

The legal requirements for business registration come from company law. However, business registration is not the only requirement before a company can legally operate. There are other registrations, permits and licences required. Everything that the public sector requires before a business can legally operate should be considered as part of the ‘start-up’ process.

An effective and efficient process requires well designed laws and regulations, effective co-ordination among national and regional agencies – with coherent policy objectives legal backing, clearly defined responsibilities, adequate and well-trained registration, permit/licensing and enforcement resources and effective consultation.

A dynamic approach should be adapted to improving systems over time, with reforms carried out in a logical order and effectively evaluated.

Pillar 1: Minimise formal requirements

Reduce or eliminate capital requirements

Minimum capital requirements significantly slow entrepreneurship.[13] Such requirements also fail to serve their intended purpose of protecting consumers and creditors from hastily established and potentially insolvent firms[14]. In recent years many governments have stopped requiring new businesses to deposit minimum capital in banks or with notaries before they can begin operations. As access to finance is probably the largest barrier to MSME growth[15], capital deposit requirements should be a priority.

Box 3. International elimination of minimum capital deposit requirements

The Organization for the Harmonization of Business Law in Africa (OHADA) has encouraged member states to reduce their minimum capital requirements. Seven member states have already passed national legislation to this effect in 2014/15, and were followed by six more in 2015/16.

In 2016, the government of Indonesia passed Government Regulation No. 7 of 2016, which abolished the formerly imposed minimum capital requirement for small and medium sized enterprises (SMEs) previously amounting to 31% income per capita.

Review historical requirements

When reviewing requirements, requirements that were obvious in the past can be reconsidered. For instance, in an increasingly digital age, is a carved Company Seal really a necessity? Historically, common seals were the standard means by which a company would execute documents and they had to be affixed to deeds. In a world of electronically verified signatures, what role should they now play? Does anyone check a seal now?

Box 4. Who uses a company seal?

Australia: The Company Law Review Act 1988 abolished the requirement for a company to have a seal, and the need for documents to be executed under seal.

Hong Kong, China: The use of a common seal, or company seal, was made optional in starting a business under the new Companies Ordinance (Chapter 622). A company can now execute a document either by signature or using a common seal, at their discretion.

Cambodia: A seal is still required although the Law on Commercial Enterprises, Article 115 states, 'An instrument or agreement executed on behalf of a company by a director, an officer or an agent of the company is not invalid merely because a corporate seal is not affixed thereto. (Note: many legal and financial transactions in Cambodia use a combination of signature with photocopy of ID card or thumbprint)

[13] vanStel, Storey and Thurik (2007); Blanch- flower, Oswald and Stutzer (2001); Klapper and Love (2011); Dreher and Gassebner (2011)
[14] Why are minimum capital requirements a concern for entrepreneurs? Doing Business Annual Report 2014
[15] Micro, Small and Medium Enterprises around the world: How many are there and what affects the count? Kushnir, Mirmulstein, Ramalho, World Bank/IFC 2010

Some countries still have a separate and relatively expensive step to check and reserve the proposed company name. If the business register is open online, could the entrepreneur choose whether to check it or get legal or other business service support to assure the name is within the rules? If a company or enterprise can be registered immediately, what is the need for a name reservation period?

Box 5. Checking the name of a new business in the UK

The entrepreneur checks the name by themselves against the legal restrictions and the Companies House and Trademark Registers. They may have to change the name if someone complains and Companies House agrees it's 'too like' a name registered before yours. Fewer than 10 cases per year are taken to the Company Names Tribunal.

A goal-based approach to company formation and termination, with simple standard models but flexibility allowed if wanted

The needs of small company start-ups and big companies are different and the risks they pose can be different too. The demands at registration should be the minimum needed to meet the relevant economic, social and environmental requirements. The corporate registry typically contains answers to questions such as, 'Who makes the decisions in a company and benefits from them?' i.e. who are the shareholders and the directors, 'Who has the legal authority to enter into contracts on behalf of the company?', and 'At what address should legal notices be served?' Especially for small companies, the use of this information should be reviewed and the benefits of more extensive information assessed against the costs. An entrepreneur may just want a simple clear requirement: 'Just tell me what to do'. Model company statutes are able to provide this. However, larger, more complex businesses value options for flexibility.

Box 6. UK Company Law reform: 'Think Small First'- Some of the proposals for small businesses

Legislation should provide a self-contained statement of the law for the small and private companies. More detailed provisions can be added for larger and public companies.

- Simplify the law for private companies generally, by simplifying the model constitution, simplifying capital maintenance rules, removing the requirement to have a company secretary
- Simplify the law further for "owner-managed" companies (owners and directors are the same people)
- Simpler forms of report and accounts

Exemption from audit for smallest companies. (Note: Latest review, after further modifications to the law, is that up to 90% of eligible companies take advantage of this exemption, broadly in line with the RIA and it is a valuable reduction in burden for small companies. The take-up of audit exemptions is generally lower for companies that reported having shareholders, lenders and/or external investors, suggesting that these companies may undergo audits to satisfy and provide confidence to these external parties.)

Source: Modern Company Law, a Consultation Document from the Company Law Review Steering Group, March 2000

While the registration rationale is similar in all cases, in practice, the amount of information that they contain and what is publicly available differs substantially between countries. Besides the basic information - shareholders, directors, officers, and legal address, the law may also require the registry to hold and make public the articles of association, financial accounts, and the capital structure, including the types, numbers and rights of outstanding shares.

Box 7. Croatia – Simpler company form

A 2012 law allowed a new, simpler form of Limited Liability Company (LLC) in Croatia, which also required a minimum capital of under $2 (cf $3,571 before). In the first 12 months, 8 407 simple LLCs were established and only 5 488 of the old form were private LLCs.

The Simple LLC cannot have more than three members/shareholders and can only have one member on its management. The simple company registration process is more user-friendly, via a prescribed form that needs to be filled by a Public Notary, stating only the intention to form a company, the list of members, the list of persons authorised to manage the company's business and acceptance of a member of the nomination to manage the company. The form is signed by all members and lodged electronically with the business court registry.

Some jurisdictions, such as the UK, have allowed flexible entities. An objects clause was originally to do with the state's granting of a concession for private individual to 'operate a trade' and anything contracted outside those objects was considered null and void. Under Companies Act 2006, Article 31: (1) unless a company's articles specifically restrict the objects of the company, its objects are unrestricted. This allows innovative business models to develop and companies to take advantage of opportunities. These could range from the transformation of a manufacturing business into a service delivery business, a restaurant developing its own farming or vocational training to a physical school turning into online educational institutions. As technology enables faster change, this becomes more appropriate. It does make it hard to use business registers to signpost other relevant licensing or permitting requirements but this is rarely done anyway. It puts the onus back on the entrepreneur to check the regulations s/he is required to follow. It is worth noting that companies still have to be classified by SIC code for statistical purposes.

Nonetheless, law in this area will continue to develop. For instance, due to concerns about illicit domestic and cross-border money laundering and tax evasion, discussions from the June 2013 G8 summit agreement ensured that companies should obtain and hold adequate, accurate, and up-to-date information on their beneficial owners. There has been subsequent G20 and EU action and this information is starting to be held in national registers.

Clear rules and procedures for the closure of a business are also vital for market efficiency and confidence of investors and consumers. Attention to this area of law has tended to come after simplification of start-up arrangements and the variation in any chosen measure tends to be wider. The most significant issues are the cost – and how much of the value is lost in inefficient bankruptcy procedures, time taken and then the priority of claims and extent of court involvement. In many countries, the need to engage with the judicial system is a significant disincentive in seeking to recover money through insolvency proceedings but the ability to resolve commercial disputes, of whatever kind, is very important for a supportive business environment.

