

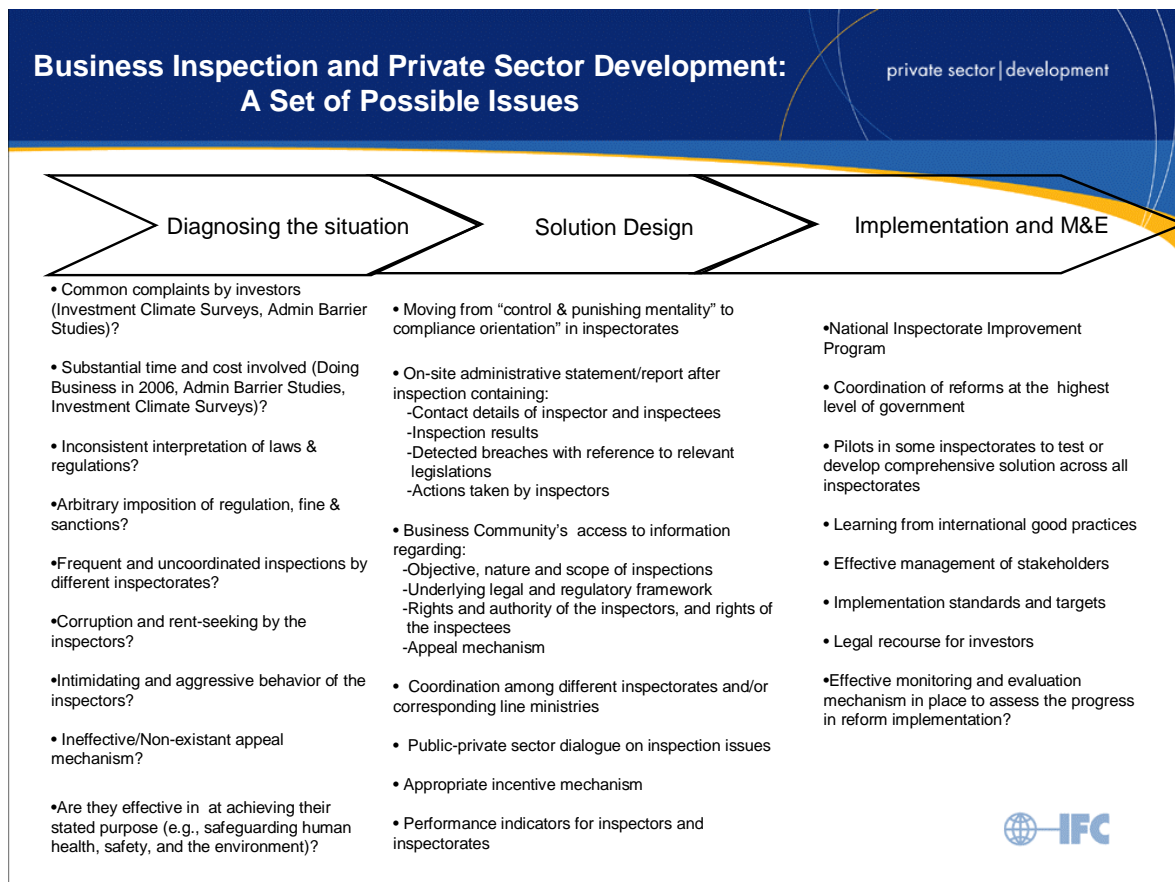
A Diagnostic Checklist for Business Inspection

Government inspections are essential and welfare improving if carried out efficiently and with accountability and transparency. However they often impose serious burden on business in terms of frequent and uncoordinated inspections, inconsistent and discretionary implementation of laws and regulations, imposition of unclear fines and sanctions, ineffective appeal procedures, intimidating and aggressive behavior and excessive discretionary power of the inspectors.

