



Business Environment Reform Facility

*The Business Environment Reform Diagnostic (BERD) Process:
Guidance for Consultants*

September 2016



Business
Environment
Reform
Facility



Department
for International
Development

Contents

Introduction	1
1.1 Purpose of this guide and intended audience	1
1.2 Structure of this document and overview of BERD Process	2
1. Design and Planning	3
1.1 Understanding where the DFID CO is in the design process and where the requested diagnostic fits in	3
1.2 Determining the scope of the diagnostic	3
1.3 BER Levels (National, Sub-National, Sectoral)	4
1.4 BER Functional Areas	5
1.5 Analysing the four BER Dimensions for each Functional Area of Regulation.	11
1.6 Cross-Cutting Issues	13
1.7 Identifying the underlying policy goals for BER programming	17
2. Conducting the Desk Review	21
2.1 Global Surveys, Indexes and Datasets	21
2.2 Country-Level Research: Key Resources	22
3. Conducting In-Country Key Informant Interviews and Stakeholder Consultation	24
3.1 Key Informant Interviews	24
3.2 Stakeholder Focus Groups / Roundtable	24
3.3 Meetings with other Development Partner Programmes	25
4. Sector-Specific BER: Approaches and Resources for Diagnostic	26
4.1 Sector-Specific BER Diagnostics: Resources	26
4.2 Competitiveness Impacts of Business Environment Reforms (CIBER)	27
5. The BERD Report	30

Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
AU	African Union
ASEAN	Association of South East Asian Nations
BE	Business Environment
BER	Business Environment Reform
BERD	Business Environment Reform Diagnostic
BERF	Business Environment Reform Facility
CIPE	Centre for Private Enterprise
CO	Country Office
CSO	Civil Society Organisation
DB	World Bank Doing Business survey
DCED	Donor Committee on Enterprise Development
DFID	Department for International Development
DP	Development Partner
FCAS	Fragile and Conflict Affected State(s)
IFC	International Finance Corporation
IGD	Inclusive Growth Diagnostic
M/SME	Micro and Small and Medium Enterprise
PEA	Political Economy Analysis
PSD	Private Sector Development
SADC	Southern African Development Community
TORs	Terms of Reference
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WB	World Bank
WTO	World Trade Organization



Introduction

1.1 Purpose of this guide and intended audience

Development agencies have developed a number of business environment reform (BER) diagnostic tools and approaches to help identify legal, regulatory and institutional constraints to growth and to design programmes to help stakeholders address these constraints through reforms. Many of these approaches do not reflect current approaches and best practices. For example, while fostering inclusive economic growth and targeting specific sectors that have high job-creation potential are increasingly seen as critical priorities, many BER initiatives continue to take a conventional, top-down perspective and rely exclusively on broad, economy-wide indicators.

This document provides updated guidance to consultants undertaking BER diagnostics for DFID Country Offices under the Business Environment Reform Facility (BERF), as well as for other donor agencies, organisations and governments. The guidance includes approaches for both economy-wide and sector-specific BER. It describes specific diagnostic tools, indexes and approaches and identifies key resources across numerous technical areas, and sets out a process for presenting the results of the diagnostic—the Business Environment Reform Diagnostic (BERD) Process.

We note that adapting and updating this guidance document will be an ongoing, iterative process as BERF assignments are completed and BER programmes are implemented. Thus for example ongoing research on best practices to integrate gender considerations into BER will inform diagnostic methodologies and the BERD process

The guidance is specifically intended to support the initial diagnostic process, when DFID country offices (COs)--or other donor agency entities as applicable--are designing new BER programmes and accordingly identifying priorities for reform, the overall parameters and where future programmes will fit in within the broader PSD portfolio, and starting the process of working with key partners and stakeholders. The BERD process is not intended to support the more in-depth programme design and implementation that takes place after tendering is complete and BER programme teams are on the ground. Many of the resources and links provided herein, however, will likely be useful for more in-depth analysis and programme design.

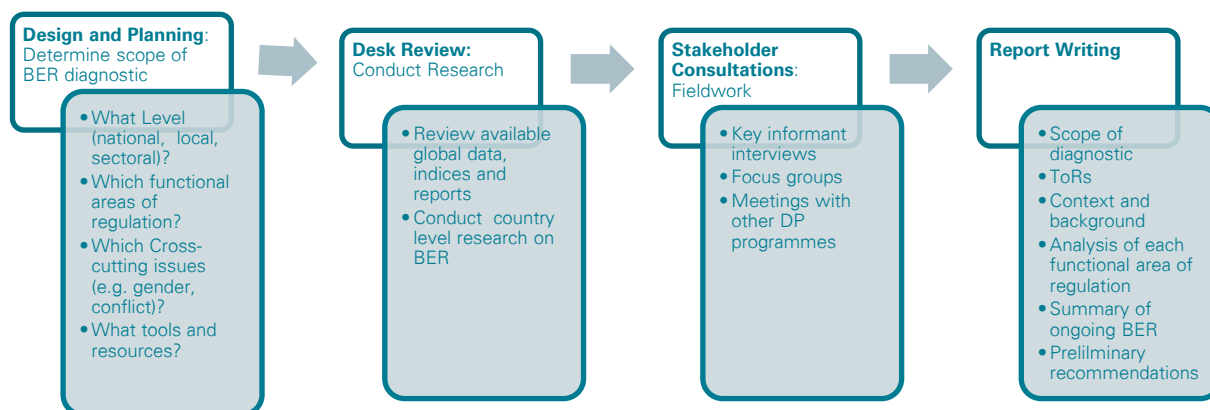
This guidance is phrased in reference to DFID country offices, but it is intended to benefit the development community as a whole as guidance for any donor, organisation, or government undertaking a BER diagnostic. Please note that this version will be piloted, reviewed and then revised by the BERF team to adapt it for broader use by the DFID Investment Climate Team, DFID Country Office staff, other donor agencies and government officials more

broadly, as well as by consultants. Comments and suggestions are welcome (see contact information on back cover).

1.2 Structure of this document and overview of BERD Process

These guidance notes are organised around each step of the BERD process:

Figure 1: The BERD Process



Section 1 (Design and Planning) provides an overview of the potential technical areas of BER at the national, local and sectoral levels, and available tools, data, resources and approaches. Each of the main functional areas of business environment regulation (e.g. business registration and licensing) is covered, as well as a brief discussion of some key cross-cutting issues (e.g. gender). Where the scope of the diagnostic and of potential future programming has not yet been determined, this Section will assist stakeholders to narrow that focus.

Section 2 (Conducting the Desk Review) provides guidance to consultants as they conduct country-specific research prior to travel, including a discussion of the main indexes and data sets.

Section 3 (Conducting In-Country Key Informant Interviews and Stakeholder Consultation) addresses the field work typically undertaken during a diagnostic, including key informant interviews, focus groups and meetings with other development partners.

Section 4 (Sector-Specific Approaches and Resources) provides resources and sets out some diagnostic methodologies to identify legal, regulatory and institutional constraints to economic growth at the sector, sub-sector and value-chain level. These will help where specific sectors have been identified as important to economic growth, poverty reduction and/or other policy goals.

Section 5 (The BERD Report) sets out the content and structure for the final report to be delivered by BERF consultants undertaking a BERD; Annex 1 provides a formatted report template.

