

# ASEAN Handbook on Good Regulatory Practice



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## Foreword

The role of Good Regulatory Practice (GRP) in ASEAN economic integration process cannot be understated. Promoting effective and quality rules, regulations, and laws, GRP is key to the region's growth, investment, innovation, as well as the functioning of the markets and society. With its potential to reduce regulatory divergence and trade-related costs, it is of little surprise that GRP has gained much traction in our region.



ASEAN Member States recognise the importance of GRP as it is not only key to the success of their development agenda, but is also of paramount importance to fulfilling their regional commitments, thus, enhancing the region's long-term competitiveness in the global economy. Indeed, by applying GRP, policy-makers can maintain a stable and enabling regulatory environment that promotes economic openness and entrepreneurship, whilst, at the same time, limit or even eliminate unnecessary administrative burdens on businesses of all sizes.

ASEAN has made good progress in implementing the Work Plan on Good Regulatory Practice 2016-2025. However, more works are required to ensure greater applicability of ASEAN GRP Core Principles, which were launched in 2018 to assist ASEAN Member States in improving their regulatory practice and foster ASEAN-wide regulatory cooperation. The publication of ASEAN Handbook on Good Regulatory Practice is one of ASEAN's latest efforts in that direction. It is my sincere hope that the Handbook can serve as a reference for regulators in ASEAN Member States in implementing GRP.

Recognising the importance of this crucial milestone in paving the way for continuous regulatory improvements and reforms in the region, we are thankful to the Economic Research Institute for ASEAN and East Asia (ERIA) for its contribution in developing this Handbook. Our appreciation also goes to the Organisation for Economic Cooperation and Development (OECD) for providing constructive inputs in the making of this Handbook, as well as our stakeholders for being constant inspiration in making our GRP work relevant and meaningful.

**Dato Lim Jock Hoi**  
Secretary-General of ASEAN

## Foreword

Many ASEAN Member States (AMS) are continuously striving to maintain and enhance efficiency and competitiveness through private-sector driven and people-centred growth. Good Regulatory Practice (GRP) is one of the proven instruments to harness national efforts and resources among AMS for competitiveness and sustaining economic growth. GRP ensures that all regulations are effective in addressing the desired public policy objectives and in serving the AMS in a balanced and equitable approach and implemented in a transparent manner. With the proper rule-making process, rule-making will be improved to ensure that cumbersome regulations that create unnecessary burdens to society and business, discourage competition and innovation or alienate stakeholders are reduced and avoided in all AMS.

I would like to thank and congratulate all who have worked together in developing this handbook. It is my sincere hope that this ASEAN Handbook on Good Regulatory Practice (the Handbook) provides clear guidelines for wider dissemination and effective adoption of GRP. With the systematic approach, this Handbook is intended to give guidance for analysis to help regulators and regulatory officials to understand, formulate and implement regulations in accordance with global practices.

I note that the handbook is part of ASEAN Work Plan on Good Regulatory Practice (GRP) 2016-2025 (or the Work Plan) to raise awareness and promote GRP at all levels. It is recommended for all AMS to continue their efforts in improving their regulatory design on a best-endeavour basis in fostering ASEAN-wide regulatory cooperation. Having good regulatory environment within ASEAN, will support the growth of ASEAN and making this region the best destination to invest and to do business.

**Professor Hidetoshi Nishimura**

President, Economic Research Institute for ASEAN and East Asia

## Acknowledgements

The ASEAN Handbook on Good Regulatory Practice is part of the deliverable under Work Plan on Good Regulatory Practice (GRP) 2016-2025 (or the Work Plan) adopted at the 23rd ASEAN Economic Ministers (AEM) Retreat in March 2017 and endorsed inter-sessionally by the AEC Council Ministers in April 2017. The Economic Research Institute for ASEAN and East Asia (ERIA) then sets out to support ASEAN's efforts in developing the Handbook) in raising awareness to promote GRP across institutions, sectors, and AMS.

This Handbook would not have been possible without the support of the Malaysia Productivity Corporation, and their willingness to share their time, experience and expertise with ERIA. For this, much appreciation goes to Dato' Abdul Latif Abu Seman for his support of this project, and mainly, Mr Mohd Yazid Abdul Majid, Ms Shahriza Bahari, and Professor Dr. Nuraisyah Chua Abdullah who have contributed towards the development of this Handbook. We are also indebted to Mr James Drummond and his colleagues from Regulatory Policy Division - Public Governance Directorate of the OECD for sharing their invaluable insights and suggestions.

We would like to express our appreciation for the continuous and unwavering support of the ASEAN Secretariat, particularly Dr Alexander Chandra, Deputy Director of and the ASEAN Integration and Monitoring Directorate (AIMD). We also extend our gratitude to ASEAN Member States for their active support and continuous work in moving forward with regulatory reform to further improve national competitiveness and promote regional integration.

Much gratitude is extended to Dr Intan Murnira Ramli who had generously reviewed and edited the Handbook and Mr Rudhian Chlissma for his excellent research assistance in developing this Handbook. The opinions expressed in this Handbook are the sole responsibility of the authors and do not reflect the views of the ERIA. Hopefully this Handbook makes an important contribution to our understanding of Good Regulatory Practice in our joint pursuit to support a stronger, more competitive businesses sector.

## About this Handbook

Regulation is a key instrument used by the Government to achieve public policy objectives and ensure the wellbeing of citizens. It is an important tool for protecting health and safety, the environment as well as ensuring a balanced and continuous development of the economy. Good regulations contribute significantly to increasing the welfare and smooth functioning of society. Regulations should be designed in a manner that ensures they are 'fit for purpose', effective and efficient in achieving intended objectives.

This ASEAN Handbook on Good Regulatory Practice (GRP), or Handbook, serves as a reference for regulators in ASEAN Member States (AMS) in implementing GRP. The Handbook is intended for use by regulators and regulatory officials particularly those involved in the process of formulation and implementation of regulations. It provides step-by-step guidance for the implementation of and compliance with GRP principles and describes in greater detail the preparation of Regulatory Impact Statement (RIS), the Regulatory Impact Analysis (RIA) process and the key requirements.

This handbook consists of 7 sections. The first section promotes reform initiatives, addressing the quality of existing and new regulations. The second section presents an overview of the ASEAN GRP Core principles. The next 3 sections outline the implementation of GRP, preparation of Regulatory Impact Statement (RIS) and assessment of its adequacy. Section 6 highlights the key features of enforcing compliance and how to minimise misconduct while section 7 discusses the examples of GRP implementation, illustrating experiences in Malaysia and Thailand.



## Acronyms

|         |                                                        |
|---------|--------------------------------------------------------|
| AMS     | ASEAN Member States                                    |
| CBA     | Cost-benefit Analysis                                  |
| EAC     | Economic Action Council (Malaysia)                     |
| GRP     | Good Regulatory Practice                               |
| MPC     | Malaysia Productivity Corporation                      |
| MCA     | Multi-Criteria Analysis                                |
| NTMs    | Non-Tariff Measures                                    |
| OECD    | Organisation for Economic Co-operation and Development |
| PEMUDAH | Special Taskforce to Facilitate Business (Malaysia)    |
| PIA     | Preliminary Impact Assessment                          |
| PIR     | Post Implementation Review                             |
| RIA     | Regulatory Impact Analysis                             |
| RIS     | Regulatory Impact Statement                            |
| ROB     | Regulatory Oversight Body                              |
| RPMS    | Regulatory Process Management System                   |

## Chapter 1.0 ASEAN Good Regulatory Practice Principles

*This chapter highlights the objectives of the ASEAN Good Regulatory Practice Core Principles (common elements applicable to ASEAN), its nature and emphasises the importance of the GRP in ASEAN.*

## **1.1 GRP core principles**

As mentioned earlier, one of the key deliverables of the ASEAN Work Plan on GRP 2016-2025 is to secure commitment to GRP at the political level, which is done herewith through the ASEAN GRP Core Principles. The objective of the Core Principles is to assist AMS in improving their regulatory practice and foster ASEAN-wide regulatory cooperation. The Core Principles are non-binding, and to be implemented on a best-endeavour basis by each relevant AEC sectoral body or AMS' national regulatory systems. The principles provide broad parameters for assessing the application of GRP in ASEAN. The ASEAN GRP Core Principles do not advocate a particular model of GRP standards but focus on common elements that are applicable to the ASEAN context.

Effective and fair regulations are needed to support growth, investment, innovation, and the functioning of markets and society. The importance of GRP has been well-recognised by ASEAN. Enhanced regulatory practice and the capacity of individual AMS is not only key for the successful delivery of their respective national development agenda, but also the implementation of regional commitments and enhancement of the regional competitiveness.

It is important to highlight the principles in this Handbook as it serves as a guide to AMS in a quest to produce quality regulations. The ASEAN GRP Core Principles are described below:

### **Box 1.1. ASEAN GRP Core Principles**

#### **Principle 1: Clarity in policy rationale, objectives, and institutional frameworks**

Regulations should be introduced with clear policy rationale, objectives and the role of implementing agencies and other supporting institutions, through which the regulation will take effect.

**Clarity in policy rationale** necessitates any regulatory intervention to be done only when “necessary” and socially beneficial. The necessity of regulations emerges when issues are not adequately addressed by individuals, existing regulations, and/or markets are not properly functioning ‘to correct’ such issues.

**Clarity in regulatory objectives** requires the policy problem to be specified, including evidence of its nature, scope, coverage, and magnitude, and adequately explaining why it has arisen. To ensure the relevance between the proposed regulation and its objectives, regulators should assess legal and empirical bases, and consider a range of policy options, including the options of designing non-regulatory interventions and improving existing regulations. The latter can often be less costly than introducing new regulations.

**Clarity in institutional frameworks** requires for related governance arrangements, including roles and accountabilities of the implementing agencies and other supporting institutions, to be clearly specified. This is important to avoid conflicting or overlapping objectives across different regulations or levels of governments (i.e., national and local) and/or across different agencies. The design of the regulation should set and provide clear and appropriate regulatory powers for implementing agencies, including cooperation and coordination with other agencies. Within the context of ASEAN, alignment of regulations with or contribution to the achievements of regional goals, as envisaged by the ASEAN Community Vision 2025, should be explored.

#### **Principle 2: Produce benefits that justify costs and be least distortive to the markets**

Any regulation introduced should effectively address identified problems while minimising costs, risks, and other adverse effects throughout the regulatory cycle. A regulation therefore needs to target the lowest possible cost to all parties and provide economic benefits and stability. Such costs cover compliance and monitoring costs, as well as externalities such as the effects on long term productivity and competitiveness, and the broader economic, environmental, and social effects.

Within the context of the ASEAN, the focus is to minimise the costs of meeting regional commitments.

#### **Principle 3: Be consistent, transparent, and practical**

Consistency amongst existing regulations and new regulations is key in avoiding duplication or establishing conflicting regulations. Consistency could be achieved through coordination mechanisms, information sharing and transparency, and identification and reform of overlapping regulations in issues across differing levels of governments.

Within the ASEAN context, consistency calls for alignment of proposed regulations with the overall ASEAN Community Vision 2025; with commitments or initiatives across different sectors especially in the cross-cutting areas; and consistency between regional and national regulatory objectives. Consistency may also include taking international standards into consideration. **Transparency** is derived from the availability and access to relevant and salient information. Access to accurate, easy-to-understand, and accessible information on the regulations should be made available for relevant stakeholders. Different information needs may be addressed using various tools.

The principle of **practicality** aims to bridge the gap between high-level policy objectives and regulatory efficiency and effectiveness upon implementation. This requires a user-focused regulatory design. Additionally, a recursive process to evaluate regulatory efficiency and effectiveness will allow for continuous refinement.

The strategic measures in the AEC Blueprint 2025 are operationalised through sectoral work plans with clearly identified action lines, and timelines, and are supported by robust monitoring and evaluation mechanisms to ensure their effective implementation while also addressing public outreach.

#### **Principle 4: Support regional regulatory cooperation**

Good regulatory outcomes require cooperation, by the government, amongst regulators, the regulated, and the broader community including the international community. Regulatory cooperation could take on many forms, from exchange of information to more binding forms such as the harmonisation of rules.

In ASEAN, the meeting of policy objectives may require coordination and cooperation across relevant sectoral bodies and/or agencies within and across Member States. For instance, exchange of information may lead to regulatory cooperation between regulators from different AMS, where, on a voluntary basis, AMS can exchange information on regulations to achieve a better understanding of different regulatory platforms and, when possible, avoid unnecessary differences in regulations.

#### **Principle 5: Promote stakeholder engagement and participation**

Stakeholder consultation and engagement is a continuous process across all stages of the regulatory cycle. A well-designed and implemented stakeholder engagement should consider all perspectives on the issues; highlighting alternative approaches to achieving objectives; serve as a useful means for evaluating regulatory costs and benefits assessment; enhance awareness and inclusivity, as well as foster transparency, accountability and hence compliance.

This principle is also recognised under the fourth characteristic of the AEC Blueprint 2025 on “A Resilient, Inclusive, People-Oriented, and People-Centred ASEAN”, particularly “The Strengthening Role of the Private Sector” (Element D2), “Public-private Partnership” (Element D3), and “Contribution of Stakeholders on Regional Integration Efforts” (Element D5). Under “Good Governance” (Element B6). Efforts to institutionalise and build a more structured and meaningful engagement with stakeholders should also be continued.

#### **Principle 6: Be subject to regular review for continued relevance, efficiency, and effectiveness**

To ensure that the regulations continue to meet their intended objectives efficiently and effectively, **regular review** is essential. Hence, the main goal of review is to ensure that regulations remain fit for purpose and impose only the minimum necessary costs to society. Such review will need to be informed by systematic monitoring of regulatory performance, and appropriate conduct policy evaluation such as the Regulatory Impact Analysis (RIA).

Review clauses or sunset provisions could also be considered. Review clauses within the regulation usually allow for reviews to be conducted within a certain period. This would help ensure the continued appropriateness of regulations, by assessing them against the dynamic policy environment and new policy options both regulatory and nonregulatory. The focus of such review should be to assess and, as appropriate, amend areas of regulation that are burdensome and duplicative, with a view to improve ASEAN's competitiveness.

Source: ASEAN (2018)

## Chapter 2.0 Implementing Good Regulatory Practice

*This chapter highlights the method in implementation of good regulatory practice (GRP) which can assist AMS to create a stable and enabling regulatory environment for investment, trade, and entrepreneurship, and thus supports healthy economies and regional competitiveness.*

## **2.1 Transparency through communication and consultation (Best Practice Consultations Requirements)**

Communication is crucial for general public or stakeholders to be updated on the need to make necessary changes on existing regulatory issues. Invitations may be through publication or official email from regulator requesting general public or stakeholders to provide instance feedback or attend physical engagement. Many regulators use their official website to alert the public on upcoming public consultation which assists stakeholders with the planning of feedback sessions. Many OECD countries use single platform (webpage) to disseminate upcoming consultation and gather feedback from the public or stakeholders (OECD, 2020).

The regulatory body should routinely make as much information as possible available to interested parties. All information delivered by the regulatory body should be easily understandable, reliable, based on facts and evidence, accessible, and provided in a timely manner. The regulatory body should take special care to ensure the consistency, accuracy and reliability of background information and key messages.

The conduct of stakeholder consultation and the frequency there of should depend on the gravity, sensitivity, and social and economic conditions of an AMS. Consultation is mandatory but certain formalities could be set aside during declared emergencies and calamities. During normal situations, however, such consultation may be conducted from time to time, even as early as the pre-drafting stage, especially when a regulation involves highly technical matters.

Formal or informal public consultation will often be a crucial stage in the policymaking process. The consultation makes preliminary analysis available for public scrutiny. It allows additional evidence to be sought from a range of interested parties to inform the development of the policy or its implementation. Consultation during formulation of regulation promotes transparency with accessibility, accountability, commitment, inclusiveness, timely and informative, and integrity with mutual respect. Consultation notices should be issued within a period reasonable enough for the intended stakeholders to do their own research and prepare for their views or positions. If engagements are organised too early, members of the public may not be able to provide their views on the potential solutions. On the other hand, if consultations are held too late, it may be difficult for any inputs to influence change at the final stage of the process.