As inspections involve so many skills and are at the junctions of so many different processes and institutions, they are among the most difficult parts of the regulatory system. They are often subject to high levels of inefficiency and abuse, especially in the poor legal and institutional environments found in many transitional and developing countries. This checklist sketches several sets of question to help analysts assess whether the burdens of inspection are constraining private sector development in a given country and if so, whether effective steps can be taken to improve the inspection system. The accompanying roster of resources and good practice case studies should provide additional clues as to how to tackle many inspection reform issues.

The checklist is organized around three steps summarized in the figure below:

- *Diagnosing the situation:* Are inspection issues a constraint to growth?
- *Solution design:* What are the key policy, organizational and institutional issues?
- *Implementation and M&E:* Are the right levers, tools, and processes in place to tackle the reform issues and ensure sustainability?



1. Diagnosing the situation: Are inspections issues a constraint to private sector development & growth?

Suggested sources of information: Investment climate surveys, administrative barrier surveys and templates, business focus group discussions, in-depth interviews with investors and/or representative of various business organizations, investor opinion surveys, Doing Business indicators on construction inspection (forthcoming).

The questions here aim to determine to what extent business inspections are constraining private sector development and economic growth. They also try to point out which inspectorates and/or inspections are the most problematic ones, such as labor, health and sanitary, fire, construction, tax, custom, and whether or not the burden of inspection from different inspectorates varies across businesses of different sizes, sectors, regions, or ownership.

- How much **do investors complain** about issues related to the burden of business inspections such as the inspector's aggressive and intimidating behavior, rent-seeking attitude, unclear interpretation and arbitrary enforcement of laws and regulations, frequent and uncoordinated inspections, imposing severe fines or other sanctions (e.g. freezing bank accounts, seizing equipments, or forcing a business to suspend operation even for minor infractions), unclear rights and obligations of both the inspectors and inspectees, and ineffective and non-credible appeal procedures?
- Among different inspections and inspectorates (e.g., tax, customs, labor, sanitary & health, construction, fire, municipal police, environmental, etc.), **which** are viewed as **the most problematic**?
- How do investors rate the severity of inspection burden **compared with other constraints** to private sector development?
- How do these ratings **compare with other countries** along the spectrum from best to worst?
- What is the **magnitude of burden of inspection** in terms of inspection duration & frequency, senior management time involved, fines & sanctions, corruption & bribery?
- Which inspectorates **fare worst** in terms of these burdens?
- What is the estimated **opportunity cost of inspection burden** in terms of logistic cost, lack of competitiveness, resultant loss of private sector investment, employment, growth and other relevant development outcomes?
- Is the inspection burden more severe for some **types of companies** (grouped by size, ownership structure), **sectors, or locations** than for others?
- Has the government carried out a **comprehensive diagnostic analysis** on business inspection to identify the main policy, institutional and organizational issues and their adverse effects on the economy? Has it shared the results broadly among stakeholders?

2. Solution Design: What are the main policy, institutional, and organizational issues that can address the causes of the problems with government inspections?

Some of the potential sources of information for sections 2 and 3 are international best practice case studies on inspection reforms and regulatory reforms, case studies on reform process management, consultations with international experts on regulatory and/or inspection reforms, and detailed interviews with various stakeholder groups to assess to what extent international best practice examples are replicable and adaptable to the country in question.

In order to pinpoint key policy, institutional, and organizational issues leading to the problems identified in the previous section, the questions in this section cover the following areas:

- Legal basis for different inspections
- Transparency and Accountability of the Inspection System
- Coordination among different inspectorates
- Resource, skills and incentive mechanism
- Efficiency and effectiveness of inspections

2.1 Unclear legal basis for inspections?

If the legal basis of inspections conducted by different inspectorates/government organizations are not well defined, it leads to inconsistent interpretation of laws and regulations and their arbitrary enforcement. This in turn increases the uncertainty for operating a business even when there are a relatively small number of regulations. Thus the key questions to investigate are:

- Is there an **overarching law** covering inspections or regulatory reform more generally (e.g., an “administrative procedures law” or “regulatory reform law”)?
- What are the key **laws** that provide the basis for different inspections that are routinely undertaken for business? Do they clearly state the underlying purposes for the various inspections? When were they **adopted**? Are they still **relevant**?
- What are the key **regulations** and/or internal instructions that provide the basis for different inspections routinely undertaken for business? When were they **adopted**? Are they still **relevant**?

