

Experience of a Regulator in the Electricity, Water & Wastewater Sectors - Trinidad and Tobago

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(RIC)

Presentation Summary

- ◆ Aim of Presentation
- ◆ RIC's Regulatory Framework
- ◆ Regulatory Structure in T&T
- ◆ Independence Attributes
- ◆ Level of Regulatory Independence of the RIC
- ◆ Measure of RIC's Independence
- ◆ Way Forward for achieving Independence
- ◆ Concluding Remarks
- ◆ Issues for Consideration

Aim of Presentation

General Aims

- Analyze the extent to which the RIC is independent.
- Draw on comparative internationally recognized indicators/attributes of independence.

Specific Aims

- Examine Independence in relation to:
 - Statutory Constraints.
 - Structural Features.
 - Contemporaneous Influences.
- Examine RIC's relationship with Service Providers and Customers.

RIC's Regulatory Framework

RIC Act proclaimed June 2000, replacing PUC

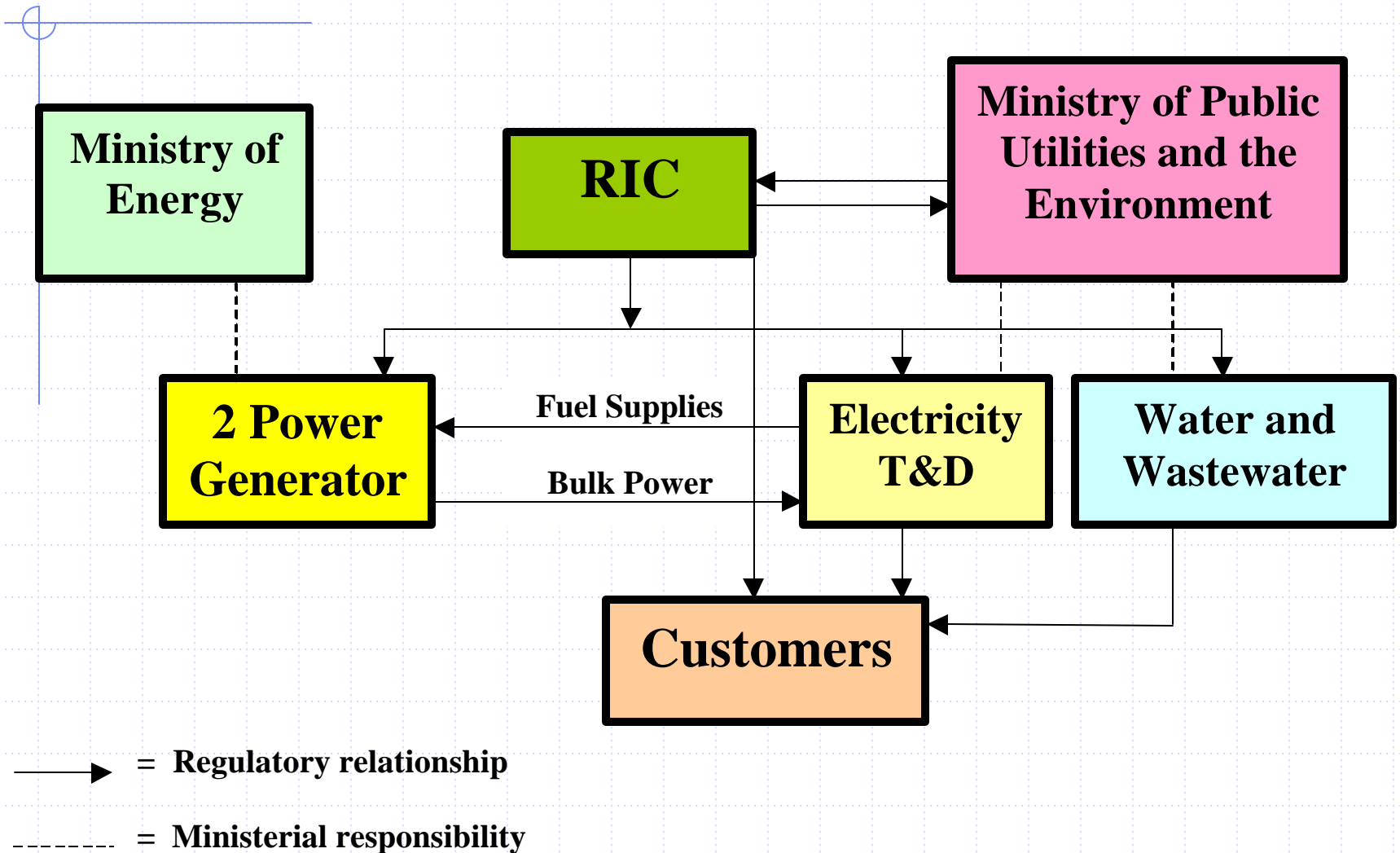
◆ Main limitations of PUC

- Quasi-judicial rate setting body (based on ROR methodology).
- No powers to set standards.
- Tribunal style rate hearing.
- Lengthiness of the proceedings (rate determinations taking over 2 years).
- Limited arms length relationship with Government.
- Funding through Consolidated Fund and controls on the use of funds & procedures for spending.

RIC's Regulatory Framework

Relationship with Government	Statutory body, but subject to policy direction from Government.
Decision-making process	Consultative. To give opportunity for stakeholders to participate meaningfully.
Appeal Bodies	Fair Trading Commission and High Court.
Dispute Settlement Powers	Can facilitate and mediate complaints against the service providers.
Selection Process for the Board	Appointed by the President on the advise of the Cabinet.
Qualifying Criteria	Experience and training in economics, finance, engineering, law, business, human resource management or public administration.
Disqualifying Criteria/ Termination	Unsound mind or incapable of functioning, bankrupt, conviction, guilty of misconduct, absent from meeting without notice or fails to carry out functions.
Tenure	Maximum of five (5) but staggered.
Staff Appointment	Commission can hire and dismiss staff.
Funding	Cess imposed on annual turnover of service providers
Staff Salary	Maximum salary with the approval of the Minister but not linked to civil services scales.

Regulatory Structure in T&T



Independence of Regulator

Some Observations:

1. Independence is relative.
2. It is one thing to create an independent regulator but quite another to empower to act independently.
3. Regulatory agencies are not created in vacuums, they are products of political, social, legal and economic conditions that exists at fixed points in time.