Under normal circumstances, consultations should last for a minimum of 12 weeks<sup>1</sup>, and policy development needs to factor this time frame into project plans. Allowing at least 12 weeks will help to enhance the quality of the responses. If the new regulation is crucial and need to be expedited, the stakeholders must be given a minimum period

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<sup>1</sup> MPC (2014b), Guideline on Public Consultation Procedures.

of 30 days to provide feedback. The chart below illustrates normative suggestion on transparency through communication and consultation where stakeholders can work together with the government to develop efficient and effective quality regulation across the policy cycle.



**Table 2.1. Effective consultation processes**

| Understanding the Problem                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Government                                                                                                                                                                                                                                                                                                                                                                                         | Stakeholders                                                                                                                                                                                                                 |
| Analysis of the problem                                                                                                                                                                                                                                                                                                                                                                            | Provide data, evidence, information and advice on the size and costs of the problem                                                                                                                                          |
| Identifying Options to resolve Problem                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                              |
| Government                                                                                                                                                                                                                                                                                                                                                                                         | Stakeholders                                                                                                                                                                                                                 |
| Identify viable options to address the problem.                                                                                                                                                                                                                                                                                                                                                    | Suggest three options at most or could be combination of options suggested to address the problem.                                                                                                                           |
| Assessment of Options                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                              |
| Government                                                                                                                                                                                                                                                                                                                                                                                         | Stakeholders                                                                                                                                                                                                                 |
| Evaluate the costs and benefits of the viable options. Compliance rates (business costs) monitoring and enforcement (government costs) should be evaluated.<br><br>Risk or performance-based regulation should be considered. Implementing such regulation places an even greater burden on regulators to know what is happening in the regulated industry.                                        | Provide data, evidence, information and advice on the costs and benefits of the viable options.<br><br>Costs of compliance should be estimated ex ante during the RIA via the Standard Cost Model or some other methodology. |
| Preferred Option                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                              |
| Government                                                                                                                                                                                                                                                                                                                                                                                         | Stakeholders                                                                                                                                                                                                                 |
| Recommend the option that provides the greatest net benefit to all concerned stakeholders considering their various needs and interests without biases.<br><br>Supporting document to show results of analysis conducted should be made available.                                                                                                                                                 | Provide feedback on analysis of the various options and the preferred option.                                                                                                                                                |
| Implementation Issues                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                              |
| Government                                                                                                                                                                                                                                                                                                                                                                                         | Stakeholders                                                                                                                                                                                                                 |
| Implementation here for regulated entities means the actual impact of the regulation i.e. preparing data, reports, preparing for site inspections etc. Consider and assess the appropriate timing for the introduction of a regulation.<br><br>Clear definition of functions among government agencies must be considered to avoid overlapping or duplications and save resources at the same time | Provide advice on the time required to establish compliance system and/or adjust to deregulation.                                                                                                                            |
| Periodic Review                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                              |
| Government                                                                                                                                                                                                                                                                                                                                                                                         | Stakeholders                                                                                                                                                                                                                 |
| Evaluate the effectiveness of the regulation and whether the regulation is still the most appropriate option to address the problem.                                                                                                                                                                                                                                                               | Provide feedback on the way the regulation has affected them.                                                                                                                                                                |

Source: Authors developed based on published materials and inputs contributed by AMS

## 2.2 Notifying the Oversight Body or Agency

Regulatory oversight bodies (ROBs) have been critical players in the process of regulatory reform by aiding on how to use regulatory management tools, promote international regulatory cooperation and ensure that quality of regulatory proposal is meeting the standards. According to OECD (2021), ROBs are usually established at the national level, within national strategic ministry or agency holding powerful portfolios which play an important role in promoting regulatory quality. Half of the ROBs are located within the government to provide support and advice to the Prime Minister and Cabinet Ministers. There are also ROBs located outside the government which focus on research on regulatory management.

As per the following, some jurisdictions have one (for example, Thailand and Vietnam) or a number of oversight bodies (for example, Malaysia and Indonesia) located within government, where the management of oversight bodies is appointed directly by government for a large share of bodies within the executive. However, in some jurisdictions, other bodies are also involved in regulatory oversight. Independent oversight institutions and advisory bodies have a unique governmental view and can provide neutral, objective evaluations on policy formulation, implementation, evaluation, and outcomes. According to the latest survey by OECD (2021), about 75% of ROBs have RIA quality control among their responsibilities. 45% of ROBs are responsible for quality control of stakeholder engagement activities and another 30% for *ex post* evaluation of regulation. The ROBs also provide guidance on regulatory management tools and systematic evaluation services.

Establishing more than one oversight bodies at multiple level of government are possible, each oversight body will play its strategic role and responsible to:

- incentivise civil servants to use regulatory management tools;
- issue guidance on how to use regulatory management tools;
- provide coordination on regulatory policy; and
- conduct systematic evaluation of regulatory policy.

### Box 2.1. Different roles of oversight bodies in ASEAN member states

#### Coordination and supervision

A key role of oversight bodies is to coordinate and supervise, making sure that regulatory reform meets quality standards, complies with a general economic strategy and that Regulatory Impact Assessment (RIA) is undertaken appropriately. In that sense, channels of communication between regulators and bodies must be properly settled.

#### The challenge function

The challenge function empowers the oversight institution with the competence of questioning regulation and its reforms by assessing quality of regulatory policy through RIA and the gatekeeper function. This means the capacity to veto a regulation which does not fulfil the requirements of quality, giving the oversight body an important amount of power. This function would be better performed if there were improvements in efficient accountability and assessment of results of regulation. There have been great advances in this area with the introduction of regulatory tools such as RIA.

#### Advocacy

Advocacy means to take especial consideration to maintaining the right path for the long-term strategy. Oversight bodies can be very useful in the promotion of regulatory reform and quality. Overlapping and duplication of functions can be avoided through information activities inside and outside government. Oversight bodies can help to raise public awareness of reform outcomes and benefits.

#### Advice and support

Provide advice and support helps to create and maintain a cultural change in regulators. This generally under-prioritised task could be achieved through extensive guidelines, continuous training and providing specific expertise, even with external consultants if necessary

Source: Bland, A. (2017)

### Box 2.2. Oversight bodies in ASEAN member states

| Regulatory oversight bodies in Southeast Asia and systematic adoption of suitable regulatory practise (GRP) tools |                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|
|                                                                                                                   | Regulatory oversight body(ies)                                                                        |
| Brunei                                                                                                            | Management Services Department; Ease of Doing Business Steering Committee                             |
| Cambodia                                                                                                          | Economic, Social and Cultural Council (ECOSOCC)                                                       |
| Indonesia                                                                                                         | Ministry of Law and Human Rights; Ministry of Home Affairs                                            |
| Lao PDR                                                                                                           | Ministry of Justice                                                                                   |
| Malaysia                                                                                                          | Ministry of International Trade and Industry; PEMUDAH; Malaysia Productivity Corporation              |
| Myanmar                                                                                                           | Directorate of Investment and Company Administration (responsible for investment oversight); Multiple |
| Philippines                                                                                                       | Anti-Red Tape Authority (ARTA)                                                                        |
| Singapore                                                                                                         | Ministry of Trade and Industry; Pro-Enterprise Panel                                                  |
| Thailand                                                                                                          | Office of the Council of State                                                                        |
| Viet Nam                                                                                                          | Administrative Procedure Control Agency (APCA), in the Office of the Government (OOG)                 |

Source: OECD (2018)

## 2.3 Publication of Annual Regulatory Plan

Annual regulatory plan contains the intention of the regulator either to introduce or amend existing regulation. These plans prepare stakeholders prior to their engagement with the regulators evidence to support their position. Relevant agencies i.e., Attorney General Chambers or Department of Justice or even local and international business chambers could also use this plan to allocate sufficient time to manage their resources and provide advocacy to the regulator. The plan will value add to the following areas:

- a. effective monitoring of RIA compliance;
- b. AMS' future direction of sectoral economic activities based on domestic regulatory coverage;
- c. assess whether future regulations may be duplicative or alerting affected parties to engage with the regulator, and
- d. ensure the suitability and responsiveness of the updated regulation to current situation.

## 2.4 Implementation Review

Once the proposals come into force, this stage offers the opportunity to review whether the regulation has met the intended objectives of the legislation. **Review clauses** are requirements in regulations for review to be conducted within a certain period. The basic principle of this tool is that a rule will continue to be applied unless action is taken to eliminate it. The action means integrating a clause in the regulation that will lead to its review and possible legal cancellation or amendment or revision or repeal, whichever is applicable.

### Box 2.3. Thailand's practice of review clauses

The responsible state agency in Thailand must review every law and regulation that imposes burdens upon the people, following the five-year review clause. While this approach guarantees that no piece of legislation is left behind over time, given the high number of legal acts in force it may take disproportionately long time to be completed and come to reviewing particularly burdensome or problematic provisions. The approach does not seem to follow an overarching vision or goal set out by the Government. There is also no current stipulation on type / depth of review according to any sort of threshold or proportionality requirement, which may raise undue burdens on ministries. The Law Reform Commission may make recommendations to the Cabinet as to which laws, regulations, or areas of law that should be amended or repealed on the grounds that they are no longer in keeping with the present needs of the people. However, this has yet to be conceptualised within a strategic framework

Source: OECD (2020a)

Different types of review clauses (refer the table below) are used for the stock of regulations. OECD (2021) has broad perspective on *ex post* review such as programmed reviews, initiate review on ad hoc basis and implement review during ongoing management processes.

**“Programmed review”** clauses can establish an examination of the efficiency and effectiveness of regulation over Good Regulatory Practice Guidelines. Other less restrictive clauses may provide greater flexibility and extend the validity period for a concrete regulation unless concrete action is taken to eliminate or change it.

**Table 2.2. Types of review**

| Types of review clauses  | Example/explanation                                                                                                                                                           |
|--------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| core review clause       | Clauses that call for repetitive reviews tend to have longer periods between successive reviews (often three to five years).                                                  |
| single review clause     | The year in which that review is planned is included. Example, with the time period to that review spanning from one to three years after the application/transposition date. |
| repetitive review clause | The time period to the first and every subsequent review is for example, set to five years.                                                                                   |
| multiple review clause   | Review requirements set for different years, the year included is either the current year (year of publication) or the first review year in the future.                       |
| automatic review clause  | The regulation automatically renews for a period of time (as provided in the regulation).                                                                                     |
| light review clauses     | Tend to have shorter periods to the first review and, when they call for repetitive reviews, have shorter periods between the two reviews (frequently on an annual basis).    |

Source: European Union (2018)

By contrast, **Sunset Clause** is a process in which new regulations are given automatic expiration dates unless updated through normal rulemaking processes. This ensures continual review and update of regulations. Sunset clauses ensure that a review of regulations occurs after a determined period and applies for subsidiary or subordinate regulation but not to primary law as it will unintentionally terminate other regulations that are linked to the law.

**Ad hoc review** fall into four categories. The review is necessary when emergencies such as the COVID-19 pandemic and natural disasters happen. This quick response will focus on certain economic activity or segment within the society to cater to urgent needs.

- a. **“Public stocktakes”** provide opportunity for businesses or affected parties to go through the list and suggest amendments for unnecessary burdens caused by the regulation.
- b. **“Stocktake-type review”** is a mechanism to undergo a uniform screening to focus on a specific issue. This selective approach is easy to control and allows deeper analysis to identify the solutions to fix the issue.

- c. **“In-depth public review”** is a thorough analysis on complex and resource intensive processes which requires sufficient consultations before the recommendation can be made.
- d. **“Benchmarking”** is a quick fix which allows for the comparison of similar regulatory frameworks, thus reducing the risk of regulatory failure.

Enforcement officers can learn about the effectiveness of the implemented regulation where the enforcement officers can evaluate the extent of behavioural change of the business sectors which responded to the regulation. This is important to assist the enforcement officers in coping with administrative requirements and compliance. This **“ongoing stock management review”** will help them to reduce the regulatory burdens to a certain target annually. In meeting the annual target, when a certain regulation is introduced, the review of existing regulations is necessary in order to reduce the number of existing regulations or ‘red tape burdens’, to meet the intended number of regulations per year.

## **2.5 Institutionalise GRP in ASEAN**

As discussed earlier, GRP is important to AMS in maintaining and enhancing efficiency and competitiveness through private-sector driven and people-centred growth. GRP is one of the proven instruments to harness national efforts and resources for competitiveness and sustaining economic growth. GRP ensured that all regulations are effective in addressing the desired public policy objectives, serve the country in a balanced and equitable approach, and are implemented in a transparent manner. Rule-making processes will be improved to ensure that cumbersome regulations that create unnecessary burdens to society and business, discourage competition and innovation or alienate stakeholders are reduced and avoided.

There are political pressures and constraints to promote good regulatory practice even before the pandemic. Implementing without understanding the essence of GRP can be counter-productive, resulting in more costs and unachievable policy objectives.

Therefore, AMS should continue to promote awareness, education and capacity development on GRP for all major stakeholder groups. Special attention should be given to the task of enhancing regulators’ understanding of the different options available for making use of standards in support of legislation. The success of regulatory cooperation has been found to depend on a number of factors, including in particular:

- a. the building of trust among regulators;
- b. availability of supporting scientific data;
- c. the progressive growth of a focused initiative; and
- d. strong industry buy-in and support.

## **Box 2.4. Best practice principles for regulatory impact analysis**

- 1. Commitment and buy-in for RIA**
  - Governments should:
    - Spell out what governments consider as “good regulations”.
    - Introduce RIA as part of a comprehensive long-term plan to boost the quality of regulation.
    - Create an oversight unit for RIA with sufficient competences.
    - Create credible “internal and external constraints”, which guarantee that RIA will effectively be implemented.
    - Secure political backing of RIA.
  - Securing stakeholder support is essential.
  - Governments have to ensure transparency of decision making to enable public control of the RIA process
- 2. Governance of RIA – having the right set up or system design**
  - RIA should be fully integrated with other regulatory management tools and should be implemented in the context of the Regulatory Governance Cycle.
  - RIA and its implementation should be adjusted to the legal and administrative system and culture of the country.
  - Governments need to decide whether to implement RIA at once or gradually.
  - Responsibilities for RIA programme elements have to be allocated carefully.
  - Efficient regulatory oversight is a crucial precondition for a successful RIA.
  - RIA should be proportional to the significance of the regulation.
  - Parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, including the quality of RIA.
- 3. Embedding RIA through strengthening capacity and accountability of the administration.**
  - Adequate training must be provided to civil servants.
  - Governments should publish detailed guidance material.
  - There should be only limited exceptions to the general rule that RIA is required.
  - Accountability- and performance-oriented arrangements should be implemented
- 4. Targeted and appropriate RIA methodology**
  - The RIA methodology should be as simple and flexible as possible, while ensuring certain key features are covered.
  - RIA should not always be interpreted as requiring a full-fledged, quantitative cost-benefit analysis of legislation.
  - Sound data governance strategies can help produce, collect, process, access and share data in the context of RIA.
  - RIA has to follow all stages of the regulation-making process and has to start at the inception stage in order to inform policy development.
  - No RIA can be successful without defining the policy context and objectives, in particular the systematic identification of the problem.
  - All plausible alternatives, including non-regulatory solutions must be taken into account.
  - It is essential to always identify all relevant direct and important indirect costs as well as benefits.
  - Stakeholder engagement must be incorporated systematically in the RIA process.
  - Insights from behavioural science and economics should be considered, as appropriate.
  - The development of enforcement and compliance strategies should be part of every RIA.
  - RIA should be perceived as an iterative process.
  - Results of RIA should be well communicated.
- 5. Continuous monitoring, evaluation and improvement of RIA**
  - It is important to validate the real impacts of adopted regulations after their implementation.
  - RIA systems should also have an in-built monitoring, evaluation and refinement mechanism in place. This includes early plans for data collection or access to data.
  - A regular, comprehensive evaluation of the impact of RIA on the (perceived) quality of regulatory decisions is essential.
  - It is important to evaluate the impacts in cases where the original RIA document does not coincide with the final text of the proposal
  - Systematic evaluation of the performance of the regulatory oversight bodies is important.

