

THE NATIONAL POLICY ON GOOD REGULATORY PRACTICE (NPGRP) STRENGTHENS PUBLIC SECTOR GOVERNANCE AND THE REGULATORY REFORM INITIATIVE

“NPGRP is a significant milestone for Malaysia’s journey in the regulatory reform agenda”

Dato' Abdul Latif Hj. Abu Seman, Director General, Malaysia Productivity Corporation

The National Policy on Good Regulatory Practice (NPGRP) was launched on 30 July 2021 and repeals the National Policy on Development and Implementation of Regulations (NPDIR). The launch of the NPGRP marks a regulatory reform milestone and timely update to the almost decade old NPDIR.

In this article, our Partner and Head of the Corporate & Government Advisory Practice, Mohamad Izahar Mohamad Izham seeks to highlight the key changes introduced by the new NPGRP and the Best Practice Regulation Handbook 2.0, and shares his view on how the new policy can spur a regulatory reform movement in Malaysia.

OCTOBER 2021



On 30 July 2021, the Chief Secretary to the Government officiated the launching of the National Policy on Good Regulatory Practice (NPGRP) issued pursuant to General Circular No. 1/2021. The NPGRP took effect 22 June 2021 and repeals the previous General Circular No. 1/2013 in relation to the National Policy on Development and Implementation of Regulations (NPDIR).

The virtual launching ceremony of the NPGRP themed ‘Boosting Productivity through Quality Regulation’ marks a regulatory reform milestone and a timely update to the ‘Good Regulatory Practice’ or “GRP” initiative given that it has almost been a decade since the issuance of the NPDIR. At the same time, the policy was also released in the form of a booklet to be read together with the new Best Practice Regulation Handbook 2.0, which would effectively supersede the Best Practice Regulation Handbook (July 2013) and the Quick

Reference Best Practice Regulation Handbook (July 2013). To ensure relevancy, the NPGRP has a periodic review mechanism, similar to the NPDIR, where the policy is to be reviewed every five years or earlier in order to measure the success of its implementation.

This article seeks to highlight some of the key changes introduced by the new NPGRP and the Best Practice Regulation Handbook 2.0. It is not exhaustive in nature and would be beyond the scope of this article to highlight every change that the new NPGRP has made. The NPGRP together with the new Best Practice Regulation Handbook 2.0 can be accessed [here](#), both in English and Bahasa Malaysia, the NPDIR [here](#), and our article summarising the NPDIR [here](#). MPC has also prepared its own brief comparison of the changes between the NPDIR and NPGRP which can be found in [Appendix I](#).

SUMMARY OF KEY CHANGES IN THE NATIONAL POLICY ON GOOD REGULATORY PRACTICE (NPGRP)

SCOPE

Perhaps the most significant change in the NPGRP is the scope of the new policy. The NPDIR applies to all regulations relating to ‘Business, Investment, and Trade’. Compared to the NPDIR, the NPGRP has been expanded to focus on all regulations affecting ‘Economy, Social, and the Environment’.

It is important to note that the scope of ‘Business, Investment, and Trade’ under the NPDIR has always been considered to be limited to what is considered as ‘business’ related regulations only. While the NPGRP does not specifically define what amounts to ‘Economy, Social, and the Environment’, from its plain reading it is distinctively larger in scope

compared to ‘Business, Investment, and Trade’ and would as a result, apply to a broader range of regulations under the NPGRP.

In relation to exemptions, the NPGRP has restated that a Regulatory Impact Analysis (RIA) is not applicable for regulations implemented for reasons of national security and sovereignty, and administrative circulars that are intended for public service administration. Notably, the NPGRP has extended the exemptions to regulations relating to criminal law such as under the Penal Code. It further clarified that a RIA is not intended to apply to the formulation of policy documents (plans and blueprints) which set out broad goals, objectives, and strategies.

