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Effective Implementation of a

REGULATORY IMPACT ASSESSMENT PROCESS IN VIETNAM

Effective Implementation of a Regulatory Impact Assessment Process In Vietnam

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TABLE OF CONTENTS

ABBEREVIATIONS

APEC	: Asia Pacific Economic Cooperation
EIRR	: Economic Internal Rate of Return
GTZ	: German Technical Cooperation
MOJ	: Ministry of Justice
NGO	: Non-Governmental Organization
NPV	: Net Present Value
OECD	: Organization for Economic Cooperation and Development
RIA	: Regulatory Impact Assessment
RIAS	: Regulatory Impact Assessment Statement
PMRC	: Prime Minister's Research Commission
PPD	: Public Private Dialogue
PPP	: Public Private Partnership
SME	: Small and Medium Enterprise
UNDP	: United Nations Development Program
VCCI	: Vietnam Chamber of Commerce and Industry
VIM	: Vietnam Institute of Management
VNCI	: Vietnam Competitiveness Initiative
WB	: World Bank
WTO	: World Trade Organization

FOREWORD

Understanding the future impacts of regulatory decisions on the private and social sectors is perhaps the most crucial dimension for creating and sustaining a high quality regulatory environment.

In most OECD countries, the tool employed to examine the costs and benefits of decisions is regulatory impact analysis (RIA). RIA is a method of systematically and consistently examining selected potential impacts arising from government action or non-action, and of communicating the information to decision-makers and the public. In essence, RIA attempts to widen and clarify the relevant factors for decision-making. It implicitly broadens the mission of regulators from highly focused problem-solving to balanced decisions that trade off problems against wider economic and distributional goals. RIA has several internal and external objectives: (i) improve understanding of real-world impacts of government action, including both benefits and costs of action; (ii) integrate multiple policy objectives; (iii) improve transparency and consultation; and (iv) improve government accountability.

In Vietnam, GTZ has been very proactive in introducing RIA to national agencies with an aim to improve the quality of the regulatory environment for enterprises. To start, GTZ provided an input on the nature and the importance of regulatory reform and regulatory impact assessment to the key national stakeholders. Additionally, a Quick Scan on the Capacities of Vietnam in Improving the Quality of Business Laws was conducted. In cooperation with local stakeholders, the first RIA in Vietnam was implemented in the making of the Enterprise Law and Investment Law in 2005. GTZ also supports to provide inputs on the methodology and techniques, documents and hints on the implementation to initially build up the national capacity on RIA. With technical support from GTZ, the Ministry of Justice has undertaken a number of RIA exercises under the framework of other laws and is aiming at a strategy to institutionalize RIA in the law making process in Vietnam.

In this context the guideline on “Effective Implementation of a Regulatory Impact Assessment Process in the Context of Vietnam” has been developed. The version 1 of this guideline was drafted by Raymond Mallon in cooperation with a team of experts from the Vietnam Institute of Management (VIM). The guideline was then improved and finalized by Le Duy Binh on the basis of lessons learnt and experience drawn from the pilot RIA exercises implemented with support from GTZ. This is part of GTZ’s efforts to further introduce RIA in Vietnam and to strengthen the national capacity in this area.

SOME DEFINITIONS OF TERMILOGY

Relevant government agency

Government agency (usually ministry) responsible for initiating the regulatory reform efforts. The head of this agency (usually a Minister) will be responsible for the content of the RIA.

Regulation

The diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders, and sub-ordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

Regulatory review

A systematic process of reviewing the desirability of existing or proposed regulation, and making recommendations aimed improving the regulatory environment

Regulatory reform

A process of reviewing and changing policies and regulations that aims to ensure the public benefits from policies and regulations exceed their costs.

Regulatory Impact Analysis (RIA)

A formal and systematic process for conducting regulatory review and regulatory reform. Now required in most OECD countries and an increasing number of developing countries.

Regulatory Impact Analysis Statement (RIAS)

A statement (report) describing the RIA process, and key conclusions and recommendations for regulatory reform or for a proposed Government action.

