CAPACITY BUILDING – AN APPROACH
THE BAHAMIAN FRAMEWORK

By E. George Moss, Executive Director and Kathleen Riviere-Smith, Financial Analyst[1]

INTRODUCTION

In many developed and developing countries, the utility companies were state/government owned monopolies, in which, a few had regulatory responsibilities. There was limited competition. Once governments started to divest their investments in these utility monopolies and liberalize the respective sectors, it became apparent that a new regulatory framework had to be developed and implemented. By and large this has led to the establishment of the independent economic regulators, which were new to most countries. It is therefore expected that the newly formed institutions will face difficulties in securing the necessary resources, financial and human, to facilitate effective operation. Therefore, a capacity building programme, formal or informal, is absolutely essential for the development of the regulator. This paper will highlight the following aspects of capacity building: Design of the Regulator; Funding Options; Selection of Funding Options; Acquisition and Retention of Human Resources; The Use of Consultants; and General Resources.

THE DESIGN OF THE REGULATOR

The functions, duties and responsibilities of the regulator will heavily impact on the design of the regulatory body. The regulator is normally empowered and authorized to perform those duties by some form of legislation. Because the design of the regulator will have a direct impact on the cost of regulation, the options must be carefully considered before any enactment of the relevant legislation. The Public Utilities Commission (PUC) Act, 1993 and as amended in 1999 created the legal framework for the establishment of the regulatory agency. The Bahamas, a small country with a

[1] The writers are employed with the Public Utilities Commission in The Bahamas. The views expressed by the writers are their own and should not be attributed to the Public Utilities Commission. The writers are responsible for all errors.

population of 308,000, had minimal regulatory expertise at the time the PUC was established. The PUC, a multisectoral regulator with the purview of telecommunications, electricity and water and sewerage, came into operation in March 2000 but currently only regulates the telecommunications sector, inclusive of radiocommunications (spectrum), and will commence regulation of the other sectors only on such date as the Minister appoints.

The legislated functions of the regulatory body will also impact the required resources, financial and human. Studies by various multilateral institutions, especially the World Bank, suggest that the main choices of design are 1. sector specific, 2. multisectoral or 3. combination of both.

There are advantages and disadvantages of each design. The advantages of a multisectoral regulator are summarized as:

1. Synergies and sector cross training;
2. Less likelihood of capture by any sector;
3. Human resources are shared resulting in greater efficiency with respect to costs; and
4. Economies of scope which lower the overall cost of regulation.

The offsetting disadvantages are:

1. Lack of sufficient sector specific expertise or focus resulting from a high degree of specialization;
2. Multisectoral regulators appear to be only appropriate for small countries or member states of a federation; and
3. Placing the responsibility of regulating more than one sector in a single multisectoral regulator is tantamount to "putting all of your eggs in one basket". If the regulator fails its impact would be on all of the regulated sectors.

It would appear that in the larger more developed countries/states, the preferred choice is for sector specific regulators or a combination. In countries, where regulatory expertise is scarce, small populations and economies, the argument for multisectoral regulators is strong. However note that the state of California, USA which has a population of over 35 million, a Gross State Product of US$1.4 trillion and the 5th largest economy in the world has a multisectoral regulator and Trinidad and Tobago has a sector specific regulator for telecommunications with a population of 1.2 million and a GDP of US$10.5 billion.

FUNDING OPTIONS

A regulator must have adequate and reliable funding to develop operational capacity to be effective. However, it must be emphasized that a regulator should only carry out the duties it is legislated to perform, no more no less, and thus should be reflective in its budget. Funding the regulator is always challenging. The general populace does not want to be taxed for something that it is not sure it will benefit from nor do consumers want any increase in the utility rates. So how does the regulator obtain financial funding for its operation?

Funding options available are as follows:

1. Budgetary allocations – The government would allocate an amount in its annual budget for the regulator but this method leaves the regulator susceptible to political interference as the regulator could be penalized by the political directorate (reduction in its budget) for an unpopular decision that it made.

2. Imposition of levies/licence fees on the regulated sector. This method is preferred as it gives the regulator control over its financing and reduces the reliance on budgetary allocations and facilitates better capacity planning and building. The levy/licence fee should not be burdensome and there are generally laws establishing the maximum levy/licence fee to be charged, e.g. Florida has established maximum levies on the industry revenue as follows: electricity – up to

0.5%; telecommunications – up to 0.25%; water and wastewater – up to 4.5%. In The Bahamas, the PUC's budget is subject to Ministerial review.