ROLES OF IMPLEMENTING AGENCIES

The NPGRP, just like the NPDIR, maintains the same implementing agencies with similar roles and responsibilities. This includes among others:

Implementing Agency	Responsibility
National Development Planning Committee (NDPC)	Responsible for overseeing the implementation of the policy and its effectiveness
Malaysia Productivity Corporation (MPC)	The ‘gate-keeper’ responsible to promote and support the implementation of the NPGRP
National Institute of Public Administration (INTAN)	Responsible for public sector training
Regulators*	Responsible for developing, maintaining, and enforcing regulatory programmes, adhering to the NPGRP and complying with the Regulatory Process Management System, and appointing Regulatory Coordinators
Stakeholders	Responsible to provide feedback and input in the preparation of public policy
Attorney General’s Chambers (AGC)	Responsible to advise the Cabinet or any Minister upon such legal matters and to perform such duties of a legal character as maybe referred by the Cabinet

*Note: Regulators include Government agencies such as Ministries, departments, statutory bodies and regulatory commissions

A notable feature that has changed from the NPDIR is the role of MPC in 'assisting NDPC in assessing Regulatory Impact Statements (RIS)'. Under the NPGRP, MPC is now entasked with 'examining the adequacy of Regulatory Impact Statements (RIS) and provide appropriate

recommendations'. This formalises the actual practice where MPC evaluates the sufficiency of RIS and thereafter, tables the evaluation to NDPC for endorsement.

DEFINITION OF REGULATIONS

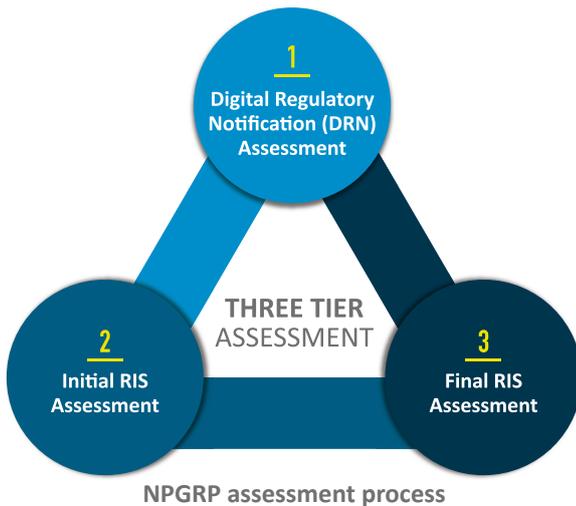
The definition of regulations under the NPGRP has been maintained to cover 'measures of general application in various forms that are undertaken by regulators at various levels for which compliance is mandatory'.

However, where previously the examples of such measures were limited to examples of subsidiary legislation such as regulations, rules, by-laws, orders, and even included guidelines, the NPGRP has clarified and expanded the examples of regulations to include 'primary legislation such as Acts, Enactments, and Ordinances'. This addresses concerns

in the past on whether the NPDIR applies to Acts of Parliament with the use of the term 'regulations' and is a move to harmonise the definition of primary and subsidiary legislation in the policy with the legal definition in law.

REGULATORY PROCESS

The Regulatory Process Management System or 'RPMS' has been revised under the NPGRP to cover a three tier assessment as compared to a two tier assessment of the Regulatory Notification (RN) Assessment and Final RIS Assessment under the NPDIR.



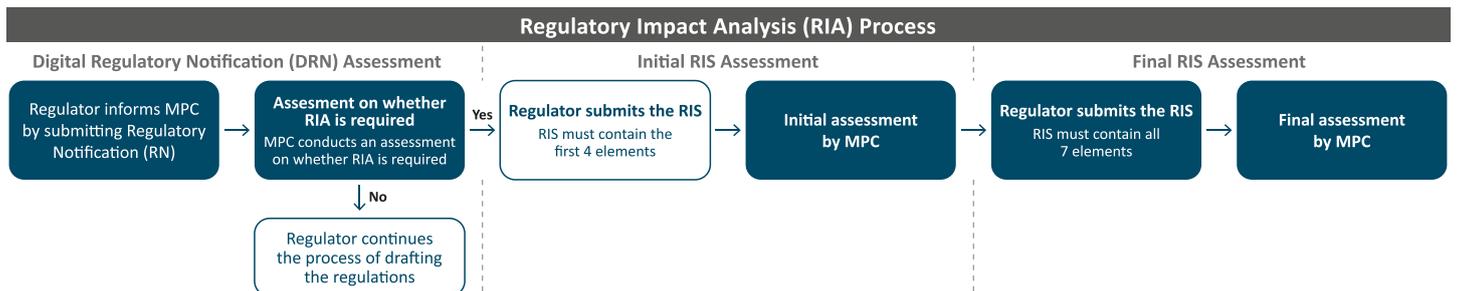
The system will advise, depending on how significant the impact of the proposal is, whether a full RIA (i.e. one consisting of an in-depth analysis, comprehensive cost benefit study and extensive consultation) or a light RIA (i.e. one that quantifies costs and benefits supplemented by a qualitative analysis) is required. If no RIA is required, the system will encourage the regulator to undertake public consultation only. This is a significant shift to a self-regulated model where accountability and responsibility is placed on the regulator to complete the correct information in the DRN system that will generate feedback without human intervention.