INTRODUCTION

This section addresses the following questions related to RIAs:

- What is regulation?
- What is a RIA and what is a RIA Statement (RIAS)?
- What are the aims of RIAs?
- Why are governments increasingly demanding RIAs?
- What policy changes require RIAs?
- Who should prepare RIAs?
- When should the RIA proposal start?
- How to ensure RIA quality?

1. WHAT IS REGULATION?

Regulation is "the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders, and sub-ordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers"[1] . Regulations include a range of rules, instruments and standards used by government and/or non-government bodies to influence business behaviour, but which may not be reflected in official regulations (i.e., not published in Cong Bao; such as guidelines, advisory letters, and norms). These are often referred to as quasi-regulations.

2. WHAT IS A RIA AND WHAT IS A RIA STATEMENT (RIAS)?

A RIA is a process for analyzing the likely impacts of a policy change and the range of options for implementing it. It can be used to assess:

- All potential impacts – social, environmental, financial and economic.
- All regulations: formal legislation (laws, ordinances, decrees, decisions, and master-plans) and quasi regulations (e.g. guidance or codes of practice, public awareness campaigns, etc.)
- Distribution of impacts to consumers, business, employees, rural-urban, or other groups.

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1 OECD, 1997. The OECD Report on Regulatory Reform: Synthesis, p. 11.

The RIAS is typically prepared in several stages:

Box 1: Indicative Table of Contents for Full RIA Statement

Introduction
Purpose and Nature of Proposed Regulatory Change
The Consultation Process
Review Options for Resolving the Problem
Benefits and Costs of Proposed Change
Compliance, Enforcement and Monitoring
Summary and Recommendations

- An initial RIA is prepared when a proposal is first considered as a first step in deciding whether to proceed.
- A partial RIA should be prepared prior to formal consultations, and included with consultation papers.
- A full RIA will include more detailed analysis, and reflect the findings from the consultation process.

An indicative table of contents for a full RIAS is presented in Box 1

3. WHAT ARE THE AIMS OF RIA?

The key aim in requiring ministries to prepare RIAs is to deliver better regulation. Some core principles[2] for achieving better regulation include:

- Only regulate when necessary;
- Consider all options, including that of "doing nothing".
- When it is necessary, regulate in a way that is proportionate to the risk being addressed, and
- Deregulate and simplify wherever possible.

More generally good regulation should:

- Have minimal burdens (on society and business). Regulatory measures should be the minimum needed to achieve pre-determined outcomes. Explicitly consider non-regulatory alternatives.
- Be designed to have minimal impact on competition.
- Be compatible with relevant international or internationally accepted standards or practices in order to minimize impediments to trade.
- Be transparent, consistent and predictable: stakeholders must be able to easily understand their rights and obligations under the regulation.

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[2] See also the more detailed principles of good regulation adopted by Australia (Appendix 4).

- Focus on the core problem, with minimal other impact.
- Have clearly defined accountability for implementation and monitoring. The responsible agency should confirm that s/he "has studied the RIA and is satisfied that the benefits of the proposal exceed the costs".