4. Effective regulation requires that regulators be largely free from political influence.
5. If regulator is *completely independent*, then it is not accountable.
6. *Complete independence* for regulators is not possible or even desirable.

Benefits of an Independent Regulator

- ◆ More consistency of decision-making, coherence and continuity.
- ◆ Decisions based on long term considerations rather than short term.
- ◆ More transparency and accountability.
- ◆ Freedom from regulatory process becoming politicized.
- ◆ High level of expertise to deal with complex issues.
- ◆ Shifts responsibility (Minister can hide behind independence when questioned).

Independence Attributes

According to Smith (1997) an independent regulator should possess the following qualities:

- ◆ Freedom from ministerial control;
- ◆ Professional criteria for appointing board members /commissioners;
- ◆ Appointment of commissioners for fixed periods and prohibiting their removal without clearly defined cause;
- ◆ Staggered terms for commissioners;
- ◆ Funding agency operations with user fees or levies on service providers;
- ◆ Exempting agencies from civil service salary caps to enable them to attract and retain well-qualified staff; and
- ◆ Prohibiting the executive branch from overturning an agency's decisions except through new legislation or judicial appeals of existing laws.

To Simplify

Regulatory independence requires:

An arm's length relationship with regulated firms, consumers and other interests.

An arm's length relationship with political authorities

Organizational autonomy that encompasses most of the attributes mentioned on the previous slide

Level of RIC's Independence

Examined using:

Statutory Constraints

Structural Features

Contemporaneous
Influences

Statutory Constraints

Although the RIC Act provides for a distinct legal mandate, it does not ensure freedom from Ministerial Control.

Examples:

- ◆ The RIC is a statutory authority however, Independence of the RIC not formally stated in the Act.

- ◆ Overlapping of responsibilities:
 - (1) Tariff Setting: RIC's function "to establish the principles and methodologies for setting tariffs". Minister's duty under license conditions is "to set procedures, principles and mechanisms relating to compensation of the Service Providers".

 - (2) Service Standards: RIC has powers to "prescribe and publish in the Gazette standards for services" while the Minister has provisions under the Regulations for setting quality of service standards.

Statutory Constraints

◆ Issuing Licences

- Minister has the exclusive power to grant licences.
- “Minister shall seek RIC’s advice before granting a licence”.
- But the Minister “is not bound to accept the advice or any part thereof rendered by the RIC”.