Source: OECD (2020a)

## Chapter 3.0 Good Regulatory Practice Handbook for ASEAN

*This chapter highlights the application of GRPs in the preparation and application of technical regulations, with special reference to the internationally accepted principles and application of GRPs i.e., ASEAN, World Bank and OECD. This is particularly important as GRP promotes good governance in the regulatory process, particularly transparency, predictability, and accountability. Ultimately, this would contribute to help create trust in trading AMS' respective regulatory systems, hence, help domestic regulators cooperating across borders more effectively.*



### 3.1 GRP Definitions

ASEAN has a unique opportunity to shape its regulatory frameworks and standards. Regulatory frameworks have key impact on trade, business and investment in the region, and accordingly, the success of ASEAN economic integration will depend on the consistent application of the ASEAN values namely respect, peace and security, prosperity, non-interference, consultation/dialogue, adherence to international law and rules of trade and industry, democracy, freedom, promotion and protection of human rights, unity in diversity, inclusivity, and ASEAN centrality in conducting external relations which will contribute to regional stability and prosperity. The additional challenge faced by AMS is to ensure the application of an appropriate regulatory system based on Good Regulatory Practice (GRP); recognised as an essential tool to the achievement of the region's economic integration plan.

The focus of this Handbook is on the application of GRPs in the preparation and application of technical regulations. This Handbook outlines internationally accepted principles of GRPs i.e., ASEAN, World Bank and OECD as well as their applications. Many related audiences may find this Handbook handy, including the regulatory authorities, irrespective of their resources, maturity, or regulatory model: institutions and senior policymakers responsible for the formulation of policies, laws, regulations, and guidelines; staff in institutions that collectively form national systems for regulatory oversight; and other relevant parties interested in regulatory frameworks, such as civil society, consumer organisations and the regulated industry. This Handbook aims to assist the AMS in their GRPs, establish new regulatory systems or update the existing ones. This Handbook is applicable to all regulatory activities in the economic, social, and environmental aspect, except regulations related to sovereignty, domestic criminal law and domestic administrative circulars.

This handbook also promotes reform initiatives that have taken on a two-pronged approach of addressing the quality of existing and new regulations. It will help AMS to improve their regulatory practice and foster ASEAN-wide regulatory cooperation. Over time, many new regulations have been introduced in which it may have place additional burdens on businesses operating across jurisdictions.

Hence, this handbook provides clear guidelines for wider dissemination and adoption of GRP to cover new and existing and future policies and regulations for effective intervention to stimulate economic growth and maximise welfare. After the COVID-19 pandemic, attaining regulatory compliance may be difficult for citizens and businesses in revitalising their economic activities. AMS must operate in a dynamic environment. The introduction of agile regulation is very challenging to unify regulations across sectors and comply with international treaties. This Handbook will provide guidance to expose regulators and policy makers to have a systematic and evidence-based approach. It helps AMSs to identify better options i.e., through behavioural insights or explicit regulation to meet the social objectives and reduce market disturbance.

AMS could adopt toolkits i.e., Business Licensing Reform<sup>2</sup> toolkit by World Bank Group, OECD Regulatory Enforcement, and Inspection Toolkits, Malaysia's Reducing Unnecessary Regulatory (RURB),<sup>3</sup> refer to the Regulatory Impact Analysis Guidelines for The Thailand Government or the Thailand 2019 Act of Legislative Drafting and Evaluation of Law to support GRP initiatives in meeting effective, efficient, and coherent regulatory review activities.

ASEAN Economic Community (AEC) Blueprint 2025 has emphasised the importance on GRP, particularly in Element B7 "Effective, Efficient, Coherent and Responsive Regulations and Good Regulatory Practice" under the second characteristic of "A Competitive, Innovative and Dynamic ASEAN". To follow through on this, the ASEAN Work Plan on GRP 2016-2025 was adopted at the 23<sup>rd</sup> ASEAN Economic Ministers' (AEM) Retreat in March 2017 and endorsed intersessionally by the AEC Council Ministers in April 2017. One of the key deliverables of the Work Plan is to secure commitment of AMS to GRP at the which is hoped to be achieved via the adoption of the ASEAN GRP Core Principles which were developed during this Work Plan.

GRP is meant to promote good governance in the regulatory process, particularly transparency, predictability, and accountability. Adhering to GRP can help create trust in trading AMS' respective regulatory systems. It can also help domestic regulators cooperating across borders more effectively.

The GRP could assist in achieving public policy objectives based on a high level of protection, while facilitating trade and investment. They do not undermine regulatory sovereignty as each AMS maintains its regulatory framework and principles.

The process for developing and implementing regulations is complex. AMS strive to ensure that regulations do not result in similar disincentives to business, investment, and trade. The challenge is to ensure the consistency and comprehensive implementation of GRP principles across the region.

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<sup>2</sup> World Bank (2006), Business Licensing Reform: A Toolkit for Development Practitioners, Washington, D.C., <http://documents.worldbank.org/curated/en/664561468779400537/Business-licensing-reform-a-toolkit-for-development-practitioners>.

<sup>3</sup> MPC (2014a), A Guide to Reducing Unnecessary Regulatory Burden: Core Concepts, Petaling Jaya, Selangor, Malaysia: Malaysia Productivity Corporation.

## **Good Regulatory Practice**

Good Regulatory Practice (GRP) is an approach to policy and rule-making practice comprising principles, methods, processes, and tools for improving the quality, efficiency, and effectiveness of regulations. GRP seeks to ensure regulations are 'fit for purpose' and deliver the public policy outcomes they are set out to achieve in a balanced, equitable and transparent manner. GRP sets out the various stages in the development of regulations systematically. It calls for a careful analysis of the issues, available relevant data and proposals and requires that stakeholders be consulted before proposed solutions are presented to decision-makers for consideration. The principal objective of GRP is to enable decision-makers to make informed and data-driven decisions based on a robust and transparent rule-making process.

## **Regulations<sup>4</sup>**

Regulations are measures of general application in various forms that are undertaken by regulators at various levels for which compliance is mandatory. Regulations include primary and subsidiary legislations. Primary legislations include Acts of Parliament, Enactments and Ordinances. Subsidiary legislations include Regulations, Rules, Bylaws, Orders and Guidelines. Regulations are used by Governments as an instrument, in combination with other instruments, to achieve public policy objectives. Regulations set out principles, rules, and conditions that govern the behaviour of citizens, businesses, and organisations towards achieving the desired public policy objectives.

## **Regulator**

Regulator refers to a government agency (Ministry, Department, Statutory Body, Regulatory Commission, etc.) that is responsible for developing, implementing, maintaining and enforcing regulatory functions.

## **Regulatory Policy**

Regulatory policy concerns the principles, institutions, practices and processes by which governments use regulatory instruments to deliver better economic and social outcomes for the welfare of citizens and legitimate businesses.

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<sup>4</sup> Any written regulation, all types of legislative instruments used by Federal, State Governments, as well as rules set by a Local Government. The conditions contained in licences, permits, consents, registration requirements and leases are also under review where they impose a compliance burden to the applicant. Quasi-regulation such as codes of practice, advisory notes, guidelines and rules of conduct, issued by either non-government or government bodies.

## **Oversight Body**

Oversight body focuses on quality control and guidance of regulatory management tools, coordination, and systematic evaluation of regulatory policy to ensure that regulatory reform meets quality standards, complies with a general economic strategy and that Regulatory Impact Analysis (RIA) is undertaken appropriately.

## **Ex-ante Assessment**

Ex-ante is a Latin word that means “before the event”. It is intended to help ensure that the regulations proposed are fair, data driven, evidence-based, logical and justified, and that the proposed priorities, objectives, measures, and allocations of resources are appropriate in order to respond to the needs identified, before it is implemented.

## **Ex-post Evaluation**

Ex-post is a Latin word that means “after the event”. The evaluation of regulations is essential to assess whether regulations work as originally intended, ensure that they are relevant and are fit for purpose. Only after implementation can the effects and impacts of regulations be fully assessed, including direct, indirect, and unintended consequences.

## **Regulatory Impact Analysis**

Regulatory Impact Analysis (RIA) is the process of systematically analysing and communicating the impacts of existing regulations as well as new proposed regulations. The essential characteristic of RIA is its informed and evidence-based decision-making for regulatory intervention through proper consultations and analysis of problems and solution options, a full-fledged cost-benefit analysis or using a less complex calculation (for light RIA) i.e., least cost analysis, and implementation and review strategies.

## **Regulatory Impact Statement**

Regulatory Impact Statement (RIS) is a document prepared by the regulator in support of a proposal for a new regulation or an amendment to a regulation following consultation with relevant parties. It contains a description of seven RIA steps, namely: problem statement, objectives, options, impact analysis, consultation, conclusion, and recommendation, as well as strategy for implementation. The RIS is presented to the decision-maker to make informed decisions based on a balanced assessment of the best available information.

### **Box 3.1. ASEAN Guidelines on Good Regulatory Practices**

The original ASEAN Good Regulatory Practice (GRP) Guide was developed by the ASEAN Consultative Committee for Standards and Quality (ACCSQ) and endorsed by the Senior Economic Officials Meeting (SEOM) at the SEOM 2/40 Meeting held from 2 to 4 February 2009 in Bangkok, Thailand. The Guide was designed to assist regulators in ASEAN Member States (AMS) in adopting efficient regulatory arrangements to improve the consistency and transparency of technical regulations, which will lead to reduction in regulatory barriers to trade. In 2018, the ACCSQ completed the task to review the GRP Guide and further renamed the document to ASEAN Guidelines on Good Regulatory Practices (ASEAN Guidelines on GRP). The ASEAN Guidelines on GRP was later endorsed at the SEOM 1/50 Meeting held from 16 to 18 January 2019 in Bangkok, Thailand. Key updates to the ASEAN Guidelines on GRP include the relevant principles set out in the World Trade Organisation (WTO) Technical Barriers to Trade (TBT) Agreement, Regulatory Impact Assessment (RIA), and the ASEAN GRP Core Principles. These principles aim at assisting AMS in improving their regulatory practices, and to foster ASEAN-wide regulatory cooperation.

The guideline highlighted GRP elements as follows:

- a. establishing the potential need for government intervention (defining the problem);
- b. assessing the options;
- c. preparing and reviewing technical regulations;
- d. notification and information;
- e. consultation;
- f. enforcing technical regulations.

The results of this analysis are detailed in the Regulatory Impact Statement (RIS). RIS is based on a set of steps that structure the preparation of regulatory proposals and has the following key elements, which set out:

- i. the problem which gives rise to the need for action;
- ii. the desired objectives;
- iii. the options (regulatory and non-regulatory) that may constitute viable means for achieving the desired objectives;
- iv. an assessment of the impact on consumers, business, government and the community of each option, including the impact on small business paperwork and compliance costs;
- v. a consultation statement (the process and results of consultation);
- vi. a recommended option;
- vii. a strategy to implement (including consideration of appropriate enforcement mechanisms) and review the preferred option.

Source: ASEAN (2019)

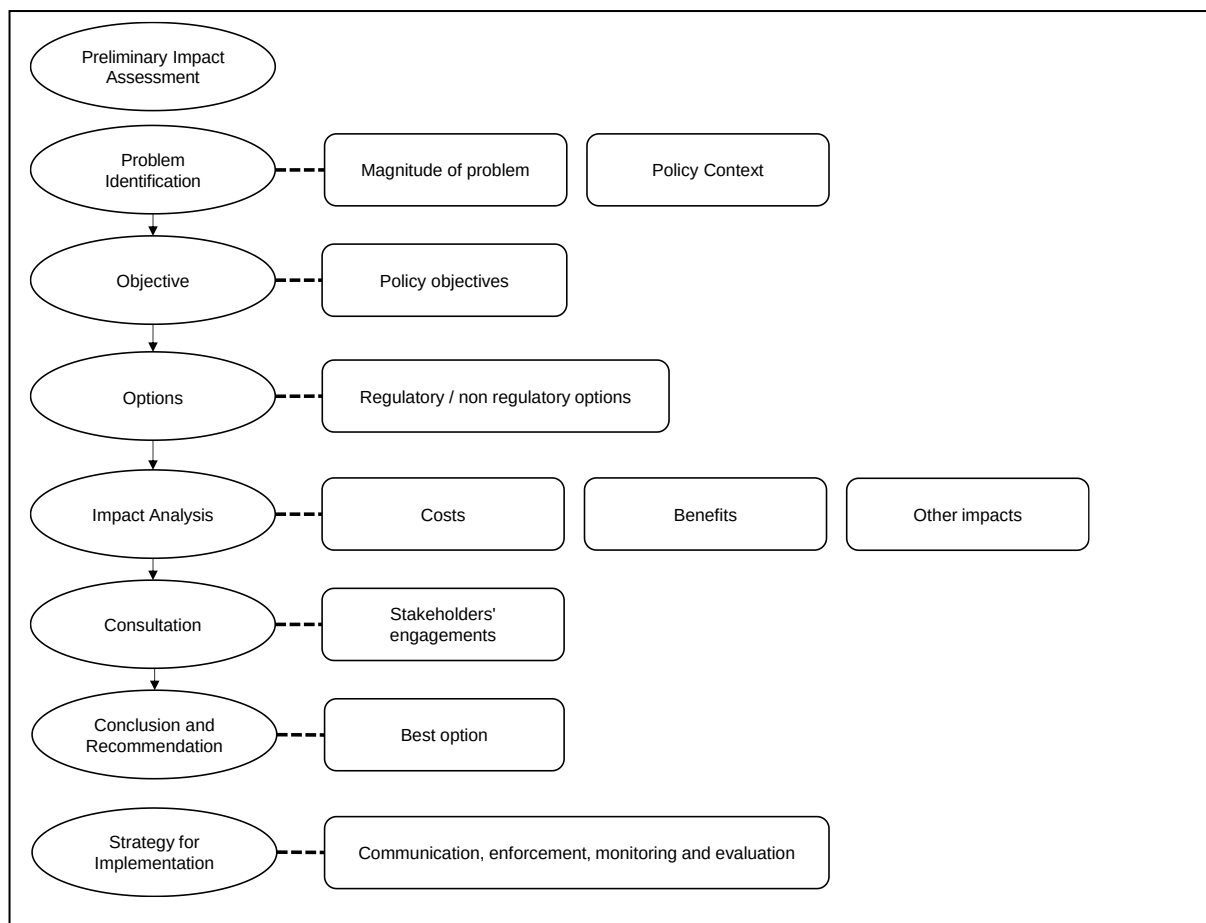
## Chapter 4.0 Preparing Regulatory Impact Analysis

*This chapter highlights the Regulatory Impact Analysis (RIA), which provides a detailed and systematic appraisal of the potential impacts of a new regulation in order to assess whether the regulation is likely to achieve the desired objectives. The need for RIA arises from the fact that regulation commonly has numerous impacts and that these are often difficult to foresee without detailed study and consultation with affected parties. The process of GRP in this chapter is further developed with the discussion on Regulatory Impact Statement to improve government decision-making processes by ensuring that all relevant information is presented to the decision maker when a decision is being made. The chapter concludes with the illustration of Best Practices of GRP implementation in Malaysia and Thailand.*

## 4.1 The 7 elements

**Regulatory impact analysis (RIA)** is a systemic approach to assessing the positive and negative effects of proposed and existing regulations and non-regulatory alternatives to reach regulatory decisions. RIA examines and measures the likely benefits, costs, and effects of new or existing regulations. It provides regulators with a flexible toolkit to evaluate the existing public policy and regulation, evaluate the impact to society, and identify suitable solutions to tackle the challenges. This is on the basis that no one is left behind. Besides that, with the 7 elements of RIA implementation, decision-makers would have access to valuable empirical data and a comprehensive framework.

**Figure 4.1. Major steps in a regulatory impact analysis**



Source: Authors developed based on Malaysia and Western Australia RIA practice

In order to strike a balance between formulating and enacting regulations on time, and ensuring that these are evidenced-based, the Preliminary Impact Assessment (PIA) is a practical option. This would address the critical question on how regulators can cope with the rapidly changing environment while simultaneously taking the time to consult all concerned stakeholders and conduct ex-ante policy analyses. Flow of RIA in Figure 4.2 tells how PIA complements rule-making process in Western Australia.

**Box 4.1. Preliminary impact assessment**

PIA is an analytical tool, designed to assist agencies and the Regulatory Gatekeeping Unit (RGU) to determine whether a regulatory proposal could have a significant negative impact on business (including Government businesses), consumers or the economy. If, after assessment of an agency's PIA, the RGU determines that a proposal is likely to result in a significant negative impact on business, consumers or the economy, completion of a RIS will be necessary.

Whilst the RIS is designed to undertake, and report on, a detailed assessment of both the costs and benefits of a proposal (whether they be environmental, social or economic), the PIA is intended to be a simple and easy-to-use tool and does not require the same level of information concerning costs and benefits.