Contrary to the NPDIR, the NPGRP encourages the regulator (in the past MPC), to make a preliminary announcement of the intention for the intended regulatory action on its website in order to inform the public of the objectives of the proposal if a RIA is required. The NPGRP also states that a Guideline on the Digital Regulatory Notification (DRN) will be produced by MPC, which is expected to be published in due course.

The Digital Regulatory Notification (DRN) Assessment phase under the NPGRP is similar to the Regulatory Notification (RN) Assessment under the NPDIR where regulators are required to first notify MPC on any proposal to create or amend regulations in order for MPC to advise on whether such proposal requires a RIA to be undertaken. An important development is that with the launching of the Digital Regulatory Notification (DRN) system on 11 May 2021, the process is now digitalised in which the submission is done online and feedback will be generated instantaneously.

A new feature is the Initial RIS Assessment phase. The regulators would now only be required to provide the first four elements of the RIA which covers problem statement, objectives, list of options, and the impact analysis including a preliminary assessment of cost-benefits (where available). MPC will thereafter provide and submit an initial assessment note after reviewing the first 4 elements. This is a change from the NPDIR which requires a RIS to be submitted only once it has completed all 7 elements. This is seen as a positive move to encourage quicker RIA assessments instead of waiting for the final form.

The last phase would be the Final RIS Assessment phase in which the regulator would submit the RIS covering all 7 elements. MPC will then provide a final assessment note after reviewing the adequacy of all 7 elements.



Source: NPGRP, Annexure C

IMPACT ANALYSIS

Under the NPDIR, the requirement to conduct an impact analysis has always been a mainstay of the RIA process where *'benefits need to outweigh the costs'*, although its tools and subsequent application are more familiar to for example RIA practitioners and economic analysts only.

Likewise in the past, the NPDIR and the Best Practice Regulation Handbook (July 2013) had brief mention on prescribing a specific methodology to adopt in conducting an impact analysis. On the other hand, the NPGRP has endorsed in detail the more commonly used approaches recognised by the Organisation for Economic Co-operation and Development (OECD) such as the Cost-Benefit Analysis (CBA), Cost-Effectiveness Analysis (CEA) and Multi-criteria Analysis (MCA) with the latter two having specific guides in the NPGRP (see Annex 4: Guide to CEA and Annex 5: Guide to MCA). For Cost-Benefit Analysis (CBA), a

similar approach was taken akin to the Digital Regulatory Notification (DRN), where the NPGRP states that a CBA Guideline will be produced by MPC, which is also expected to be published in due course.

Another specific mention is to consider business compliance costs as a new feature of the NPGRP in bridging the gap to make the use of impact analysis more *'user friendly'*. Compliance costs are costs borne by businesses as a result of complying with the regulatory requirements and includes costs of administrative burden, substantive costs, and administration and enforcement costs. The NPGRP encourages the adoption of the widely used Standard Cost Model (SCM), particularly for ex-post reviews, as a means to measure compliance costs and quantifying administrative burdens for businesses (see Annex 3: Guide to SCM of the NPGRP).

CONSULTATION

Under the NPGRP, the requirement on consultation has specifically included the minimum period of 30 days for stakeholders to give feedback. A tool that is specifically mentioned is the use of the Unified Public Consultation (UPC) portal, co-developed between MPC and the World Bank, to provide regulators an online public consultation platform. Another notable insertion is the mention that regulators should publish a consultation report providing a summary of the consultation held and outcomes.

The specific prescription of such items in the past were typically detailed in the Guideline on Public Consultation Procedures (October

2014), which for one explicitly stated that consultation is to be a minimum of 12 weeks as an example. With the pivot towards digitalisation and increasing use in technology, such standards are accepted as the norm. It is also expected that MPC will in due course issue an update to the Guideline on Public Consultation Procedures (October 2014). On a similar note, the General Circular No. 2/2012 in relation to Online Public Engagement, which had lapsed in 2014, is another Government circular which should be revisited to promote online consultation among regulators.