3. Usage or service fees – This relates to fees for specific services and activities conducted by the regulator. Licence application and filing fees could be charged for services. Funds from usage and service fees tend to be limited and less reliable as they are dependent on the activities the operators may be interested in.

4. Any combination of the 3 options above.

SELECTION OF FUNDING OPTIONS

The guiding principles for the selection and implementation of a system in determining the levy/licence fees and the national or budget allocation are as follows:

1. Transparency – The fees should be set in a manner that is clear and understandable for the regulated sectors and public at large.
2. Objectivity – The fees set should be seen as fair and justifiable to the regulated entities.
3. Equity – Each regulated sector should only cover the cost of its own regulation as well as contribute to common costs allocated across sectors. The fees should therefore be seen as equitable to each regulated sector.

These levies/licence fees are generally expressed as a percentage of gross revenue of the entity or sector regulated, which may result in different percentages per sector. This method, based on the proportionality principle, is seen as equitable as experience has indicated that there is generally a relationship between the gross revenue and the volume and complexity of regulatory work generated. It should be noted that the regulator should be vigourous in the collection of the levies/licence fees. No doubt the final decision of any National Regulatory Authority will depend on its enabling legislation.

The PUC currently regulates only the telecommunications sector and as such its experience will be drawn principally from that sector. The PUC currently uses a

combination of all three funding options. The PUC has been operating on a budget of approximately B$2.9 million per year. Approximately 86%, 14% and less than 1% of that budget has been funded by licence fees (telecommunications and radiocommunications), government allocation and service fees, respectively. The 14% government allocation represents certain provisional capacity at the PUC for electricity and water regulation.

The PUC Act enables the PUC to levy and collect fees from the regulated utilities to defray its budgeted costs and expenses. The PUC also charges service fees for telecommunications licence applications. The legislation also provides for any costs and expenses not recovered by the fees levied to be charged upon and paid out of the Consolidated Fund. This was an important consideration for the PUC in its early days when it was still developing a stable and adequate income stream. Therefore, capacity building was hampered until the PUC achieved greater control over its finances. The activities of the infant PUC were not always welcomed and some licensees challenged the PUC's power to assess and collect licence fees.

THE ACQUISTION AND RETENTION OF HUMAN RESOURCES

The regulator must be able to acquire its own staff, professional and support, to effectively perform its functions. Notwithstanding having its own staff, it is highly unlikely that the regulatory body is able to hire readily trained and experienced professional staff at the onset. Therefore, it may be necessary to rely heavily on the expertise of consultants during the initial stages of the regulatory agency. The regulator can also benefit by having the option to outsource some of its activities, if necessary, to improve its capacity.

Staffing

One of the most challenging aspects of capacity building for the regulator in its infancy stage is the acquisition and retention of staff, to ensure that the functions of the regulator are conducted efficiently. As operators in most jurisdictions are required to be efficient,

the regulator must require the same of itself and hold on to the mantra "small is beautiful".

Some of the factors that have to be considered with respect to staffing are a full appreciation of:

1. The functions of the agency;
2. Skills required;
3. Skills available in the country; and
4. The notion that some professionals may not be very willing to work for the agency in its infancy stage.

The necessary skills in developing countries may not be available thereby resulting in the recruitment of less experienced staff that need to undergo lengthy training periods. Job descriptions and general description of operational processes, the functions of work units or sections need to be prepared to ensure functions and duties are clearly identified. The preparation of those items will lay the foundation for an effective recruiting programme. Clearly expatriate personnel will have to be recruited on short term contracts to fill the gaps while nationals are being trained.

Compensation Package and Training

Recruitment has been more successful with competitive and flexible compensation packages. The regulator should benchmark salaries and benefits with regulated entities as well as other private sector entities with whom the regulator must compete for similar skills. Therefore, by offering competitive salaries and benefits including training opportunities, the regulator has a fair chance of recruiting and retaining qualified staff as it is competing directly with the private sector and the regulated companies for the required staff. Generally, the avoidance of civil service salaries and conditions of employment is an important factor in recruiting and retaining professionals as in most developing countries civil service salaries are generally lower than those in the private sector or statutory corporations.

Training, initial and continuous, is another key in capacity building. Training in regulatory functions can normally be facilitated through various methods including: short courses, workshops, seminars, exchange and twinning programmes with other more experienced regulatory bodies, higher degrees and professional designations. The regulator itself can add a powerful dimension to its training programme by joining regulatory associations/organizations like OOCUR, NARUC, ITU and CTO in that networking among professionals will be enhanced tremendously.