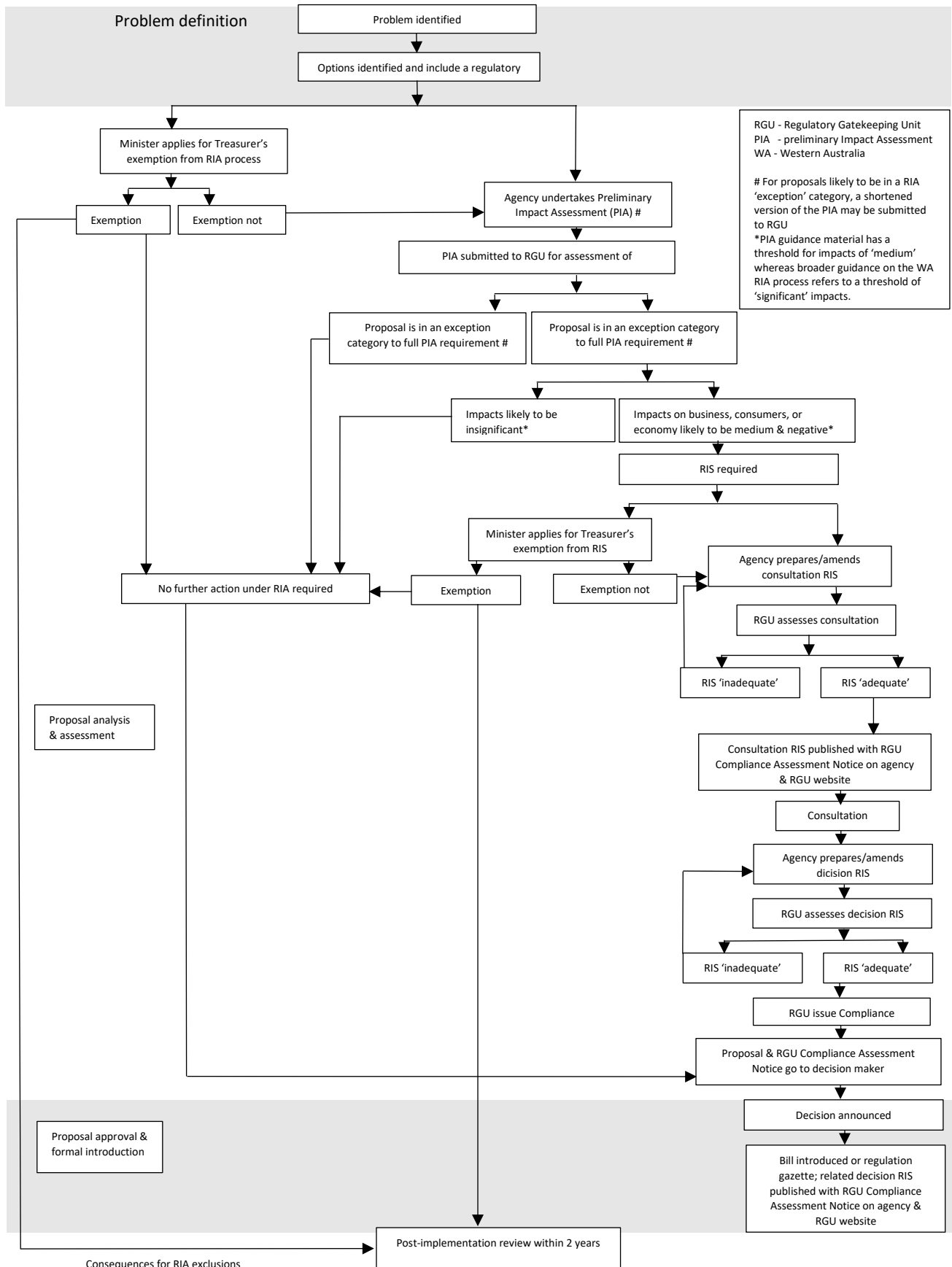
The PIA also highlights to agencies the main features and logic of the proposal and the extent to which the proposal meets government objectives

Source: WA Water Department (2012)

While Light RIA is undertaken for proposals which are of minor significance and low impact on the economy or the impact of which is confined to a limited number of economic sectors. Post implementation review (PIR) and Light RIA which will be discuss further in the following discussion.



**Figure 4.2. Flow of RIA Implementation in Western Australia**



Source: Productivity Commission (2012)

#### **4.1.1 Problem Identification**

A good definition of the problem and a clear understanding of its causes are the necessary preconditions for setting appropriate objectives and identifying possible options to address the problem. The elaboration and adoption of the regulation usually is just one possible way of solving the problem. Moreover, the adoption of legal acts should be the chosen measure only in circumstances when no other solution is appropriate or sufficiently efficient to avoid the risk of overregulation. This is precisely why it is essential to fully define the problem. A good problem definition should:

- a. describe the nature of the problem in clear terms and support the description with clear evidence;
- b. identify clearly the drivers or underlying causes of the problem;
- c. identify if there are existing policies that can address the problem if strictly implemented;
- d. set out clearly the individuals, sectors, or social groups affected, and the size of affected groups; what are the interests and needs of various stakeholders?
- e. describe the nature of the impact on each individual mentioned in the above group. Identify the significance these effects and how long these effects will persist;
- f. describe how the problem has developed over time and how existing policies are tackling it;
- g. describe how the problem is likely to develop in the future without any action from the Government (identify assumptions, risks and uncertainty involved); and
- h. if relevant, describe possible international aspects that influence the problem and its possible development in the future.

#### **4.1.2 Objectives**

After identifying the problem, it is time to identify the desirable objective. The objective refers to the main aim of the policy to be implemented. It is essential to distinguish between the "ends" and "means". The objective must be the "end" outcome that the Government wants to achieve, and the "end" should not be confused with the "means", which are the possible ways to achieving objectives. A good objective should be Specific, Measurable, Achievable, Realistic and Timely (SMART). If possible, it is always advisable to describe the objective in quantitative terms (e.g., numbers) so that success is measurable.

### 4.1.3 Instrument Options

Once the objective is defined, the main options (i.e., means) that could be pursued to attain the target should be identified. It is advisable to identify as many different practical ways of achieving the objective as possible. This will enable the Government to identify the best possible option. Some tips for identifying options:

- a. options should be related to the objectives and should be proportionate (with as few negative side-effects as possible and reaching the objective should be more important than the negative side-effects);
- b. one of the proposed options should also be so-called 'doing nothing' option (in other words, option that would offer to maintain the status quo);
- c. avoid presenting only the 'doing nothing' or existing state of things (status quo) option, the 'extreme' option (that kind of option which is unrealistic to implement due to unavoidable circumstances – lack of resources, lack of political support, etc.) and the preferred option. Please refer the box below on how to identify options;
- d. narrow down the options by screening them for technical and other constraints, and assessing them against the criteria of effectiveness and efficiency;
- e. Clearly explain the reasons for excluding specific options from further analysis.

## Box 4.2. Identifying options

Sometimes a mix of options should be considered. Some groups, especially small businesses, experience regulations differently while others present less compliance risk. Have you considered whether a mix of policy options would be more effective and efficient?

- **No regulation.** There may be good reasons for regulating but these must be weighed against not regulating. One benefit of not regulating is that no regulatory offsets need to be found.
- **Better enforcement of existing regulations.** Sometimes better staff training, enforcement, or a different management focus to address cultural, behavioural, or systems issues can be an effective means to achieve the desired outcome.
- **Principles-based regulations.** These allow affected groups maximum flexibility in achieving compliance. For example, where a market operates inefficiently, light-touch regulations may lay down rules for the participants on how to agree on prices. More heavy-handed regulations may involve government itself determining the price. Light-touch regulations must be implemented to ensure that those affected understand their legal rights and obligations; otherwise, the regulations may not be effective.
- **Self-regulation.** This consists of industry-written rules and codes of conduct enforced by the industry. Where industry participants understand and appreciate the need for self-regulation, this can be a good option. Any red tape resulting from self-regulation is usually minimal and often administered sympathetically by the industry. Self-regulation is a good option where the consequences of market failure are not critical, and the market is likely to move towards an optimal outcome by itself. Self-regulation is not a viable option if an industry has no incentive to comply with its own rules. In some cases, self-regulation may create public concern, where, for example, perceived conflicts of interest could threaten safety, such as in food handling, healthcare, or aviation. Self-regulation should be approached carefully where previous attempts to achieve compliance or penalise non-compliance have failed.
- **Quasi-regulations.** This approach covers a wide range of rules or arrangements that are not part of explicit government regulations but nevertheless seek to influence the behaviour of businesses, community organisations, and individuals. Examples include industry codes of practice developed with government involvement, guidance notes, industry–government agreements, and accreditation schemes.
- **Co-regulation.** This is a solution where industry develops and administers its own arrangements and government provides legislation to enforce them. Such legislation can set out mandatory standards but may provide for enforcement through a code overseen by the industry.
- **Explicit government regulations.** So-called black-letter law, these comprise primary and subordinate legislation and are probably the most common form of regulation. They are usually used as a regulatory tool where perceived risk is high or public interest and achieving compliance are critically important. Such regulations must be drafted in plain language and sunset requirements observed.
- **Alternative instruments.** With each of these regulatory options, alternative instruments may be available to address the problem or issue set out in a regulatory impact statement, including the following:
  - No specific action, that is, relying on the market in conjunction with existing general liability laws (e.g., negligence or breach of contract) and insurance laws.
  - Information and education campaigns, including product labelling or media campaigns.
  - Market-based instruments, including taxes, subsidies, traceable permits, performance bonds, and traceable property rights.
  - Pre-market assessment schemes such as listing, certification, and licensing.
  - Post-market exclusions such as bans, recalls, licence revocation, or negative licensing.
  - Service charters.
  - Standards, which may be voluntary, compulsory, or performance based.
  - Other mechanisms such as public information registers, mandatory audits, and quality-

Source: ERIA (2018)

Particular attention should be paid to non-regulatory options. Usually, the necessity to elaborate and adopt regulations is the last measure undertaken by the Government. The main reason being the problem can often be solved more efficiently without a regulation. However, bureaucracy tends to use regulation more than other options just because it is more convenient for a regulator to instruct the society or businesses to follow the regulator's "legacy setting" which require them to "submit an application and wait for approval". This shows that the relevant agencies performing their tasks, although by doing so may undermine the effectiveness of problem solving. Hence, this can lead to the risk of not achieving the objective, as well as the risk of creating an additional cost for entrepreneurs or society in order to fulfil the obligations of the regulation. In order to decide if regulation is the best form of government intervention, some countries use so-called 'threshold tests' that include several criteria helping to decide whether regulation would be essential. However, these criteria should be perceived critically because, in reality, the necessity for public intervention can be the result of several reasons.

**Box 4.3. Reasons of government's intervention**

- a. market failure (for instance, market prices do not reflect the actual costs and benefits to society; insufficient supply of public goods; missing or weak competition; missing or incomplete markets; information failures, such as imperfect information or lack of access to information for consumers);
- b. regulatory failure (for instance, already existing regulation that appears not to be in public interests; inadequately defined legal framework; unintended consequences resulting from already existing public intervention);
- c. social objectives and public-interested redistribution of resources (especially concerning equity issues); and
- d. hazard or risk on health and safety of the society.

Source: MPC (2014a)

#### **4.1.4 Impact Analysis**

Once the Government has identified all the possible alternatives, the impact analysis should:

- a. identify alternatives' potential impacts and their significance; and
- b. analyse and mutually compare alternatives and their potential impacts.

At the initial stage, it is essential to identify all the possible impacts of the alternatives. Following which, it is sufficient to identify which impacts are likely to be significant or require deeper analysis.

Before RIA is implemented, a fifth of OECD countries have introduce threshold test to determine whether the regulatory proposal requires in-depth RIA. This will help both regulators and ROBs to cater to the increasing number of regulatory proposals every year (OECD, 2021).

#### **Box 4.4. OECD best practice principles on regulatory impact analysis: a closer look at proportionality and threshold tests for RIA**

OECD countries should consider the following, when developing proportionality rules or threshold tests:

1. Determining the scope of RIA should start at an early stage when policy makers are evaluating the problem – potentially even before considering the need for intervention – and identifying regulatory and non-regulatory alternatives. Preferably, this process should start already in the phase of legislative planning.
2. An oversight body should assess whether the regulator has characterised the problem correctly, including its magnitude, when the regulator still has the flexibility in formulating a regulation or policy. The earlier policy makers understand the magnitude of the problem, the better the government may target resources to developing solutions.
3. During the early stage of RIA, policy makers should begin to introduce an economic rationale and data to determine the scope of the issue. This does not mean an in-depth analysis at an early stage (e.g. a well-developed cost-benefit analysis). Policy makers should be broadly scanning an issue, before undertaking an in-depth analysis.
4. The time and resources devoted to the development of regulation and its analysis should relate to the size of the impacts, the size and structure of the economy, the impacts per capita, the flexibility of the policy, and the relative resources of the government.
5. If a country chooses to use quantified thresholds for RIA, they should be inclusive and base the thresholds on the size of impacts across society, rather than focusing on any specific sector or stakeholder group. There may also be a risk in using one single value threshold that captures impacts across society. One stakeholder group may be disproportionately affected but the total impacts are below the threshold, so countries may wish to consider a threshold that also incorporates a per capita or stakeholder threshold.
6. Regulations should only be exempt from completing the RIA process in genuinely unforeseen emergencies, when a significant delay could objectively put the wellbeing of citizens at risk. Oversight bodies should be very critical of ministries that overuse such exemptions. Ministries should also be required to conduct an *ex post* evaluation to ensure that the regulation was effective after a defined period of time.
7. Regulations with limited policy options or flexibility (e.g. transposition of EU directives or supranational laws) might have a less rigorous process. When fewer policy options or instruments are available, even if the impacts may be quite significant, policy makers have less flexibility to improve a policy at this stage. Despite this, governments should be mindful that EU directives or other supranational instruments might still have a degree of flexibility in their implementation.
8. The time and resources for regulation development and analysis should also scale with the capacities of the government. It is important that governments continuously build the expertise of policy makers in RIA and stakeholder engagement to make analysis more effective. Governments must build capacities in ministries before they can require significant levels of analysis.

Source: OECD (2021)

Threshold is a triage system that may help government with limited resources to filter regulatory proposals. If the cost has exceeded the threshold, then the proposal will have to undergo the full RIA process.

#### **Box 4.5. Canada's proportionality and threshold**

Canada applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management's principle of proportionality, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors:

- Low impact, cost less than CAD 10 million dollars present value over a 10-year period or less than CAD 1 million annually;
- Medium impact: Costs CAD 10 million to CAD 100 million present value or CAD 1 million to CAD 10 million annually;
- High impact: Costs greater than CAD 100 million present value or greater than CAD 10 million annually.

Source: OECD (2020b)

**Box 4.6. The 2012 OECD recommendation on regulatory and policy governance: principle 4**

- 4.1 Adopt ex ante impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.
- 4.2. Ex ante assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.
- 4.3. Ex ante assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. Ex ante assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.
- 4.4. When regulatory proposals would have significant impacts, ex ante assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. Ex ante assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.
- 4.4. Regulatory impact analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision-making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.
- 4.5. Ex ante assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.
- 4.6. When carrying out an assessment, officials should:
  - Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects;
  - Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets;
  - Evaluate the impact on small to medium sized enterprises and demonstrate how administrative and compliance costs are minimised.
  -
- 4.7. RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

Source: OECD (2020b)

#### **Box 4.7. Important points to consider when conducting cost benefit analysis**

##### **a. Cost**

Costs to businesses may include:

- 'Paper burden' or administrative costs to be borne by businesses that are associated with complying with or reporting on regulatory requirements.
- License fees or other charges levied by the government.
- Changes likely to be required in production, transportation, and marketing procedures.
- Shifts to alternative sources of input supply.
- Higher input prices.
- Restricted access to markets.

Costs to consumers may include:

- Higher prices of goods and services resulting from restrictions on competition.
- Reduced utility (quality, choice, etc.) of goods and services.
- Delay in the introduction of goods to the marketplace and/or restriction in product availability.

Costs to the community and/or the environment may include:

- Environmental degradation or pollution.
- Reduction in public health and safety.
- Undesirable redistribution of income and wealth.
- Lower employment levels or economic growth.