4. WHAT SORTS OF QUESTIONS SHOULD BE ADDRESSED IN A RIA?

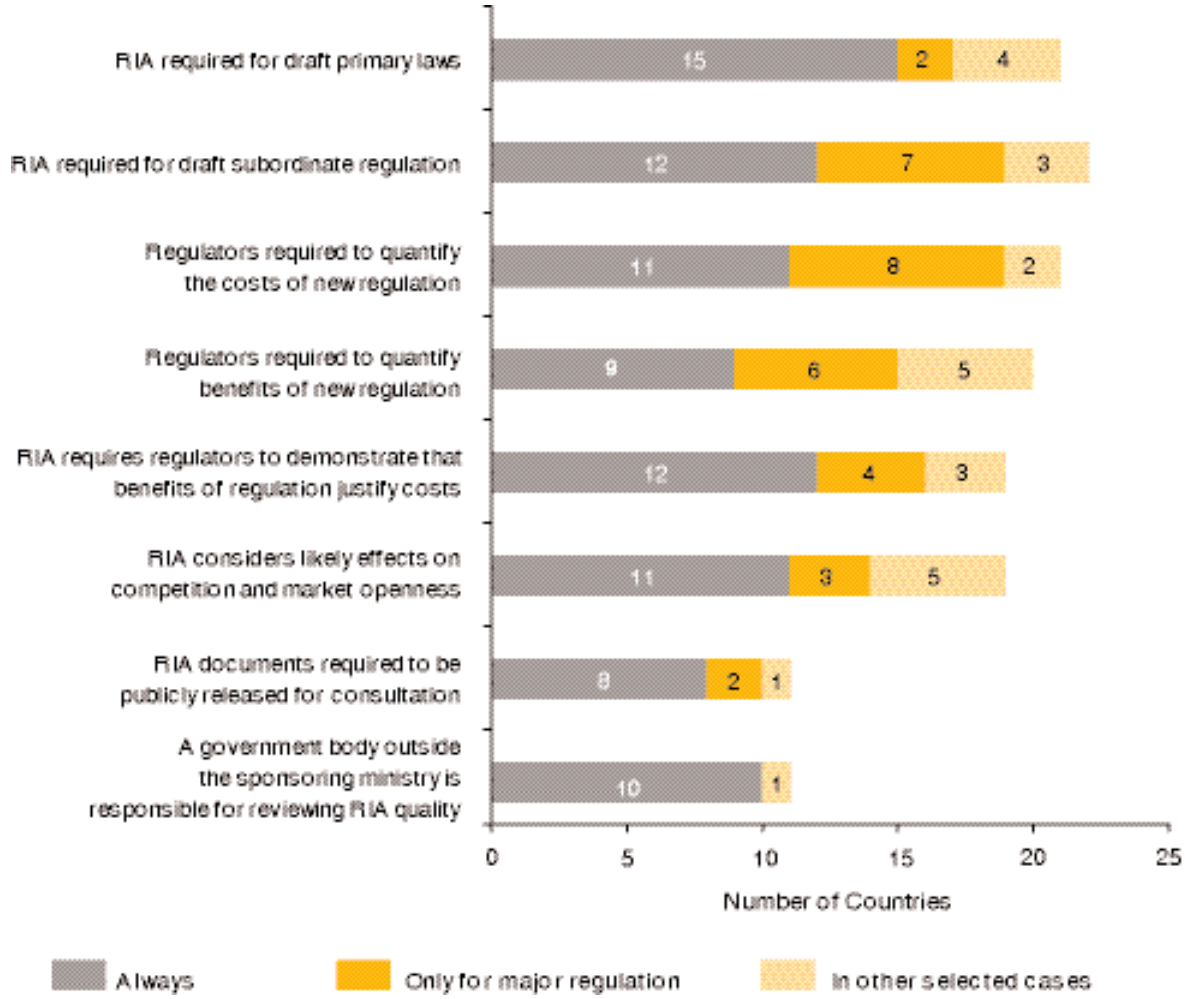
- Nature of the problem. What is the problem that needs addressing?
- Regulation and regulatory failure. Is regulation likely to improve upon market outcomes? Could regulation lead to worse outcomes?
- Alternative solutions. What are the alternative approaches to dealing with the problem, including non-regulatory action?
- Benefits of regulating. What are the likely benefits of the proposed options? What groups will incur these benefits?
- Cost of regulating. What are the likely costs of proposed options? What groups will incur these costs?
- Public consultation. What are the views of the public and key stakeholders on the issued and proposed options?
- Support for regulation. What support is there amongst key stakeholder groups for the proposed options?
- Impact on competition. What will be the impact on competition?

5. WHY DO MANY GOVERNMENTS REQUIRE RIAS?

RIAs are required by many governments because they help policy makers to:

- Clearly define the objectives of proposed policy change.
- Consider and assess the full impact of the proposed policy change. RIA process helps to assess and increase awareness of unintended impacts on non-target groups
- Identify and assess alternative options for achieving clearly defined policy objectives.
- Ensure that regulations are consistent with policy and regulatory instruments of other government agencies.
- Assess whether the benefits of the proposed change are greater than the costs (adverse impacts) of the proposed change.
- Ensure a transparent and efficient consultation process.
- Determine whether particular groups may be disproportionately affected.
- Help ensure compliance with international agreements and treaties.