Table 1. 1 Comparison of ASEAN member state performance on insolvency measures

	Brunei Darussalam	Cambodia	Indonesia	Lao PDR	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Resolving insolvency Ease of Doing Business ranking	57	72	76	169	46	164	56	29	23	125
Cents on the dollar recovered in insolvency	47.2	13.9	29.9	none reported	81.3	14.7	21.3	88.7	67.7	21.6
Time taken to liquidate after reorganisation (years)	2.5	6	2	none reported	1	5	1.7	0.8	1.5	5

Pillar 2: Elimination of multiple checks and validation in the process

To eliminate duplication of information obligations

Some countries put more emphasis on public officials ensuring that the information is accurate, while others put the onus on the applicant, and manage complaints if they arise. It is important that the cost and benefit to entrepreneurs, agencies, other businesses and the public are assessed; for example, name checks and notarization. A notary public is an official witness to the free and willing signing of one or more documents by one or more people whose identity the notary has verified. However, it plays a more limited role in protecting the proponents by ensuring the legal form or articles are suitable. Systems which require notarisation still often also require identity documents to be submitted for checking at registration. This often shows that requiring information to be notarized can be an expensive process for small companies and with limited benefits gained in the process. Nonetheless, as company law is clarified and documents are standardised, the need for legal advice for simple company formation is reduced.

Box 8. Comparison of Company Memorandum and Articles of Association standardisation and notarisation

The Articles of Association (or incorporation) along with the memorandum of association (if required) are the constitutional documents of a company. They set out the company's operating rules - the responsibilities of the directors, the kind of business to be undertaken, and the means by which the shareholders exert control over the board of directors. The Articles make the company a legal entity (legal personality). National rules vary:

- **United Kingdom:** At registration, companies are offered a standard ('model') template for the Memorandum and Articles of Association. If these are used, the company can be registered online directly.
- **Myanmar:** Applicant is given standard Memorandum and Articles when they reserve a company name. These will have to be certified (stamped) for a fee.
- **Singapore:** Companies limited by guarantee and unlimited companies must register articles of association, while for companies limited by shares, registration of articles is optional. If no articles are registered, then Table A in the Fourth Schedule of the Companies Act will be applicable by default as the articles of the company. In practice, companies tend to register their own customized versions of Table A.
- **Indonesia:** An applicant must arrange for a notary to obtain the standard form of the company deed and notarize company documents
- **Philippines:** Articles of incorporation and treasurer's affidavit must be notarized.

Nonetheless, it is equally important to ensure that the data inserted in the company register are verified and that, if automated, do not get corrupted. Simplification processes must therefore go in parallel with the efficient co-ordination and integration of data across the different agencies. Administrative simplification can contribute to reducing informality, but must also be supported by strong investment.

It is equally important to understand what is required from a business and to tailor-fit this in the business registration system, For example, a more integrated system would ensure that businesses are able to obtain authorization at once and minimise the need to provide information multiple times.

Easy access to clear, accurate information about what is required

How far should a potential business owner have to go to find out what they need to do to start up? The information should be widely available and accurate. The internet is littered with sites with out-of-date requirements that were not changed when the law was reformed. This is even more often true for the translations. How far are national languages and local institutions respected? This is the first stage of making the regulatory process transparent. Involve businesses and experts in giving support to businesses in preparing the material in a way that works best for new businesses.

A simple and practical process to follow

Regulatory and administrative procedures should be streamlined and transparent. There should be the fewest sensible number of procedures required within a time frame e.g. only one at any time. Agencies should work with representative groups to design the processes and make sure that feedback is asked for, welcomed, and is used to make improvements. Best practice is to use impact assessment – with even simple cost-benefit assessment – to assess the value of changes. The aim should be to minimise aggregate regulatory burden in order to stimulate economic efficiency, while achieving intended benefits of the regulation. Consider both types of cost: (1) actual cost of complying with the rules, such as hiring a notary and (2) the administrative cost of dealing with the process, such as the time spent going to the agency office or making five copies of the documents. Involving stakeholders in the process, and learning more about their experiences, will help make these cost-benefit estimates more realistic.

It is also a good idea to check if the requirements are practical. For example, it would necessary to ensure that certain requirements do not create a situation where a bank cannot open an account for a business which is not in the registered but the law also requires evidence of a bank deposit before a business could be registered.

Pillar 3: Commit to time frames

Transparent service standards (speed, timeliness, feedback and redress)

A way of driving improvement is to set measures for the standard of the service that can be expected, and then to set targets and publish performance.

Speed is important for businesses. Agencies should set targets for maximum response and processing times. If time limits are defined, then a decision is needed regarding what happens when the limit is reached. A few jurisdictions have a 'Silence is Consent' rule: if the deadline is passed without certification or explicit objection, the business is automatically considered registered. This approach was pioneered in Italy and currently enforced in Armenia, Georgia and Morocco[16]. An alternative is 'Silence is Negation' where the business can immediately appeal as it is assumed that the application has been rejected.

Table 2.1. Singapore – ACRA Service Standards (extract)

Business Registration Department	
Registration of new business (direct registration)	100% within 15 minutes of payment
Registration of new business (processing of name appeal)	100% within 3 working days of complete submission of information
Online renewal of business registration	100% within 15 minutes of payment
Processing of incorporation /	98% within 15 minutes of payment

[16] WB : Doing Business in 2005, Obstacles to growth.

registration of companies	100% within 2 months of payment
Customer Relations Department	
Attending to public at Compliance Enquiry Counter	95% of customers attended to within 30 minutes of waiting time 100% of customers attended to within 60 minutes of waiting time
Attending to public at General Enquiry Counter	95% of customers attended to within 60 minutes of waiting time 100% of customers attended to within 90 minutes of waiting time
Compliance Department	
Processing of application for extension of time (private and public unlisted companies)	85% within 5 working days of payment 100% within 14 working days of payment
Striking off names of companies from the register	85% within 6 months after processing the application for striking-off (no objection cases) 100% within 8 months after processing the application for striking off (objection cases)

Table 2.2. Hong Kong Companies Registry – Service standards (extract)

Service	2015-16 Targets		2016-17 Targets	
	Service Standard (Note 1)	% meeting standard	Service Standard (Note 1)	% meeting standard
	(expressed in working days unless otherwise specified)			
Registration of new companies (Note 2) • local company delivery in hard copy form delivery in electronic form Non-Hong Kong company	 4 1 hr 13	 95 90 95	 4 1 hr 13	 95 90 95
Change of name of local company Delivery in hard copy form Delivery in electronic form	 4 1hr	 95 90	 4 1 hr	 95 90
Registration of general documents Delivery in hard copy form Delivery of specified forms in electronic form (Note 3)	 6 24 hrs	 90 90	 5 12 hrs	 90 90
Registration of charges	8	90	7	90
Deregistration of companies Issue of approval letter	 5	 95	 5	 95

Source: Notes :

1. The service standard for delivery in hard copy form excludes the day of delivery. The service standard for delivery in electronic form is calculated from the time of e-submission.

2. Business Registration Certificates are issued by the Companies Registry for the Inland Revenue Department together with Certificates of Incorporation.

3. The service standard applies to specified forms which are submitted electronically and automatically processed by the Integrated Companies Registry Information System.
Agencies should also offer clear appeals process. It is best practice for the appeal to be considered by someone other than the original official.

Box 9. Examples of administrative appeals processes

WASHINGTON STATE

Reconsideration is used when you identify a mistake of law or fact made in the determination that could change the result of your decision. This process is available for mainstream cases only.