BEHAVIOURAL INSIGHTS

The Behavioural Insights approach or what is commonly referred to as *'nudging'* relates to the understanding of human behaviour in order to better develop regulations. MPC has been advocating the adoption of Behavioural Insights reflected in among others, the National Seminar on Behavioural Insights (2020) and the National Conference on Behavioural

Insights (2021) in order for regulators to better understand the drivers of behaviour in policy design. Importantly, the application of Behavioural Insights in the NPGRP is also to promote a choice tool in supporting the development of alternative options in Government intervention.

EX-POST EVALUATION

The NPDIR and NPGRP both maintain the same GRP requirement for regulations to be reviewed every 5 years. This is to ensure that such regulations have achieved its intended purposes and is still relevant over time.

Under the NPGRP, this process has been reinforced by allowing regulators to seek assistance from MPC to conduct the ex-post evaluation through its various regulatory review programmes. Such

programmes include among others Reducing Unnecessary Regulatory Burdens (RURB), review of Non-Tariff Measures (NTMs), and Cutting Red Tape (MyCURE). This initiative is progressive given feedback from regulators who do not have the capacity or technical capability to internally conduct such evaluations, and instead now would be able to leverage on MPC's resources for assistance.

POST IMPLEMENTATION REVIEW (PIR)

A form of ex-post evaluation, the concept of Post-Implementation Reviews (PIR) is not a new concept between both the NPDIR and the NPGRP, although it is noteworthy to mention that under the NPGRP, Annex 9 includes a specific template for Post Implementation

Review (PIR). This development is timely given the recent interest in regulators wanting to conduct Post Implementation Reviews (PIR), largely as a result of regulatory reviews on a periodic basis or as a means to measure effectiveness of new or amended regulations.