◆ **Sharing of duties** – Monitoring water quality and effluent discharge, also Ministry of Health.

Structural Independence

Examine the following main attributes:

Appointment of Chairman/Board Members

Prescribed Tenure/
Security of Tenure

Financial Autonomy

Appointment of staff &
terms & conditions

Structural Independence

Appointment of Board Members

Act states that the President of T&T shall appoint persons qualified by reason of training and extensive experience in economics, finance, engineer, law, business, human resources, or public administration.

Reality

- Commissioners nominated by the Minister, approved by Cabinet and appointed by the President.
- Some Commissioners chosen for the first Board appointment were openly aligned with the ruling political party.
- With the Change in Government in 2001, one Commissioner resigned voluntarily, others were asked "to do the proper thing" by the Minister. But they refused and their terms were allowed to expire. Only two of those commissioners were re-appointed by the new Government.

Structural Independence

Appointment of Board Members

Reality Continued

- Issue of re-appointments of retiring Commissioners at best ambiguous.
- Dismissal conditions in the Act – Unsound mind, bankruptcy, conviction, misconduct, failure to attend meetings without notice.

Option/suggestion for Appointments:

- Chosen by Government from a list of names put forward by an independent Committee.
- Appointment on the discretion of the President, would require constitutional amendment.
- Director General type or Panel of Board (3 DGs) type vs Board of Commissioners.

Prescribed Tenure/Security of Tenure

Best practice

- Board should enjoy pre-determine fixed terms (eg. At least 3yrs).
- Terms to be staggered.
- Specific dismissal criteria.

RIC Act specifies a maximum of 5 year terms but all not expiring at the same time. The Act also specifies the dismissal criteria for Commissioners.

◆ Reality

- Commissioners have been appointed for 1, 2 or 3 year terms, thus limiting their contribution to the regulatory process & not totally insulating them from Ministerial influence.
- As indicated previously, with the change in Government in 2001, the Commissioners refused to resign, when requested, and the new Government was forced to let their terms expire.

Financial Autonomy and Appointment of Staff

Funding autonomy Implies (Best Practice):

(1) Source of funding of the regulator:

Regulator should have nearly complete control over how funds are raised and disbursed.

(2) Financial powers of the regulator

Regulator should be free to hire and fire.

Financial Autonomy and Appointment of Staff

Reality

- RIC's funding is based on the fees (Cess) charged on the service providers.
- Minister approves the budget and determines if the budget is "fair and reasonable"
- Lengthy approval process - Permanent Secretary, Minister and finally Cabinet.
- Once budget is approved, RIC is free to determine the use of funds.
- RIC is not governed by civil service pay structure.
- With respect to hiring, RIC has full flexibility in hiring but subject to "such maximum limit of remuneration as the minister may determine"

Contemporaneous Influences

How would this work?

- Government sends signals
- Regulator can suffer repercussions if it ignores these signals
- So Regulator adjusts accordingly.

RIC's Experience:

- RIC has been regulating for a limited number of years so it is difficult to conclude.
- No tariff review completed.
- RIC asked to attend monthly meetings at the Ministry – RIC declined to attend (Reason: conflict of interest – SPs at meeting).
- Minister expressed serious concern for not being informed of rate of return reduction announcement in advance.
- Although lobbied by the service provider, Minister did not intervene when Guaranteed and Overall standards established for the electricity sector.

Arms Length Relationship with Service Providers / Consumers

Some observations:

- ◆ **The Regulator is often accused of being captured by consumers when Service Providers are allowed below normal markets returns.**
- ◆ **Because of information asymmetry, the regulator is often seen as favouring the Service Providers since:**
 - Short-term interests of the consumers may not always coincide with the long-term interests of Service Providers and the Regulator is generally accused of being captured by the Service Providers, if such short-term interests are ignored.
- ◆ **Testing for regulatory capture is always a difficult task, especially when trying to strike a balance between protecting Consumers interests and legitimate commercial interests of Service Providers.**

Arms Length Relationship with Service Providers

Two indicators of independence from Service Providers are:

- 1) Whether the staff of the regulator and regulated firms frequently move between the regulator and the regulated.
- 2) And whether the impact of regulatory decisions were in favour of the regulated entity, in particular whether allowed returns were above normal market rates of return.