When does a petition for reconsideration have to be made?

The written petition for reconsideration must be postmarked or delivered by the due date shown on the decision (plus any extensions granted prior to the due date).

What happens if a petition for reconsideration is not filed on time?

When the petition for reconsideration is not filed on time, the decision becomes final. If you do not pay the assessment by the due date, additional interest and penalties will accrue.

Can I request an extension for filing a petition for reconsideration?

Yes. An extension may be granted on the same grounds as other petitions.

What should I include in a petition for reconsideration?

A petition for reconsideration must identify specific mistakes in law or fact that requires reconsideration. If you fail to specify mistakes of law or fact, your petition for reconsideration may be summarily dismissed without a hearing.

You must include any new documents and explanations with your petition for reconsideration. If your petition for reconsideration is accepted, it will be assigned to the original TRO so that any errors in fact or law can be corrected and new arguments and information addressed.

Will there be a reconsideration hearing?

Most petitions for reconsideration can be decided without a hearing. The TRO may decide to hold a reconsideration hearing in some cases.

How will I be informed of the reconsideration decision?

The TRO will issue a written reconsideration decision and send it by regular US mail to you and your authorized representative.

AUSTRALIAN BUSINESS REGISTER

If you are not satisfied with a decision that has been made on behalf of the Registrar of the Australian Business Register, please call our information line first so we can try to resolve the issue. If you are still not satisfied you have the right to lodge an objection. You have 60 days from the date you received the decision to lodge an objection.

When we receive an objection, we review the facts and evidence you provide and come to a decision. We may contact you or your representative to discuss your objection or request further information. We will let you know if your objection will take longer than usual to decide (for example, because it raises complex matters).

Both these organisations have further appeals processes to the courts.

Pillar 4: Inform businesses of their rights

Incentives aligned to promote compliance

Despite the potential benefits, most businesses see registration, at best, as a necessary evil - something they have to do before they can get on with their real activities. So as well as making it as simple as possible, government should make sure that the incentives to comply are aligned as well.

Examples of relevant action could include additional start-up advice being offered alongside registration or to newly registered businesses or tax breaks for small registered businesses. Enforcement should be well targeted and supportive of compliance: registering a business must not be an opportunity for rent-seeking behaviour by officials. If a level playing field is particularly important, such as of food outlets for public health, then there should be compliance checks for all businesses operating in that field.

Box 10. Business registration compliance and enforcement thinking:

Some examples from Malaysia

- *Links to support and advice.* At incorporation, the business is automatically registered with specified authorities and with the SME Corp. This is a network of 'one-stop centres' for business advisory services, relevant information on Government funds and incentives for SMEs, including tax incentives, and also provides a channel for feedback on SME issues.

- *Companies Commission of Malaysia (SSM).* SSM is a strong proponent of the philosophy of "enforcement by education". With the 'Balanced Enforcement' approach, SSM believes that education complements the effectiveness of enforcement initiatives in ensuring voluntary compliance. The Companies Commission of Malaysia Training Academy (COMTRAC) was established in 2007 to educate stakeholders and strengthen public awareness about the need, importance, and benefits of complying with corporate legal provisions. Since implementing this approach, the compliance rate has improved from 40% in the early 2000s to 93% in 2016.

- *Tax compliance.* The approach includes an education and outreach programme (including one-stop service counters at tax offices), verification (surveillance, public information gathering, cooperation with other government agencies for data matching between asset acquisitions e.g. through stamp duty on property, motor vehicle registrations and insurance) and tax payer database), and enforcement

Source: SME Corp and SSM websites, https://www.imf.org/external/np/seminars/eng/2013/asiatax/pdfs/malaysia1.pdf

Singapore uses the power of IT to generate and send reminders for Annual General Meetings and annual returns to the businesses at its registered office address and to all officers of the business at their residential address. If the deadline for filing the return is passed, the system will again generate reminders to the business and its officers giving them a grace period to rectify the default. Once the grace period has passed and the AR has not been filed, the records will be transmitted to the State Courts.

II. GOOD PRACTICE IN JOINED-UP GOVERNMENT

Pillar 5: Have a credible system for reviewing regulations

In the past when societal problems were less complex and information flowed more slowly, governments could deal with matters in a 'top-down', hierarchical arrangement. However, with IT services offering the possibility for more personalised and connected services, this approach no longer works so well. Even an apparently simple issue, such as registering a company, is not usefully contained within ministerial or agency boundaries. A business should not have to supply the same information to more than one government body.

One term to capture this type of development is ‘joined-up government’. The New Labour Government in Britain, in 1997, coined the term to mean enhancing coordination and integration within the public sector. It was not only about removing organisational boundaries but also the need to align targets, incentives (such as joint funding, pooled budgets and linking remuneration to joined-up targets), structures, and cultures of authority in order to fit tasks that cross organisational boundaries.

Experience shows that this breaking of silos is the most difficult change management agenda of all. It is common to create new structures and processes to oversee and account for the delivery of outcomes. Such arrangements are usually needed both at the political level (such as cabinet sub-committees or horizontal ministerial portfolios) and within the administrative system (such as cross-departmental working groups or inter-agency task forces). In some cases, local or bottom-up cooperation is more innovative and successful and has lessons to offer for any joined-up government initiative. Greater use of e-technology is often part of the solution but it is far from the only approach that is needed.

Governments should:

- make effective use of one-stop shops
- ask for information only once
- consider a unique business identifier
- make appropriate use of ICT
- provide appropriate protection for data
- implement simple and transparent fees and payment systems
- take the opportunity to reform business licensing too

Key features of the British initiative included new structures such as cross-departmental policy and delivery units and the allocation of cross-cutting portfolios to ministers. In New Zealand, standardised governance arrangements for public service agencies were introduced. In Australia, a number of one-stop-shops were created at both federal and state level to provide easier citizen access to services. In Singapore, successive e-government action plans provided the basis of greater service integration and accessibility. Cross-agency project teams are now commonly used to tackle inter-agency matters and, through its use of standards-based infrastructure, application services and supporting processes and procedures, Singapore has emerged as one of the world leaders in e-services.

Many countries often work within silos within and across institutions that are responsible for business registration. This therefore makes it challenging to bring together like-minded institutions to adopt meaningful changes in business registration practices. Performance management and incentive systems can play a role in influencing institutional behaviour to shift from silo and vertical administration to horizontal governance to further promote good business registration practices.

However, there are also many examples of failures in joined-up government initiatives, particularly in the area of e-government and the use of IT to integrate services. Based on international experience, a number of common critical success factors towards achieving joined-up government can be identified. These include: (1) the identification of clear objectives and political commitment; (2) the existence of viable structures (particularly at lower levels of government); and (3) the allocation of an appropriate budget and the alignment of that budget with joined-up goals and clear accountability lines. For public servants used to working in discrete parts of the public sector, engaging in substantive joined-up government work requires emphasis on particular values including collaboration, integration, innovation, risk-taking and flexibility.

Make effective use of one-stop shops

The one-stop-shop concept is the arrangement of functions together for the convenience of the customer, in the way a mall or supermarket/hypermarket does for a shopper. The one-stop shop can be physical or online, provide only information or also used for transactional processes. At best, a business can be set up in a single visit and with a single (affordable) payment.

In reality there is a continuum of varieties of one-stop shop, from a single door with information board into separate agency functions to a single desk dealing with all functions, a single visit or single interaction online platform, and single payment points.