1. Design and Planning

1.1 Understanding where the DFID CO is in the design process and where the requested diagnostic fits in

The first step in designing the diagnostic is to ascertain where the DFID CO (or other donor agency / government) and national stakeholders stand in the process of developing new BER programming. Consultants should obtain and review background documents such as:

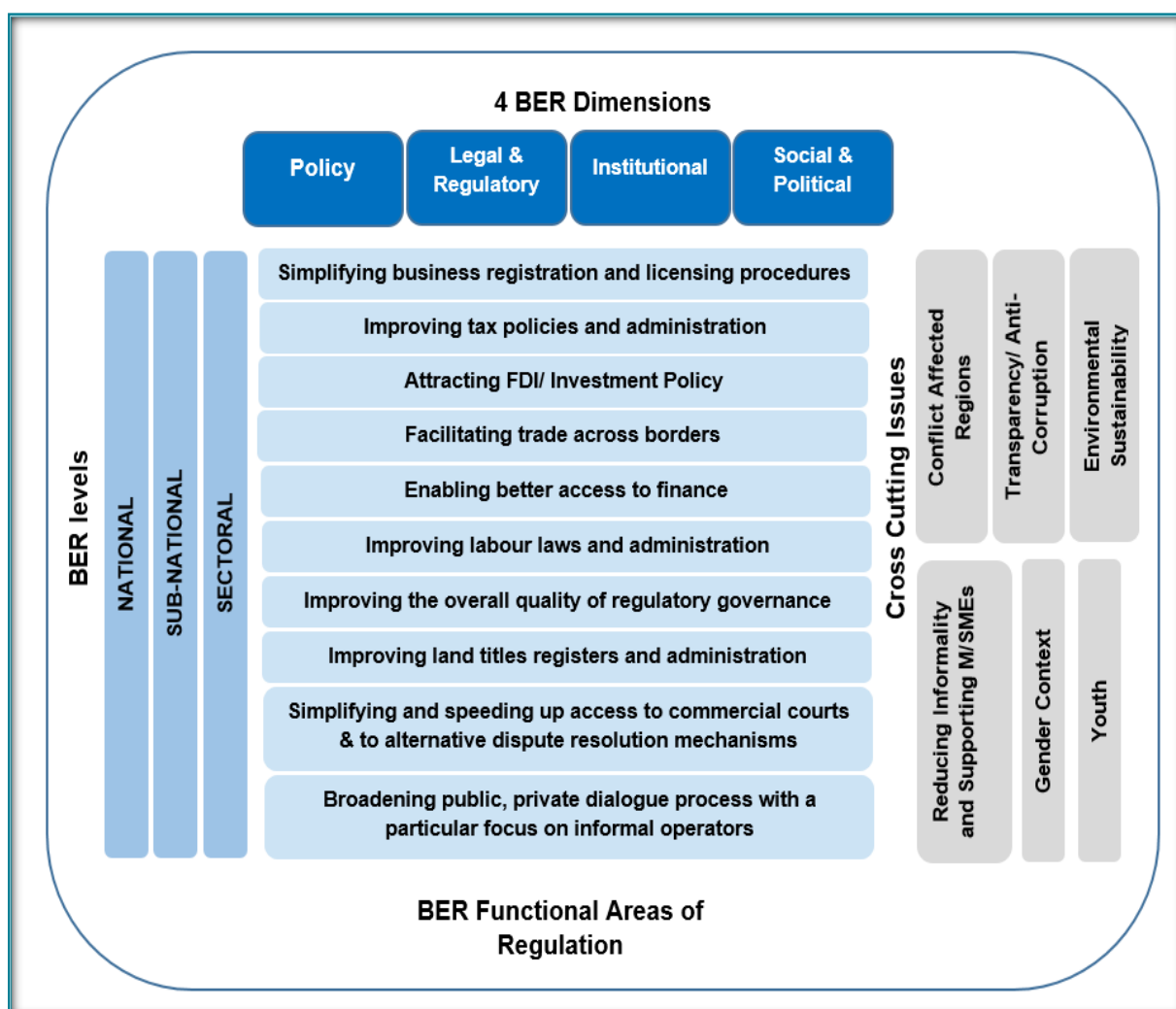
- Relevant DFID CO private sector development programme and country strategy documents.
- DFID Inclusive Growth Diagnostic (IGD) for the country (or draft if it is not available).
- Any ToRs, Draft ToRs, Business Case, Design Concept Notes (or drafts thereof) relating to the planned BER programme for which the diagnostic is being carried out.

1.2 Determining the scope of the diagnostic

BER potentially covers a vast number of reforms and determining the scope of the diagnostic is a critical first step. Establishing this scope is likely to be an iterative process that will continue throughout the desk review and the in-country consultation and will be influenced by many factors, including the priorities of the DFID CO and national stakeholders, by other Development Partner (DP) programming, as well as by practical constraints such as the number of consultants conducting the diagnostic and the number of consultant days available.

Figure below, adapted from the DCED's conceptualisation of the key dimensions levels and functional areas of BER illustrates the potential scope of BER programming. The left side shows the three **BER Levels** (National, Sub-National and Sectoral), the middle portion lists ten major **Functional Areas of Regulation**, which in turn can be analysed along four **BER Dimensions**. Reflecting recent trends in DFID BER programming, we have also included along the right side six of the most important **Cross-Cutting Issues** that DFID COs are likely to consider as part of future economic development programming.

Figure 2: The Dimensions of BER



Source: Adapted from Donor Committee for Enterprise Development (DCED), Supporting Business Environment Reforms: Practical Guidance for Development Agencies (2008).

Regardless of the resources available for the diagnostic, there will always be a trade-off between breadth and depth. For example if only a few functional areas are selected, the team will be able to conduct more stakeholder consultations, better analyse constraints and start the process of identifying possible reforms. On the other hand, considering a greater number of technical areas for future programming also has its advantage, such as increasing the probability of identifying key constraints to inclusive growth.

1.3 BER Levels (National, Sub-National, Sectoral)

The conventional and most common level for BER reforms has been and remains today the **national level**: supporting government agencies, the national legislature, national business membership organisations and worker's organisations to strengthen national policies, laws

and regulations, as well as the institutions such as regulatory agencies and courts responsible for implementation and enforcement.

With the increasing regulatory power of subnational authorities such as provincial, regional and local jurisdictions, national reformers and development partners are also focusing on the **subnational level**. A focus at this level may reflect decentralisation of regulatory responsibilities to local jurisdictions and the barriers to internal markets that may result thereof, as well as differing social, economic or political contexts. BER programmes in the past have been successful at encouraging competition among sub-national jurisdictions, as well as piloting reforms at the local level which then can be duplicated and adapted more broadly. Some BER diagnostics are focused entirely on a specific province or state, while others may combine a national and a subnational focus.

As discussed above, one of the major trends in BER programming in recent years has been for reformers to combine conventional, “top-down” or “horizontal” reforms which affect all businesses) with **sector-specific**, “bottom-up” or “vertical” reforms which look at the business environment from the perspective of a specific sector, sub-sector or value chain. Guidance on how to undertake sector-specific BER diagnostics is provided in Section 5.

Finally, we note that the DCED identifies a fourth level of BER, namely the supra-national or regional level, where regional development bodies (e.g. AU, ASEAN), regional economic communities (e.g. SADC) and the WTO are key partners and may dictate specific reforms. This level of BER will typically not be part of an initial BER diagnostic, but will likely be relevant to the programme.

Resources: BER at the National and Local Levels

- Kunai Sen, State-business relations: Topic Guide (University of Birmingham / GSDRC 2015)
- Donor Committee for Enterprise Development, Supporting Business Environment. Reforms: Practical Guidance for Development Agencies (2008), available on the DCED Business Environment Working Group / Interagency Database (www.businessenvironment.org)
- World Bank, Doing Business 2016: Measuring Regulatory Quality and Efficiency (2016), available at <http://www.doingbusiness.org/reports>
- USAID, Business Climate Legal and Institutional Reform (BIZCLIR) Final Report (2011)
- Sunita Kikeri, Thomas Kenyon and Vincent Palmade, Reforming the Investment Climate: Lessons for Practitioners (World Bank / IFC 2006)
- Simon White, Beyond National Business Environment Reform: A Review of Donor Agency for Regional and Local Business Environment Reform (DCED August 2016)

1.4 BER Functional Areas

There are a number of functional areas of regulation that have a direct impact on setting the environment for private enterprises, ten of which are set out in Fig. 2 above. Identifying

which of these functional areas are likely to be within the scope of the diagnostic is a key step. Several factors will determine which functional areas should be considered:

- The underlying goals of BER programming in the country; e.g. if job creation and poverty alleviation are top priorities for national stakeholders and DFID, functional areas such as access to finance and labour law will likely be important. This aspect of the diagnostic design is discussed in more detail in Section 2.7 below.
- The level of economic, institutional and political development of the country; some areas of BER may simply not be possible in the least developed countries, including in fragile states and regions; a good example would be insolvency reform, which is highly complex and requires functioning judicial institutions.
- Other ongoing or planned BER reforms in the country; for example if several other DPs are working on improving land titles, it may not be worthwhile to focus on that functional area.