Figure 1: RIA Requirements in OECD countries (out of 28 responses)



Source: Argy, S, and Johnson, M, 2003. p. 44, using data from OECD (2002b).

Requiring government agencies to undertake a rigorous assessment of the impact of regulations can help reduce policy mistakes. RIA helps bind government agencies to formulating policies and regulations that are in the national interest. RIA can be also be used by oversight agencies (e.g., the National Assembly) to monitor and ensure that Government agencies take account of national interests in formulating new policies. More generally, the transparent public assessment process helps reduce the impact of vested interests on regulatory processes, and reduces opportunities for corruption.

The net result of RIAs should be the development of a more competitive economic, and a more equitable society. Internationally, increasing numbers of governments are using RIA as a tool to improve the enabling environment for business, economic competitiveness and more equitable development. Viet Nam needs to institutionalize measures to ensure that it becomes even more competitive in an increasing integrated global economy.

6. WHAT POLICY CHANGES REQUIRE RIAS?

RIAs should be prepared for all policy/regulatory changes that affect businesses, non government organizations, or other interest groups. More generally, RIAs are needed whenever policy options are being considered that may have positive or adverse impacts on particular groups in society, or on the whole nation.

The RIA should be proportionate to likely impacts (e.g., if the proposed change is likely to impact on a few firms, or many firms to a very small degree, or if the costs and benefits are likely to be small, then the RIA may be quite brief. Where impacts are likely to be substantial, more in-depth analysis will be required).

7. WHO SHOULD PREPARE RIAS?

The Government agency responsible for preparing the proposed policy change should be responsible for preparation of the RIA, but may decide to contract actual preparation to specialist organizations and/or firms.

Consideration needs to be given to nominating an agency to oversee compliance with RIA requirements and to ensure the quality of RIAs. Integration of RIA into the decision-making processes of government agencies will require sustained political, administrative and public support.

8. WHEN SHOULD THE RIA PROCESS START?

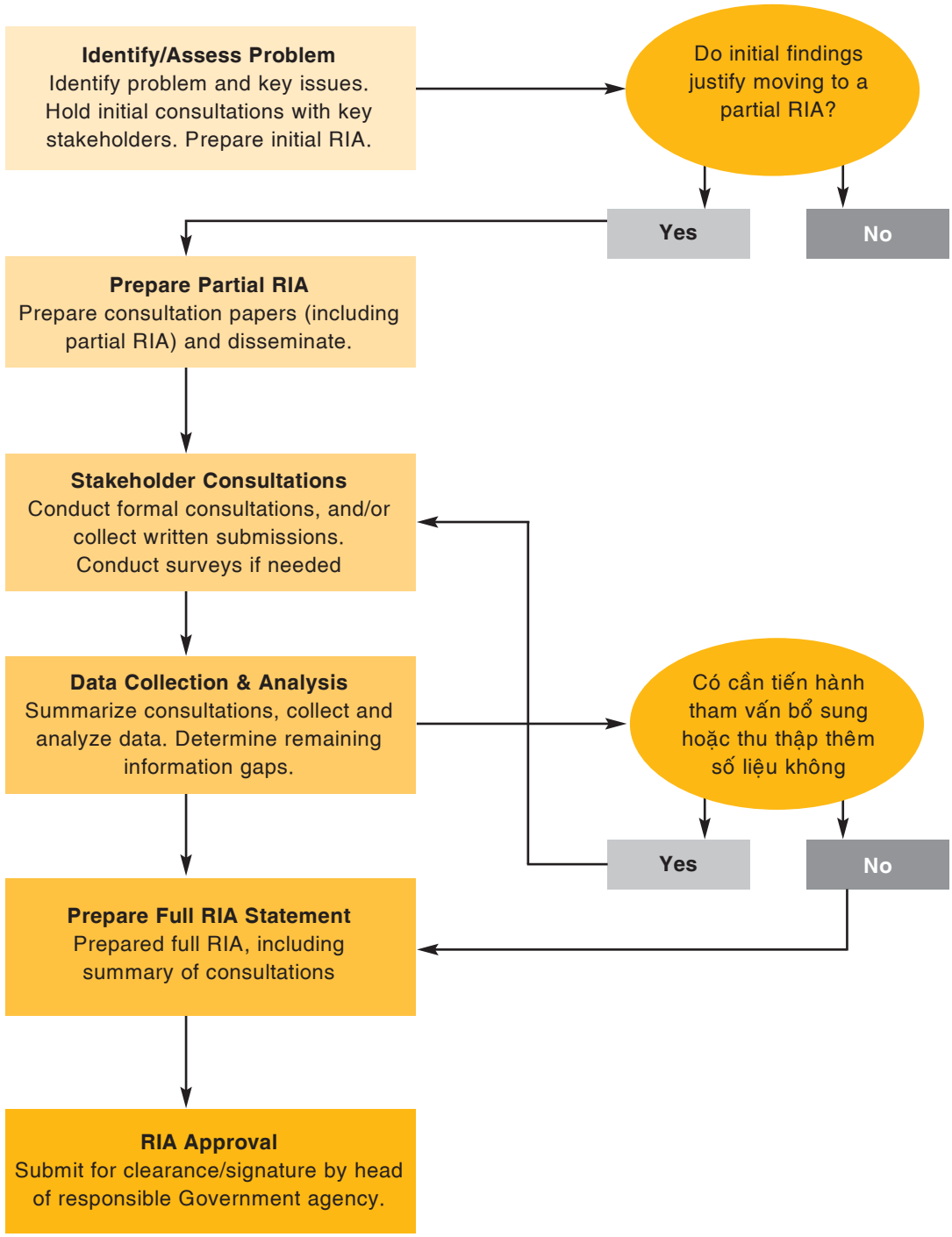
The RIA process should start as soon as possible in discussions on proposed changes, and be developed as the proposal develops. The RIA process should be an integral part of the policy formulation process to help improve the quality of the policy making process. An initial RIA should be prepared as soon as possible to identify the range of options available, and to include in consultation papers as part of the consultation process. A partial RIA should be prepared as input to the consultation paper. A full RIA should provide more detailed analysis of the impact of a limited number of preferred options, including a detailed summary of the consultation process.