In the past, in many civil law countries, notaries coordinated company start-up procedures, effectively compensating for the failure of various government offices to work together. For the entrepreneur, the notary was the one-stop shop. Some bodies, which have become known as 'one more stop shops' are there simply to co-ordinate the activities of other agencies on behalf of the entrepreneur – they are additional administrative step but at least it's a single, hopefully friendly face to deal with.

Several countries, including Colombia, Portugal, and Estonia, have concluded that, for straightforward incorporations, a notary is not necessary. In Belgium, Italy, and Spain notaries have become key intermediaries for electronic filing. In the United Kingdom and Ireland, company incorporation agents have for many years been active as "one-stop shop" intermediaries and are finding a new role in connection with electronic filing, but there is no obligation to use their services.

The first inter-agency coordination is usually between business registration and basic business tax registration. Both agencies can often see the links and the potential for simplification. The next most common registrations are for labour requirements but these are much more rarely included. European experience is that it can be very difficult for other agencies to see how they benefit from the one-stop shop and the lead agency has often had little or no contact with them before, making communication harder still. The Albanian National Registration Centre is one of the few examples where investors can complete all the procedures for business registration, registration for health insurance, social insurance and labour directorate registration, with a single application. But they must then register separately at the Municipality Bureau of Internal Revenue. Benin established a One-stop shop, *Guichet Unique de Formalisation des Entreprises (GUFE)*, as a single access point to post-registration requirements - tax declaration, application for import and export licences, tradesman card, registration with ministry of trade and affiliation with Social Security Office. Only later did the commercial registry join, for approval of incorporation documents.

Box 11. Singapore – OneStopShop@ACRA, Accounting and Corporate Regulatory Authority

A new business registers with ACRA and is then given the option to register for one of the following services:

- Domain Name Reservation
- Open Bank Account
- Register for Goods and Services Tax
- Activate Customs Account

- Subscribe to free e-newsletter
- Sign up for GeBiz Alerts

All the above services are managed by other agencies. If the applicant signs up for any of them, the details are sent by ACRA to the relevant agency.

Few governments have tried to combine regulatory requirements and other MSME business support activity in their one-stop shops. Australia has adopted a single portal approach - business.gov.au - for all government information, transactions and services. It is marketed as a whole-of-government service providing essential information on planning, starting, running and selling or closing a business, as well as access to business compliance requirements. The Philippines *Negosyo* centres are another rare example, aiming to provide business registration assistance, business advisory services, and business information and advocacy.

How well do one-stop shops deal with local registration and other regulatory requirements?

Box 12. Finding out about local requirements for a business

In the USA, Business licenses and permit are found at every level of government (federal, state, region, county, city). administrations seem largely to have made use of on-line portals to help businesses establish the nature and scope of required permits and other requirements. The U.S. Small Business Administration provides a “Business Licenses and Permits tool” which helps business identify the licenses and permits that they require and provides links to web pages, application forms and instructions. The tool also includes links to portals for each of the fifty states.

In Australia, the Business License & Information Service (ABLIS) provides location-specific information on required state licenses and permits.

Most businesses require some form of local - municipal/regional/provincial - registration but decentralization, deconcentration and devolution have often created cultural and technical barriers to making these links.

The largest attempts to achieve this are the European Points of Single Contact which will be discussed later.

Provide information once only

A business should not have to supply the same information to more than one government body. As well as being a waste of time, it makes data entry errors far more likely and failure to update information in all systems almost inevitable. Enabling a single data provision requires cooperation between agencies, at the least making them share data. Further developments range from consolidating registrations into a single application to interconnecting databases or registries.

In 2016, it was reported that over 80% of corporate registries share info with other public agencies and over 50% take information from other agencies, for instance, sharing registration with tax authority or checking IDs.

For example, from 1 May 2015, India reduced the number of forms required to incorporate and start a business to just one, INC-29. Until then, it had required a minimum of 8 forms with much duplication of the information, including one each for a digital signature certificate, approval of the company name, registration of the memorandum and articles of the company, approval of the registered office and a separate form for every director.

Since 2005, Norway has required all public registers and public administrations to use the data in the Central Coordinating Register for Legal Entities instead of asking businesses again for the data.

Box 13. How far is information shared between the business registry and tax authority in ASEAN countries?

Brunei Darussalam – The Registry of Companies notifies the Collector of Income Tax of the company's registration and basic details. The company collects a letter from the registry to take to the tax office.

Cambodia and Indonesia – The company must register for tax separately.

Lao PDR – The company gets a letter for the tax office when registered at Enterprise Registration Office.

Philippines – The company is issued a Taxpayer Identification Number at registration but must still register in person with Bureau of Internal Revenue

Malaysia – The company must register separately for income tax and PAYE. This is done online after receiving the MyCOID number. To register for GST the company needs to submit further details with to Royal Malaysian customs.

Myanmar – companies are obliged to register for commercial tax with the tax authorities one month before the start of their business and inform the tax authorities within 10 days of starting a business. Each month the Company Registration Office also sends a list of newly registered to the relevant townships for cross-checking.

Singapore, Thailand, and Viet Nam – Information for tax officials are automatically registered at business registration.

Source: World Bank Ease of Doing Business 2016
Note: Because of national variation between time and thresholds, VAT registration is often a separate activity

Pillar 6: Move towards a unique business identifier

The next developments are the use of a unique ID for individual and legal entity, then linking all information to that entity. There is a basic data integrity improvement from using a unique ID but the full efficiency benefits for an economy depend on all trading entities being in the same system. For instance in New Zealand, 19 percent of actively trading businesses in New Zealand are sole traders, 15 percent are trusts, and 12 percent are partnerships. A further four percent of entities that are not businesses in the traditional sense undertake business activity, such as government agencies and the not-for-profit sector. The full benefits (network effects) of the NZBN to the wider economy depend on all of these having an NZBN.

Box 14. New Zealand Business Number (NZBN)

NZBN is a universal identifier which will enable businesses to easily update, share key information and interact with each other and the public sector. NZBN has been introduced to streamline all essential business information, and over time will become the only number businesses will need to use to interact with a range of other businesses and government agencies. Both registered and unincorporated businesses may have an NZBN.

Government agencies will progressively recognise businesses by their NZBN. Linking information between these agencies and businesses will also lead to improved data quality and reduced rework. Concerns raised during consultation focused on maximising the benefits of the NZBN, while protecting the privacy of individuals in business, such as sole traders.

The success of the NZBN depends on rapid uptake of the number by businesses and state sector agencies. This is needed to build momentum for infrastructure development and private investment in commercial opportunities. Otherwise it becomes another number, rather than the intended replacement for the many current identifiers.

Source: Cabinet Circular CO (16) 3 to all Departments, Ministerial Direction to Crown Entities issued under Section 107 of the

Crown Entities Act 2004, NZBN regulatory impact statement, May 2014

Pillar 7: Make effective use of ICT

There is ever-increasing use of computer systems for managing corporate registration systems, for back office data storage, for giving information, to allow documents to be sent and finally to enable online registration. Streamlining registries and databases offers faster processing and helps to meet growing demands for company information within government for reduction of duplication and regulatory oversight. It improves data integrity by reducing reduce the number of times information has to be given. It can improve access for firms operating at a distance from registrar's offices and application forms can even be pre-filled with information already held on other government systems.

But all too often, even sites that work are not user-friendly. Operators and applicants need to be able to find simple information about what they have to do, save their application part-way through, have access to help to complete any forms or attach or retrieve documents and so on. Even navigating around the system has to be carefully thought through e.g. the Bulgarian Point of Single Contact has an A-Z search facility, but licensing is under 'A' for 'Application for …' rather than the activity that the licence covers.

Box 15. E-enabling changes in corporate registries in 2015

Albania introduced electronic signature for the first time.