Costs to the government may include:

- Costs of developing regulations.
- Conducting an education campaign/providing information.
- Administration of licensing/inspection services.
- Collection and collation of business information.
- Enforcement costs including the costs of litigation

##### **b. Benefits**

Identify and describe the benefits of the options to the community at large. Certain benefits may not be quantifiable. Examples of benefits include:

- Improvements in product and service quality.
- Availability of a wider range of products and services.
- Reduction in the costs or prices of products and services.
- Reduction in accidents and improvements in public health and safety.
- Improvement in the environment.
- Reduction in compliance costs for businesses and administrative costs for the government.
- Improvements in the information available to businesses, the workforce, consumers or the government.

##### **c. Distribution of Costs and Benefits**

- government intervention, regulators should make transparent the distribution of regulatory costs and benefits across various social groups.

Source: MPC (2021a)

A cost-benefit summary proposal should also be included in RIA. This is to summarise the quantitative and qualitative benefits and costs affecting stakeholders.



#### Box 4.8. Quantifying the impact

**Table: Cost-Benefit Summary Statement**

| IMPACT                                                                                                         | COST/UNIT |
|----------------------------------------------------------------------------------------------------------------|-----------|
| a. Quantified impact (RM/year)<br>Benefits (by stakeholder group) Costs<br>(by stakeholder group) Net Benefits |           |
| b. Quantified impact non-monetary<br>(unit/year)<br>Positive and negative impact (by<br>stakeholder group)     |           |
| c. Qualitative or Intangible Impact Positive<br>and negative impact (by stakeholder<br>group)                  |           |

Explanatory Notes:

**a. Quantified and monetised impact**

As some of the benefits generated from regulatory policies are methods for quantification. Only benefits and costs that are monetised can be aggregated to arrive at net benefits.

**b. Quantified but not monetised impact**

For items where the benefits or cost cannot be monetised but can be quantified, list out these items in terms of physical units. Include both positive and negative impacts that have been quantified and indicate clearly the unit of measure (e.g. the number of deaths or injuries avoided).

**c. Qualitative or intangible impacts that are neither monetised nor quantifiable**

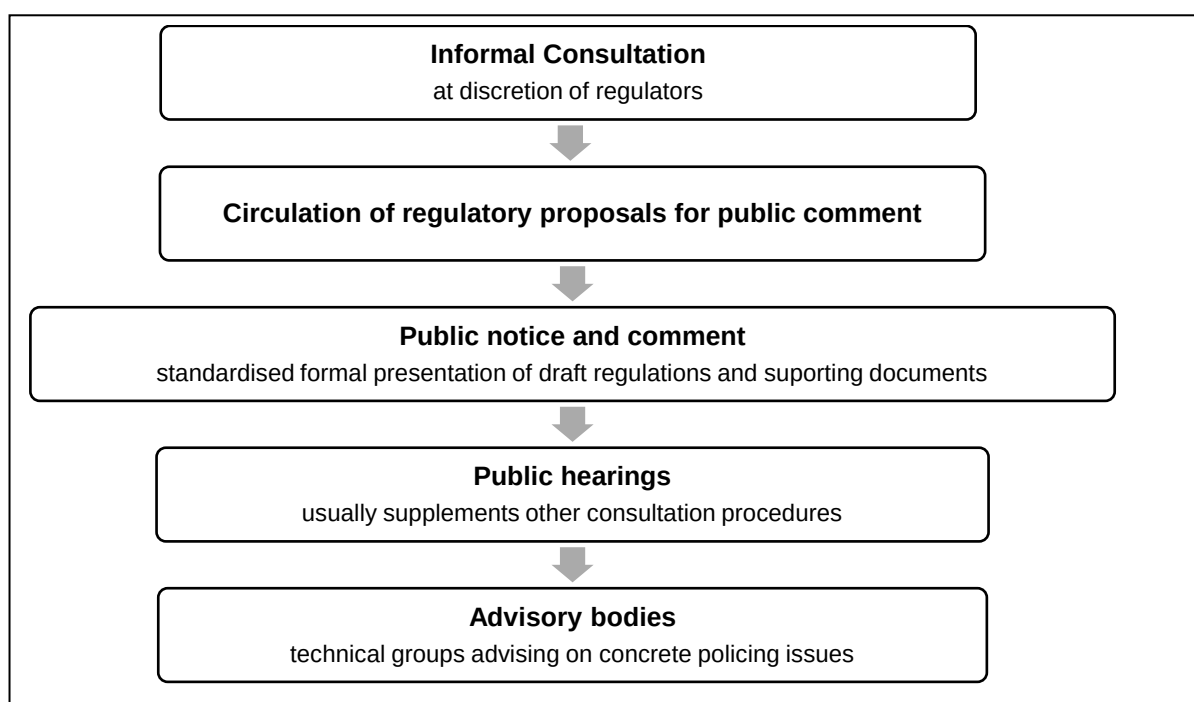
Intangible or qualitative items that are likely to have a significant impact on decision-making should be listed out and their importance briefly stated. These items are the elements of analysis that matter but cannot be estimated. List both their positive and negative impacts by stakeholder group. These qualitative impacts can be very important to a decision-maker

Source: MPC (2021a)

#### 4.1.5 Consultation

As mentioned earlier, public consultation will often be a crucial stage in the policymaking process. The consultation makes preliminary analysis available for public scrutiny. It allows additional evidence to be sought from a range of interested parties to inform the development of the policy or its implementation. Consultation is a regulatory process that seeks to gather data from relevant citizens and businesses on the testing options in the context of RIA to improve regulatory design. Its primary goals are to improve efficiency, transparency and public involvement in large-scale projects, laws, and policies. Constant engagements with all affected parties including government agencies will build strong relationship, develop buy-in and ownership for resultant policy, hence boosting compliance.

**Figure 4.3. Flow of consultation**



Source: Authors developed based on Rodrigo, D., & Amo, P. A. (2006)

**Table 4.1. A quick reference on consultation**

| What                                                                                                                                                                                                                                                                                                                                                      | Why                                                                                                                                                                                          | Who                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Two-way process to seek and receive views of stakeholders, business, affected parties and general public on proposed changes in policy                                                                                                                                                                                                                    | <ul style="list-style-type: none"> <li>Promotes transparency and accountability</li> <li>Improves awareness and understanding</li> <li>Encourages public ownership and commitment</li> </ul> | Stakeholders, experts, regulators, business community, employees, NGOs, interest groups, citizen                                                                                                                                                                                                                                  |
| When                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                              | How                                                                                                                                                                                                                                                                                                                               |
| <ul style="list-style-type: none"> <li>As early as possible – integral part of RIA process</li> <li>Informal dialogue prior to a more formal consultation to obtain initial feedback &amp; gain an understanding of the issues</li> <li>Early stage of impact assessment to gather inputs</li> <li>Various stages of the policy making process</li> </ul> |                                                                                                                                                                                              | Online platforms <ul style="list-style-type: none"> <li>Website</li> <li>Portal</li> <li>Social Media</li> <li>Online survey</li> </ul> Physical engagements <ul style="list-style-type: none"> <li>Working committee</li> <li>Formal meeting</li> <li>Informal discussion</li> <li>Forum</li> <li>Door to door survey</li> </ul> |

Source: Authors developed based on MPC (2014b) and inputs contributed by AMS

Consultation involves notification (to publicise the matter to be consulted on), engagement (a two-way flow of information and opinion exchange) as well as participation (involving stakeholders in the drafting of policy or legislation). More specifically, the steps of the consultation process are aimed at:

- a) informing stakeholders about proposed decisions within the public administration or the National Assembly;

- b) obtaining feedback from the representatives of the affected parties about proposed decisions;
- c) analysing the opinions expressed by the stakeholders and examining the possibility to take them into account during the decision-making process;
- d) reporting on the actions taken, whether these incorporated the opinions expressed by the stakeholders, and in what ways. This also includes explaining why certain opinions were not considered, if any.

The essence of the RIA procedure is to maintain the adoption of evidence-based decisions. Therefore, stakeholders and representatives can provide the most appropriate information about possible consequences of the proposed recommendations. Regulators often do not have enough practical knowledge in the field, and the consultation process helps considerably to fill this gap. Citizens can provide information on the possible impacts of the proposed decisions and give helpful advice on the best way to enforce the proposed decisions. However, it should be noted that RIAs should not have decisions in them as a matter of principle. If the decision has already been made, then the RIA amounts to nothing more than a compliance exercise, undermining all of the points from the previous comment. In addition, in theory, RIAs are presented to decision makers to allow them to evaluate the options and make the best decision.

#### **Box 4.9. Consultation document**

- a. Preparation for consultation should include the preparation of consultation documents that are clear, concise and focused.
- b. A list of questions for affected parties can be concluded:
  - i. Check if the benefits and costs are comprehensive;
  - ii. Confirm if the assessment of competition effect is appropriate;
  - iii. Seek a response on the enforcement methods proposed; and
  - iv. Check for unintended consequences.
- c. Ensure that submissions received on potential costs are supported by evidence. This will prevent respondents from overstating costs in order to deter the department or agency from pursuing a particular course of action.
- d. Seek responses on:
  - i. the validity of key assumptions;
  - ii. the options that are available (regulation and alternatives to regulation);
  - iii. implementation issues (including guidance and timing); and
  - iv. the preliminary findings on the issue.

Source: MPC (2021a)

#### **Box 4.10. Consultation - Thailand Experience**

Thailand has operated basic yet relatively institutionalised channels for online stakeholder engagement, complemented by less formalised channels undertaken by each regulator on a case-by-case basis. Anecdotal evidence suggests that consultation practices have remained fundamentally discretionary both in terms of the timing, procedures and levels of openness and of the very purpose of the exercise. In practice, ministries and regulatory agencies each have their established practice. While Government regulation mandates a 15-day mandatory publication of the draft bill on their individual website, some ministries and agencies also have their own system of (tripartite) working committees through which sectoral policy issues are discussed and elaborated thanks also to stakeholders' inputs and feedback. In such contexts, letters are sent to business and civil society organisations and individual stakeholders and meetings are organised with various degrees of formality. Evidence also suggests that impact analyses are not systematically used to inform consultations, and consultation submissions do not systematically inform RIAs.

Source: OECD (2020c)

#### **4.1.6 Conclusion and Recommendation**

A summary of the analysis should mention the preferred option alongside the costs and benefits. The summary needs to be supported by the analysis contained in the executive summary. Regulators need to outline how the preferred option is better than the others.

#### **4.1.7 Strategy for Implementation**

The RIA should contain a plan to implement the proposal, including the costs. The implementation should consider the following:

- a. prepare a proper communication plan to ensure the stakeholders have sufficient time for adoption of the new or amended regulation;
- b. provide explanation to the affected stakeholders to make the necessary changes to ensure compliance and implication of non-compliance;
- c. allow the stakeholders to access the information (materials) including the benefits and implementation process of new regulations;
- d. provide sufficient training to all enforcers on how the regulation will be implemented to ensure that regulators can respond in risk proportionate ways and help to achieve the regulatory objective; and
- e. form dedicated teams to focus on data, monitor the implementation (to avoid duplication and imposing unnecessary burdens), publish data or reports (allow academicians or strategists to explore on ex post evaluation).

The overall strategy and implementation should be planned and well communicated so that the measure proposed will succeed in its objectives.

#### **4.1.8 Scope and Exemption**

The handbook is applicable to all regulatory activities affecting the economic, social and environmental aspects. The preparation of Regulatory Impact Statement (RIS) is not required for:

- a. Regulations that are implemented for reasons of national security and sovereignty;
- b. Regulations relating to criminal law, such as the Penal Code; and
- c. Administrative circulars that are intended for public service administration.

In addition, regulators may proceed to implement regulations without RIS in exceptional circumstances when dealing with urgent matters i.e.COVID-19 pandemic that require immediate action. In such cases, the regulator must notify the oversight body and provide them the reasons for the decision. PIR is required for such regulations.

## **4.2 Assessing the Adequacy for Regulatory Impact Statement**

As a first step, regulators need to provide a description of the problem and RIS should clearly identify the problem that needs to be addressed. When identifying the nature and size of the problem, empirical evidence and the perceptions of the problem must be referenced, wherever available. If the problem involves risk to the society, businesses, or the environment, a description of the risk should be included. A consultation with a few groups should be organised to collect early description, quantify the magnitude of the problem, and map the regulatory processes to understand and visualise the problem. Identify the government actions that have been taken to address the problem and the root causes that lead to market or regulatory failure.

**Regulatory Impact Statement (RIS)** is an executive summary of the full Regulatory Impact Assessment (RIA) submitted by a regulator to support the regulatory changes for existing or formulating new regulations. In general, this should not be long unless necessary. The RIS is an evidence-based study detailing how the analysis has been taken, how the regulator derives the recommended option and how it will be executed on the ground with minimal side-effects to the economy and society. The government will use the RIS to make a right decision after it has gone through a comprehensive review based on the latest best available information.

### **4.2.1 Criteria for Assessing the Adequacy of RIS**

A one-page summary of RIS must be prepared for decision makers and submitted to the RIA Secretariat (oversight body) together with RIS. The summary of proposals will be examined by the secretariat to ensure completeness. The summary will include a brief description of the main points of RIS, including the impact of the preferred option, the affected stakeholders, and the alternative options. It will also assess the extent the preferred option reduces business compliance costs and improves productivity growth.

**Box 4.11. Example of a regulatory impact statement**

## RIS Assessment Note

|                          |                                                     |
|--------------------------|-----------------------------------------------------|
| <b>Date</b>              | 5 November 2021                                     |
| <b>Document Assessed</b> | Regulator A (Scale of Rates, Dues and Charges) 2011 |
| <b>To</b>                | xxx                                                 |
| <b>Assessed by</b>       | xxx                                                 |

MPC assesses RIS for consistency and adequacy according to the prescribed processes and requirements related to the quality of the analysis. The preparation of a Regulatory Impact Statement (RIS) shall document the regulatory impact analysis and the process undertaken.

The purpose of this note is to provide early comments regarding the information and depth analysis required for the RIS to be assessed as adequate.

| Num. | Item                                                                                                                                                        | Comment                                                                                                                                                                                                                                                                    |
|------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.   | The problem or issues that give rise to the need for action                                                                                                 | Adequate                                                                                                                                                                                                                                                                   |
| 2.   | The government goals of the proposed action in concrete and measurable terms, with a clear timeline for achieving the benefits                              | Adequate                                                                                                                                                                                                                                                                   |
| 3.   | The range of options (regulatory and non-regulatory, as applicable) that may constitute feasible means for achieving the desired objectives                 | Adequate                                                                                                                                                                                                                                                                   |
| 4.   | An assessment of the impact (costs, benefits and levels of risk) of a range of feasible options for consumers, businesses, the government and the community | <ul style="list-style-type: none"> <li>Not adequate</li> <li>Attachment 11 contains stress test results of a number of vessels. The impact analysis needs to provide estimated total cost increase information so as to be more apparent to the decision maker.</li> </ul> |
| 5.   | Description on how adequate consultation was conducted                                                                                                      | Adequate                                                                                                                                                                                                                                                                   |
| 6.   | Demonstrate the preferred option based on the impact analysis and selected option adequately meets the objectives of the proposed action                    | <ul style="list-style-type: none"> <li>Not adequate</li> <li>The preferred option should be based on assessment of impact (element 4)</li> </ul>                                                                                                                           |
| 7.   | The mechanisms adopted to ensure compliance and enforcement strategy                                                                                        | Adequate                                                                                                                                                                                                                                                                   |

Source: MPC (2021c)

**4.2.1.1 Problem Statement**

The RIS should clearly identify the problem(s) that need to be addressed. This part of the analysis must:

- Present evidence on the magnitude (scale and scope) of the problem;
- Form a taskforce and document relevant existing regulation at all governmental levels, vertically or horizontally and demonstrate that the problem could not be addressed without intervention;

- c. Identify the relevant risks (risk to safety, health, the environment or businesses), if the problem involves risk and estimate the probability of an adverse outcome, including if no action is taken, and how government will minimize the risk; and
- d. Present a justifiable and sustainable long-term action without disturbing the productivity of the government. To be considered after taking into account the potential risk that may happen and how to minimise the problem.

This is to ensure that when a policy or regulation addresses an existing problem, it would not emerge as a new problem that might adversely affect the whole value-chain. The RIS Adequacy Template in Annex 1 provides greater detail on fulfilling the adequacy of RIS.

#### **4.2.1.2 Objectives**

The RIS should explain the objectives, outcomes, goals or targets set by the government.