9. HOW TO ENSURE RIA QUALITY?

RIAs will only be effective if they are well prepared. The Government (or National Assembly) may consider nominating a (new or existing) agency to be responsible for monitoring the quality of RIAs. This agency should not be directly involved in regulatory development and preparation of RIAs. The use of participatory approaches and sound

communication strategies, including ensuring that RIAs are easily accessible by the public (e.g., summaries in the press, full RIAs on the internet), can also help increase pressure on government agencies to produce quality RIAs.

Figure 2: Key Steps in the RIA Process



STEP 1

PROBLEM IDENTIFICATION AND INITIAL ASSESSMENT

1. OVERVIEW

Governments generally adopt regulations to solve or ameliorate a problem. The problem may result from problems with existing policies or regulations, or it may result from market failures. There are often many ways to address each problem. The challenge for the policy analyst is to identify efficient solutions that are consistent with broad Government development objectives.

The aim of all government policies and regulations should be to achieve some clearly targeted objective in order to solve a problem. RIA is a tool to evaluate options for achieving this objective and to discover what other effects policies and regulation may have. The policy analysts needs to ask questions about what the government is trying to do, the probability of success, and other impacts on society and/or the economy. The policy maker needs to:

- Understand the problems need to be addressed.
- Be clear about the objective to be achieved via regulation.

- Look at all options to identify the best ways to achieve this objective.
- Ensure that benefits of the regulation exceed the costs (taking account both direct and indirect impacts).

2. UNDERSTANDING THE PROBLEM

The analyst needs to start by asking some fundamental questions about the problem and factors contributing to the problem; questions like:

- What is the problem?
- What groups are affected by the problem and how?
- What are the key concerns of the public and key stakeholder groups?
- What led to the problem? What events or behavior contribute to the problem?
- What motivates key players contributing to the problem? Do the problem result from ignorance, or because it is in their interests?
- What are other key characteristics contributing to the problem? Are there any legal limits on what can be done to resolve the problem?

Clearly identify and define the problem. While obvious, too many regulations are drafted without a clear statement of the problem and the regulatory objective. This can contribute to over-regulation and ambiguity.

