Legal Reform & Law Reform Commission

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What are the main laws having an impact on business environment?

- CATEGORY 1 - “Core” Business laws
  - Company law, Bankruptcy and Insolvency, Collaterals, Commercial Contracts, Commercial procedure
  - CHALLENGE: Unclear and old laws - Implementing agency is a judiciary that often lacks capacity to deal with business concerns
What are the main laws having an impact on business environment?

- CATEGORY 2 - Other major laws having an impact on private sector:
  - Labor law, Land law, Tax law, Tort law (product liability), Environment law, etc.
  - CHALLENGE: Complex legal framework due to strong “historical” and “social” role - Issue is balancing fairness/equity with predictability/efficiency
What are the main laws having an impact on business environment?

- CATEGORY 3 – New Sectoral laws inspired by market economy:
  - e.g. Competition, Consumer Protection, Banking, Accounting (IFRS), Capital Markets, Intellectual Property Rights, Investment Law, etc.

- CHALLENGE: Importing exogenous legal concepts, often with specific implementing agency (Banking commission, Competition Agency, etc.)
What are the main laws having an impact on business environment?

- CATEGORY 4 – Infrastructure Laws
  - e.g. PPP in Telecom, Energy, Water, Oil, etc.
  - CHALLENGE: Different urban/rural contexts - coexistence of imported models with old models still implemented by line ministries
Importance of Quality of Law in Economic Competitiveness

Badly drafted laws can have a strong negative impact

- In Lebanon, old landlord/tenant law has not followed displacement of the population – courts are facing 17000 trials each year only on questions relating to payment of rent because of unclear provisions
- Could be resolved easily by clarifying the respective rights of tenants and landlords
- Courts have no time left for more important matters
Importance of Quality of Law in Economic Competitiveness

Badly drafted laws can have a strong negative impact

- In Algeria, Factoring Law (transfer of professional debts to specialized factor companies) has the exact opposite effect of what is was supposed to favor
- Law requires formal notification of each debtor whose debt is transferred
- Impossible in practice – Costly and easy to arrange not receiving the notification
- Result: No factoring activity in Algeria
Importance of Quality of Law in Economic Competitiveness

Number of new laws and regulations is increasing fast worldwide

- Role of the Government is changing - Setting the rules of the game rather than playing the game
- Consequence: production of an increasing amount of laws and regulations
- Quality: poorly drafted laws and regulations
- Government not always well prepared for this
- Judiciary is often not ready
Increased legal competition in globalized environment

- Law plays a crucial role cultivating and maintaining a positive investment climate
- Attractive rules and predictable law-making body are strong assets for economic development
- WTO accession focus on legal framework and its implementation
The Challenge of Legal Reform

Complex choices face reformers

- Wide variety of different private operators: informal sector, individual entrepreneurs, family-owned companies, state-owned companies, publicly-traded companies, banks, international investors, etc.
- Importing external models? Developing specific local laws?
- Efficiency vs. Fairness?
The Challenge of Legal Reform

Aim is to ensure economic efficiency of private sector as a whole

- Avoid establishing built-in protection for determined stakeholders
- Protection can be abused or be counterproductive
- Often, numerous protection of debtors weaken their access to credit
The Challenge of Legal Reform

Need to implement reforms at several levels at the same time

- Weakness of ONE component weakens the efficiency of ALL other components of the “Legal Chain”
- Weak capacity to work on several legal components explains many ineffective reforms in developing countries
The Challenge of Legal Reform

Most legal reforms need to be accompanied by parallel reform addressing side-effects

- E.g. Reducing the minimum capital requirements
- Good, facilitates starting a business - but then banks were concerned that borrowers can easily organize their insolvency by creating several companies at no cost
- Disclosure of financial statements, insolvency and bankruptcy rules must be strengthened in parallel
The Challenge of Legal Reform

Ministry of Justice is already in charge of complex reform of the court system

- Court organization – geographical mapping (e.g. Lebanon)
- Training of judges & court personnel
- Procedural codes – often too complex
- Developing specialized courts – general trend in Business Law:
  - commercial courts (France), company law court (Delaware), bankruptcy courts, etc.
  - Increasingly technical knowledge required by business practices
The Challenge of Legal Reform

For all these reasons, law should not belong exclusively to lawyers

- Economist, public interest group, businessmen should be involved in its design
- Paradox: designing a legal system of high quality is a very complex and technical task
- Therefore, need to establish a reform structure that can produce a complex legal system that remains easy to access and to use
Organizing the Process of Legal Reform

- Recent studies found that developing economies that have managed to grow fast initially relied on a well organized and dedicated reform team.
- Formulating and updating the reform strategy, building consensus and mobilizing resources for implementing the strategy.
- This team must also have the needed financial and technical resources as well as access to the top of government to compel the administration to act.
Organizing the Process of Legal Reform