The process of selecting which BER functional areas to focus on will be iterative and will continue throughout the desk review and the in-country diagnostic, and should be discussed with DFID and national stakeholders. To assist in the diagnostic design process, a brief description of the ten BER functional areas and selected key resources are set out below. These resources often (but not always) start with the relevant Doing Business indicator, which provides a baseline assessment of some of the areas of regulation, but these indicators should always be complemented by other data and country-specific and sector-specific desk research and in-country field work wherever possible given their relatively narrow focus and rules-based approach.

1.4.1 Simplifying business formation, registration and licensing; competition law

This functional area relates to all aspects of business entry, from the initial formation of a legal entity, obtaining of all required business licenses to competition policy. Many of the constraints on small businesses (and disincentives to formalisation) include the sector specific business licensing regimes that come after business registration and are not reflected in the World Bank's Doing Business "Starting a Business indicator".

Resources: Business Formation and Licensing

- World Bank Doing Business (Starting a Business Indicator)
<http://www.doingbusiness.org/reports>
- Enterprise Surveys (Days to obtain operating license, Percent of firms expected to give gift to get operating license), <http://www.enterprisesurveys.org/>
- Reforming Business Registration: A Toolkit for Practitioners (IFC / World Bank January 2013) <https://www.wbginvestmentclimate.org/toolkits>
- How to Reform Business Licenses (IFC / World Bank)
<https://www.wbginvestmentclimate.org/toolkits/business-licensing-toolkit/>

1.4.2 Improving business tax policies and administration

Business tax policy and administration are a key element of the business environment and critical to economic growth, formalisation and public finance. Note that DFID, unlike other donor agencies may include business tax policy and administration reform with public financial management and macroeconomic policy programmes rather than with BER.

Resources: Tax Policy

- World Bank Doing Business (Paying Taxes Indicator)
<http://www.doingbusiness.org/reports>
- Enterprise Surveys (Regulations and Taxes and Corruption indicators),
<http://www.enterprisesurveys.org/>
- Designing a Tax System for Micro and Small Businesses: A Guide for Practitioners (IFC)
<https://www.wbginvestmentclimate.org/toolkits/>

1.4.3 Attracting FDI / Investment Policy

Attracting and regulating foreign direct investment is a broad area which ranges from investment promotion policy, simplification of the investment approval process to sectoral regulation.

Resources: FDI / Investment Policy

- UNCTAD Investment Policy Reviews (IPRs)
<http://unctad.org/en/pages/DIAE/DIAE%20Publications%20-%20Bibliographic%20Index/investment-Policy-Reviews-%28IPR%29.aspx>
- World Bank Global Investment Promotion Benchmarking Project:
<https://www.wbginvestmentclimate.org/research-and-diagnostics/>
- Business Environment Reform and Investment Promotion and Facilitation: Rapid Evidence Assessment (DFID August 2015)
- The Extractive Industries Transparency Initiative (EITI) <https://eiti.org/>

1.4.4 Facilitating trade across borders

With a growing recognition of the importance of access to international markets for developing countries, improving trade policies, harmonising trade laws and regulations, reducing the time and cost of exporting and importing and increasing the transparency of customs administration have become important areas of BER. International trade policy and customs administration reform are highly technical areas of BER and a diagnostic will generally require a specialised expert.

Resources: Facilitating Trade

- World Bank Doing Business (Trading across Borders Indicator)
<http://www.doingbusiness.org/reports>
- World Bank Country Diagnostic Trade Integration Studies (DTIS), available at <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/TRADE/0,,contentMDK:20615178~menuPK:1574524~pagePK:148956~piPK:216618~theSitePK:239071,00.html>
- Enterprise Surveys (Days to obtain import license, Percent of firms expected to give gift to get import license), <http://www.enterprisesurveys.org/>
- Michael Trebilcock, Advanced Introduction to International Trade Law (Elgar, 2015)
- Gerard McLinden et al., Eds., Border Management Modernization (World Bank, 2011)

1.4.5 Enabling better access to finance, improving financial sector regulation and protecting investors

Access to finance is one of the greatest constraints to growth in poor countries. M/SMEs are collectively usually the largest employers yet they typically lack access to capital and to risk management tools such as savings, insurance and credit. Reforms in this area also address financial sector regulation more broadly, including bank regulation, collateral registries, credit bureaus and company law.

Resources: Access to Finance

- World Bank Doing Business (Obtaining Credit and Protecting Minority Investors indicators) <http://www.doingbusiness.org/reports>
- United Nations Capital Development Fund (UNCDF), Making Access Possible (MAP), <http://www.uncdf.org/en/map>
- The Economist Intelligence Unit / Global Microscope: The enabling environment for financial inclusion, available at <https://www.microfinancegateway.org/library/global-microscope-2015-enabling-environment-financial-inclusion>
- World Bank, Micro, Small, and Medium Enterprise Finance, <http://www.worldbank.org/en/results/2013/04/05/msme-finance-expanding-opportunities-and-creating-jobs.print>
- United Nations Commission on International Trade Law Legislative Guide on Secured Transactions (UNCITRAL 2007), http://www.uncitral.org/uncitral/en/uncitral_texts/security/Guide_securedtrans.html
- Enterprise Surveys (Finance indicators), <http://www.enterprisesurveys.org/>

1.4.6 Improving labour laws; Technical, Vocational Education and Training Policy

While labour law reform has been an important part of BER in developing countries, it has proven to be a politically sensitive area. After considerable controversy, for example, the World Bank removed the “Employing Workers” indicator from the Doing Business survey. Addressing gender discrimination in labour law and improving the job skills of youth, workers and entrepreneurs remain an important part of donor support to private sector development in poor countries, and appears as a cross-cutting issue in BER programmes.

Resources: Labour Law

- World Bank: Research on Labor Market Regulation;
<http://www.doingbusiness.org/research/labor-market-regulation>
- UNESCO, Technical Vocational Education and Training
<http://www.unesco.org/new/en/education/themes/education-building-blocks/technical-vocational-education-and-training-tvet/>
- Enterprise Surveys (Workforce indicators), <http://www.enterprisesurveys.org/>

1.4.7 Improving the overall quality of regulatory governance

Identifying shortcomings in the regulatory system as a whole—both in terms of developing regulations and enforcing them—allows reformers to target a broad number of regulatory areas. A number of possible entry points exist, including tools for reviewing existing regulatory stock (e.g. the regulatory guillotine), tools to develop new regulations (e.g. regulatory impact analysis (RIA); and tools to improve the implementation of regulations (e.g. One Stop Shops).

Resources: Regulatory Governance Quality

- Better Regulation for Growth: Tools and Approaches to Review Existing Regulations (Investment Climate Advisory Services of the World Bank Group in partnership with UKAid, 2010). <https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/business-regulation/better-regulation-for-growth/brg>
- Regulatory Governance in Developing Countries (Investment Climate Advisory Services of the World Bank, 2010)

1.4.8 Land and Property Rights

How a country exploits its real estate resource has a huge impact on its economic and social development. Reforms to improve how land markets function, including land titles registers and administration, as well as subnational regulation of construction permits are important elements of the business environment. Land and property rights are emerging through BERF policy research as a key area of BE reform in FCAS.

Resources: Land and Property Rights

- World Bank Doing Business (Registering Property and Dealing with Construction Permits Indicators) <http://www.doingbusiness.org/reports>
- Richard Baldwin, Presentation on Land Markets Diagnostic Tool (DAI, April 2016)
- Secure property rights and development: Economic growth and household welfare. Property rights evidence paper (DFID April 2014)
- Do no harm in land tenure and property rights - designing and implementing conflict sensitive land programs (CDA, 2013)

1.4.9 Improving commercial dispute resolution

Improving access to commercial courts and alternative dispute resolution (ADR) mechanisms and strengthening judicial institutions are important functional elements of BER. Efficient contract enforcement, the rule of law and effective protection of rights are essential to economic and social development. An insolvency system is important to facilitate the exit of inefficient firms. The BER diagnostic process should include meetings with judges, court administrators, lawyers and other professions like enforcement agents and insolvency administrators.