Arms Length Relationship with Service Providers (Continued)

RIC avoids capture:

- ◆ The RIC has no revolving door policy.
- ◆ RIC's review of TSTT's performance led to a reduction in the international rates by 50%.
- ◆ RIC has strong statutory powers to demand information from and fine Service Providers if they do not comply.
- ◆ Setting and enforcing of (QS) standards.
- ◆ RIC publishes its key documents for public comments and is becoming more open as to its detailed methodologies for determining rates.
- ◆ Commissioners are not allowed to accept employment with service provider for two (2) years after their term.

Arms Length Relationship with Consumers

Indicators to determine arms length relationship with Consumers:

Whether there are dedicated unit and/or proper procedures for:

- Consumer complaints.
- Quality of service/universal access to service.

The RIC:

- Has a Consumer Service Department.
- Has implemented Quality Service Standards.
- Is in the process of acquiring a ISO 9001:2000 Quality Management System. (Standard used to assess one's ability to meet customer and applicable regulatory requirements and thereby address customer satisfaction).

Arms Length Relationship with Service Providers / Consumers

In addition to above indicators, there are system processes to mediate regulator's relationship with operators and consumers:

Decision making process:

RIC uses a consultation process to ensure that decisions are fair and transparent

Ethics Rules:

RIC has Instituted Guidelines in four main areas:

- Disclosure of activities
- Avoidance of activities
- Resignation from positions that pose conflict
- Recusal from an area of the Regulator's work.

Other Ways of Achieving Regulatory Independence

- Effective regulation is more than building institutions and ensuring regulatory independence. Regulators must also focus on sector economics and pricing policies.
- **As long as Utilities are Government owned:**
 - Government will try to control them and continue to intervene.
 - Service Providers will continue to lobby Minister for funding.
 - There will be resistance to the acceptance of independent bodies.

Other Ways of Achieving Regulatory Independence(Cont'd)

Three Important Methods:

1. Regulator must have full responsibility for tariff setting. The implementation of Price Caps will help.

2. Regional regulatory cooperation and approach can advance domestic reform and credibility by:

- Reducing political influence.
- Reduce deviations from negotiated agreements.
- Strength in numbers.

3. While any number of mechanisms can be constructed to aid in establishing a regulator's independence, in the final analysis, it is the perception of the public that matters the most.

- Monitoring and publishing of data, performance indicators etc.
- Monitoring and enforcing quality of service standards.
- Auditing
- Adopting and maintaining open and transparent decision-making process
- Adopting and following codes of conduct and ethical practices.
- Handling complaints fairly and effectively.

Measure of RIC's Independence

Some tentative conclusions:

Evidence suggests that no single regulator has adopted all the independence attributes examined in this presentation.

Although RIC has a degree of regulatory independence, there are areas of concern:

- Overlapping responsibilities.
- No full tariff setting independence.
- Potential for Government interference in Board appointment.
- Attempts to limit the RIC's discretion.

Some positive attributes:

