



THE REGULATORY BURDEN ON MUNICIPALITIES

Presentation to the Department of Cooperative
Governance and Traditional Affairs Technical
MinMec Policy Seminar

For an Equitable Sharing of National Revenue

INTRODUCTION

- In South Africa, decentralisation is a key vehicle for democratisation and development
 - Political representation at community level
 - Efficiency gains of decentralisation
 - Alignment of decisions to local preferences
- The design of the system should ensure that all positive aspects of decentralisation are realised
 - Degree of local autonomy to promote accountability to communities
 - Need for a legal and regulatory framework to ensure economic benefits of decentralisation are also maximised
 - To balance local autonomy greater national interest

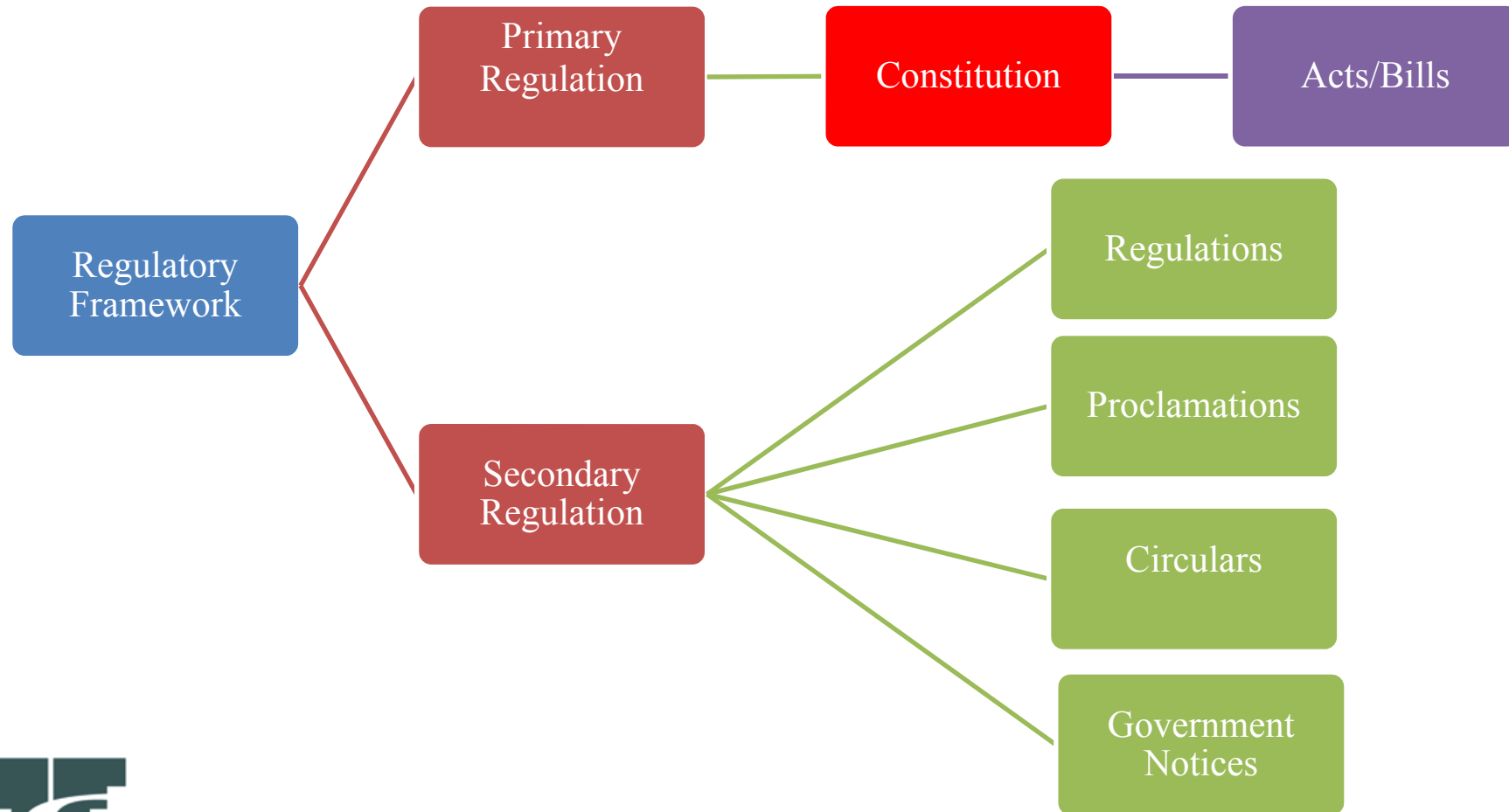
THE NEED FOR REGULATIONS

- The Constitution promotes a unitary state with three interdependent spheres operating in a system of cooperative governance
 - Spheres are distinct, inter-related and interdependent
 - A system of support, monitoring, evaluation and regulation of sub-national government is enshrined in the constitution
- A governance and regulatory framework intends to inform the operations of sub-national government while protecting LG autonomy
 - Supported in the Constitution
 - Balance between local autonomy and cooperative governance system
 - Ensure efficient and effective use of public funds
 - Minimises corruption and maladministration

CONCEPT OF REGULATION

- Proper understanding of concept of regulation is key to understanding their impacts
 - Regulations are legal and administrative rules applied and enforced by state institutions that mandate and prohibit actions by regulatees with infringements subject to criminal, civil and administrative sanctions (see next slides)
- More often regulations are viewed narrowly and in a static way as costs and constraints...But regulations can also motivate or be enablers of regulatees to adopt to certain actions.

CONCEPT OF REGULATION (CONT.)