2.2 Is the inspection system transparent and accountable?

Transparency in the legal basis governs accountability in the inspection system and helps reduce inconsistent interpretation of laws and regulations and their arbitrary enforcement by inspectors. This in turn reduces scope for corruption and bribery. So some of the key questions to investigate are:

- Is there any top-level (inter-ministerial) institution/committee that oversees the entire inspection system to ensure that the goals & objectives of the inspection system are met and a well-controlled, transparent and accountable inspection system is in place?
- Is it clear what are the goals and objectives (in terms of public welfare) of the various inspections?
- Do the investors have easy access to information related to the laws, regulations, and inspection policies to which they are subject?
- Do all inspectorates have a compliance policy that is publicly available?
- Do the investors have easy access to information related to their rights and responsibilities as well as those of inspectors?
- Are inspectors required to provide written inspection reports to the inspectorate after an inspection is done, which includes the reasons for the inspection, the procedural steps taken to ensure an objective and fair inspection, evaluations of the evidence that was found during the inspection, follow-up steps needed to ensure further compliance, and any fines imposed during the inspection and agreements for a prompt correction of the perceived violation?
- Do inspectees receive a copy of such inspection report?

- Do the inspectorates have any monitoring mechanism to monitor the inspectors, particularly to oversee whether a written report is prepared after the inspection, whether the measures taken by the inspectors are appropriate and to restrain the excessive discretionary power of the inspectors?
- Are there explicit performance measurements for individual inspectors linked with the pay scheme of the inspectors?
- What type of sanctions used in case of corrupt practices?
- How do different inspectorates deal with appeals and complaints from the investors? Do they create and maintain records of complaints and respond to the complaints from business? Is there a database of complaints filed and their outcomes?
- Are investors aware of the complaint and appeals procedures related to different inspections? Do inspectors take affirmative steps to inform the business community about the complaint and appeals procedures (such as through leaflet, media advertisement, internet, etc.)?
- How long on average does it take to resolve an appeal? Is there any mechanism to assess the success of appeals procedures?
- Is there any public consultation mechanism on inspections? Is there any regular forum where representatives from different inspectorates regularly discuss inspection issues with all the relevant stakeholder groups?
- How much advance notice is given to the business community if and when there is a change in laws, regulations, and/or policies?

2.2 Uncoordinated, frequent and duplicative inspections?

Often several inspectorates/government organizations perform similar kinds of inspections that tend to confuse the inspectees. For instance, the national fire inspector may want that the fire extinguisher to be a height of 1.3 meters from the floor, while the municipal fire inspector insists that the height should be 1.4 meters. Uncoordinated, frequent and duplicative inspections impose unnecessarily high cost and risk on business. So some of the key questions in this connection to investigate are:

- Is there any coordination body such as an Inspectorate Coordination Council or the like in order to reduce the unnecessary duplications of various inspections and to ensure a well-coordinated inspection system?
- Is there a government-wide policy on sharing information across inspectorates/government organizations on the results of related inspections?
- Do different inspectorates/government organizations coordinate the inspection targeting and the schedule for related inspections?
- Do national inspectorates coordinate with subnational inspectorates in terms of sharing information, inspection procedures, inspection targets and schedules?

2.3 Are inadequate resources, lack of skills and poor incentive mechanisms key constraints?

The following questions try to assess the extent to which lack of resources, skills and incentive mechanism are problems:

- Are lack of resources (financial and/or human) a constraint to improve inspectorates' performance?
- Are the inspectors across all the inspectorates poorly paid?

- Are inspectors or inspectorates rewarded based on the infractions they discover and the fines and sanctions they impose? Or on the basis of performance measurement related to the inspectorate's goals and objectives?
- Is the imposition of fines encouraged from the inspectorates as it has the potential to increase the inspectorate's revenue?
- Is there any training available for the inspectors to improve their client orientation?