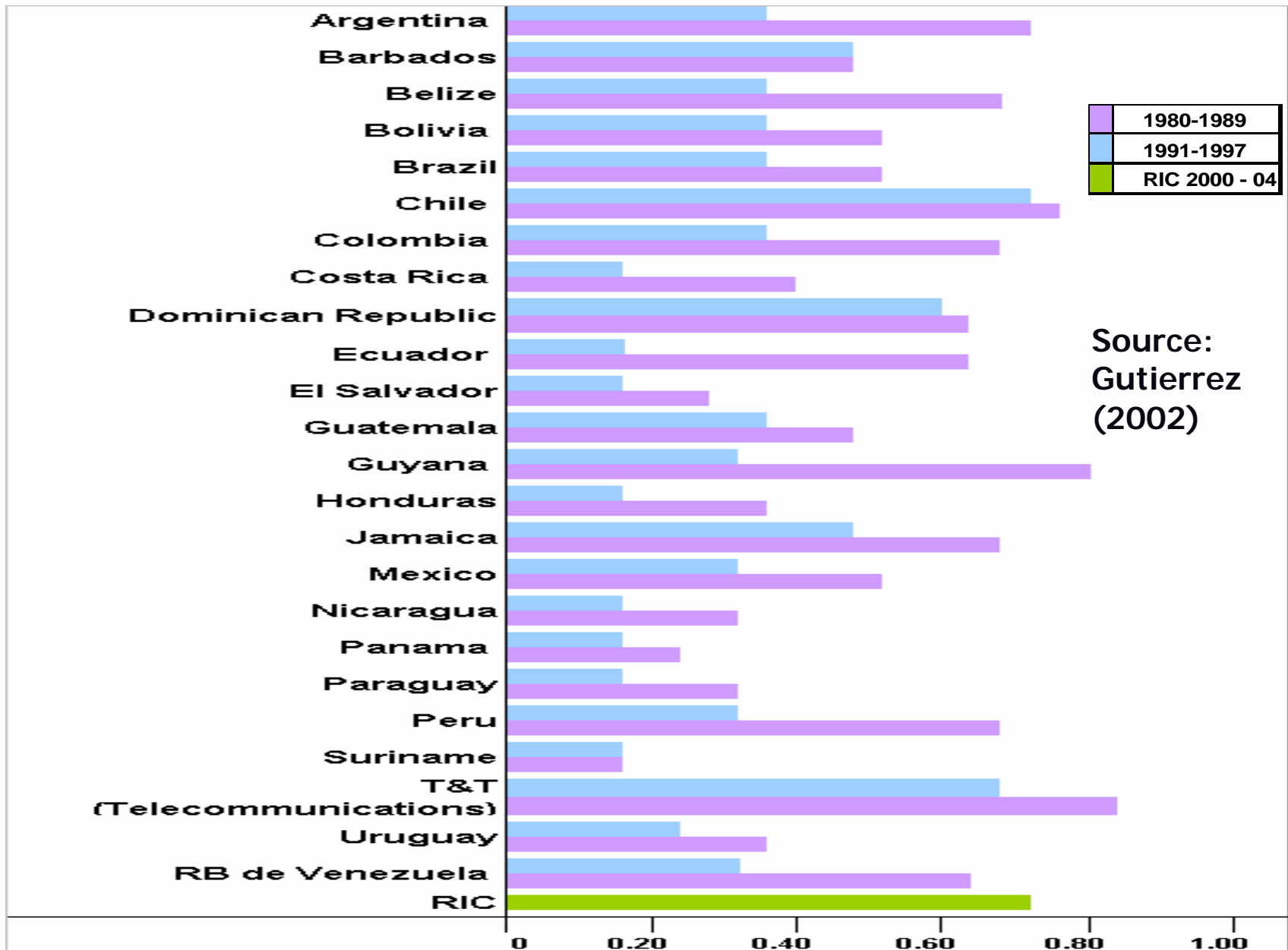
- Fair amount of financial autonomy.
- Autonomy in staff appointments.
- No civil service salary caps.

Measure of RIC's Independence

Institutional Criteria	Ranking *
Independent from Government	C
Transparency	B ⁺
Accountability	B
Board Appointments	C
Tenure	B ⁻
Financial Autonomy	B ⁻
Decision-making	B
Staff appointment, salaries	B ⁺

* Ranking Scale:
A-Best Practice
E-Highly Unfavourable

Regulatory Indexes for Telecommunications in Latin America & Caribbean



Source:
Gutierrez
(2002)

Concluding Remarks

- ◆ Regulation is a dynamic process that takes time, and must be based on a transparent Government policy. The objective of the regulator should be autonomy and good governance through accountability, transparency, equitability and efficiency.
- ◆ There will always be potential for conflict between political priorities and regulator's statutory duties, and they need to be accepted and managed and not avoided.
- ◆ Both Government and regulators can contribute to managing tension:
 - By avoiding any personalization of issues.
 - Regulator can help to improve the process by avoiding surprises so that Minister is aware, in advance, of any significant regulatory decisions.
 - Through frequent meetings between Chairman and Minister.

Issues for Consideration

1. Should there be a single / panel decision-making regulator or a Board of Commissioners?
2. Should there be an independent broad-based selection committee short-listing and proposing the names of Commissioners for appointment by Government?
3. Should there be a fixed / minimum (say 3 yrs) service stipulation for the Commissioners?
4. Should Commissioners be removed only in restrictively defined Cases?
5. Should the Chairman of the Regulatory Body have regular meetings with the Minister?
6. Should there be informal meetings between the Commissioners & the Government?
7. Should the policy direction of the Government be consultative?
8. What should be the suitable procedure for testing regulatory capture?