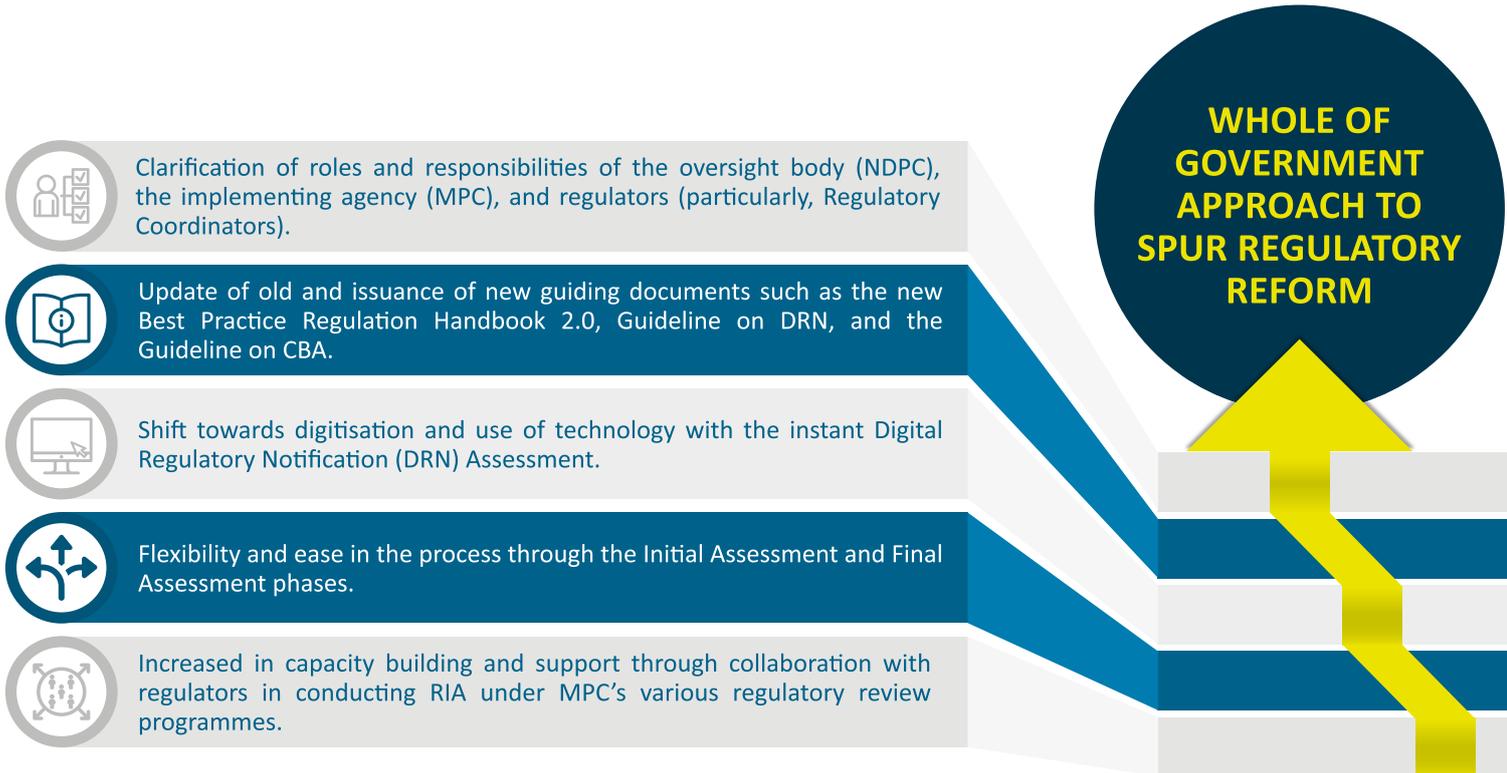
COMPARISON TABLE OF KEY CHANGES BETWEEN THE NPDIR AND NPGRP

	NPDIR	NPGRP
 SCOPE	 <p>Business, Investment, and Trade</p>	 <p>Economy, Social, and the Environment</p>
 ROLES OF IMPLEMENTING AGENCIES	<p>MPC Assisting NDPC in assessing RIS</p>	<p>MPC Examining Regulatory Impact Statements (RIS) for adequacy and making appropriate recommendations.</p>
 REGULATIONS	<p>Measures of general application in various forms that are undertaken by <u>Ministries/Departments/Agencies</u> for which compliance is mandatory including:</p> <ul style="list-style-type: none"> Measures which may alternatively be termed as regulations, rules, by-laws, orders, and guidelines. 	<p>Measures of general application in various forms that are undertaken by <u>regulators</u> at <u>various levels</u> for which compliance is mandatory including:</p> <ul style="list-style-type: none"> Measures which may alternatively be termed as: <ul style="list-style-type: none"> Primary legislation such as Acts, Enactments, and <u>Ordinances</u>; Subsidiary legislation such as regulations, standards, rules, by-laws, and orders; and <u>Guidelines</u>.
 TIERS OF ASSESSMENT	<p>Two tiers comprising of:</p> <ul style="list-style-type: none"> Regulators are to first notify MPC on any proposal using the RN Form, and MPC will review and advise on whether such proposal requires a RIA to be undertaken and a RIS prepared; and If RIA is required, a RIS covering all seven elements must be submitted to MPC upon completion and MPC will assess the RIS for adequacy. 	<p>Three tiers comprising of:</p> <ul style="list-style-type: none"> Digital Regulatory Notification (DRN) Assessment: Regulators are to first notify MPC on any proposal using the RN Form. <u>MPC will review and advise on whether such proposal requires a RIA to be undertaken and a RIS to be prepared</u>; Early RIS Assessment: <u>Regulators are required to provide the first four elements of RIA which covers the problem statement, objectives, list of options and impact analysis including a preliminary assessment of cost-benefits (where available)</u>; and Final RIS Assessment: <u>Regulators are required to submit the RIS covering all seven elements. MPC would conduct a first pass assessment and the Regulator would need to resubmit the RIS in which MPC's final assessment will be issued after reviewing the second pass submission.</u>
 IMPACT ANALYSIS TOOLS	<p>Brief mention in the Best Practice Regulation Handbook (July 2013)</p>	<ul style="list-style-type: none"> Details on tools such as CBA, CEA, and MCA, and relevant templates. Use of SCM to calculate business compliance cost.
 CONSULTATION	<p>Minimum 12 weeks.</p>	<ul style="list-style-type: none"> Minimum <u>30 days</u>. Use of Unified Public Consultation (UPC) portal.
 BEHAVIOURAL INSIGHTS (BI)	<p>N/A</p>	<p>Application of the '<u>nudge</u>' theory.</p>
 EX-POST EVALUATION	<p>Regulations to be reviewed every 5 years.</p>	<ul style="list-style-type: none"> Regulations to be reviewed every 5 years. <u>Regulators may seek assistance from MPC through its various programs such as RURB, NTMs, and MyCURE to undertake such reviews.</u>
 POST IMPLEMENTATION REVIEW (PIR)	<p>Template not provided</p>	<p>Template provided</p>