Arizona, USA implemented online LLC formation.

Brazil (*Alagoas Maceio*) introduced a digital registry for sole traders.

Colombia implemented e-filing for incorporation and changes.

Denmark implemented a brand new digital registration solution that increases quality of registration. It enables automatic checks and facilitates users to do additional types of registrations online.

Gibraltar introduced electronic consultation, electronic archive and electronic filing on essential documents.

Hong Kong launched a full-scale electronic filing service, covering all specified forms. The registration process can be completed in less than 24 hours for specified forms that are submitted electronically and processed automatically.

In Ireland, since June 2015, registration of charges (mortgages-security interests) can only be completed electronically.

Macedonia (The Former Yugoslav Republic) introduced electronic filing of changes.

Norway extended the scope of the types of applications that are processed electronically and automatically by the business register. Automated procedures include several types of notifications to the register, such as change of business address, email address, mailing address, auditor, CEO and a few more. In addition to this, they have introduced a full electronic to enable the whole process, from incorporation to registration of the limited liability company, to be done electronically.

Israel launched a web system for electronic filing of applications for registration of companies and changes to company information.

Mongolia updated their law governing the web-based entity registration.

Qatar recently launched an e-service portal.

Spain introduced new legal provisions making e-filing of accounts mandatory and governing electronic documents for the registration of sole traders with limited liability.

Source: The International Business Registers Report 2016 (ASORLAC, CRF, ECRF AND IACA)

Business registries are generally leading the way in these e-enabled registry solutions, with the pressure and support from large companies to help them deliver improvements. But, as every organisation knows, getting IT systems to work sounds easier than it is in reality. Although data is limited, survey and poll results about e-government initiatives in developing/transitional countries show that 35% are total failures, 50% are partial failures and only 15% are successful[17]. Even in highly developed economies, IT projects rightfully have poor reputations.

Box 16. Austria – implementation of web portal for business registration

In Austria, www.usp.gv.at is estimated to have reduced companies' costs by €100 - €300 million. The site's success since launch has been seen in significant user growth.

The portal has, at the same time, been a medium for administrative reform, in particular improvement of processes and the elimination of multiple notifications.

Further benefits have been better data quality, and reduced maintenance and set-up costs for new e-Gov applications, with savings of up to €20 million expected by 2016.

Use of www.usp.gv.at :

	2010	**2011**	**2012**	**2013**
User sessions	363 783	489 606	586 477	1 286 405
Annual growth (%)		35%	20%	119%
Unique clients	281 289	449 575	511 486	753 460
Annual growth (%)		60%	14%	47%

The success of the Austrian site is seen as a function of its speed and relevance, which resulted from:

- Involving senior politicians and administrators from the very start to ensure project support;
- Putting in place an appropriate legal framework to support the e-Gov project;
- Recognising that organisational and legal aspects can be more challenging than technical problems – and planning accordingly;
- Co-operating with a wide range of business-related partners to ensure a high quality of information; and
- Ensuring collaboration across government (federal and regional), and recognising this takes time.

As well as the need to simplify the process and authorisations before bringing specifying an online process, the computer and e-infrastructure has to be reliable, sufficient trained and competent staff available and the applicants need support. In developing economies, where rural systems may still, or until recently have been, paper based, these changes are significant. There is also a more fundamental question, particularly in developing economies, about access to online systems. While mobile penetration is growing dramatically, this doesn't necessarily mean that even tech-savvy entrepreneurs have computer screen access. Can the portals be truly responsive (mobile-friendly) and is the support available compatible with using the same device to fill in the form?

[17] eGovernment for Development Information Exchange, coordinated by the University of Manchester's Institute for Development Policy and Management

Provide appropriate protection of data

Particularly when systems are being brought online, issues of data protection and the risks of identity theft have to be considered. Most registry applications require at least a username and password and the option of automatic notification, if registration details are changed. Within the EU, 17 Member States have stronger electronic identification (eID) systems but cross-border recognition remains to be seen.

Box 17. eID implementation for businesses in Denmark

NemID consists of a user ID, password, and a keycard with "keys" (time codes). When an employee logs on, they must enter their user ID and password and the code from the keycard. This indicates they are authorized to contact public authorities, access secure portals and data and sign documents on behalf of the business.

A business may request up to 3 free NemID signatures for its employees.

Enable online applications

In addition, a problem with all these automated processes is the verification of signatures. We discussed earlier some of the issues with notarisation of signatures on company documents. The use of electronic communication presents further challenges. The acceptance of records of approval reduces markedly along the spectrum from pen and paper, through photograph, fax and scan to digital and e-signatures.

In ASEAN alone, the full spectrum of forms is used. In Cambodia, many legal documents are still signed by thumbprint which is perceived as more secure than a written signature and is often accompanied by photocopy of the individual's ID card. Scans of original documents are not widely accepted although it is probably legally enforceable. However, in Indonesia, Malaysia and the Philippines, a digital signature is accepted while Singapore has recently adopted the use of e-signature.

In a similar way that requiring bank transfer for fee payment would increase the number of businesses with a bank account or perhaps create a barrier to registration, the acceptance and use of the next form of signature approval along the spectrum could incentivise its recognition in general commerce.

Box 18. 'e-signature' systems

Electronic signature

An electronic signature is, like its paper equivalent, a legal concept adopted by a person with the intent to sign a record. An electronic signature can be broken down into these components:

- A method of signing
- Data authentication
- User authentication
- Capture of intent

Digital Signature

A digital signature refers only to the encryption / decryption technology on which an electronic signature solution is built. Digital signature encryption secures the data associated with a signed document and helps verify the authenticity of a signed record. Used alone, it cannot capture a person's intent to sign a document or be legally bound to an agreement or contract.

Implement simple and transparent fees and payment systems

Best practice is for all types of public sector registration and permit/license requirements to be available at a flat fee, set simply to cover processing and any related costs, such as mandatory publication of information. Some countries have chosen, for a time, to incentivise business registration by making it free. This helps reduce the costs of entry but is not sustainable. Roughly 50% of corporate registries globally are fully funded by fees collected while the rest receive government support or funding.

Box 19. Companies House – example fees and payments (1)

Company registration

- *Online (using standard articles):* £12, payable by debit, credit card, or PayPal.
- *By post:* £40, payable by cheque.
- *Same day registration*: £100. Get application at Companies House by 3pm.

Note: All Companies House fees are set by regulation, fees shown are as of February 2016.

Requiring fee payment through a bank can encourage the commercial use of banking and reduce the opportunity for informal payments. However, across many countries, a significant proportion of the population is unbanked, including entrepreneurs. This means that it is probably too early to mandate payment by bank transfer. The local context must be taken into account when checking whether sufficient branches are available to make this practical, or whether, for instance, MFI should become involved.

Governments are starting to consider single payment points for individual and business interaction with government. Drivers range from convenience and efficiency to transparency and reducing the opportunity for corruption.

Box 20. Canberra, Australia: Framework for the payment of ACT Government bills

The objective is to accelerate business engagement with the digital economy, help businesses access new customers and markets and to continue to remove red tape.

It will provide:

a) Consistency in service offering – progressively standardising the suite of payment services and bill presentation across government, while taking into account the limitations of the current systems and the needs of specific business or regulatory processes

b) Facilitate a staged approach to electronic notification and presentment of bills to the community

c) Implement strategies to further promote electronic payment to government.

