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Regulation and governance of investment policy in Morocco

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Abstract: In Morocco, the state aims to realize socio-economic development. Therefore, it uses many levers such as public policies, laws, and regulation. The investment policy is one of those policies. This policy uses regulation to achieve its goals, especially through rule-setting, monitoring, encouragement and by incentives, either by government departments directly, or, increasingly, through the delegation of these functions by the state to a number of relatively autonomous regulatory agencies and committees. Those entities fulfill public functions and make public decisions in matters of investment. This use of regulation as a tool to realize policy goals raises many questions about their efficiency, effectiveness, and governance. This paper will be mainly concerned with the impact of the governance of regulation as a way to conduct investment policy and how to correct it. It brings together a theoretical framework of regulation and its application in the Moroccan context by drawing from principal agent theory, and introduces a way to enhance the governance of regulation for more transparency and accountability, and also to meet policy goals through the adoption of Regulation Impact Assessment (RIA).

Keywords: Regulation, governance, investment, Regulation Impact Assessment

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1. Introduction

In an era of multi-level governance, the regulatory state appears more powerful than before in Morocco. Though, its regulatory governance for the public interest has generally become a more dominant or preferred mode of public policy aims, which is manifested in the policy of investment. This policy aims to realize socio-economic development via the rise of the private investment flow and the deliverance of infrastructure. In that sense, the conduct of the latest policy passes through market enhancement to facilitate doing business in the country and by the construction of diverse infrastructures beneficial to the function of some economic sectors.

These missions are done through rule-setting, monitoring, encouragement, incentives, and contractualization, either by government departments directly, or, increasingly, through the delegation of these functions by the state to a number of relatively autonomous regulatory agencies and committees. However, this shifting of responsibilities for critical economic objectives to quasi-autonomous regulatory agencies and actors raises issues of public accountability, economic productivity and policies coherence.

The levers and instruments of these policies, especially economic policies, are mainly public spending, as well as the regulation of economic activities. They aim to regulate, guide, incentivize and encourage the different economic agents. From this point, the state exercises its power over the market and supervises it in order to make it function in the manner it deems appropriate for the socio-economic development of the country.

The justification of adoption of 'Regulation' as a mode of public action relies on its flexibility. It fits changing circumstances more than laws, and it adapts to such rapidly changing investments choices and flux. However, this regulatory state requires a form of governance that limits the possession of public power by bureaucrats and politicians.

Like other countries seeking to develop its economic model and enhance its social development, Morocco counts on boosting the investment. Therefore, it has opened its economy to local and foreign private capital to invest in the country. However, it continues to count on state intervention in the economy, often through resource allocations, and the public ownership of key sectors of the economy via its public firms. These firms conduct the majority of the investment in the country.

In this context, policy of investment has emerged as the top policy priorities of the actual government. It depends on public spending, the regulation of market mechanisms, and also through the creation of infrastructures favorable to specific economic activities.

Though, three main categories of levers of investment policy are widely used, it's about incentives distribution, infrastructure deliverance and market regulation. In this categorization, distribution includes not only incentives transfers but also the provision of all kinds of public aid; such as taxes spending, land allocation to realize investment projects and Public Private Partnership (PPP). Also, the state provides infrastructure that serves some economic activities. All those aspects are interrelated and use regulation.

This regulation aims at serving various types of economic sectors and activities qualified as strategic and highly important for the country. It's done by setting specific measures and standards to facilitate the investment. Morocco aspires to overcome many structural problems of its economy that hinder its productivity and competitiveness, and also to strengthen resilience to crises. All this requires a continuous policy adjustment.

Nevertheless, whatever the nature of the economic policy adopted or adjusted, its implementation involves the establishment of institutions with a regulatory role. In the case of investment policy in Morocco, the aim is to guarantee a business climate which encourages investment and strengthens market mechanisms within the framework of transparent rules of conducting business, which promote competition and the competitiveness of the national productive sectors. A necessary condition for the diversification and enrichment of different economic activities, that might have a positive impact, not only on economic growth, but improves the wellbeing of the population, especially by efficient public spending and reducing market externalities.

In this perspective, managing market externalities is one of the areas of state intervention in the economy via investment policy. It must regulate the activity of different companies in order to impose restrictions and limitations, particularly when their production has serious environmental effects, such as pollution and the exploitation of non-renewable natural resources.
These restrictions take the form of production quotas, compliance with many standards and could go as far as determining prices. The adoption of these measures directly affects investment choices, particularly in the private sector. Aligning with these requirements forces private investors to increase investment and operating costs by taking additional measures or reducing production, which only narrows the profit margins for these investors. Therefore, the reframing of this regulation is a necessity for an optimal policy of investment.