2.4 Ineffective and inefficient inspection system?

The questions in this section try to identify what are the key organizational and management bottlenecks for an efficient and effective inspection system:

- What is the inspection strategy of different inspectorates? Is there a risk based inspection strategy in place (e.g. targeting new firms, firms with dubious records, areas vulnerable to abuse, etc.)?
- Do all the inspectorates have an annual inspection plan containing type, duration, frequency of different types of inspections (e.g. regular, random, follow-up, based on complaints received) that the inspectorates plan to undertake in a give year? If yes, are they consistent with the resources available and in line with the underlying goals and objectives of the inspectorates?
- Do different inspectorates have well-defined criteria for targeting inspections?
- Do the inspectorates maintain a database and related information on the inspectees as well as information on potential outcomes related to non-inspection, e.g., on fire and safety hazards, environmental hazards, etc.? Do they use this information to help target inspections? Do different inspectorates share this kind of information?
- Is there an education campaign to inform inspectees about what is expected of them and why in order to encourage voluntary compliance?
- Are there alternative mechanisms to meet the objective of safety and environmental sustainability, such as third party verification by accredited private inspectors, voluntary compliance with incentives (e.g. Clean Industry Certificate, Environmental Compliance Certificate)?

3. Implementation, M&E: Are the right levers, tools, and processes in place to tackle the Inspection issues and keep reforms on track?

Once the most critical policy, institutional and organizational problems related to inspections have been identified, it is possible to evaluate the reform strategy, its implementation and sustainability. It is imperative that while designing the reform package, sustainability of such a package is carefully analyzed. Many good reforms could be of limited life span if sustainability is not thought through in advance and could die out even before the country could realize the benefits. The questions in this section are aimed at helping to determine whether the government has the right levers, tools, and processes in place to tackle those problems—and whether it is targeting its efforts most effectively.

- Is there a national master plan for inspection reform including clearly defined responsibilities, that is who is going to be responsible for which reform and when and how the reform is going to be implemented? Is the highest level of government involved in coordination and monitoring of progress? To what extent is that linked to the country's overall development goal and reforms in other areas?
- Does the government have a good understanding of the political economy barriers to inspection reform relating to each key issue and stakeholder group?

- Is the government effectively managing stakeholders—informing, involving, compensating, or confronting them as appropriate? (See the checklist on stakeholder management.)
- Does the reform program take advantage of the experience of other countries that have followed good practices in inspection & regulatory reforms (in terms of policies, institutions, management/organizations)? (See the case studies of good practice listed in the roster of resources.)
- Are there laws/legislations/policies setting implementation targets and standards for monitoring the performance of different inspectorates—and providing for enforcement of those standards through rewards or penalties? (See the checklist on implementing private sector development reforms.)
- Are the reform initiatives focused on the key issues, as well as on locations, and sectors, if firms/business in certain sectors and locations are more prone to the burden of inspections than their counterparts elsewhere?
- How are the reforms started -- pilots in some inspectorates and/or for some businesses?
- Is there effective coordination across the different levels and agencies of government dealing with inspections?
- What tools are used for monitoring the reform process (business feedback through opinion surveys, focus group discussions, a mechanism of complaint registration, etc.)?
- What reforms have recently been completed in the most problematic areas? Are there any benchmarks against which measurable and achievable targets are set for implementation?
- Is there any mechanism of learning by doing and/or of corrective measures following negative feedback from monitoring and/or ‘clients/users’?
- To what extent is there an effective legal recourse by ‘clients/users’ in case of deficient implementation?
- Is the reform program properly funded and financially sustainable? (See the checklist on implementing private sector development reforms.)
- What is the role of the international donor community in the inspection reform process?
- What are the key requirements to sustain the reform? What are the conducive factors that will enable the country to sustain the reform and what are the risk factors?
- How best the country could manage the risk factors and leverage the enabling factors to sustain the reform process?