DIFFERENT TYPES OF REGULATIONS

- Command and control regulation
 - Backed by legal sanction
- Self regulation
 - Command and control regulation imposed on oneself
- Incentive based regulation
 - Promote good behaviour by providing incentives
- Market based regulation
 - Use market mechanisms (e.g.. Permits)
- Command and control regulation predominant in LG

DISADVANTAGES OF COMMAND AND CONTROL REGULATION

Advantages and disadvantages with all types

- Authoritative, complex, intrusive and inflexible
- Can lead to moral hazard whereby public interest becomes secondary
- Can be difficult to implement uniformly
- Can also be difficult to enforce

A good system of regulation needs to ensure that all of these disadvantages are minimised

CURRENT SITUATION

- However, too much regulation can be counter productive
 - Can create unnecessary compliance burden
 - Can be a burden/barrier/obstacle to the success/performance/development
 - Exacerbate disadvantages highlighted
- Legislation and regulation in LG has been increasing with many regulators
 - Compliance related legislation since the advent of democratic local government include:
 - MFMA (National Treasury)
 - MSA (Cooperative Governance)
 - MPRA (Cooperative Governance and Traditional Affairs)
 - MFPFA (National Treasury)
 - Related regulations
 - Municipal Regulations and guidelines (National Treasury)
 - Water and electricity related (DWA, DOE)
- LG currently the most regulated sphere in the country (see next slide)

HAS INCREASED REGULATION IMPROVED MUNICIPAL PERFORMANCE

- Increased Regulation, in a sector with poor capacity (human, financial, technical) has resulted in a vicious cycle: increased regulation/circulars → more non compliance → poor service delivery
- Allegations of corruption and general mismanagement still rife in LG
- Regulation itself cannot solve fundamental issues
 - Capacity issues
 - Skills shortages
- LG more accountable to NG than local communities
 - Greater centralisation
- Are excessive regulation contributing to underperformance?