Resources: Commercial Dispute Resolution

- World Bank Doing Business (Enforcing Contracts and Resolving Insolvency Indicators) <http://www.doingbusiness.org/reports>
- World Justice Project Rule of Law Index, available at <http://worldjusticeproject.org/rule-of-law-index>
- Linn Hambergren, Justice Reform and Development: Rethinking donor assistance to developing and transition countries (Routledge 2014)
- Guide to Rule of Law Country Analysis: The Rule of Law Strategic Framework (USAID 2010)
- Alternative Dispute Resolution Guidelines (IFC 2011) <https://www.wbginvestmentclimate.org/toolkits/>
- Lukasz Rozdeiczner and Alejandro Alvarez de la Campa, Alternative Dispute Resolution Manual: Implementing Commercial Mediation (IFC 2006)

1.4.10 Broadening the public-private dialogue process

Public private dialogue (PPD) is a critical element of the reform process, including the initial diagnostic. PPD comes in many forms. It can be structured or ad hoc, formal or informal, wide-ranging or focused on specific issues. It can involve a broad variety of private sector representatives, labour unions and civil society groups and can take place at local, national, or international level. It can be organised by industry sector, cluster or value chain, or it can cover cross-cutting economic issues. Because M/SMEs, informal operators and disadvantaged groups rarely have a seat at the table, a focus on broadening existing PPD mechanisms to include these groups will likely be an important element of future BER programming.

Resources: Public-Private Dialogue

- Benjamin Herzberg and Andrew Wright, The Public Private Dialogue Handbook: A Toolkit for Business Environment Reformers (DFID / WB / IFC / OECD) (2006)
- Building the Capacity of Business Membership Organizations: Guiding Principles for Project Managers (World Bank Group, 2005)

1.5 Analysing the four BER Dimensions for each Functional Area of Regulation.

The list of ten BER functional areas of regulation set out in Section 1.4 is long and reflects a wide range of constraints on private sector development. Thus if the BER diagnostic ToRs do not narrow the scope of the diagnostic, it will generally be necessary for the diagnostic team to discuss the scope with the client.

Likewise, each one of these functional areas is not just a set of “technical issues” requiring a legislative or regulatory fix. Instead, effecting change and addressing constraints to growth in each area will involve engaging with a multi-institutional, political environment whose complexity includes layers of history, as well as a range of different interests, incentives and perspectives.¹

The BERD—the first step in designing and implementing a multi-year programme—will not be able to address or even identify all of these factors. However, adopting an approach developed under the USAID-funded BizCLIR programme can help the diagnostic team start the analytical process and set the stage for a “politically smart” approach. As the team undertakes the desk review (Section 2) and the field work (Section 3), it will analyse each selected functional area of regulation along the four key “dimensions” of BER identified in Figure 2 above: Policy, Legal and Regulatory, Institutional and Social and Political. Some of the key questions that can be asked under each of these dimensions are set out below:

Policy: How effective is the policy-making process? How do stakeholders provide input into policies? For example, at the sector level, are national policies aligned with private sector actors working in the sector?

Legal and Regulatory Framework: How closely do existing laws and regulations reflect global standards? Are those global standards relevant? How well do they respond to commercial realities? Do embedded incentive structures track social and economic objectives?

Implementing Institutions: How well do administrative agencies and courts carry out their duties in terms of efficiency, transparency, and predictability? Do institutional behaviours create barriers to participation and predictability? In terms of supporting institutions: how deeply rooted in civil society are the laws and institutions that govern economic life? Do the many needed individual parts of the “system” exist, and if so, do they work together efficiently? What evidence is available as to whether laws and regulations are implemented in practice? What are the incentives of the key stakeholders regarding implementation? Who will win and who will lose?

¹ DFID Legal Assistance for Economic Reform Programme (LASER) (2016) Politically smart approaches to donor investment climate programming: A Guidance Note, referencing J. Boulton (2015) Embracing Complexity – Strategic Perspectives for an age of turbulence. Oxford University Press.

Social and Political Dynamics: How is economic power distributed? How do economic and political interests combine? How far does policy and the legal/regulatory framework actually guide decisions over business registration, granting licences etc. against informal and corrupt practices – are we operating in a rules-based or a deals-based environment? How well do administrative and legal systems respond to users’ evolving needs? How receptive to change are the key stakeholders? What forces or factors govern the pace and direction of change in the system? Are specific ethnic groups or disadvantaged groups subject to discrimination and/or exclusion in the business environment (both the formal framework and informal practices)? Will conflict or fragility affect how regulations get implemented, or how the reform process will work? What are the key barriers to women’s economic empowerment, and what do we know about how the business environment is different for women?

A Note on PEA: Political economy analysis (PEA) can and should be used at all phases of BER programmes, including in the diagnostic process. PEA can help consultants identify underlying policy goals, match those goals to specific reforms and allow politically smart analysis. PEA should likewise inform the desk research and field work. The resources listed below can help consultants integrate PEA into the diagnostic; for example, the 2011 DCED guide on PEA for BER provides a list of useful questions to help guide the analysis.² Likewise, in fragile and conflict affected states (FCAS), the Conflict Sensitivity Screening Tool will help support PEA.³

Resources: Political Economy Analysis (PEA)

- DFID Legal Assistance for Economic Reform Programme (LASER), Politically smart approaches to donor investment climate programming: A Guidance Note (February 2016)
- Peter Davis, The Political Economy of Business Environment Reform: An Introduction for Practitioners (DCED, May 2011), available at <http://www.businessenvironment.org>
- DFID, Political Economy Analysis How to Note (2009)
- V. Bruce Tolentino, From Analysis to Implementation: The Practice of Political Economy: Approaches to Economic Reform (2010)

An illustration of the analysis of a BER functional area across policy, legal and regulatory framework, implementing institutions and social and political dynamics is provided in the textbox below—using the example of the 2009 analysis of the facilitating trade across borders as presented in the USAID funded Zimbabwe BizCLIR assessment.

² P. Davis (2011) The Political Economy of Business Environment Reform: An Introduction for Practitioners, (DCED)

³ The Conflict Sensitivity Screening Tool prepared for DFID (2012) - http://www.gsdr.org/docs/open/st_dfid.pdf

Illustrative Analysis of a BER Functional Area under the four BER Dimensions: Trading across Borders in Zimbabwe

Policy: The Ministry of Industry and Trade is responsible for general trade policy formulation and implementation, in coordination with other ministries including the newly established Ministry of Regional Integration. In terms of international and regional trade agreements, Zimbabwe is a participant in the WTO, a member of the Common Market for Eastern and Southern Africa (COMESA) and of the Southern African Development Community (SADC). Zimbabwe lacks a comprehensive trade facilitation policy.

Legal and Regulatory Framework: The Customs and Excise Act (1955) is outdated and does not reflect all treaty and agreement obligations, including the Revised Kyoto Protocol on harmonization of customs procedures. The principal laws and regulations governing trade remedies and customs valuation and tariffs (Customs Tariff Law, Competition Regulations) appear complete and current.

Institutions: (1) Trade Policy: The ministry staff responsible for regional integration numbers only 21, divided among the Ministries of Industry and Trade and of Regional Integration. Zimbabwe is negotiating with COMESA on tariffs, a free trade area and a customs union, but none of these have been implemented. The Ministry of Regional Integration is not fully functioning. (2) Trade Facilitation: The Zimbabwe Revenue Authority (ZIMRA) is responsible for both revenue collection (taxes) and trade facilitation (customs), and there is no separate customs department within ZIMRA. The resultant shortcomings include low quality and quantity of customs officials, lack of specialized customs training within ZIMRA, reduced morale and a focus on revenue collection over trade facilitation. The other border agencies (immigration, agriculture, health and others) do not coordinate efficiently and multiple clearances are typically required. Key supporting institutions include the Confederation of Zimbabwean Industries, the Associations for Freight Forwarders and Customs Agents, the Transport Owners Association, and the Standards Association of Zimbabwe.