Identify what interest groups are affected by the problem, and by likely measures to address the problem. Describe how these groups are affected, and clearly identify any groups of winners and losers from current arrangements.

Consult with key stakeholder groups to clearly identify their concerns and/or perspective. Informal consultations (e.g. with business associations) may be adequate at this early stage. Consultations at this early stage are very important to ensure that the analyst is addressing the correct problem, and thus thinking about an appropriate solution.

Understand the basis for the problem. Efficient resolution of a problem requires an understanding of how the problem arose. Is it a long-standing problem? Does the problem arise from other regulatory changes? Or does the problem arise from changes in the external environment (e.g., introduction of new trade standards by another country).

Understand the motivations of stakeholders involved. If the problem arises from ignorance (e.g., about procedures for appeal against administrative decisions), then a public awareness initiative may be appropriate. But if the problem is with existing regulations, consideration needed to be given to addressing the regulations. Consultations can be important in assessing motivations.

The underlying causes and nature of the problem. Does it result from market failure? If so, is it the type of market failure that can be addressed without recourse to government regulation?

The analyst also needs to review the existing body of law that address the problem? As a general rule, it is better to use economy wide principles to resolve a problem, rather than industry specific regulation.

Advice should be sought from specialists (economists, lawyers, and scientists) as early as possible in the RIA process. Research may need to be commissioned to help understand the problem, to identify options for addressing the problem, and to assess the impacts of alternatives.

Box 2: Types of market failure

Imperfect competition - Markets can fail to produce efficient and/or equitable outcomes if there is inadequate competition. The existence of monopolies (a single seller determines prices), oligopolies (a few sellers influence prices) and monopsonies (a single buyer) can stifle competition. Governments sometimes intervene to try to reduce the adverse impacts of imperfect competition.

Externalities - Positive and/or negative spillover (indirect) impacts of market transactions that are not reflected in prices. (e.g., the environmental impacts of and industrial plant are not reflected in the plant's cost structure).

Public goods - The consumption of a public good by one person does not prevent it from being consumed by others. A lighthouse is a public good which, once established, can be used by all ships. Thus, it is difficult to ask individual ships to pay for the service. Governments may provide public goods because they would not be supplied by the market.

Imperfect or costly information - Markets sometimes fail because of a lack, or high cost of obtaining information.

3. SPECIFYING THE OBJECTIVES

The objectives of regulations, and non-regulatory alternatives, are what the Government aims to achieve to address the problem. The objectives are the goals, outcomes, standards or targets to be achieved to correct the problem. These should be clearly specified with a clear link to the problem. The success of a regulation needs to be monitored and evaluated against the progress in achieving these objectives.

The regulatory objective relates directly to the regulatory approach to overcoming the problem. The objective should be more specific than the problem definition (e.g. as desirable objective may be to reduce administrative costs of securing foreign investment approvals by 10%), and should be developed in consultation with stakeholders, the regulator, and regulatory and industry experts.

Some stakeholders may have objectives that differ from national interest objectives. Such objectives should be noted and discussed (reflecting on the incentives facing different groups) in the RIA.

Attempts to define a national interest objective to resolve a problem will sometimes lead analysts ask whether the government should intervene. Analysts may conclude that stakeholders have raised an issue to protect their vested interests. (e.g., recent US anti-dumping actions may be aimed at narrow vested interests, rather then consumers and broader national economic interest.)

4. CONSIDER ALTERNATIVE OPTIONS

The analyst should develop a list of alternatives actions that could be taken to address the problem. This list may include "doing nothing" and non-regulatory alternatives. Typically these alternative options will achieve somewhat different targets at different costs. National benefits may be greater by solving part of a problem at a low cost, than solving the whole problem at a greater cost.

Figure 3 presents a framework that may help in analyzing options, with the aim of minimizing the need for direct government interventions. As indicated in the following diagram, the first step in defining options is to clearly identify and understand the nature of the problem.

In addition to “doing nothing”, the analyst should consider options that require direct and/or indirect government interventions. Examples of direct government intervention include direct providing (or paying the private sector to provide) a public good or service, and directly restricting some activities. Provisions of education, health and sanitation services are examples of direct intervention.