The key principles for the policy are:

a) Cost effective for government – direct transactional costs (bank fees, payment infrastructure etc) must be as cost effective as possible given the transaction value and volume

b) Process efficient – downstream processing costs (impact on other parts of government etc) must be as efficient as possible

c) Customer convenience – simple and cost effective options for the customer

d) Digital first – new services must be designed with a digital payment solution foremost allowing customer choice of digital service

e) Adaptable – payment methods that are flexible, ensure fit for purpose while able to adapt to emerging payment trends and facilities.

Source: ACT Government Bill Payment Policy 2015

Box 21. GOV.UK Pay

The objective is a uniform payments platform to allow government bodies to improve the way they reconcile payments across multiple payment methods, such as debit cards, credit cards and digital wallets.

The UK government knows that a cross-government platform cannot be developed in isolation. It needs collaboration, business process analysis, and lots of user research. The discussions have already taken place with many colleagues across government to find out how they currently take payments and how that could be improved. That research is being intensified and is focussing on taking credit and debit card payments for some online transactions of the first partners: Companies House, Environment Agency, Home Office and Ministry of Justice.

An important way in which corporate registration enables the economy is by reducing the risk of business-business transactions by allowing the contracting partners to know that each other are legal and currently active and solvent. This information is a type of public good (the value and availability is not reduced by use) and is usually provided free. It should be highly accessible. More detailed data is often legally accessible but charged for. Other permits and licences are also often displayed at the business premises but less often accessible online.

Box 22. Companies House – example fees and payments (2)

Information services

- Online search of all public data held on companies – free of charge e.g. basic company information and status, nature of business, date of last and next accounts, full transaction filing, mortgage charge data and disqualified directors details
- Search company information using WebCHeck – basic information free, £1 per document image
- Companies House Direct subscription service – access to all 130million documents held, going back 20 years. Subscription £4 per month and £1 per document image
- Historical company records, document packages, company reports and appointments and detailed mortgage information. Can be sorted by company or individual.

Note: All Companies House fees are set by regulation, fees shown are as of February 2016.

Pillar 8: Take the opportunity for business licensing reform

This can be a significant regulatory reform project in its own right and is often more politically sensitive than other business registration reform, because the costs and benefits are more distributed. It must be undertaken within the national contexts of de-concentration and de-centralisation. For many countries, even the first step of collating current requirements will be difficult in itself. Small business representative organisations should be involved as well as business support intermediaries.

III. FEATURES OF A MODERN NATIONAL BUSINESS REGISTRATION SYSTEM

Starting or formalising a business should appear to the business, so far as possible, as a single step. It is the public sector's responsibility to make the connections to different agencies work behind the scenes.

Company law should offer simple legal forms for businesses with standard or model templates, capital deposit requirements reduced or eliminated, and the need for the use of intermediaries, such as notaries, removed. There must be clear decisions on whether micro-enterprises, sole traders and other non-incorporated businesses should be included in the register: a single register may be simpler to maintain. It is best practice for registration to be an administrative not judicial process.

The process should be simple for the applicant. Best practice is to manage this through accessible one-stop shops, including virtual presence, with clear inter-agency commitments, funding and performance targets. These services could be provided by a government agency or could also be sub-contracted out. They should provide clear information on all registration and common licensing/permitting requirements. Any need for rare and highly specialised assessment e.g. major hazard installations and sources of non-standard support, such as sector-specific grants, should be signposted. The interface should be developed and improved in collaboration with business representative groups and using the skills of those who regularly provide support to start-ups.

There should be no duplication of information requests and a single application form should be used where possible, with requirements only separated if there is a clear reason to do so, e.g. if VAT registration is not required until after many months of trading.

An online process should be available but, recognising local contexts, probably a paper and face-to-face option too available reasonable locally, with support on request in all cases so that forms can be completed correctly first time. ASEAN has a young demographic, some with high IT skills, alongside a sometimes less literate older generation and incomplete infrastructure including electrification. For example, while there is high mobile penetration, computer access is more limited. Only 40% of the population have internet access[18].

There should be transparent service standards, mechanisms for feedback and redress and a minimum flat fee – set to cover only processing costs and transferrable electronically.

Government should move towards a unique business identifier for all interaction with public agencies, national and local, and consider the development of a single payment point to government.

Many of these elements, such as accepting online communication, shared data access and single application forms, will require legislation.

Enforcement should be designed to support business growth while achieving compliance. The public sector must consider who should have access to which parts of the information, for each agency, and how to maintain data protection while allowing suitable transparency and search. For instance, for the business registry, government will want to enable domestic companies to join global value chains. Allowing easy access to trustworthy registry information enables due diligence processes by larger players in the supply chain, reducing the risk for them of contracting with local companies.

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[18] www.techinasia.com/talk/digital-southeast-asia-q4-2015

Challenges and policy recommendations for ASEAN

ASEAN is committed to streamlining business permit and registration, to enable less costly and faster business formation. The Strategic Action Plan for SME Development 2016-2025 includes the establishment of one-stop shops, benchmarking for registration and obtaining construction permits and registering property and improving the capacity of policy makers to design, simplify and implement such systems.

POLICY RECOMMENDATION 1: Simplify legal company forms and requirements, such as capital deposit

There are opportunities for simplification in company forms and requirements in some ASEAN countries.

This is a regulatory simplification process. There is good practice to follow, with impact assessment and cost-benefit calculation advice available. Both compliance costs and administrative costs should be considered, although the one-stop shop steps below will add to the administrative burden reduction. The priorities should be:

1.1 Minimise remaining capital deposit requirements

1.2 Offer a simple limited liability company form, with model company documents and minimum necessary requirements for registration. Revisit the rationale and benefits and costs of notarisation**.**

1.3 Reconsider the need for other elements such as the company seal or certified invoices.

Table 3.1 Legal requirements for starting a domestic business in ASEAN member states										
	Brunei-Darusssalam	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
What name check is required?	Online name check and payment for reservation	Online search and reservation, fee paid online or at bank	Online clearance, with fee. Usually by notary public.	At same time as main registration application	Mandatory search and reservation online	At office	Online search but pay reservation fee in person	Online in same procedure as filing	Online search facility	As part of registration
Is a bank deposit required	no	yes. $1000 within 30 days of incorporation	no	no	no	yes for foreign company	yes		yes	yes - value set by bank $100-$300
Are there standard templates for company statutes (eg Articles)	no	no	yes - standard form of company deed	yes	no	yes (or rubber stamp)	$100		Articles not required except for company ltd by shares, but common	no
Must memorandum and articles be notarised?	no - but certified at registration	Form must be signed by share-holders and directors at MoC, public notary or Cambodian lawyer.	Must be notarised	no	Must be signed by lawyer or company secretary	Must be signed before lawyer or CPA	Must be notarised		Must be notarised	no
Is a company seal required	no - but used in practice	yes - registered and acknowledged by MoC		yes - two Ministries must give permission to carve then register at provincial department before use	yes (lawyer or company secretary)	yes (or rubber stamp)		yes	no - except for share certificates, but commonly used in practice	yes

Table 3.2. Summary comparison of ease of starting a business across ASEAN

	Brunei-Darusssalam	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
time (days)	14	99	22	67	18	13	28	2.5	25.5	24
cost (% of income per capita)	1.6	57.2	19.1	4.6	6.2	40.4	15.8	0.6	6.6	4.6

Source: World Bank, Ease of Doing Business 2017

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POLICY RECOMMENDATION 2: Map and simplify processes

Currently there is a significant variation across ASEAN member states in effort required to register a business. The average time needed, over 30 days, is skewed by outliers but there is room for improvement across the board.

Bring together a team, with effective representatives from the agencies involved and very preferably the private sector, especially small businesses. Evaluate how well agency-business interaction is working.