Social and Political Dynamics: (1) Political Will: Advances in trade facilitation depend on the leadership and commitment of the top levels of government and of the border agencies. There is limited political will at these levels and few gains have been achieved in recent years. (2) Corruption: Corruption in Zimbabwe is primarily at the highest level of government, and historically the country's public and private sectors have not been as corrupt as many of its neighbours in Africa. However the hyperinflation period created "chaos" at border posts and has resulted in an increase in bribes being paid at the border. (3) Transport Infrastructure: Zimbabwe's poor infrastructure creates problems for trade facilitation, with the major transport corridors needing upgrading.

Preliminary Recommendations: (1) Reorganise ZIMRA to create separate customs and tax departments that function independently; (2) Improve trade facilitation by creating one-stop operations at all border posts and increasing targeted training for Customs personnel; (3) Develop an overarching trade facilitation policy; (4) Update and modernise the Customs and Excise Act.

Source: Zimbabwe's Agenda for Action: Business Climate Legal and Institutional Reform (BIZCLIR) Diagnostic (USAID 2009).

1.6 Cross-Cutting Issues

Like most development agencies, DFID's private sector development programming around the world prioritises inclusive growth, and DFID BER programmes aim to integrate key cross-cutting issues such as gender, youth, poverty reduction or conflict into their design from the start, rather than as an "add-on". Accordingly BER diagnostics under BERF will typically cover one or more of these cross-cutting issues. Each cross-cutting issue will apply

at the national, subnational and sector level, and can be analysed across the policy, legal and regulatory, institutional and socio-political dimensions.

Two scenarios are possible with regard to incorporating cross-cutting issues into a BER diagnostic. The first is that specific cross-cutting issues are identified as a priority from the start in the ToRs for the diagnostic. If this is the case, at least one of the consultant(s) should be an expert in that area and significant resources should be dedicated to the issue during the desk research and field work. The second possibility is that no cross-cutting issues are expressly set out in the ToRs; in this case the consultants should look more broadly at these issues during the diagnostic, identifying potential partners and key constraints. Three of the most important cross-cutting issues (gender, poverty / informality, and conflict) and corresponding resources are presented below.

1.6.1 Gender

Regardless of whether or not there is an explicit requirement from the client to incorporate gender considerations, the gender aspects of BER should always be carefully considered at all stages of the diagnostic. The textbox below summarises some of the key factors that can have a major impact on women and women-owned businesses.

Gender and Functional Areas of Regulation

Below is an illustrative summary of factors in the Business Environment that have a direct impact on women-owned/managed enterprises and the employment of women

Business Registration and Licensing: Corruption, harassment, extortion by officials

Tax Policy and Administration: Direct and indirect taxes, awareness of tax requirements and procedures, unequal treatment, corruption/harassment inuring tax collection, benefits from tax payment

Access to Finance: Overall legal capacity, land titles and property rights (for collateral), discriminatory banking laws, Know your customer (KYC) requirements, Supply side banking data, financial infrastructure (credit bureaus, collateral registries, digital distribution channels), lines of credit for women and credit guarantee schemes, de facto land titles and property rights law, male dominated policy making

Labour Laws: Legal gender differences, gender based work restrictions, gender discriminatory laws, maternity, paternity and parental leave, child care, elder care

Regulatory Governance: National sector guidelines and quality standards

Land titles, Registration and Administration: Equal land and property rights, administering land titles, women's participation in land reform and titling programmes

Access to Commercial Courts and ADR: Gender discrimination by the judiciary, legal literacy

Broadening Public Private Dialogue: Legal rights for women, quotas for women in parliament / public sector, gender diversity in public and private sector, women's trade union participation, women's engagement in business associations and networks.

Source: Katherine Miles, Business Environment Reform and Gender (Business Environment Working Group, DCED, August 2016)

Resources: Gender and BER

- Katherine Miles, Business Environment Reform and Gender (Business Environment Working Group, DCED, August 2016)
- Sevi Simavi, Clare Manuel & Mark Blackden, Gender Dimensions of Investment Climate Reform: A Guide for Policy Makers and Practitioners (World Bank 2010)
- Women, Business and the Law Survey 2016: Getting to Equal (World Bank 2015)
- Enterprise Surveys (Gender Indicators) (World Bank), available at <http://www.enterprisesurveys.org/>

1.6.2 Reducing Poverty and Informality

First generation BER programmes in developing and transitioning countries typically did not identify poverty reduction or formalisation as explicit goals, and diagnostic methodologies such as Doing Business likewise were not designed to identify reforms that would foster inclusive growth. This can be seen for example in the hypothetical cases used in DB questionnaires: these feature established, mid-sized companies rather than M/SMEs, and require respondents to the questionnaires to assume that no bribes are paid. Clearly the reality in most developing contexts is often characterised by a large number of M/SMEs and informal or semi-formal actors, as well as significant administrative corruption. It is not surprising then that such global indices are often not seen as relevant to informal actors or to M/SMEs.⁴ Current BER programming is increasingly focusing on inclusive growth and reducing informality, and consultants undertaking a BERD should be aware of recent research and approaches to PSD programming. The resources below will help in that process.

⁴ R. Kormos (2013) Pro-Poor Business Law and Regulatory Reform. Developing Alternatives, available at <http://bit.ly/1gLameg>

Resources: BER, Poverty and Informality

- GSDRC Applied Knowledge Services, Inclusive Growth Topic Guide (2015)
- Business Enabling Environment Assessment Tool / Informal Rules (Mercy Corps), available at <https://www.mercycorps.org/research-resources/private-sector-engagement-tool-kit>
- Business Environment Reform and Poverty Rapid Evidence Assessment (DFID, August 2015)
- Donor Committee for Enterprise Development (DCED), Business Environment Reforms and the Informal Economy: Discussion Paper (December 2009)
- Removing Barriers to Formalization: The Case for Reform and Emerging Best Practice (Prepared for USAID by DAI, 2005)
- Simon White, Donor approaches to improving the business environment for small enterprises (Committee of Donor Agencies for Small Enterprise Development, 2004), available at www.sedonors.org
- International Labor Organisation (ILO) / SEED, Survey Kit: Surveying the influence of national policies, laws, and regulations on employment in micro and small enterprises (2002)
- Enterprise Surveys (Informality Indicators) (World Bank), available at <http://www.enterprisesurveys.org/>
- Making the Law Work for Everyone, United Nations Commission on Legal Empowerment of the Poor (UNDP)

1.6.3 BER and Conflict

Many of the countries where BERF consultants will be working are fragile and conflict affected states (FCAS). The challenges facing businesses and investors in FCAS are unique and can be broken down into four categories, and vary in terms of severity across FCAS.

- **Economic:** reduced foreign and local investment, sectoral shifts, damaged infrastructure, illicit taxation and extortion, the legacy of war economy, and informality.
- **Political and security related:** low legitimacy and capacity of the state, residual violence, and a lack of a functioning judicial system.
- **Social:** tensions between communities, weak and disrupted networks, low trust and psychological trauma. This can act as a barrier to effective BER due to slow implementation and uptake.
- **Demographic:** high number of female headed households, a large number of incapacitated and injured combatants, health issues, population displacement, employee flight and low education. This is a prominent issue in how to guide BER to obtain inclusive growth.

The principles for action set out below will help consultants conducting a diagnostic in FCAS consider these challenges as they conduct the desk research and field work.

BER in Fragile and Conflict-Affected States (FCAS): Principles for action

- Planning, design, implementation and evaluation of BER needs to be flexible and adaptable in FCAS situations, more than in peaceful states, as the context is more susceptible to rapid change. Gathering baseline data and constant monitoring is essential so that mitigations/responses can be put in place quickly.
- Smaller-scale changes can be more effective than sweeping reforms in very fragile contexts. In Mozambique, for example, smaller scale reforms such as creating an alternative dispute resolution for commercial contracts, have helped reduce the time needed to resolve commercial disputes.
- Post-conflict conditions may present opportunities for positive social reforms, such as women's empowerment, as traditional power structures may be more open to inclusion of women in business.
- Timeframes for reforms in FCAS are longer than in other countries. Contingency for this needs to feed into the design and implementation of BER programmes.
- Incorporate political economy assessments and conflict sensitivity analyses.