In the policymaking system created by the constitution, implementation of most investment rules is the responsibility of the government, which often has to create new public agencies, or at least expand existing ones. In addition, through the parliament system, political allies play an active role in the approbation of rules that allow the government to exercise the regulatory power. It’s a sort of transfer of the power of the state to other agents. A power that is hardly opposable, which requires a new governance of the regulation.

Therefore, this paper will be mainly concerned with the governance issues of regulation. This governance assumes particular connotations in the case of Moroccan investment policy, especially as the regulatory decisions are delegated to public agencies and committees, which fulfill public functions and make public decisions in matters of investment, but are not framed by standards that limit their regulatory power.

In this perspective, we present the following hypothesis of this research paper

H1: the levers of investment policy present a problem similar to principal agent problem,

H2: the governance of regulation hinders the investment policy goals.

Thus, this paper will examine the aspects of regulation and their implications. Also, we will analyze what Morocco has done in matters of the governance of the regulation of the investment, and what is still to be done. Based on this diagnostic, we present recommendations to improve the governance of the regulation.

This analysis of the governance of regulation in Morocco draws from the Principal–Agent Theory (Michael Jensen and William Meckling, 1976) the problems that might face the delegation of investment regulation in Morocco, which allows us to move from the theoretical framework of regulation to practical evidence of the use of regulation in the conduct of investment policy in Morocco that are needed to be enhanced. For that matter, we are presenting an application of Regulation Impact Assessment (RIA) promoted by OCDE adapted to the Moroccan context based on the pitfalls noticed in the analysis. This paper brings together a theoretical framework of regulation and its application in the Moroccan context, and introduces a way to enhance the governance of regulation to meet policy goals.

2. Literature review

2.1 Conceptualization of theories of Regulation

Regulation has been associated with enforcement and compliance in many theories, which is not the case anymore (Baldwin, 1995). The emergence of new modalities and theories of regulation is influenced by the transformation of the state. Thus, the world witnessed in the last decade the appearance of new theories of regulation such as theories of 'responsive regulation' (Ayres and Braithwaite, 1992), 'smart regulation' (Gunningham and Grabosky, 1999) and 'problem-centered' regulation (Sparrow, 2000).

Despite those theories have changed the regulatory as way of compliance, they have raised many questions about the motivations and behaviors of actors in charge of making public policies (Sunstein and Thaler, 2008; Jolls, Sunstein, and Thaler, 2000; Baldwin and Black, 2008; LeGrand, 2003). In this perspective new theories emphasize the relation between regulation and public policy making, and also the effect of the use of regulation as strategy by actors such as 'risk-based' and 'principles-based' approaches to regulatory enforcement (Baldwin, Robert, et al. 2010).

This evolution of regulation makes defining it such a hard task. However, it is important to set the limit of what is and more importantly of what it is not regulation. The most common definitions of regulation evolve around a set of commands used by public power to influence and control all forms of social activities. However, this way of looking at regulating makes it a way to intervene in all aspects of social life. Nevertheless, the state is incapable to conduct such a task as it locks the necessary resources to do it, or it has not a clear objective of the outcome of its action, or it locks the motivation as an incentive to do so, which leads to the question why and for what reason to use regulation.

This regulation refers to the legal and institutional framework in which a decision of regulation of investment is being made. It includes many levels including the government, the administration and the governance. The latter emphasizes the relationships between regulation and public policy. This leads us to the relation between regulation and public policy making by politicians and bureaucrats. This modality of governance directly affects the substance of the regulation and its effects on investment. This could explain the result obtained in the implementation of the policy of investment. This regulation covers many aspects as mentioned above such as authorization, taxation, pricing incentives, and its concerns also conditions and norms of production.

It is fair to say that regulation is not always a way of governing; it is limited to a certain level, however, it presents a high level of return to the state community or the agents and actors in charge. Is what is illustrated in Philip Selznick's seminal definition of regulation as ‘the sustained and focused control exercised by a public authority over activities valued by the community’ (Selznick, 1985).