##### **Box 4.12. Example of objective setting**

###### **2. Rationale and Objectives**

The overall purpose of the reform is to substantially reduce the number of unnecessary licensing requirements in \_\_\_\_\_ and to make the licensing regimes simpler and more transparent, and focused on legitimate regulatory purposes. As part of this, the reform will develop appropriate institutional arrangements that can ensure the quality of and accessibility to business licenses over time.

The three specific objectives are:

- To identify and review all remaining business licenses in \_\_\_\_\_.
- To establish an electronic registry of all business licenses in \_\_\_\_\_.
- To establish a permanent unit responsible for the quality review of new licenses

Source: World Bank (2006)

#### **4.2.1.3 Options**

The RIS should identify a range of options that deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education, and voluntary standards. If only one option (apart from the option of non-intervention) is considered feasible, the RIS should provide sound justification for considering only two options.

RIA is an iterative process, both regulator and business associations regularly share challenges and gather feedback. Regulators can tap on this opportunity to collect information, for example: how other countries regulate? Is there any best practice that we can adopt or adapt? Else, the regulator can always use their network to get more information from the ASEAN Secretariat, OECD, World Bank or even WTO to find better options if they have very limited options to consider.



#### **4.2.1.4 Impact Analysis**

The RIS should provide an adequate information on the analysis of the costs and benefits for each option, and should:

- a. Identify the affected parties by the new-to-be options and specify significant impact on the economy, social and environment;
- b. Assess the costs and benefits of all the options supported by evidence-based analysis using formal cost-benefit analysis tools and set current option (status quo) as a baseline;
- c. Assess the net impact of each option on the community, considering all costs and benefits;
- d. Assess and quantify cost benefit analysis on businesses and the not-for-profit sector, including distributional impact to small businesses, individual and quantify the effect of each option on business compliance costs;
- e. Connect the objective(s) of the intervention with every option and analyse the risk;
- f. Explore and design option by looking at command-and-control regulations, namely: performance-based regulations, process-based regulations, co-regulation, economic regulation, economic instruments, information and education and voluntary approaches;
- g. Look for the best practices on every option either locally or internationally and check whether the intervention violates any treaties;
- h. If the proposed regulation maintains or establishes restrictions on competition, demonstrate that the regulation results in a net benefit and that the government's objective/s can be achieved only by restricting competition; and
- i. Provide data to support the potential options.

#### **4.2.1.5 Consultation**

The policy makers need to establish who, when, and what to consult with affected stakeholders. The consultation process should be made accessible by using appropriate methods to keep stakeholders accessible to information and be updated with the development of the regulatory proposal. The RIS should:

- a. Outline the plan adopted for consultation;
- b. Include results on intergovernmental consultation;
- c. Describe how consultation was conducted (when consultation was undertaken, the timeframes and the methods used);
- d. Ensure inclusion of all representatives of affected stakeholders in the consultation plan;
- e. Summarise the views of those consulted, including substantial disagreements; supported by legal bases and scientific references;
- f. Outline how those views were taken into consideration; and

- g. If full consultation was not undertaken, provide a reasonable explanation as to why it was not.

#### **4.2.1.6 Conclusion and Recommendation**

The RIS should recommend the preferred option that maximises community net benefit. This statement needs to be supported by the analysis contained in the RIS.

#### **4.2.1.7 Strategy for Implementation**

The RIS should provide information on how the preferred option would be implemented, monitored, and reviewed. This should include wide implementation issues including for example, costs of compliance and risk/performance-based regulation, as discussed earlier. While preparing the strategy, it is important to check whether the implementation of the preferred option is still relevant and can be accepted at all levels.

### **4.2.2 Post implementation reviews**

Where a regulation proceeds without implementing proper RIA or previously received exemption from implementing RIA from the government, the regulation should be the subject of a PIR within five years of implementation, i.e. a period which is generally seen as a reasonable time period to see the full effects of most regulations. While the terms of reference for each review will depend on the individual circumstances, a review should generally be similar in scale and scope to what would have been prepared at the decision-making stage. Issues that should be examined include:

- a. The problem that the regulation intends to address.
- b. The objective of the governmental action.
- c. The impact of the regulation i.e., whether the regulation is meeting its objectives at least necessary cost.
- d. The effective implementation of the regulation, i.e., whether the regulator has enough manpower to ensure effective implementation.
- e. Whether the government's objectives can be achieved in a more efficient and effective way

For regulations that would have required the quantification of compliance costs, the PIR will require an estimation of the incurred and ongoing compliance costs. The PIR Template in Annex 2 provides steps to assess the regulation.

**Box 4.13. Post implementation review in Malaysia**

In Malaysia, regulatory process management system (RPMS) indicates there is a requirement for regulations to be reviewed every 5 years. If the Post Implementation Review would not have taken in place after 2 years of intervention by the government, then the regulator must follow the regulatory review cycle that has been set by GRP policy.

Source: MPC (2021b)

### **4.2.3 Implementing Light RIA**

A public-private collaboration in regulatory changes provides a better perspective when designing or redesigning existing regulations. As highlighted by international organisations who promotes good regulatory practice, for example The World Bank, OECD and ASEAN, the ease of doing business is an urgent issue to address and to allow businesses to improve their economic activities especially during post pandemic. The report assesses the burden of regulation as seen from the private sector's point of view. The report has also influenced regulators to reflect on their capacities and on-going bureaucracies. A quick scan of business regulations should focus on reducing red tape and productivity improvements. Reducing regulatory burdens enable savings which can be channelled to improve and enhance efficiency in delivering products and services.

For example, Malaysia has established A Special Taskforce to Facilitate Business (PEMUDAH). The Minister of Prime Minister's Department, Chief Secretary to the Government and Private Business Leader are co-chairing the PEMUDAH high level meeting. The members of PEMUDAH are mainly the secretary generals and director generals of government ministries, agencies and departments and the private sector from prominent industry and trade leaders and non-governmental organisation heads. Since 2007, collaborations between the public sector and the private sector have marked successful regulatory reforms and improvements to enhance the public and private sector service delivery and the general business environment in Malaysia (PEMUDAH, 2022).

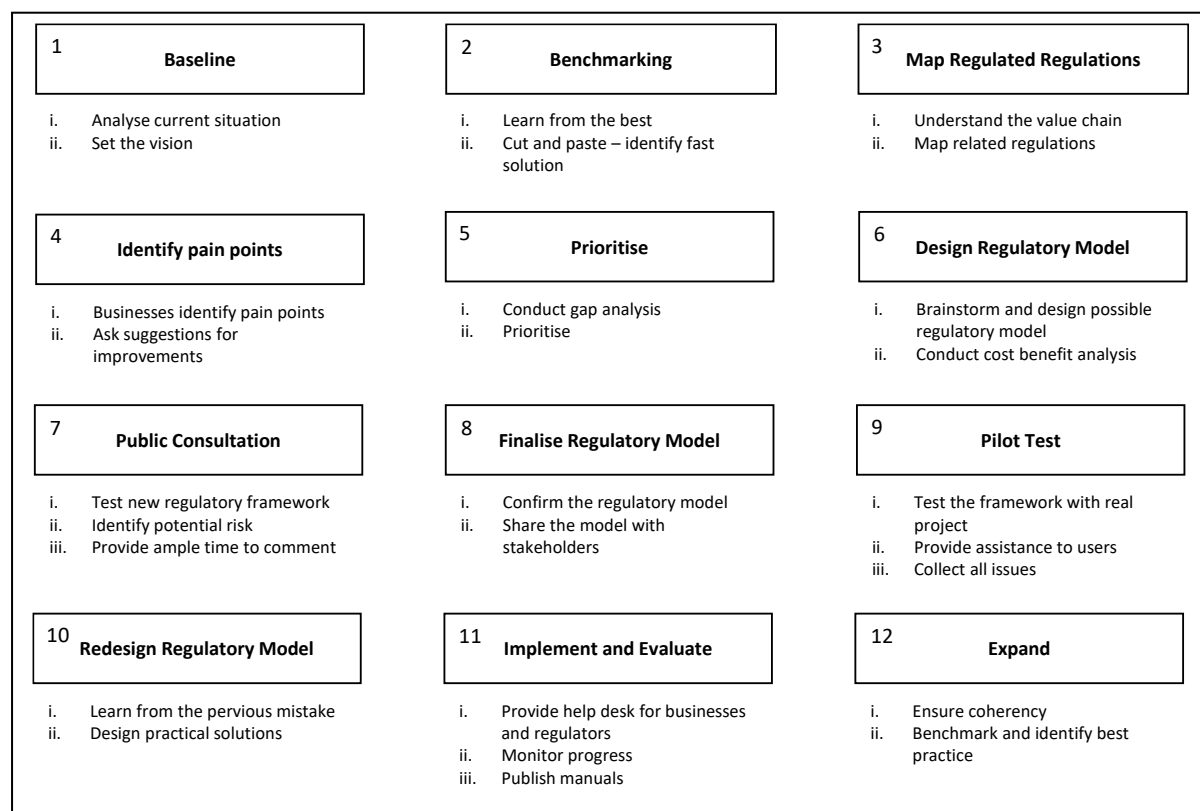
Similarly, the Philippines government engages key stakeholders in the policy or regulatory formulation process. The enactment of Republic Act 11032 established the Ease of Doing Business (EODB)-Anti-Red Tape (ART) Advisory Council to advise ARTA on policies, programs, and systems that aim to improve regulatory management.

Whereas for Singapore, the Government formed Pro-Enterprise Panel (PEP) to gather feedback from the businesses and public on inefficient procedures in existing regulations that hinder productivity and competitiveness. The PEP consists of partners from private and public sectors and is headed by the Civil Service. The commitment from this initiative has gained over 2,000 suggestions from businesses and more than 1,000 have influenced the regulators to make necessary changes on existing regulations (MTI, 2022).

This initiative has produced faster results and motivated private sectors to provide more “evidence” of government’s inefficiency that has affected their productivity and competitiveness to grow. The only difference is that this approach uses less comprehensive impact analysis like CBA promoted under RIA. Many projects under PEMUDAH focus on reducing procedure, time and cost as promoted by ease of doing business methodology.

In the case of a crisis, regulatory proposals would just depend on adjusted analytical requirements, cost-benefit analysis and data from small enterprises could be used to propose recommendations for better decision making. Requirement for monetised impact could be relaxed and ex post evaluation would be carried out in later stage (OECD, 2021).

**Figure 4.4. Steps to execute regulatory improvement project under PEMUDAH (Malaysia)**



Source: MPC (2016)

Light RIA is undertaken for proposals which are of minor significance and low impact on the economy or the impact of which is confined to a limited number of economic sectors.

**Box 4.14. Five minimum requirements for a functional light RIA:**

- a. Political commitment to establish and operate an effective and self-sustaining RIA process;
- b. A unit or group of regulatory reformers - preferably based in a central area of government, which oversees, comments and reports on the quality of regulatory proposals, before decisions about regulation are made;
- c. Consistent criteria and rules employed to screen regulatory proposals;
- d. The regulatory policy development process is transparent and includes consultation with stakeholders; and
- e. A capacity building program is in place, involving preparation of guidelines, training of officials preparing RIA, and establishing monitoring, evaluation and reporting systems.

Source: World Bank (2010)

## 4.3 Enforcing Compliance

### 4.3.1 Critical Features of Compliance Strategies

In general, government intervention in markets via regulation should derive from a market failure analysis, i.e., monopolies, externalities, information asymmetries, etc. The type of risk can come from many incidences i.e., natural disasters, flood, fire, pandemic, pollution, fraud, road accidents, bankruptcy etc. The analysis of the regulatory options should commensurate with the risk being addressed. More important is risk mitigation which involves a consideration of the likelihood of potential harm, and the magnitude of that harm.

The regulator should consider the issue of compliance from two perspectives. First, if the regulator's assessment suggests there is a significant risk of a high level of non-compliance, the regulator should consider why there will be challenges of non-compliance? Most probably, the challenge of non-compliance is a result of weak communication pertaining to the requirements of the regulation.

#### **Box 4.15. Managing risk when designing the options**

1. Prescriptive on the methods of operation or input to achieve the desired outcome with specific method of operation or input;
2. Performance-based rules which specify the intended outcome rather than specifying method to be used;
3. Principles-based goals which indicates the broad intention and rely on agents to meet the objective; and
4. System-based, process-based or management-based regulations where businesses develop their own risk management strategies and to be audited by regulator.

Source: MPC (2014a)

Second, after conducting the assessment, if the regulator still finds potential of non-compliance, then the regulator should identify another alternative by considering behavioural insights as a new strategy to use psychology and human science or leave it as status quo. There are six core principles that provide deeper assessment of the quality of the regulation and help to reduce the adverse side effect when conducting the review of recommended option.

**Box 4.16. Six core principles to induce compliance of regulations**

- |              |                                                                                                                                   |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------|
| Principle 1: | Have a proportionate and targeted response to the risk being addressed.                                                           |
| Principle 2: | Minimise adverse side-effects to only those necessary to achieve regulatory objectives at least cost.                             |
| Principle 3: | Have a responsive approach to incentivise compliance of regulation.                                                               |
| Principle 4: | Ensure the interpretation of the problem consistent with all affected parties.                                                    |
| Principle 5: | Adopt transparency criteria, give sufficient time to all parties to express their concerns and the information is easily accessed |
| Principle 6: | Accountable on the decision made by the regulator and provide explanation when needed                                             |

Source: MPC (2014a)

### 4.3.2 Voluntary Compliance and Assisting Compliance

Regulatory measures should contain compliance strategies that ensure the most significant degree of compliance at the most appropriate level of regulator intervention and the lowest possible cost to all parties and hence, provide economic benefits and stability. In some circumstances, inspection and enforcement are less important and voluntary compliance can play an important role. Voluntary compliance happens where companies prefer 'to show good example' and to maintain their reputation. Allocation of resources to enforce regulations can be applied to certain industries or companies with less incentive or underperform.

Enforcement is firstly not possible if the regulation is unenforceable and requires operational workarounds. This raises issues of graft and corruption, as well as noting poor regulatory design. For example, side effects of asbestos can come after many years of exposure where cost or risk is hard to be observed. Another example, where provision of a product imposes cost on others which the producer does not need to pay such as a solution. In this case, the market must be corrected before enforcement can take place, this is to avoid penalty or reward to be given on business without enough evidence. Strategies to encourage compliance are as follows:

**Table 4.2. Strategies to assist compliance**

| <b>Commitment Strategies</b> | <b>Example</b>                                                                                                                                                                                 |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Modes of communication       | <ul style="list-style-type: none"><li>• Online forms</li><li>• Email</li><li>• Phone call</li><li>• In writing</li><li>• In person</li></ul>                                                   |
| Incentives                   | <ul style="list-style-type: none"><li>• Industry awards</li><li>• Reduce tax</li></ul>                                                                                                         |
| Education campaigns          | <ul style="list-style-type: none"><li>• Information campaigns</li><li>• Education activities</li><li>• Free training</li><li>• Fee-based training</li><li>• Guidelines and handbooks</li></ul> |
| Special assistance           | <ul style="list-style-type: none"><li>• For small business</li><li>• For non-metropolitan business</li></ul>                                                                                   |

Source: MPC (2014a)

### **4.3.3 Measuring Performance of the Regulation**

**Regulatory reform** refers to concerted change that improves regulatory quality and enhances the performance, cost-effectiveness of compliance with regulations, or legal quality of regulations and related government formalities. The scope of reform can encompass the revision of individual regulations, the improvement of processes for making regulations or the rebuilding of an entire regulatory regime and its institutions. Measuring Regulatory Performance will assist the Government to evaluate the design and implementation of their regulatory policy against the achievement of regulatory objectives. To achieve results, the government should:

- a. monitor and report the regulatory reform activities across sectors;
- b. report the performance of regulatory management system against the intended outcome;
- c. identify opportunities for system-wide improvements to regulatory policy settings and regulatory management practices, and
- d. create mechanism for transparency, i.e., creation of online portal.

All above mentioned commitments could be translated in annual report on regulatory reform for reference and monitoring purposes.

### **4.3.4 Minimising Misconduct**

The government regulatory framework and whole-of-government policy will assure regulatory quality. Public Consultation is mandatory for regulatory reform process to achieve the government's commitment to be more accountable, transparent and inclusive. Many developed economies have introduced centralised portal to gather feedback from citizen and businesses. In order to minimise misconduct, government



should invest on centralised public consultation portal to facilitate stakeholder engagements in its rule-making process. This portal allows members of the public easy access to regulatory consultations with proper recording and live tracking for future reference.