Some recent literature and diagnostic tools that consider the special challenges of BER in FCAS are set out below.

Resources: BER in FCAS

- Economic development in fragile and conflict-affected states: Topic Guide (GSDRC 2015)
- A Rough Guide to Investment Climate Reform in Conflict-Affected Countries (USAID / World Bank 2009), available at <http://documents.worldbank.org/curated/en/170911468148162966/>
- The Conflict Sensitivity Screening Tool prepared for DFID (2012) - http://www.gsdr.org/docs/open/st_dfid.pdf
- Business environment reforms in conflict-affected contexts' Note prepared as part of the 'Strengthening the economic dimensions of peacebuilding' Practice Note Series by International Alert - http://www.enterprise-development.org/wp-content/uploads/IntlAlert_PracticeNote_BER_March2010.pdf
- Naoise MacSweeney, Private Sector Development in Post Conflict Countries: A Review of Current Literature and Practice (DCED 2009)

1.7 Identifying the underlying policy goals for BER programming

The ToRs for the assignment will outline the basic parameters for the diagnostic. However, the diagnostic team will likely need to understand the underlying policy goals for the future BER programme. The team should review the background strategy documents listed above in Section 1.1 above and should discuss the assignment with the BERF team and DFID staff (or other donor agency as applicable) to try to understand as much as possible about what national stakeholders and DFID are hoping to achieve with the BER programming. Supporting a drive for export-led economic transformation would require a totally different set of reforms to efforts to expand formal job creation in MSMEs for example.

The Inclusive Growth Diagnostic (IGD) in particular will typically identify the overarching objectives of DFID’s economic programming, binding constraints to inclusive growth, and likely growth sectors; and should provide the starting point from which the diagnostic can drill down. The process of crystallising the underlying goals of reform will be an ongoing process throughout the diagnostic, and there is usually considerable back and forth between host country government officials, private sector representatives and the international donor community. Government officials may have goals that are distinct from those of the donor agency; the diagnostic will provide valuable information for purposes of reconciling the goals. For example, leaders may have made public pledges to dramatically improve their country’s World Bank Doing Business scores; meeting those goals will be a priority for the government and can trump broader goals such as inclusive growth or poverty reduction. In such a case constructive engagement by a BER programme could mediate these goals and use initiatives designed to improve scores to open the door to reforms that also seek to meet other policy goals.

Identifying the underlying goals of the BER programming in the country requires that the diagnostic team be familiar with the most recent scholarly research and donor agency guidance on BER, as well as recent trends in PSD more broadly. DFID is leading the way in incorporating inclusive growth goals into PSD initiatives, and BER diagnostics commissioned by DFID COs under BERF reflect this new direction. For example, where an IGD identifies certain sectors of the economy as having a high potential for poverty alleviation and job growth for vulnerable populations, those specific sectors and even sub-sectors are likely to be targeted for future BER programmes—sometimes instead of the more conventional, economy-wide regulatory reforms aimed at improving World Bank Doing Business indicators.

As key underlying reform goals of stakeholders are identified, the BER diagnostic team should be able to focus research and field work on specific technical areas. Figure 3 below provides some guidelines linking selected policy goals to specific BER levels, functional areas and cross cutting issues. These guidelines or decision matrix are broad, as identifying BER is highly context specific and will vary enormously across geographies. This matrix will be tested and revised as the BERF team undertakes diagnostics and supports ongoing programmes. Likewise, all of the key assumptions about BER set out in the underlying Business Case and Theory of Change for BERF, such as the assumption that an improved business environment will lead to better economic outcomes and poverty outcomes apply to these Guidance Notes and to Figure 3 below in particular.⁵

⁵ See: DFID Business Environment for Economic Development (BEED) Business Case. For a more in depth discussion of the empirical evidence on the links between investment climate and growth, see Clare Manuel, Is there a causal link between investment climate and growth? A review of the evidence (Legal Assistance for Economic Reform programme, June 2015)

Figure 3: Matching Underlying Policy Goals to Specific BER

Underlying Policy Goals	BER Level(s)	BER Functional Areas of Regulation	Cross-Cutting Issues
Inclusive Growth / Job Creation	National, Subnational, Sectoral. Sectors identified in inclusive growth diagnostics (IGD)	Business Registration/Licensing, Trade Facilitation, Access to Finance, Improving Labour Laws, Access to Commercial Justice / ADR, public private dialogue (PPD)	Gender, Youth, Decreasing Informality / Supporting M/SMEs, Conflict (as applicable)
Inclusive Growth in Targeted Sub-National Areas	National and Subnational (with a focus on local implementation of national level laws and regulations; Sectoral (with a focus on specific sectors identified as important to the targeted region)).	Business Registration / Licensing, Trade Facilitation, Access to Finance, Improving Land Titles and Construction Permits, PPD (with a focus on local dialogue mechanisms)	Gender, Youth, Decreasing Informality / Supporting M/SMEs, Conflict (as applicable)
Formalisation, Strengthened M/SMEs	National, Subnational, Sectoral. Focus on sectors identified in IGDs where M/SMEs have most potential or play a major role	Business Registration / Licensing, Trade Facilitation, Access to Finance, Improving Labour Laws, Improving Overall Quality of Regulatory Governance, Commercial Justice & ADR, PPD	Gender, Youth, Decreasing Informality / Supporting M/SMEs, Conflict (as applicable), Transparency/Anticorruption
Increased FDI	National, Sectoral. Specific sectors identified as key for FDI	Tax Policy, FDI/Investment Policy, Facilitating Trade, Improving Overall Quality of Regulatory Governance, Improving Land Titles and Administration, Commercial Justice	Environmental Sustainability, Transparency/Anticorruption
Compliance with Trade Agreements or Treaties	National	Tax Policy and Administration, FDI/Investment Policy, Facilitating Trade, Specific areas of legal or regulatory reform identified in trade agreements or treaties	Transparency/Anticorruption, Environmental Sustainability
Improved Doing Business Scores / Visible Legal and Regulatory Reforms	National	Focus on Doing Business Indicators that can be improved with legal and regulatory reforms—rather than longer-term institutional and policy change. Also focus on Doing Business reforms that have not been undertaken yet.	None—though as noted, efforts should be made to incorporate cross-cutting issues into BER

It is the responsibility of the diagnostic team members to remain up to date on donor guidance, scholarly research and international best practices including current DFID guidance on PSD and BER. Some key resources are presented below.

Resources: Current DFID Approaches to BER

- Clare Manuel, Investment Climate Reform: Doing it Differently, What, Why and How (DFID Legal Assistance for Economic Reform Programme) May 2015.
- Miguel Laric, Systems Change in the Business Enabling Environment / Investment Climate Practice Note (July 2012)
- DFID, Business Environment Reform and Poverty: Rapid Evidence Assessment (August 2013)
- Independent Commission for Aid Impact, DFID's Private Sector Development Work (May 2014)

2. Conducting the Desk Review

Prior to field work, the diagnostic team will conduct a thorough desk review of existing research and studies on the business environment and private sector development in the country. The desk review should take up to 5 days. The availability of good quality background documentation varies significantly across different countries. With the exception of global indices and surveys such as the World Bank Doing Business Survey and the Global Competitiveness Index, most available reports and studies are country-specific or undertaken only for selected countries.

2.1 Global Surveys, Indexes and Datasets

The following resources generally cover most countries, though the quality of the data will vary significantly, particularly in FCAS.

1. World Bank / Doing Business Survey (DB). This annual expert survey of legal and regulatory constraints covers 189 countries and ten areas of business regulation, each of which is scored and compared with the other countries. Although controversial, DB remains by far the most used BE survey and provides a clear framework and guidelines for certain reforms; it is also relatively objective. Due to its high visibility, DB helps stakeholders get political buy in for reforms that may improve a country's ranking, providing a good entry point for reforms. Some of the limitations of DB include its reliance on "best practices" from industrialised Western countries instead of locally-identified needs; its emphasis on selected, narrow reforms, and the absence of focus on the needs of informal economic actors and the poor and disadvantaged. Given the demand for technical assistance from countries interested in improving their scores, it will be important for the BERF team to ensure that this tool is used effectively--as an entry point and diagnostic tool rather than an end in itself.