However, another problem appears with the use of such power; who is going to be in charge of applying this regulation? It is the beginning of the manifestation of governance as a way to frame this public authority and to put it in the right hands. The struggle over this power is manifested in the political competition over the key position in government and public administration. It is also a quest the private sector embraces to acquire a power that will allow it to position in the market beyond what the free markets offer. In this perspective Julia Black's defines regulation as ‘the intentional use of authority to affect behavior of a different party according to set standards, involving instruments of information-gathering and behavior modification’ (Black, 2001) (Baldwin, Robert, et al. 2010). This definition makes regulation an instrument and a tool of high risk of deviation from its valued objective by the community, especially with the lack of governance.

2.2 Limits and risks of regulation: place of governance

Managing the risks is becoming a significant mission of the state, especially how the action of the latter with a lack of governance constitutes a high risk of deviation from its conventional roles. Moreover, the regulation is considered simply a form of risk management (Hutter, 2001). Further, risk management is becoming a marker of good governance for organizations (Power, 2007). It's a mission that goes beyond the comments that may suggest that after the 'nightwatchman 'regulatory state' as it described by Majone (1994, 1997) and Moran (2003). The recurrence of the crisis and their risk accelerate the shift toward a 'risk regulatory state'. Risks that are created by society itself and which require management by the government (Giddens 1990, 1999; Beck 1992). A mission that requires good governance.

This is how the limits of regulation are manifested in the government's capacity to intervene effectively and ensure the regulation of economic activity in an optimal manner. (Arrow and Kurz, 2011). The first limitation concerns the difficulty of regulating markets and economic activity outside of market mechanisms. The second limit is the influence and pressure exerted by private interest groups who try to alter public economic choices in their favor, and thus exclude others.

Concerning the second mode, the quality of the missions and the mode of operation of the administration is called into question, in particular because of the increase in its discretionary power which manifests itself in the interpretation and unilateral application of texts, which paves the way for a rigid bureaucracy. Furthermore, the two modes coexist in the same system; they develop and implement choices deemed to be priorities for the public decision-maker. This is what forms the public choices which must be the subject of societal consensus (Fischer, Frank, et al. 2007)

Regulation therefore comes back in favor of more standards to follow in order to conduct economic activity, and also for more state intervention to stimulate the economy. The regulation of economic activity is also adopted to limit the abuse of natural monopolies who seek to exploit their position to increase their prices. However, the political-administrative nature of regulation makes it subject to pressure to expand the profit margins allowed to these monopolies (Stigler, 1971). All these risks require modalities to enhance regulation for more accountability, transparence and policy coherence, such as RIA.

2.3 Reframing regulation by using RIA

The use of RIA in most developed countries is a systemic and mandatory model to assess the policy choice especially by using Cost Benefice Analysis (CBA) in matters of secondary legislation, and also to control bureaucracy by making sure the agencies are aligned with principal agents view (Claudio M. Radaelli and Fabrizio de Francesco 2010). However, in developing countries its use is not that spread, among those countries is Morocco, even if he has strong economic relationship with the countries adopting RIA such the OECD countries, this organization that Morocco takes as a reference to adopt good governance practices to conduct business.

In the following we are presenting the manifestation of regulation in conducting investment policy in Morocco by defining its problems and risks, before presenting recommendation to enhance it.

3. Method

The method used to analyze the governance of regulation of investment policy in Morocco is based on the Principal Agent Theory finding applied to the Moroccan context. It relates the problems of delegating certain regulation aspects from the state to agents presented by this theory with the aspect of the regulation of investment in Morocco. Therefore, this method tries to relate principal agent theory with investment regulation by using critical qualitative analysis. To do so, we begin with a contextualization of this policy by determining the nature of its livers and how they are used, and what are their consequences.

Also, this analysis focuses on the aspects of regulation that is covered by RIA; because this method might be a response to the problem covered by Principal Agent Theory. RIA solves the principal agent problem by limiting and framing the power of bureaucracy, and by dressing accountability, transparency, effectiveness and policy coherence issues (OCDE, 2018). In this sense, this analysis aims at determining the principal agent problems, its manifestation and risks in the Moroccan context, and to present the adaptive application of RIA to correct it.

4. Analysis of regulation governance of investment in Morocco

Morocco has opted for the liberalization of its economy. It gave margins of freedom to the different economic operators. This is reflected in the legal framework which aims at the liberalization of investment and trade. However, this framework allows the state to regulate the economy.

In this sense, regulation is necessary to guarantee the proper functioning of markets. Nevertheless, this regulation could turn into excessive regulation marked by rigid procedures that would restrict economic activity and freedom of enterprise and trade.