2.1 Map the processes. Start by finding out what is really happening now. Detailed mapping of procedures invariably yields surprises and opportunities for improvement.

2.2 Simplify individual procedures and reassess whether they can be completed in parallel. Is it necessary to ask for certain checks before the next step can be taken e.g. authorisation to print invoices and receipts by specified printer then bring them back for stamping?. Use simple RIA, at least calculating the administrative burden cost compared with any evidence of real benefit. How will data be keep up to date?

2.3 Set a common approach to fees across different procedures. Are fees going to be flat rate and set to recover costs? How will this be measured? Will offices handle cash? Government may want to encourage banking but this will be a barrier for some. According to KPMG, in 2016, only 27% of Southeast Asia's population have a bank account. In Cambodia, for instance, this number is 5%[19].

2.4 Establish a single business register for all types of enterprises. If possible, countries should look into the possibility of establishing a single business register for all business enterprises, which can be carried out in the process when adopting a one-stop shop approach (see policy recommendation 3). Once properly set and managed, this basic infrastructure has the potential to produce positive spill-over effects in statistical data collection, information for credit bureaus, legal documentation, etc.

POLICY RECOMMENDATION 3: Build on the one-stop shop approach

Build on the existing the one-stop shop approach – do not create another body[20]. The national one-stop shops of the ASEAN Strategic Action Plan for SME Development are realistic and yet will be a major challenge for all member states to achieve across all locations. The barriers include infrastructure – such as electrification, civil service capacity and co-operation between ministries and local governments/authorities. ASEAN should consider surveying MSMEs about the barriers they face, or working with the World Bank Entrepreneurship/Enterprise Surveys, for instance, to explore more detail across the region. Note that successful improvements elsewhere have been developed and implemented step by step.

Again, a team is essential, with effective representatives from the agencies involved and preferably the private sector, especially small businesses. Evaluate how well existing one-stop shops are doing.

3.1 Decide which processes to include first. Most ASEAN countries have started by integrating elements of tax registration into the business registry process. The next sizeable elements are labour requirements e.g. social security. Can there be a single form? Can the business have common number for the registrations – this could be a first step towards a unique business identifier?

[19] KPMG 2016, reference: https://www.techinasia.com/talk/438m-unbanked-southeast-asia-fintech
[20] How many stops in a one-stop shop. A review of recent developments in Business Registration. IFC 2010

3.2 Simplify fees and payment. Can there be a single payment and can one office collect fees on behalf of all agencies? Does the One Stop Shop keep any of the fees?

3.3 Where should the shops be and how will they be staffed? What is the appropriate provincial/regional spread? Will offices be under national or sub-national control?

3.4 How does the business get information about what they need to do? At the One Stop Shop, online or from other lcoations?

3.5 Can the business deal with just one person. Can they get help with filling in the form(s)?

3.6 Set service standards. Set targets and establish monitoring needs. Make sure that it is possible for businesses to give feedback and that there is a procedure for this to be meaningfully dealt with.

3.7 Specify any computer system. Who will enter the data? Can the information be shared electronically with other organisations; consider data security and future interconnection needs.

3.8 Will there be an online filing option? This is the move from online information to transaction. Will the online option include payment and transmission of certificates? ASEAN has multi-speed economies within and between its member states.

POLICY RECOMMENDATION 4: Consider other business permit / licensing requirements.

Table 3.3 Current one stop shops and combination of registration for business start-up in ASEAN member states

	Brunei-Darusssalam	Cambodia	Indonesia	Laos	Malaysia	Myanmar	Philippines	Singapore	Thailand	Vietnam
Is there a One-Stop Shop to facilitate the process? (more than one type of registration)		yes	yes … but does not cover name clearance, approval of deed of establishment, or Certificate of Company Domicile	no	yes - SSM and MyCOID online portal. Must register online if shareholders are only individuals. Else in person	yes	yes being introduced through Cities.	yes ACRA	yes Single Point Service Centre	yes National Business Registration Portal
OTHER MANDATORY, SEPARATE REGISTRATIONS (NOT Labour, Tax)			Certificate of Company Domicile - by head of village. Except Jakarta, separate application for registration certificate and trading licence	1. Register Articles with State Asset Management Office, with copy of ERC. 2. Location certificate 3. Approval of signage			Location - register with Barangay. Community tax certification. In business permit to operate			
TAXES – separate registration										
Business' or 'corporation' or described as 'income' tax	Collector notified and registration form issued at company registration.	with above	yes apply at office or online	yes - take letter from registration office and many other documents	Through web portal, attaching Certificate of Incorporation and director/manager details		Number issued at company registration but must go in person to register		with above	yes - pay local tax authority or through bank
VAT		with above	yes apply at office or online	yes	Online - requires bank account and business registration number	Register at township 1 month before start	Register and get authority to print invoices and receipts. Must then be stamped	with above	yes	Register to print own

LABOUR - separate registration										
Notify Ministry of Labour		yes. Written declaration before start. Then register enterprise ledger and payroll, certification of internal regulations, if large – recognition of election of shop steward	yes - within 30 days	yes list of employees taken for tax registration		yes			yes at Single Point Service Centre (or directly)	yes - within 30 days
Social Security		yes - with National Social Security Fund	yes	yes	yes, online	yes	yes		at Single Point Service Centre	yes
Health insurance or provident funds…	form issued at registration		yes		yes		yes	Mandatory Employee Compensation Insurance	at Single Point Service Centre	yes - with Social Security

IV. DRIVERS OF A MODERN REGIONAL BUSINESS REGISTRATION SYSTEM

When governments commit to integrating their economic development to achieve growth, they want to improve market efficiency. Regulatory heterogeneity or administrative barriers should not prevent companies from establishing themselves in the territory of other Member States. Cross-border trade has traditionally been the first area of cooperation. Regional free trade areas and customs unions have preceded economic integration and states have developed mechanisms for working together by creating systems to support these.

An internal market is enabled by a degree of regulatory cooperation, based on the establishment of common regulatory goals and principles, taking into account the current policies and regulations in place, and the challenges faced by the different countries. The experience is that managing structures to resolve issues of harmonisation and create common approaches is not easy.

The kind of issues that need to be addressed for regional business registration include key issues of company law such as company formation requirements and procedures, corporate governance, capital maintenance, mergers and acquisitions, accounting and audit, and market regulation[21]. After 10 years, EU member states are still struggling to implement achieve this. It requires excellent interconnection between national and local systems. Even at a less complex level, for example, few EU corporate registries have information or search functions in other languages, only about 50% will accept foreign language Memoranda and Articles, etc. even with certified translation and many have difficulties recognising foreign mobile numbers and bank account details.

Box 23. A decade for the EU to make an interconnected regional business registry

2009: Directive 2009/01 – required certified copies of filings to be available electronically

2012: amended Directive 2012/17 – required Business Registries Interconnection System (BRIS) to be established.