- This type of approach is often used for “Economic Reform” (and IT development)
- “Legal Reform” has the same needs:
  - Huge legal reform program needs to be prioritized after auditing reform needs
  - Implementation needs to be centralized to avoid contradiction
- Several countries have opted for permanent “Law Reform Commissions”
What is a Law Reform Commission?
1. Definition

- An specific statutory body (like for instance an “Agency”)
- Established to keep the law under constant review and make recommendations for its reforms
- Institutional aspect: usually has a permanent committee (5-8 members) with an advisory inter-ministerial commission (15 members)
- Coordinating role and “Think tank” - NO MONOPOLY OVER LEGAL REFORM
- But can also be mandated to be an implementing agency
2. Why?

- it is practically impossible for a legislative assembly alone to keep all the legal framework to date – expert work needed:
  - Keep under constant review the legal background of the country
  - Identify most urgent reform needs
  - Identify long term reform needs
  - Propose a well structured reform approach to government
3. Detail of Responsibilities

- Identifying areas of the law needing reform
- Partnering with other government organizations/GPCs
- Assigning research activities to selected private organizations such as international experts, law firms and law schools
- Developing legislative proposals
- Providing general public input into the reform process by the inclusion of citizens' advisory councils in law research initiatives
## 4. Differences between LRC and others reform mechanisms

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<th>Law Reform Commissions</th>
<th>Other reform mechanisms</th>
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<td>Centralized approach</td>
<td>✓</td>
<td>✗</td>
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<tr>
<td>Preliminary auditing of existing laws</td>
<td>✓</td>
<td>✗</td>
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<tr>
<td>Prioritization of the reforms needed</td>
<td>✓</td>
<td>✗</td>
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## 5. Pros & Cons of LCR

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<td>Relative Independence from the government and all particular interest groups</td>
<td>Risk of becoming an unaccountable organization that produces vague and worthless report (delays in getting government approvals and delays in implementation)</td>
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<td>Permanence and independence statute</td>
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<td>Expertise: LRCs usually have strong links with both public and private legal sectors (government ministries, legislative assembly, judiciary and legal profession, legal academics)</td>
<td>High Operating Costs</td>
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<td>Focus: a single well-defined purpose</td>
<td>Risk of the process being blocked due to centralization</td>
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<td>Continuity: a consistent approach both to particular areas of the law and to the law reform itself</td>
<td>Another agency in an already very institutionalized environment</td>
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6. Who has established LRC?

- 85 countries have established Law Reform Commissions
- Law Reform of Ireland established under the Law Reform Commission Act, 1975
- Law Reform Commission of Hong Kong established in 1980
- New Zealand Law reform Commission established by the Law Commission Act 1985
- Canada: several LRC at State level
7. Australia Example

- Permanent, independent federal statutory corporation, operating under the *Australian Law Reform Commission Act 1996 (Cth).*

- The ALRC conducts inquiries - known as references - into areas of law reform at the request of the Attorney-General of Australia.

- The ALRC is directly accountable to the Federal Parliament for its budget and activities, and therefore it is not under the control of ministries, giving it the intellectual independence to make research findings and recommendations.

- ALRC recommendations do not automatically become law. However, 80 per cent of the ALRC's reports have been either substantially or partially implemented.

- The most effective and influential agent for legal reform in Australia.
8. Thailand Example

- Thailand has nowadays more than 600 Acts of Parliament and more than 10,000 subordinate legislations.

- Poor quality of legislation: The 1997 economic crisis renewed attention to the need for a legal reform in Thailand. The legal system was incapable in dealing with economic and social situation of the present day world.

- The Law Reform Committee for the Development of Thailand (LRC) was established as an agency to review the suitability of all existing legislations for the government.

- LRC has to give recommendation to the Prime Minister on which law should be repealed or revised for compliance with the provisions of the Constitution of the Kingdom of Thailand and global economic change.
8. Thailand Example (Cont’d)

- Organization: 1 chairperson, 2 vice-chairpersons, 16 committee members, 1 secretary, 3 deputy secretaries

- Subcommittees in charge of (i) drafting specific new laws (ii) reviewing existing legislation in each field.

- Particularity: Thailand’s LRC is linked to the “Economic Development Institute”, which acts as a secretariat for the LRC. By doing so, it enables the LRC to associate economists to the legal reform process and also to cut down on its own operating costs.
9. South Africa Example

- Presided by a judge of the Supreme Constitutional Court.
- Eight members chosen on their professional experience as judge, lawyer, or professor of law, or other relevant qualification.
- Mandated to make recommendations for:
  - Repealing obsolete or unnecessary provisions
  - Removing anomalies
  - Ensuring uniformity in the law in force
  - Consolidating or codifying the law
  - Improving access and readability of the law