In addition to this function of market supervision, the state also considers itself as an economic agent who seeks its share in what the market offers in terms of opportunities, benefits, and advantages. Therefore, the state offers paid services and sells goods. This is done via the public companies. The latter enters into a game of competition with the private sector, and they operate in natural and protected monopolies.

In that sense, public ownership of many firms, especially the public utilities companies, are supposed to conduct public investment under this economic regulation. As those public entities cover a large part of economic sectors; the state became the major actor in the economic sphere. However, it delegates this mission to relatively autonomous agencies and bureaucratic entities which raises the principal agent problems.

The bureaucracy constitutes a means of exercising economic power by the government. The public administration is given the power to control, to plan, to authorize, to regulate, to sanction, to produce and to invest. Furthermore, this statutory regulation plays an important role in the political economy of the Keynesian economy adopted by Morocco; the state plays a major role in economic recovery policies, especially via its fiscal policy. A role that is given also to its investment policy via the increase of public investment and encouragement of private investment.

In that sense, Morocco has carried out several reforms that aim to improve the business climate. These reforms concern taxation, the right to information, the simplification of administrative procedures, the establishment of several regulatory and control bodies to promote private investment.

Nevertheless, this relationship which connects the State and the private sector is not always a relationship of regulation and control, but it can also take a form of partnership. The most widespread form is the Public-Private Partnership (PPP) which aims to satisfy a general interest while generating a profit.

In addition, the Moroccan state has reformed business law, such as the commercial code, the public procurement code and the PPP law. Other institutions were also created, including the adoption of texts for the establishment of a strategic investment fund named “the Mohamed VI Investment Fund” and the creation of the State Portfolio Management Agency, as well as the reform of the texts which govern the regime of special economic zones. Lately, Morocco is engaged in a large reform of its public firms for more efficiency and effectiveness.

The governments rely on legislative production to conduct these reforms that aim to organize economic activity. This is manifested in the adoption of laws and regulatory texts, such as the investment charter, which is presented as a solution to the problem of weak private investment. This charter presents a system of the granting of incentives decided by the National Investment Committee presided by the Head of government.
Also, regional committee of investment are created in the 12 regions of the kingdom, they presided by the governor of the region, and it has in its composition many members such representative of Regional Agency of Investment which prepares the technical and administrative aspect of the investment projects. It also includes representatives of the various ministerial departments involved in the investment projects in addition to representative of the Ministry of Finance and Ministry of Interior. This committee decides in land allocation to realize investment projects. Also, it decides on grants, and permits for less important investment projects that do not enter the scope of the national committee.

All those measures use regulation delegated from this state. This requires governance that guarantees the effectiveness and coherence of the realization of the policy goals.

5. Finding

The governance has been used widely in the political discourse to qualify the dynamics of reform. Morocco has decided to reinforce its institutions. However, this shift was not translated to real effective governance that allows the participation of many actors in the process of public decision making; the investment decisions are in hands of the government and the public administration which raises many questions about the nature of the governance in Morocco to conduct such a policy marked by a high regulation, which make this policy an exclusivity for those entities, which limit its governance.

This governance of policy making, which manifests in the increasing hegemony of government and public administration, has become by far the most important lever of policy making in Morocco, this represents a governance issues.

the investment committees are too small to allow large-scale participation in a diverse area of investment activities, especially in matter of public incentives and authorization. Also, the executive could increase its influence in investment decisions by members of the National Investment Committee. The law puts a good deal of power in the hands of this committee.

Moreover, the conduct of public investment by few public firms makes the governance of this policy a particular one that depends largely on the agenda of the members or direction of those firms. The investment choices are decided by restraint members of the corporations. However, the impacts of those decisions affect a large population and are financed by public funds. In this perspective the regulation instilled by investment policy has many governance weaknesses that could limit its effects and its results.

Table 1: Risks of delegating investment regulation in Morocco

The investment policy levers delegated	The principal	The agent	The problem	Risks
Incentives and grants to investment, and approval of large projects	The state	National investment committee	Adverse selection, Information asymmetry & moral hazard	The committee cannot be an expert in every sector and political interference
Land allocation to realize investment projects approval of investment projects		Regional investment committee	Complexity & lack of coordination (multiple agents)	An Agent's Key Performance indicator (KPI) might conflict with the principal's overall goal
Public Investment in economic infrastructures		State-Owned Enterprise (SOE)	Goal Divergence (Conflict of Interest)	SOE's managers pursuing political or personal goals instead of commercial and public service goals

Source: elaborated by authors based on regulation delegation problems introduced by principal–agent theory

6. Discussion

Even if Morocco counts on regulation as a way to promote investment it has not established a system of governance to control the regulation to adjust to policy goals. One of the methods used worldwide to carry such a mission is RIA, this method is proven to be efficient in reducing many of management insufficiency that might undermine the objective of this policy through efficiency/burden reduction, transparency, accountability, controlling bureaucracies and effectiveness and policy coherence.