COMMENTARY

The issuance of the NPGRP is much needed in order to address the deficiencies in the almost decade old NPDIR. It comes at a time when public awareness and scrutiny in regulatory development is at a significant high as a result of the COVID-19 pandemic and political uncertainty. In addition to giving the GRP initiative a much needed reboot, it is encouraging that the NPGRP adopts the ‘*whole of government approach*’ in the implementation of the regulatory process management system while at the same time providing certainty and clarity to weaknesses in the previous policy.

The new policy evidences a realisation of the need to integrate together the end-to-end RIA regulatory framework in order to strengthen adoption of the GRP initiative. This can be seen with the holistic changes made in the policy, institutions, and supporting documents in order to achieve greater regulatory reform conformity. It is hoped that criticism of the past that regulations had been formulated in Parliament without a RIA being undertaken would cease to be a common feature of future public policy in the years to come.



APPENDIX I – OVERVIEW OF THE CHANGES TO THE NPDIR

OVERVIEW OF THE CHANGES TO THE NATIONAL POLICY ON THE DEVELOPMENT AND IMPLEMENTATION OF REGULATIONS (NPDIR)

KEY ASPECTS

PREVIOUS SETTING

National Policy on the Development and Implementation of Regulations (NPDIR)

NEW SETTING

National Policy on Good Regulatory Practice (NPGRP)



TITLE



Business, investment and trade

Economy, social and environment

SCOPE

Two-tier assessment

- Regulatory Notification (RN) assessment - to determine whether Regulatory Impact Statement (RIS) is required or not
- Final RIS assessment - regulator submit all seven (7) elements

Three-tier assessment

- Digital Regulatory Notification (DRN) assessment
- Initial RIS assessment - regulator submit first four (4) elements of Regulatory Impact Statement (RIS); problem statement, objectives, options and impact analysis
- Final RIS assessment - regulator submit all seven (7) elements



TIER OF ASSESSMENT

- Overseeing the implementation of this policy, assessing its effectiveness and recommending improvements; and
- Examining Regulatory Impact Statements (RIS) for adequacy and making appropriate recommendations

For monitoring purpose, MPC will undertake assessment on the effectiveness of the implementation of the policy and report to NDPC



ROLE OF NDPC

Not included in NPDIR but the clause available in Best Practice Regulation Handbook 2.0

Existing regulator must be subjected to regulatory review once every 5 years



EX-POST EVALUATION

Not included in NPDIR but the clause available in Best Practice Regulation Handbook 2.0

Post Implementation Review is required when a regulation has been introduced, removed, or changed without a RIS. The PIR must be completed within two (2) years of the implementation of the regulation



POST IMPLEMENTATION REVIEW (PIR)

No

Applying Behavioural Insights



BEHAVIOURAL INSIGHTS (BI)

If you have any questions or require any additional information, please contact Mohamad Izahar Mohamad Izham or the Zaid Ibrahim & Co. (a member of ZICO Law) partner you usually deal with.



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Mohamad Izahar is a Partner in the Corporate and Government Advisory practice group at Zaid Ibrahim & Co. (a member of ZICO Law).

His practice focuses in the area of law reform. This includes advising Federal and State Governments including Ministries, regulators, and statutory bodies on the *'end-to-end'* law reform spectrum ranging from regulatory mapping, undertaking feasibility studies, conducting regulatory impact analysis (RIA), assisting in the drafting of primary and subsidiary legislations, and implementing regulatory frameworks.

He has also been involved in post-law reform work through his experience in compliance and governance with legal awareness initiatives, advising on regulatory compliance, developing legal audit programmes, and advising on rationalization, privatization, and corporatization exercises.

At the same time, his practice includes providing strategic and legal support to private sector clients interested in engaging the Government in policy development and reform. This includes industry proposals to amend or introduce new laws as well as complex and novel regulatory applications and approvals.

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