Centralised public consultation will ensure that stakeholder engagement in the rule making process more uniform, effective, and efficient. Effective stakeholder engagement is vital as it:

- a. Allows stakeholders views to be heard and considered;
- b. Allows sharing of relevant data (e.g., National Single Window);
- c. Promotes transparency and accountability;
- d. Enhances predictability;
- e. Reduces risk of policy failures; and
- f. Encourages public commitment to the policy.

The centralised portal will allow stakeholders to provide feedback on any regulatory issues through three phases, namely:

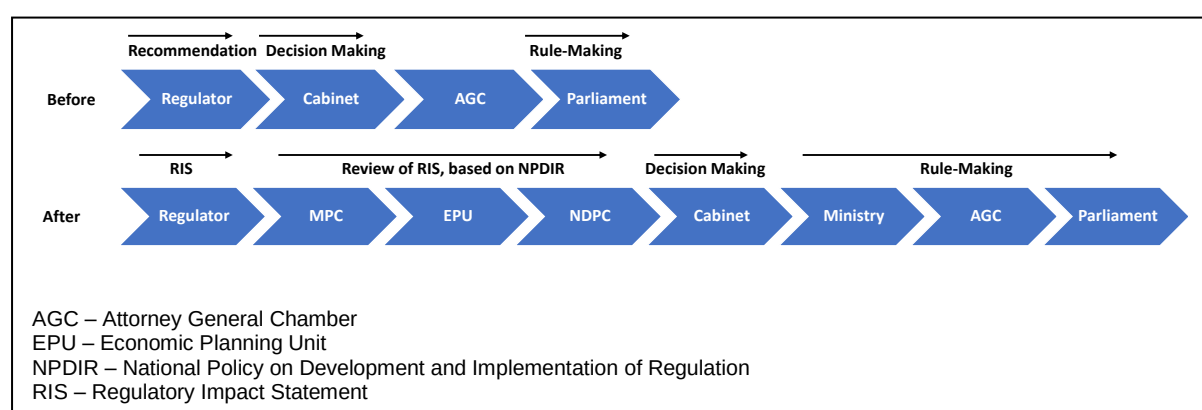
- a. Forum discussion;
- b. Preliminary consultation; and
- c. Final consultation.

## 4.4 Examples of Best Practices of GRP Implementation in ASEAN

### 4.4.1 Malaysia Good Regulatory Practice

Malaysia has introduced whole-government approach to enhance inter-agency coordination and integration in response to the problem of ever-increasing fragmentation of the public sector and public services. The first policy on GRP was named the **National Policy on the Development and Implementation of Regulations (NPDIR)** launched in 2013. The Government is committed to implementing institutional reforms through the upholding of the principles of good governance such as accountability, transparency, and inclusiveness.

Figure 4.5. Steps to develop a new regulation



Source: OECD (2015)

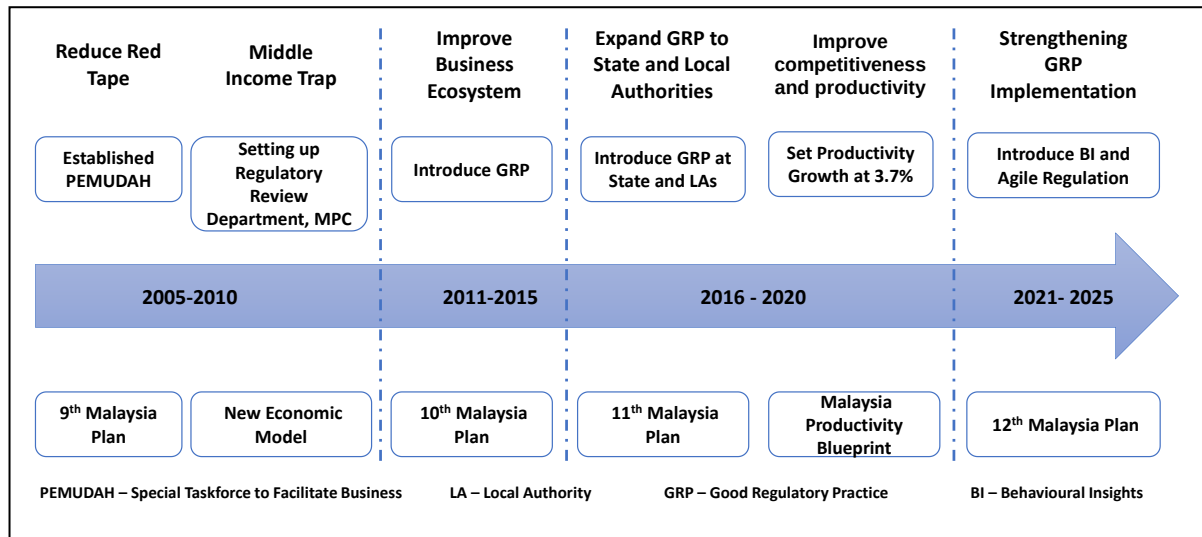
Since the establishment of NPDIR, Attorney-General Chamber's roles in legislative drafting the newly proposed regulation has been coordinated effectively. Every proposal from the regulator or ministry is required to get approval from the NDPC and Cabinet. Failure to meet the two prerequisites would result in a halt to the legislative drafting process unless special approval from the Prime Minister has been granted to bypass the process.

In July 2021, the policy has been replaced with the National Policy on Good Regulatory Practice (NPGRP) that includes **Behavioural Insights** to provide alternative for regulator to consider non-regulatory approach.

Best Practice Regulation handbook provides structured ways to improve the design and development of regulations. Regulatory Impact Analysis require regulators to comply to the adequacy criteria. The improved handbook version 2.0 introduced in July 2021 emphasises the **Post Implementation Review and Light RIA**. The regulator must implement a post review after 2 years of implementation of new or amended regulation that has skipped RIA process due to certain reasons.

Guideline on Public Consultation Procedures to help regulators with preparation and implementation of consultation. Requirements to conduct public consultations and report on results.

**Figure 4.6. Malaysia regulatory reform journey**



Source: MPC (2022)

#### **Box 4.17. Malaysia experience in implementing GRP**

Regulatory reform refers to concerted change that improves regulatory quality and enhances the performance, cost-effectiveness of compliance with regulations, or legal quality of regulations and related government formalities. The scope of reform can encompass the revision of individual regulations, the improvement of processes for making regulations or the rebuilding of an entire regulatory regime and its institutions. A convenient point to mark the beginning of Malaysia's current regulatory reform journey would be in 2007 with the establishment of PEMUDAH, the Special Task Force to Facilitate Business.

PEMUDAH was established to address regulatory and administrative issues affecting business resulting from increased competition and rapid change. Malaysia launched the New Economic Model (NEM) which aims to reach high income status by year 2020 while ensuring Malaysian economy moved into higher value-added activities in both industry and services. The NEM promoted private sector investment, liberalising and deregulating the economy.

In 2013, the Government further strengthened and formalised the mandate of Malaysia Productivity Corporation (MPC) for regulatory reform with the launching of the National Policy for the Development and Implementation of Regulations (NPDIR). It is a policy that embeds Good Regulatory Practice (GRP) in the formulation of new regulations or amendments to regulations. On 8<sup>th</sup> May 2017, the Prime Minister launched the Malaysia Productivity Blueprint (MPB), a new milestone in Malaysia's productivity journey. The Eleventh Malaysia Plan has set a target of 3.7% productivity growth for the 2016-2020 period. Through MPB, the Government is focusing on productivity as a key driver for growth and regulatory reform is an integral part of this challenge.

Forging a Robust Ecosystem, one of the thrusts stated in MPB, aims to strengthen regulatory governance through the implementation of clear and effective regulations across multiple ministries and agencies and review of non-tariff measures (NTMs). Quality regulations will nurture a conducive environment for enterprise competitiveness and boost national productivity.

During 2016-2017, several activities were executed to intensify the implementation of NPDIR. Several programmes were held to promote and enhance the knowledge and skills of regulatory coordinators on GRP and to obtain feedback on challenges encountered in the implementation of NPDIR. Later in 11<sup>th</sup> Malaysia Plan, GRP outreach was expanded to states and local authorities. Initial engagement with state governments included workshops and seminars to create awareness of GRP and NPDIR as well as to undertake baseline studies to better appreciate the rule-making process at each state. On December 2018, Sarawak Chief Minister launched the Policy and Best Practice Regulation Handbook and later followed by Sabah Government in September 2021.

Under current 12<sup>th</sup> Malaysia Plan, the Government is committed to continue to set Malaysia as the best investment destination within ASEAN region by improving trade facilitation as well as strengthening the institutional and regulatory framework. Thus, strengthening Good Regulatory Practice and public service delivery will be the main agenda to allow full participation from private sectors to pursue targets set under Shared Prosperity Vision 2030.

Source: MPC (2022)

#### **4.4.2 Thailand Good Regulatory Practice**

The 2017 Constitution of Thailand express the principles of better regulation which later stipulated in Thai National Strategy (2018-2037), Twelfth National Economic and Social Development Plan, and the "Thailand 4.0" strategy (OECD, 2020).

The Government of Thailand through Office of the Council of State (OCS) has progressively improved the rule-making process framework and execution of good regulatory practice in the State. As mentioned in the Section 77 of the Constitution of

the Kingdom of Thailand (2017), it requires regulators to make necessary review on existing regulations, allows public engagement during formulation of regulation and reduce burdensome requirements. In other words, this whole-of-government approach has indicated Regulatory Impact Assessment (RIA) is compulsory and must be conducted the regulators to improve business environment and country competitiveness.

According to OECD, Thailand has made a great effort to comply with GRPs' requirements and standards by upholding the importance of making decision using evidence-based approach and allow full participations from the stakeholders during the regulatory design stage.

#### **Box 4.18. Foundation for Rulemaking Process in Thailand**

In Thailand, the importance of regulatory policy as a development tool has been set in national strategic documents, including the 20-year National Strategy (2017-36) to assure continuity of economic and social policies and the related Twelfth National Social and Economic Development plan (2017-2021). Among different overarching policy issues, the Plan focuses on the review and simplification of administrative laws and regulations and explicitly calls for enhanced regulatory governance as well as better public management and integrity. The Government of Thailand also supports ASEAN and APEC frameworks that identify excellence in regulatory governance as a key leverage point to support market competition and digital information. This process supports the Government of Thailand in the implementation of the 2017 Constitutional provisions on better regulation and use of good regulatory practices (GRPs).

The review began as the new Act on Legislative Drafting and Evaluation of Law (2019) was passed, aimed at implementing Section 77. The review has been undertaken with three capacity building and one fact finding missions, supported by and an assessment of relevant Thai laws and procedures. This review also supports the OECD Thailand Country Programme, which began in 2018 and is composed of 15 projects drawing on four pillars: good governance and transparency, business climate and competitiveness, "Thailand 4.0", and inclusive growth. The purpose is to assist Thailand in aligning with OECD standards while supporting their domestic reform agenda. This "diagnostic scan" of these reforms examines the regulatory governance and oversight mechanisms as well as the deployment of good regulatory practices and management tools by the central Government. It aims to support the Government of Thailand to further implement and deepen regulatory reform at the national level over the medium- to long-term. It also focuses mainly on the technical aspects of the reforms, given that the Act was passed and in the process of implementation simultaneously with the review.

Regulatory assessment as stipulated in the Constitutional Articles 77 and 258, have universal application to the executive, legislature, agencies, and sub-national governments. However, the 2019 Act is focused on implementing regulatory policy tools in primary law. Nevertheless, certain aspects, in particular, of the review of the outcomes of the law (ex post review), cover both primary and secondary law. Therefore, new secondary legislation is excluded from impact assessment but must undergo this process, along with the existing stock of regulation in Thailand, after 5 years.

Source: OECD (2020c)

#### **4.4.3 Implementation of Good Regulatory Practice by ASEAN Member States**

Most AMS recognise the importance of GRP and have initiated programmes to improve their regulatory environment. The implementation of GRP varies from one AMS to another, but everyone is committed to pursue the same direction to make ASEAN better coordinated for regional integration and competitiveness. According to Amo, P. A. & Rodrigo, D. (2007) and OECD (2018) the regulatory oversight bodies can be more than one body or centralised to oversee the GRP implementation.

#### **4.4.4 Sustaining GRP Momentum in ASEAN**

The introduction of the Annual Report on Regulatory Reform Report is a good effort to inform stakeholders in AMS on the progress of regulatory improvement initiatives at all levels. The report is useful to update the society and businesses on regulatory plan that will be implemented by the respective regulators. The stakeholders will be able to respond timely and provide sufficient information to the government in making the right decision based on current data.

## Case Study: Application of RIA in Malaysia

*This case study highlights Short Term Residential Accommodation (STRA), which although has gained popularity among travellers world-wide, it is a subject of debate among many key players within the tourism industry, community leaders and government agencies.*

*This study analysed existing legal frameworks of STRAs and took into consideration the social and political climate surrounding the STRA activity. This case study assists policy makers in responding to the concerns raised by stakeholders affected by STRA and made recommendations for the way forward in managing STRA in line with the spirit of sharing economy.*

## **Introduction of Short-Term Residential Accommodation (STRA) Guidelines in Malaysia**

Online STRA has become a phenomenal way of complementing travellers to find bargain priced accommodation services with plenty of options. This online STRA has gained popularity world-wide because of its efficiency and worth to pay for the service and it also provide a new source income to rural and sub-urban property owners. However, development of STRA has also posed some concerns among many key players within the industry, community leaders and government agencies. Before recognising this new activity through regulatory requirements, various factors must be considered and carefully planned as STRA affects many traditional operators like hotels, hostels, recreational camping / cabin, and resorts which may have significant impact in them.

A Working Group on Home Sharing Economy (WGHSE) was established by Malaysia Productivity Corporation (MPC) and act as a mediator in 2018 by the Government to address issues and challenges of all concerned parties and develop a regulatory framework for STRA. The WGHSE is chaired by Secretary General, Ministry of Housing and Local Government and co-chaired by Champion of Tourism Productivity Nexus. The purpose of WGHSE is to provide guidance and direction for a coherent approach towards the development of the home sharing economy regulatory framework. The members of the WGHSE comprises of twenty (20) government agencies and sixteen (16) private sectors from hotel associations, digital platform operators, hosts, community representatives, and other relevant stakeholders.

**Regulatory Mapping** was conducted to identify the regulatory gaps in the practice of STRA. Although the following is the list of laws which indirectly may apply to the STRA, however, there is absence of specific law which regulate the STRA.

- a. Town and Country Planning Act 1976
- b. Hotels (Federal Territory of Kuala Lumpur) Act 2003
- c. Tourism Industry Act 1992
- d. Strata Management Act 2013
- e. Registration of Guests Act 1965
- f. Innkeepers Act 1952
- g. Local Government Act (Act 171)

**Benchmarking of STRA Regulations** with selected countries was conducted and the following is the result of the analysis.



### Benchmarking of STRA regulations with Major Cities

|    | Input related to STRA              | San Francisco                  | New South Wales                                                                     | Japan                        |
|----|------------------------------------|--------------------------------|-------------------------------------------------------------------------------------|------------------------------|
| 1. | Regulation on property             | Short Term Administrative Code | Short term Accommodation Regulation                                                 | Private Lodging Business Act |
| 2. | Regulator                          | Office of Short-term Rental    | Department of Planning, Industry and Environment and Department of Customer Service | Local authority              |
| 3. | Regulation enforcement date        | Feb, 2015                      | 2019                                                                                | June, 2017                   |
| 4. | House rules                        | Yes                            | Yes                                                                                 | Yes                          |
| 5. | Registration for host              | Yes                            | Yes                                                                                 | Yes                          |
| 6. | Registration for platform provider | Yes                            | Yes                                                                                 | Yes                          |
| 7. | Nightcap requirement               | varies based on location       | 180 per year                                                                        | 180 per year                 |
| 8. | Neighbour's right                  | Yes                            | Yes                                                                                 | Yes                          |
| 9. | Tax and fees                       | Yes                            | Yes                                                                                 | Yes                          |

Source: MPC (2020)

Series of engagements with State Governments and Local Authorities were conducted to discuss on the approach of the local authorities on STRA. Local Authorities allow for the operation of STRA due to their flexibility in using existing framework and regulations.