2015: Commission Implementing Regulation (EU) 2015/884 - technical specifications and procedures

2016: call for funding in 2016 for back-office but not national Access Points (18 month project)

2019: BRIS should be running, at least the back office

For a competitive internal market, information must also flow freely. Useful business registration information includes business existence, insolvency, ownership, disqualification of directors. At the larger end of the commercial spectrum, cross-border takeovers, mergers and restructuring need to be recognised. It is also valuable to know when a business is just a branch from another jurisdiction – a subsidiary, not a separate legal entity. It is very common, across countries, to register these and most regimes give them a number. However, very few have yet managed to link this to their home registry number, which would help to keep the information up to date if the parent status changes. ASEAN is considering the benefits of

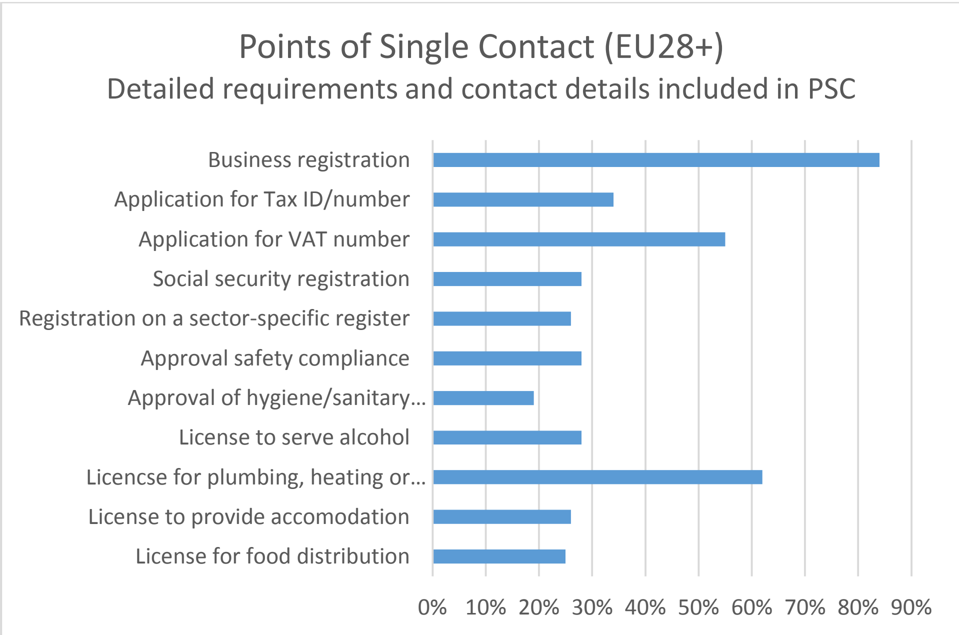
[21] Source: Mustilli and Pelkmans 2013a, 2013b.

harmonization of information requirements for the establishment of companies and the creation of an official company register accessible by all Member States[22].

As covered earlier, business registration goes far beyond the initial corporate registration. To start operating in most jurisdictions, businesses require a host of other permissions, from requirements to do with employing people to sector-specific protections for issues such as health and safety or professional licenses to operate.

The EU Services Directive mandated that Member States must make easily accessible through the "Points of Single Contact" for an individual or business in another member state to find out about the rules, regulations and formalities that apply to service activities and to complete the administrative procedures online. The PSCs are like a virtual one-stop shop, with national counters. In addition, it also requires creating a network among regulatory and supervisory authorities.

Progress of the EU Points of Single Contact



Source: Performance of the Points of Single Contact. Final report for DG Internal Market, Industry, Entrepreneurship and SMEs 2015

This was far more than an IT project to e-link national services. Establishing a regional system replicates all the difficulties of creating an integrated national one - financial, political, legal, technical inter-operability and basic communication and co-ordination challenges - with the addition of sovereignty, language and cultural barriers. Clear institutional arrangements are needed, such as a steering committee with technical working groups to discuss harmonisation of relevant policy and data exchange. In addition, many member states did not have one-stop shops at the outset or not with anything like this scope. After a decade, fewer than 40% of the requirements are yet in place.

In the EU, the process of establishing the PSCs has gone alongside and in some cases driven permitting and licensing reforms. The stages are similar, although there are different stakeholders and more powerful incumbents to manage. The potential benefits are often huge but the scale of the task is also large, with numerous competent authorities and enforcement agencies to work with.

[22] ASEAN Services Integration Report 2016

Challenges and policy recommendations for ASEAN

One quarter of trade in ASEAN in 2015 was between member states[23]. Intra-ASEAN M&A activities continued to rise in 2016, suggesting an increase in intraregional corporate activities and regional expansion of investment by ASEAN companies. In most ASEAN Member States, intra-ASEAN investment is a major source of FDI.

It should be noted that regulatory barriers can be used as a way to protect weaker economies. For instance, when creating the ASEAN Free Trade Area (AFTA), the ASEAN-6 committed to eliminate most tariff lines by 1 January 2010. Newer members, namely Cambodia, Laos, Myanmar and Viet Nam, were given longer to implement their commitments, generally 1 January 2015 with some more sensitive items planned for 1 January 2018. This was to give less developed states time to strengthen their domestic economies before full exposure to competition. However, there is some evidence than foreign FDI crowds out domestic firm creation and the prevailing view is that countries lose more than they gain.

Registration of companies is a target area in the ASEAN e-Government Strategic Plan 2020. To achieve this, ASEAN is considering the benefits of harmonization of information requirements for the establishment of companies and the creation of an official company register accessible by all Member States.

ASEAN already has experience of managing the institutional arrangements needed to facilitate regulatory co-operation and single points of regional information access, through mechanisms to increase the efficiency and competitiveness of inter-regional trade. It is clear that the different member states' current capacity to negotiate and implement such arrangements varies widely and prioritisation and sequencing is important.

POLICY RECOMMENDATION 5: Define objectives and targets for business registration in ASEAN

5.1 Supporting development of national systems of business registration. A first step for a positive regional business environment should be to support the improvement of national systems. ASEAN members could set targets, recognising the current context in each ASEAN member state. Targets could include the minimum time taken to register a business (as in the Ease of Doing Business report), cost and the number of return visits needed to the One Stop Shop. ASEAN could consider extending this exercise to cover aspects of local registration and licensing. This could be achieved, for instance, by assessing the full start-up process for key example types of business, such as a restaurant or small manufacturing facility.

5.2 Encouraging intra-ASEAN investment. If encouraging ASEAN citizens and enterprises to invest in other member states by setting up businesses is a significant objective, then there should be one-stop shop targets about cross-border accessibility and language and associated legal decisions about acceptability of certified translations, foreign bank accounts etc. This requires regulatory co-operation. This would progress alongside work on cross-border tariffs and taxation.

5.3 Regional data sharing. This needs clarity of objectives, such as supporting economic development, reducing fraud and money laundering or reducing risks for business. It would require a degree of regulatory co-ordination, about thresholds of registration, information gathered and legislation to make it accessible. Institutional arrangements such as technical working groups would be needed to review requirements and propose actions.

5.4 Agree on standard entries for business registers. Given the varying pace of development across the ASEAN countries, one way to build convergence towards a harmonised or unified business register is

[23] http://asean.org/?static_post=external-trade-statistics-3

to consider and agree on standard entries for business registers e.g. the information that would need to be included in forms. This would further encourage regional data sharing that is consistent and can be comparable across ASEAN countries.

5.5 Build a common platform for company or enterprise names. In parallel to improving national databases to ease name-checking process for companies and enterprises, further progress toward data sharing can be achieved through the creation of a common platform for company or enterprise names.

5.6 Integrated network for business start-ups. This could be a longer-term objective but the European experience is that achieving national one-stop shops including all national and local registration, permit and licensing requirements is extremely difficult to achieve. Making these accessible to cross-border users has received even less attention even across the EU. Even the relatively self-contained, technologically enabled and business-like world of business registration finds this difficult and in the ASEAN context, some member states do not yet have the capacity or infrastructure to put a national system in place.

POLICY RECOMMENDATION 6: Share skills across ASEAN

6.1 Sharing IT system development skills for government. While national requirements and challenges are different, technical skills in implementing IT projects are transferable and member states could support each other in implementing and integrating systems. Regional technical and inter-operability standards could be developed for new systems, setting the groundwork for further integration in due course.