2. World Bank / Enterprise Surveys. An Enterprise Survey is a firm-level survey of a representative sample of an economy's private sector. The surveys cover a broad range of business environment topics including access to finance, corruption, infrastructure, crime, competition, and performance measures. Since 2002, the World Bank has collected this data from face-to-face interviews with managers and business owners in over 130,000 companies in 135 economies. The Enterprise Surveys "Country Profiles" provide key investment climate indicators for a country with benchmarks against their respective regional and income groups. <http://www.enterprisesurveys.org/about-us>

3. World Bank / Business Environment Snapshots: Business Environment Snapshots is a "one-stop guide" to business environment indicators, laws, and World Bank Group project information for 183 countries. It is currently limited to World Bank group materials. <http://rru.worldbank.org/besnapshots/>

4. World Economic Council / Global Competitiveness Index (GCI). The GCI assesses the competitiveness landscape of 140 economies, providing insight into the drivers of their productivity and prosperity. Only a few of the 12 GCI pillars are directly relevant to BER however, and unlike DB, the GCI is based primarily on other indexes and surveys and accordingly does not provide guidance on specific reforms. <http://reports.weforum.org/global-competitiveness-report-2015-2016/>

5. KPMG Change Readiness Index (CRI). The CRI is designed to measure how effectively a country's government, private and public enterprises, people and wider civil society anticipate, prepare for, manage and respond to change and cultivate opportunity. The CRI is designed for use by a wide range of public and private organisations to improve government policy by benchmarking national strengths and weaknesses and identifying areas in need of reform, to inform public and private investment decisions by highlighting the strengths and weaknesses of target countries. The CRI covers 127 countries, and combines data from 22 primary survey questions, gathered from 1,270 country experts around the world, with a rich secondary dataset made up of more than 120 secondary variables. <https://home.kpmg.com/xx/en/home/insights/2015/06/change-readiness-index-methodology.html>

2.2 Country-Level Research: Key Resources

1. World Bank / Investment Climate Assessments (ICA). These detailed assessments are run by the Investment Climate Department of the Private Sector Development Vice-Presidency Unit in response to requests from the field structures. Investment Climate Assessments identify key constraints to growth in a country and areas for reform. These reports analyse perception of entrepreneurs and firm performance in the country and their link to quantitative data found in investment climate surveys. ICAs have been prepared for over 60 countries (either covering the overall investment climate or a specific sector) and several regions. If there is an ICA for the subject country, it is typically a very useful resource for a BER diagnostic. <http://documents.worldbank.org/curated/en/docsearch/document-type/904594>

2. USAID Business Climate Legal and Institutional Reform (BizCLIR). BizCLIR assessments are detailed diagnostic studies of the business environment, combining a review of legal and regulatory frameworks as well the social and economic context. In total, eleven BizCLIR assessments were conducted between May 2007 and November 2010 in Pakistan, Tanzania, Jamaica, Rwanda, Burundi, Uganda, Macedonia, Kenya, Zimbabwe, West Bank/Gaza and Mexico. Even though these are out of date and cover only a limited number of countries, BizCLIR reports are useful resources. Many elements of the BizCLIR methodology have been adapted for this guidance, and some of the research conducted under BizCLIR resulted in new approaches for BER programmes, including the GenderCLIR diagnostic methodology to better incorporate gender perspectives in BER and the AgCLIR diagnostic methodology for agricultural sector BER diagnostics. Unfortunately, the website is no longer available, so each report must be searched for individually on the Web.

3. **The Economist Intelligence Unit (EIU).** The EIU prepares country-level studies and reports on countries as well as a wealth of economic data. <http://country.eiu.com>
4. **USAID Development Experience Clearinghouse (DEC).** Consultants should do a search on the DEC, USAID's knowledge management website to find any USAID project reports or studies pertaining to PSD in the country. This website is relatively easy to navigate and often simply searching by country will yield useful resources. <https://dec.usaid.gov/dec/home/Default.aspx>
5. **Other Publications:** Consultants should look for reports and publications from international and country level donor agencies, academic institutions, think tanks, government agencies and civil society organisations. Many of these will be only available locally, and this kind of research should be part of the field work as well as the desk research.

3. Conducting In-Country Key Informant Interviews and Stakeholder Consultation

3.1 Key Informant Interviews

After completing the desk review of existing resources and prior to travel, consultants should work with a local consultant and/or local DFID CO staff to start developing a list of institutions and individuals to meet with in-country. The list can include government agencies, parliamentary committees, commercial courts, business associations, chambers of commerce, workers associations, legal practitioners, civil society leaders, academic institutions, think-tanks, and businesses ranging in size from sole proprietorships to multinational corporations, as well other development partners. Where possible, the diagnostic team should try to identify individuals with a diversity of political, social and cultural perspectives, so as to get a realistic assessment, including of which reforms are likely to get government support, who the winners and losers are from reform, and so forth.

The local consultant(s) will play a critical role in identifying and contacting potential interviewees, arranging meetings and maintaining the schedule. Consultants should consider political and cultural sensitivities and follow directions from DFID in terms of meetings. For example, DFID CO (or other donor agency) staff may not want the diagnostic team to contact certain ministries, or may want to avoid any mention of projected assistance funding levels. Likewise, protocol considerations may preclude meetings with government officials above a certain level. The team should take detailed meeting notes and should record contact information for each interviewee. In some cases, interviewees may ask that their name not be made public and that request should obviously be respected.

Transparency with Respect to Interviewees

It is critical that interviewees be fully informed in advance of the context of the visit to avoid any misunderstandings. A government official or civil society leader may mistakenly assume that the meeting is an introductory visit for a new donor programme rather than part of a diagnostic. Local consultants struggling to get appointments may be tempted to mislead potential interviewees by hinting that a meeting may result in future funding, so it is critical to issue clear directives to local consultants.

3.2 Stakeholder Focus Groups / Roundtable

If time and resources permit it, informal roundtable events or stakeholder focus groups can complement the key informant interviews, as well as set the stage for future public-private dialogue. These events can be organised around specific BER issues or sectors, or geographically where there is a subnational focus, and can bring together public and private sector stakeholders.

Another option is to hold a formal roundtable at the end of the assessment period, which can provide an opportunity for the assessment team to present and discuss its initial conclusions with donor agency staff, representatives of the host country government, and many of the individuals interviewed over the course of the assessment. The roundtable creates a forum for sparking a public-private dialogue that the DFID CO and future BER programmes can maintain and nurture through future events. Obviously this option requires considerably more time and resources and will not be suitable for shorter BER diagnostics.

3.3 Meetings with other Development Partner Programmes

There are typically a number of DP funded PSD and BER programmes in countries where BERF works. Understanding what reforms are being supported by these programmes, what local stakeholders they are working with and meeting with the local teams can all be extremely useful to the BER diagnostic team. DP programmes can provide data and reports on the current BE and can provide invaluable background information.

The DFID CO staff will usually have coordinated with these programmes, either locally or through head offices, in advance of the BER diagnostic and will be familiar with existing donor coordination mechanisms and relationships. There is considerable co-funding and collaboration between bilateral and multilateral donors in the area of BER—for example co-funding by DFID and the World Bank. Depending on the personalities involved however there can also be complicated relationships between DPs. Consultants should always discuss potential meetings with other DPs with DFID (or other donor agency client) in advance.

4. Sector-Specific BER: Approaches and Resources for Diagnostic

The guidance below applies to the extent that specific sectors, subsectors and/or value chains in the country have been identified as part of the scope of the BER diagnostic. This may be directly through the ToRs for the assignment, or indirectly, for example where the DFID Inclusive Growth Diagnostic for the country has identified one more priority sectors.

The main constraints to growth in a sector may be horizontal across the economy (for example access to finance) or vertical (for example sector specific regulations). Thus, the analytical framework and resources set out in Figure 2 above remains useful here. Conducting sector specific BER diagnostic will often require that an expert with sectoral expertise to be part of the team.