### Identification of Regulatory Constraints for STRA and Policy Recommendations

Based on the analysis on the existing regulatory framework the committee had identified several challenges that might disrupt the implementation of STRA regulation. The summary are as follows:

- Requirement to register as a business.
- STRA platform needs to be licensed while the Hosts are required to be licensed with the respective Local Authority.
- Host to convert the use of land from “residential” to “commercial” in order for Hosts to operate STRA.
- Fire safety requirements should be made mandatory to STRA operation.
- STRA Platform must be licensed under “travel agency business”.

## Sufficient Consultations

In collecting and collating relevant input and feedback from the stakeholders, Public Consultations were conducted as follows:

- a. Stakeholder's meeting;
- b. Open House meeting;
- c. Focus Groups/Sharing Sessions /Workshops;
- d. Unified Public Consultation (UPC) Portal;
- e. Social Media campaign;
- f. Survey forms; and
- g. Email submissions.

## Cost Benefit Analysis

Between June 2019 to February 2020, consultations with the government agencies and private sectors were conducted to formulate cost benefit analysis and the following table is the result of the findings.

**Summary of options with CBA**

| No. | Option                                                                                                                                                   | Impact                                                                                                                                  |                                                                                                           |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|
|     |                                                                                                                                                          | Cost                                                                                                                                    | Benefit                                                                                                   |
| 1.  | Status quo                                                                                                                                               | a. Insurance premium<br>b. Permit<br>c. Fire safety assessment<br>d. Loss of potential revenue<br>e. Enforcement cost<br>f. Safety risk | a. Reduction in customer complaint<br>b. Reduction in enforcement cost<br>c. Reduction in compliance cost |
| 2.  | Abolish existing regulation for accommodation services. Introduce e-accommodation services (e.g., Air BnB) and regulate as accommodation network company | a. Operation cost<br>b. 10% of SST on all terms and conditions                                                                          | a. Reduction in customer complaint<br>b. Reduction in enforcement cost<br>c. Reduction in compliance cost |
| 3.  | Deregulation of accommodation services industry                                                                                                          | a. Enforcement cost<br>b. Safety risk<br>c. Loss of government revenue                                                                  | a. Reduction in customer complaint<br>b. Reduction in enforcement cost<br>c. Reduction in compliance cost |

Source: MPC (2020)

In October 2020, the working committee has produced a Guidelines on Short-term residential accommodation. This conclusion came after many series of engagements with key stakeholders and the committee had agreed that the proposed STRA guidelines based on current regulations and framework able to facilitate both new and incumbent players to recognise STRA.

## **Pilot Test on STRA Guidelines**

A local authority in Klang Valley has embedded the guidelines with some modification to tailor with their existing framework and regulations has agreed to do a pilot test on their new STRA Guidelines. The formulation of the guideline was also a joint effort with a local university, professionals from construction and town development, association of hotel, a ministry managing this portfolio and together with Malaysia Productivity Corporation. The purpose of the guideline is to regulate and enforce regulations relating to residential accommodation activities that is based on the concept of bed and breakfast or short-term rental within the vicinity.

The STRA Guidelines has been endorsed by the Working Committee after undergone RIA processes with a pilot project to test the guideline. The guidelines was the outcome of undergoing all RIA steps. All the stakeholders were satisfied with steps taken by the committee, recommendation made based on facts, sufficient consultations to cater all feedback and response, and the committee has complied RIA in accordance to National Policy on GRP promoted by MPC.

## Frequently Asked Questions

### Requirement for Regulatory Impact Statement (RIS)

Q: Is RIS only required for primary legislation or any legislative instruments?

A: No. RIS is required for all regulations and for all other requirements that the Government usually imposes that do not form part of explicit Government regulation (such as industry codes of practice, guidance notes, industry-Government agreements, administrative circulars, and accreditation schemes).

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Q: Is RIS required if any other party other than the higher committee in the Government is making the decision?

A: Yes. RIS is required for all regulations regardless of which entity makes the decision. The purpose of the RIS is to enable the decision-maker to make an informed decision.

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Q: Is RIS required only for new regulations and not for amendments to regulations?

A: No. RIS requirements are applicable to both new and to-be-amended regulations.

---

Q: Is it true that RIS only must consider the impact on businesses and not on the not-for-profit organisations?

A: RIS must consider the impacts on all relevant groups such as consumers, the Government, and the community.

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Q: Is it true that RIS is only required if the regulation imposes compliance costs?

A: No. RIS is required if a regulatory decision is likely to impact any societal entity. This impact includes items that can be readily quantified in monetary terms (such as compliance costs, service charges or subsidies) as well as items that cannot be readily quantified in monetary terms (for example, the costs of pollution or please read Case Study: Application of RIA in Malaysia).

---

Q: Is RIS required even when the regulation will provide a benefit to business?

A: Yes. A RIS is required for regulatory decisions that are likely to have a positive or a negative impact on businesses unless the impact is of a minor nature. Impacts are considered minor if they don't substantially change existing

regulatory arrangements for businesses, individuals, or community organisations. A minor change could involve a small one-off cost, an indexation arrangement or an expansion of an existing program.

Q: Is RIS only required as a record?

A: No. RIS is required to be presented to decision-makers to assist in decision making.

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Q: Does RIS *need* to examine non-regulatory options?

A: Yes. If non-regulatory options can feasibly address the Government's objective, they should be included in RIS.

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Q: If benefits are difficult to be evaluated, does the RIS still need to have a cost benefit analysis?

A: Yes, even though it can be very difficult to determine a monetary value on certain factors including environmental and social impacts. The cost-benefit analysis should recognise this difficulty and include a qualitative discussion of these impacts for comparison with the other impacts that can be quantified. The objective of using cost-benefit analysis is to present a comprehensive analysis of positive and negative impact. If necessary, other impact analysis tool may be used if it achieves the same purpose. Regulator can always submit any information during *ex ante* assessment that can help to conclude for decision making, later the regulator will have to conduct *ex post* evaluation after certain period of time.

**Box 7.1. The COVID-19 pandemic has resulted in a raft of regulatory policy changes relating to RIA**

Some OECD members introduced changed RIA procedures...

- In Belgium, no impact assessment was conducted for COVID-related regulatory proposals and the oversight body, the Impact Assessment Board, was not consulted on such proposals.
- The United Kingdom provided a summary of impacts document in support of its initial response to the COVID-19 pandemic.
- COVID-related regulations passed in Slovenia were not subject to an ex-ante impact assessment, however there is a requirement to undertake impact assessment after a period of two years. ... and some members changed institutions
- Australia created the National COVID-19 Commission Advisory Board to provide timely and direct advice from a business perspective to support the Government's management of COVID-19 and its plans for economic recovery.
- The Czech Republic restored the National Economic Council (NERV), a body which had been originally established to assist the government in putting forward economic reform measures in the aftermath of the global financial crisis. The NERV collaborated in creating the Czech Recovery and Resilience Plan with the Ministry of Industry and Trade, which has six focus areas including a digital transition; research, development, and innovation; and institution, regulation and business support in response to the COVID-19 pandemic.

Source: OECD(2021)

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## Annexes

### Annex 1: Regulatory Impact Statement (RIS) Adequacy Template

| Element 1: Problem Statement                                                                                                                                                                                          | Yes/No/NA | Remarks | Evidence in RIS (page) |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|---------|------------------------|
| Clearly identify the problem(s) that need to be addressed                                                                                                                                                             |           |         |                        |
| Present evidence on the magnitude (scale and scope) of the problem                                                                                                                                                    |           |         |                        |
| Identify affected parties and stakeholders                                                                                                                                                                            |           |         |                        |
| Document relevant existing regulation at all levels of government                                                                                                                                                     |           |         |                        |
| Demonstrate that existing regulation is not adequately addressing the problem (i.e., meeting the objective)                                                                                                           |           |         |                        |
| Identify the relevant risks, if the problem involves risk, and explain why it may be appropriate for the government to act to minimise them                                                                           |           |         |                        |
| Present a clear case for considering that additional government action may be warranted (taking into account existing regulation, any risk issues, and the potential for market developments to overcome the problem) |           |         |                        |
| Element 2: Objectives                                                                                                                                                                                                 | Yes/No/NA | Remarks | Evidence in RIS (page) |
| Explain the objectives, outcomes, goals or targets of government action                                                                                                                                               |           |         |                        |
| Include SMART objectives?                                                                                                                                                                                             |           |         |                        |
| Element 3: Options                                                                                                                                                                                                    | Yes/No/NA | Remarks | Evidence in RIS (page) |
| Identify a range of alternative options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options.                                                                                         |           |         |                        |
| Indicate non-regulatory options                                                                                                                                                                                       |           |         |                        |
| Link option to the defined objective(s) (i.e., explain how it will achieve the objective).                                                                                                                            |           |         |                        |
| If only one option (apart from the “do-nothing” option) is considered                                                                                                                                                 |           |         |                        |



|                                                                                                                                                                                                                                                 |                  |                |                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|----------------|-------------------------------|
| in the RIS, sound justification should be provided to explain this (if for example the Cabinet directs that a limited set of options be considered, this must be clearly stated in the RIS).                                                    |                  |                |                               |
| <b>Element 4: Impact Analysis</b>                                                                                                                                                                                                               | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
| Identify the groups in the community likely to be affected by each option                                                                                                                                                                       |                  |                |                               |
| Specify significant economic, social and environmental impacts on them.                                                                                                                                                                         |                  |                |                               |
| Analyse impacts of the do-nothing option as a baseline.                                                                                                                                                                                         |                  |                |                               |
| Assess the costs and benefits (or increased and reduced cost if cost-effectiveness or compliance cost methods are used) of all the options supported by an acceptable level of evidence, where appropriate, using the status quo as a baseline. |                  |                |                               |
| Indicate if option has long- term impacts.                                                                                                                                                                                                      |                  |                |                               |
| Assess the impact of each option on the business/ industry as a whole, taking into account all costs and benefits.                                                                                                                              |                  |                |                               |
| Quantify other significant costs and benefits to an appropriate extent, taking into account the significance of the proposal and its impact on stakeholders.                                                                                    |                  |                |                               |
| Analyse the extent to which each option would reduce the relevant risk if an objective of regulation is to reduce risk, and the costs and benefits involved, if relevant.                                                                       |                  |                |                               |
| Indicate whether the option is sufficient to meet the defined objective(s).                                                                                                                                                                     |                  |                |                               |
| Document any relevant international standards.                                                                                                                                                                                                  |                  |                |                               |
| Assess if the regulation maintains or establishes restrictions on competition.                                                                                                                                                                  |                  |                |                               |

| <b>Element 5: Consultation</b>                                                                                   | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
|------------------------------------------------------------------------------------------------------------------|------------------|----------------|-------------------------------|
| Outline the plan adopted for consultation                                                                        |                  |                |                               |
| Include results of the inter-agency consultation                                                                 |                  |                |                               |
| Describe how consultation was conducted (when Consultation was undertaken, the time frames and the methods used) |                  |                |                               |
| Summarise the views of those consulted, including substantial disagreements                                      |                  |                |                               |
| Outline how those views were taken into consideration                                                            |                  |                |                               |
| If full consultation was not undertaken, provide a reasonable explanation as to why it was not                   |                  |                |                               |
| <b>Element 6: Conclusion and recommendation</b>                                                                  | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
| Clearly state the preferred option.                                                                              |                  |                |                               |
| State why this option is preferred and indicate the costs and benefits of this option.                           |                  |                |                               |
| This statement needs to be supported by the analysis contained in RIS.                                           |                  |                |                               |
| <b>Element 7: Strategy for Implementation</b>                                                                    | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
| Provide information on how the preferred option would be implemented, monitored and reviewed.                    |                  |                |                               |
| Interactions between the preferred option and existing regulation of the sector should be clearly identified.    |                  |                |                               |

Source: MPC (2021a)

**Annex 2: Post Implementation Review Template**

| <b>Section 1: What problem was the regulation meant to solve?</b>                                                                                                                                                                                                                                         | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|----------------|-------------------------------|
| Provide a brief description of the issue/problem that gave rise to the need for regulatory action                                                                                                                                                                                                         |                  |                |                               |
| State why existing regulation(s), if any, was inadequate and why changes and/or new regulation was required                                                                                                                                                                                               |                  |                |                               |
| Identify the affected parties and stakeholders. Explain how each party was affected                                                                                                                                                                                                                       |                  |                |                               |
| Risk assessment: What risk was the regulation addressing? Can it be quantified, for example how many people were affected and how?                                                                                                                                                                        |                  |                |                               |
| <b>Section 2: Why was government action needed?</b>                                                                                                                                                                                                                                                       | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
| State clearly why government action was needed and the objective of the regulatory action. Describe the intended effects or outcomes including using 'SMART objective' approach to facilitate monitoring and review.                                                                                      |                  |                |                               |
| <b>Section 3: What policy options were considered?</b>                                                                                                                                                                                                                                                    | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
| Describe options considered for achieving the desired objectives. State anticipated impact of each of the identified options in terms of costs, benefits and risks to businesses, consumers and community, government and any other parties. Ideally assessment of impact should be over a 5-year period. |                  |                |                               |
| State the reasons for choosing the implemented option                                                                                                                                                                                                                                                     |                  |                |                               |
| <b>Section 4: Which stakeholders were consulted?</b>                                                                                                                                                                                                                                                      | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
| List those government departments and agencies, and stakeholder groups that were consulted in the finalization of the proposal and RIS.                                                                                                                                                                   |                  |                |                               |

|                                                                                                                                                                                     |                  |                |                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|----------------|-------------------------------|
| <b>Section 5: How was the regulation implemented and evaluated?</b>                                                                                                                 |                  |                |                               |
| Briefly explain the implementation strategy for the regulatory action. Identify the parties responsible and their roles. State the implementation costs to the parties responsible. |                  |                |                               |
| Identify enforcement body for the regulation and describe the enforcement method.                                                                                                   |                  |                |                               |
| <b>Section 6: Has the regulation delivered a net benefit?</b>                                                                                                                       | <b>Yes/No/NA</b> | <b>Remarks</b> | <b>Evidence in RIS (page)</b> |
| Describe the impact of the regulation to date. Has the impact been positive, negative or within expectation?                                                                        |                  |                |                               |

Source: MPC (2021a)

### Annex 3: Multi-Criteria Analysis (MCA)

MCA is a qualitative approach to evaluate costs and benefits that are unable to be monetised or converted into numerical values. It should be used when there are multiple policy objectives that cannot be practically quantified. The aim of this method is to identify the best option to be considered for recommendation to decision makers.

Example: Case of E-hailing Taxi

The regulator in considering possible solution to the issues relating to the emergence of unregulated e-hailing taxis posing unfair competition to regular taxi operators, established a study team that comprises representatives from key stakeholders. The study team identified 4 objectives in tackling the issue relating to E-hailing Taxis. These are:

- a. efficient & Convenient public transport
- b. public safety
- c. maintaining fair competition; and
- d. impact on Government revenue

Three options (possible solutions) were also identified. They were:

- a. to maintain the status quo
- b. to regulate e-hailing Taxis
- c. to ban e-hailing Taxis

| Options Criteria                         | Wt  | 1 Status Quo | 2 Regulate e-hailing taxi | 3 Ban e-hailing taxi |
|------------------------------------------|-----|--------------|---------------------------|----------------------|
| Efficient & convenient public transport. | 40  | 5 (200)      | 8 (320)                   | 3 (120)              |
| Public safety                            | 30  | 5 (150)      | 5 (150)                   | 4 (120)              |
| Fair competition                         | 20  | 5 (100)      | 7 (140)                   | 5 (100)              |
| Government Revenue                       | 10  | 5 (50)       | 6 (60)                    | 3 (30)               |
| Total weighted score                     | 100 | (500)        | (670)                     | (370)                |

Total weight of 100 divided among the criteria. Assign score 1-10 in terms of ability to achieve the criteria in each cell.

Option 2 to regulate E-hailing Taxi attained the highest score and should be the recommended solution

Source: MPC (2021a)

**Annex 4: Summary of Conclusion and Recommendation**

Presentation of options in table form for quick decision making.

| Options | Total benefits<br>in RM<br>(per annum) | Total Cost in<br>RM<br>(per annum) | Other Benefits                 | Unintended<br>Impacts |
|---------|----------------------------------------|------------------------------------|--------------------------------|-----------------------|
|         |                                        |                                    | (List with Brief Descriptions) |                       |
| 1       |                                        |                                    |                                |                       |
| 2       |                                        |                                    |                                |                       |
| 3       |                                        |                                    |                                |                       |
| 4       |                                        |                                    |                                |                       |

Each option requires brief explanation, why the preferred option is recommended.