Moreover, regulation is seen as something that must be controlled, therefore a system that guarantees that as a way to rebalance power should be thought through, as it is done in the case of law making and approval by the parliament.

Though, Morocco has to conduct reform in the sense that makes its regulatory system more compliant toward the realization of public policies goals in a coherent manner. To do so the reform should first be coherent with other reforms to lead to more positive results in terms of economic development and social prosperity.

Alleviating social problems is one of the objectives of state intervention, which is now carried out via investment policy; economic efficiency is not the only objective of this policy. However, the instruments used by this policy presents many problems. If the regulation of the economy, the granting of investment incentives and the provision of economic infrastructures make it possible to support economic activity, the social domain has another operating logic that must be taken into consideration when developing those kinds of policies. Of course, economic performance leads to social prosperity, but this does not happen automatically. Therefore, investment policy which aims to reduce social inequalities must be designed in a way to remedy this problem alongside the objectives of recovery and support for economic activity.

7. Lessons for policy-makers and practitioners: Toward the reinforcement of regulation's governance

One of the best practices that might fit the Moroccan context is the adoption of RIA as a way to establish a system that guarantees more policy coherent. This might create an atmosphere for the investment to develop without procedural complications, and guarantee that those investments realize the objective of socioeconomic development and limit their negative effects.

The RIA should cover those aspects of regulation that present a high risk of affecting the outputs and outcome of investment policy by following a threshold implementation that focuses on the imminent risks of regulation with major impact before moving to other aspects. Therefore, we focus in this paper on the four aspects of investment regulation developed above, these aspects have a great impact on investment policy because of their scoop and their use of public funds. It concerns thou: Incentives to investment, Establishment of a license or permit system as a requirement of operation, public firms' portfolio management, and the use of public funds to support many economic sectors and activities.

Table 2: The potential application of RIA to frame investment regulation in Morocco.

The regulation	Effects and risks	RIA aspects	Impact of RIA
Incentives and grants to investment	a substantial or widespread impact on the investment decision	Valuation, Risk and Benefit-Cost Analysis	Efficiency/burden reduction
Establishment of a license or permit system as a requirement of operation	Affect a number of businesses, community organizations and individuals.	competition assessment processes	Controlling bureaucracies
Public firms portfolio management	opposition among stakeholders or the public	Corporate Governance	Transparency Accountability
The use of public funds to support many economic sectors and activities	Induce economic cost to the community	Effectiveness- Cost Analysis	Effectiveness and policy coherence

Sources: elaborated by authors based on OECD Reviews of Regulatory Reform Regulatory Impact Analysis: A Tool for Policy Coherence. (2009).

The application of RIA is not without challenges that are related to the institutional architecture and to other cultural aspects related to the making decision process, especially bureaucracy and government that could resist what limits their power.

8. Limitations

This study has two main limitations. First, we are subject to generalizability limitations because the study analyzes a large policy. We have dealt with this limitation by using theoretical farmwork as analysis tool rather than statistical generalizability of our findings.

Second, we acknowledge the limitations related to the applicability of our findings to the Moroccan context as it not that simple or easy to apply some modalities that have proven their effectiveness in a completely different context. Nevertheless, we are trying to expand our search beyond the positivist analysis that dominate the analysis of these topics in Morocco. We are though trying to integrate other approaches and theories that enlarge the scope of the analysis and provide solutions and suggestions to improve public management issues in the country and in the developing world. This article goes in that sense in matter of a wildly used regulation that represent many problems.

9. Conclusion

Regulation, as a policy tool, must be rethought. This concerns in particular the capacity of the state to supervise economic activities and to establish rules that would boost private investment flux and the productivity of public investment. It concerns the framework that guarantees transparence, accountability and policy coherence.

Although, legal texts and institutions are established to facilitate and attract productive investment, there are still many aspects of regulation that should be reformed towards harmonization and coherence with investment policy goals. Also, the significant extensive delegation of regulatory powers to investment committees and public firms and agencies should be followed by governance reinforcement via mandatory practices that limit their discretionary power. In that sense, many of the conventional regulatory methods should be discarded to let the place for regulatory reform that consists of both new regulation and governance.

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