Section 4.1 sets out some available resources for a number of sectors. Section 4.2 presents a methodology for conducting a sub-sector or value chain BER diagnostic.

4.1 Sector-Specific BER Diagnostics: Resources

4.1.1 USAID AgCLIR (Agriculture)

The AgCLIR methodology is an adaptation of the USAID BizCLIR diagnostic methodology described above, with a focus on agribusiness and the agricultural sector as a whole. In AgCLIR diagnostics, the stakeholders that are interviewed represent every stage in the agricultural process – farmers, traders, transporters, processors, and exporters – as well as the government ministries and civil servants who regulate them. In addition to evaluating the ten functional areas of regulation from the World Bank’s Doing Business survey as they relate to agribusiness, additional chapters have occasionally been added to an AgCLIR report to address specific agricultural problems such as food security and climate change.

Unfortunately the BizCLIR programme closed and USAID is no longer supporting AgCLIR. Individual AgCLIR diagnostic reports were prepared for Ghana (2008), Nigeria (2009), Senegal (2009), Kosovo (2010), Tanzania (2010), Uganda (2010) and DRC (2011) and most of these can be found on the web with a search engine or on the USAID DEC knowledge management website mentioned above (<https://dec.usaid.gov/dec/home/Default.aspx>)

4.1.2 FAO Practice Guide (Agriculture and Agribusiness)

The Food and Agriculture Organization of the United Nations (FAO)’s Enabling Environments for Agribusiness and Agro-industries Development--Regional and Country Perspectives (2013) is another useful resource for agricultural sector BER, providing both regional analyses for Africa, Asia, Latin America and Eastern Europe, as well as twenty country studies. Available at <http://www.fao.org/ag/ags/ags-division/publications/publication/en/c/171732/>

4.1.3 DCED Sector-Focused BER Guide (pharmaceuticals, renewable energy, mining and horticulture)

Supporting Sector-Focused Business Environment Reform in Developing Countries (DCED, December 2015), by Simon White, provides an analysis of BER issues in four key sectors: pharmaceuticals, renewable energy, mining and horticulture. The guide presents specific lessons learned from PSD initiatives supporting these sectors, with a focus on BER and is an indispensable resource where a BER diagnostic focuses on one of more of these sectors. Considerable attention is given to sector policy making or industrial policy, which is especially important where the diagnostic has a sectoral focus.

4.2 Competitiveness Impacts of Business Environment Reforms (CIBER)

In 2008 DAI economists completed the development of the CIBER tool, a bottom-up, value chain specific approach to BER. This set of guidelines for BER involves estimating the cost and quality impacts of burdensome regulations or areas where a lack of regulations impedes competitiveness; reviewing the political and administrative feasibility of reforms; and developing (and implementing) advocacy plans to support reform initiatives. The CIBER process takes a targeted approach toward assessing regulatory reform requirements. Rather than examine all regulations, administrative procedures and judicial enforcement issues affecting a subsector, it uses input from enterprises and industry experts to determine the scope of analysis.

While CIBER was first developed and applied in the context of an in-depth study of the Brazilian cashew nut value chain, it is flexible and has been adapted to support rapid appraisals of business environment constraints to feed into program design and is thus appropriate for BERF BER diagnostics where specific sectors, sub-sectors or value chains have been identified as a priority. The CIBER process provides for three main steps summarised below:

Step 1: Develop List of Constraints. The first step is to work closely with subsector stakeholders to identify key regulatory and administrative constraints to competitiveness. These constraints may be imposed by overly burdensome, outdated, inappropriate or insufficient regulation. Next, stakeholders are consulted to identify and ground-truth priority issues related to the business environment. This information may be gained through surveys, one-on-one interviews or focus groups. Consultation with industry experts and international buyers is also helpful for identifying issues that may not be visible to local participants.

Step 2: Estimate Costs of Key Constraints. Once a short list of constraints has been identified, the method guides researchers, project staff and industry stakeholders through the process of identifying the costs imposed by specific laws, regulations, implementation issues or lack of necessary regulations. In some cases it is possible to track the added cost per unit of the product under consideration, as well as added value at each stage of

production, using a cost modelling approach. In other instances, such as for issues of quality certification, a qualitative approach or general estimate of the magnitude of impact will be sufficient.

Step 3: Conduct Rapid Cost Benefit Analysis and Assess Political Feasibility. At the next stage of the CIBER exercise, facilitators engage stakeholders in a process of weighing the costs and benefits of business environment reforms that target the constraints identified or reinforce positive impacts. Next, the diagnostic team assesses the political (see table below) and administrative feasibility of each reform. This may also need to be supplemented by an assessment of the impact of fragility or conflict issues on reform feasibility.

CIBER POLITICAL FEASIBILITY ASSESSMENT FACTORS

- | | |
|--|---|
| <ul style="list-style-type: none"> • The degree of geographic centralisation of the value chain under review • The degree of specificity of the regulation to the value chain • Level of government at which the regulation is promulgated/implemented • Historical factors that have led to or support the current regulatory framework • Existing incentive structure that has led to or support the current regulatory framework • Possibilities for refining the existing incentive structure • Support/opposition within and outside of government | <ul style="list-style-type: none"> • Leverage supporters/opponents have to support their own interests • Expected size of impact in terms of costs (financial, time, political, etc.) • Past reform initiatives and reason for outcome • Current or near-term government reform initiatives are planned and who is championing them • Degree of political centralisation • Public-private organisational role and structures • “Winners” and “losers” in policy implementation • Degree to which other private-sector actors may be hurt by the reforms |
|--|---|

While it may or may not be within the scope of a particular BER Diagnostic, the feasibility assessment can support the prioritisation of reform activities and helps future programmes to determine short-, medium- and long-term priorities, informing the development of an advocacy approach. These may be designed around public-private dialogue initiatives and/or use locally appropriate media outlets to build a broader base for reform support.

The resources below will help consultants adapt the basic CIBER approach to the specific needs of the BER diagnostic. In this respect the 2008 USAID CIBER guide (see below) is the most comprehensive guidance.

Resources: CIBER and Sector and Value Chain Specific BER

- CIBER: Enhancing Competitiveness Impacts of Business Environment Reforms: A Value-Chain Approach for Analysis and Action (prepared by DAI for USAID, 2008)
- Bryanna Millis and Dan Charette, Competitiveness Impacts of Business Environment Reform (CIBER): A Bottom-Up Approach, 13 Developing Alternatives 1, (DAI, Winter 2009)
http://dai.com/sites/default/files/pubs/alternatives/Dev_Alts_Grounds_for_Growth.pdf
- USAID Microlinks website, <https://www.microlinks.org>
- Sector Competitiveness Analysis Tools, Reference Guide (Prepared by DAI for the World Bank Group (2010)
- Vincent Palmade, Industry Level Analysis: The Way to Identify the Binding Constraints to Economic Growth (World Bank Policy Research Working Paper No. 3551, March 2005)
- Joy Moncrieffe and Cecilia Luttrell, An Analytical Framework for Understanding the Political Economy of Sectors and Policy Arenas (Overseas Development Institute, 2005)

5. The BERD Report

The diagnostic team is responsible for preparing a detailed written report, the BERD Report, for delivery to DFID upon completion of the assignment. This report should at a minimum set out the parameters of the assignment and the scope of the diagnostic, provide background information on the current political, economic and social context in the country and/or specific target sectors, an analysis of each functional area of the business environment analysed during the diagnostic, a summary of ongoing BER reforms in the country, a discussion of the team's findings and specific recommendations to DFID regarding next steps and which BER to support in future programmes. A list of meetings, key informant interviews and workshop participants should be annexed, along with a complete list of documents obtained. Each BERD Report will of course be tailored to the DFID ToRs for the assignment.

Contact us

Katja Silva-Leander

BERF Activity Coordinator

T +44 (0) 1442 387 534

E katja_silva-leander@dai.com

Kongkona Sarma

BERF Technical Adviser

T +44 (0) 144 238 7553

E kongkona_sarma@dai.com

Rémy N. Kormos, J.D., LL.M.

BERF Senior Consultant; Principal Author

E remy_kormos@dai.com