It has not been easy to recruit qualified staff for the PUC. There is the novelty of the organization and the workforce is uncertain of the PUC's permanence when compared with other statutory authorities. In order to achieve some success in its acquisition of professional staff, the PUC's compensation package had to be comparable with that offered to attorneys, accountants and engineers employed in larger private sector firms. On the other hand there are limited opportunities in the country for some professionals such as economists thereby resulting in a very limited pool of qualified persons. With respect to this particular profession, the PUC is still trying to attract candidates.

The PUC has implemented a very aggressive training programme utilizing the Public Utilities Research Centre (PURC) of the University of Florida, the International Telecommunication Union (ITU), Organization of Caribbean Utility Regulators (OOCUR), Caribbean Telecommunications Union (CTU), National Economic Research Associates (NERA), Telecommunications Executive Management Institute of Canada (TEMIC), United States Telecommunications Training Institute (USTTI), Adam Smith Institute and other organizations. The PUC has also required some consultants to hold workshops, which provide knowledge transfer, at the end of various segments of their assignments. There are presently 22 full time professional and administrative staff in the employment of the PUC. Exhibit 1 illustrates the PUC's current organization chart.

THE HIRING OF CONSULTANTS

Consultants can play a significant role in capacity building by providing expertise to tackle complex issues but how does a start-up regulator know which consultant to hire? This question is best answered by contacts and relationships established by senior employees, e.g. the Chairman and Chief Executive, in their former positions. Initially it may be necessary to use the Government's rules on competitive bidding to hire consultants. The Government may have also used consultants to develop a framework for the establishment of the regulator which will eventually develop its own directory/ list of available and competent consultants from various sources. It is conceivable that the Government may allow the regulator to access its consultants. However, there may be an issue of independence if the same consultant performs work for the government and the regulator. The regulator, through its networking with other organizations, such as OOCUR and ITU, can obtain information on consultants and their expertise.

In the PUC's case, the Government of The Bahamas used the services of PricewaterhouseCoopers LLP (USA & UK offices) to perform a consultancy for the "Establishment of the Public Utilities Commission". The Government received some financing from the Multilateral Investment Fund (MIF) of the Inter-American Development Bank (IDB) towards the cost of the consultancy. Some of the tasks included in the consultancy were the development of a Legal Framework which included a review of the PUC and utility Acts, preparation of operational guidelines, preparation of cost of service studies and proposed training program for the PUC's staff.

Most regulators, those in developed and developing countries, seek assistance from consultants from time to time. The PUC has used consultants on a variety of projects during these past five years.

In addition to hiring consultants for the performance of certain tasks, increasingly regulatory agencies are contracting out or outsourcing certain tasks. The PUC has also outsourced some core operational activities in particular the issuing of maritime

radiocommunications licences to the Bahamas Maritime Authority (BMA). Section 14 (4) of the Telecommunications Act explicitly states that the Commission may delegate any of its numbering functions to any person.

GENERAL RESOURCES

The agency will also need access to some general resources to carry out its functions. The regulatory body must be able to network and join organizations such as OOCUR and the ITU. The agency will have to develop a relationship with the Central Government and may do so by sending periodic reports, financial and operational, to the various ministries and departments depending on the nature of the activity in process. Developing the agency's own culture is also very important and it will set the framework of the agency's modus operandi. The agency can also build an image for itself with the public through the media. The PUC has used public relations, press releases, infomercials, speaking engagements and its website to inform the public of its presence, functions and its work.

CONCLUSION

In the last decade, many countries have established or are in the process of establishing regulatory agencies. The regulator should have adequate and reliable funding to be effective in the execution of its mandate. The regulatory agency's needs, financial and human resources, will depend on the functions of the agency.

The design of the regulator, single sector or multisectoral, will impact the costs of its establishment and operation. In order for the regulator to recruit and retain qualified professional staff, it should offer competitive salaries and benefits. The regulator must be independent to make its decisions but it must be accountable and able to withstand public scrutiny with respect to its actions.

Bibliography

Smith, Suzanne, editor *The Private Sector in Infrastructure Strategy, Regulation, and Risk* Washington. D.C.: The International Bank for Reconstruction and Development / The World Bank, 1997.

Guasch, Luis J., and Pablo Spiller, *Managing the Regulatory Process: Design, Concepts, Issues and the Latin America and Caribbean Story*. California: 1998.