ISSUES WITH REGULATIONS (1)

- Impact of regulations is cumulative and municipalities struggle to prioritise core municipal mandates.
 - Many fail to balance regulatory compliance with their core delivery mandates
- Regulations tend to be inversely related to municipal size: the smaller the municipality the greater the impact (in terms of time and proportion of budgets).
- Uniform requirements of regulations
 - LG differs markedly in terms of capacity (urban/rural; revenue cap)
 - Varying ability to comply
- Design of regulations
 - Different departments are custodians of different pieces of legislation
 - Coordination becomes difficult
 - Increases regulation load on municipalities
- Unlike with PG, LG has many legislative frameworks

ISSUES WITH REGULATIONS (2)

- Implementation of LG regulations by Provinces
 - PG lacks M&E capacity in implementing such regulations
 - LG effectively accountable to both NG and PG
 - Need to strike a balance between NG/PG control and LG discretion
- Enforcement of regulations does not consider resources to comply to regulations

EXAMPLES OF CURRENT COST OF LEGISLATIVE REQUIREMENTS (1)

- Research is limited on costing compliance and the impact of individual regulations and its cumulative impact
- FFC review of the LGFF raised compliance costs as a major financial burden
 - Emakhazeni municipality costed the implementation of GRAP 17 at R6.8 million
 - It was argued that substantial resources diverted from service delivery to comply with audit requirements

EXAMPLES OF CURRENT COST OF LEGISLATIVE REQUIREMENTS (2)

- Do municipalities need to create specific departments to deal with reporting requirements?
 - Approximately over 75 legislative reporting requirements (Source: eThekweni Metro) with monthly, quarterly and annual deadlines
 - MFMA reporting requirements - approximately over 40 reporting requirements
 - Statistics Act reporting requirements – around 5 requirements
 - DORA reporting requirements – reporting on conditional grants
- New initiatives (SCOA) continue to ignore capacity and resource

OTHER ISSUES

- Need to improve council and community oversight over LG
 - Regulations seem to be countering this aspect
- Municipal capacity building initiatives need to improve and be implemented holistically
- Lack of appropriate skills continues to hamper LG
 - Need to ensure minimum competencies are implemented
- There needs to be consequences for non-compliance

CONCLUSION (1)

- Policy makers need a more adequate conceptualisation of regulations and a deeper understanding of mechanisms in which regulations affect municipalities
- There is a need to streamline and simplify regulations to minimise the red tape/administrative burden associated with LG regulations.
 - Address capacity constraints in the sector
- Need to understand the cumulative impact of all LG regulation.

CONCLUSION (2)

- When contemplating new regulations, a differentiated approach should be considered as the burden/impacts are bound to be different for different categories of municipalities. The resilience levels to regulatory shocks are often determined by a municipality's capacity (skills), resources, etc, and therefore differentiation by municipal category should be a key guiding principle when instituting new regulations. In general a number of instruments should be considered for minimising the regulatory burdens, and options should include:
 - Instruments for improvement of existing regulation
 - Modification or abolishment of obligations
 - Thresholds for obligations
 - Co-ordination between obligations (StatsSA, MPE, NT, DCOG etc.)
 - Better communication and guidance
 - Better use of ICT for easier compliance

CONCLUSION (3)

- The Commission recommends that a cost benefit analysis on LG regulations should be undertaken to properly interrogate costs and benefits of LG regulations. (Assess both negative and positive impacts of existing and new regulations as it is briefly covered in Section 105 of the Municipal Systems Act)
- The Commission recommends the institutionalisation of Regulation Impact Analysis (RIA) and make it mandatory to assess the following:
 - Financial impacts on national and local government
 - Administrative impacts on national and local government
 - Economic and administrative impacts for companies
 - Administrative impacts for citizens
 - Environmental impacts

CONCLUSION (4)

- RIA can be used to compare the impacts of regulatory and other feasible non regulatory interventions and enables the best, effective and efficient alternative to be chosen
 - Assess also costs and the quality of regulation: poor quality regulation may increase compliance costs, and reduces government ability to achieve objectives
 - RIA improves the effectiveness and efficiency of regulations, improves public decision making, government transparency and accountability, effectiveness and efficiency of government
- DCOG should consider setting up a division that would spearhead “better regulation” as part of government strategy to improve regulations. The division will be responsible for promoting and supporting regulatory reform, bring awareness on regulations, conducting analysis of areas of regulation, for example regulation aimed at municipalities



THANK YOU.

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