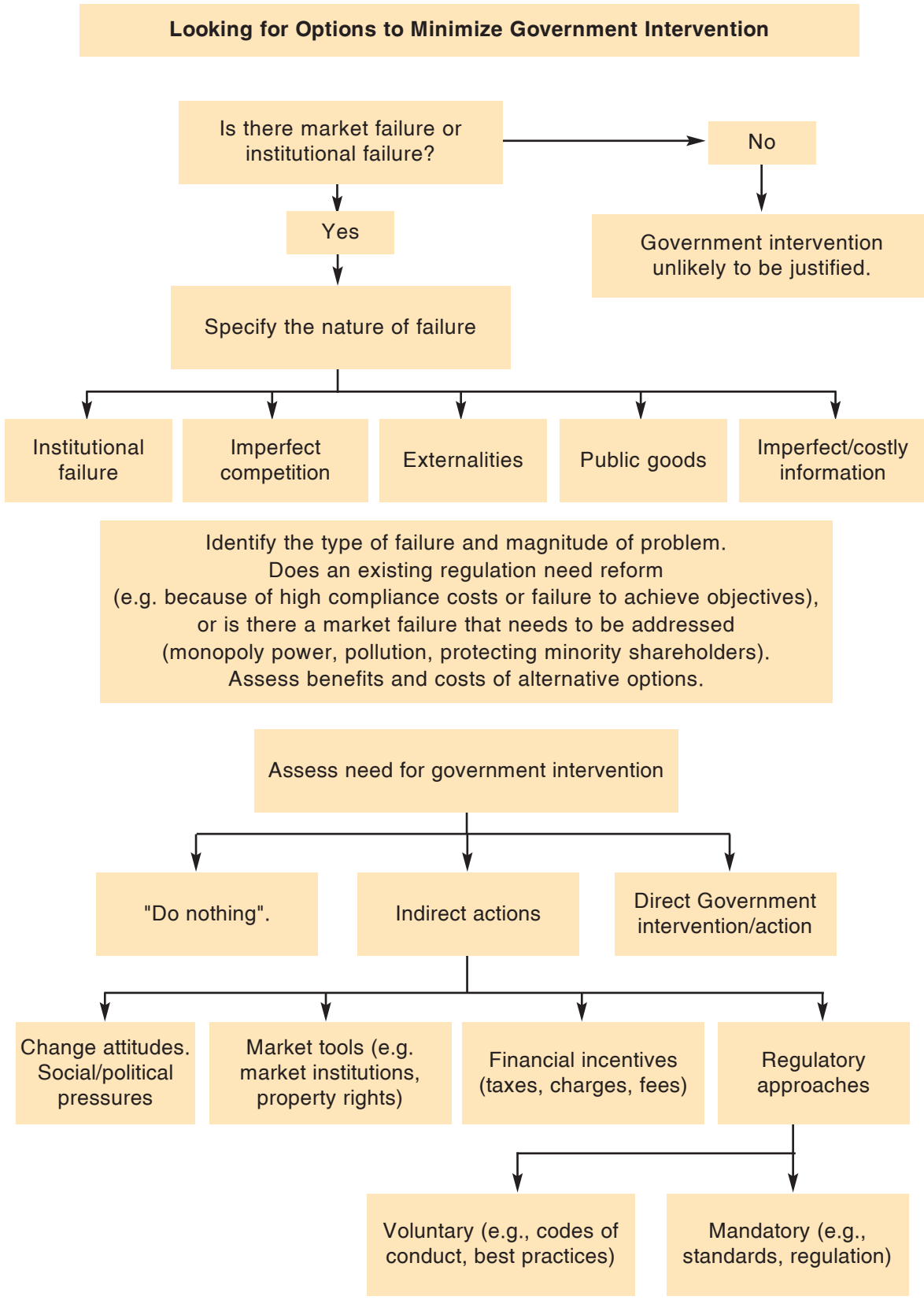
Indirect government intervention typically aims to correct market failure by facilitating an enabling environment that facilitates competitive market. Types of indirect government intervention include:

- Suasion. Use of moral, social or political pressure to modify behavior?
- Pure market approaches. Attempt to better define and/or enforce markets to correct market failures.
- Economic approaches. Use economic instruments to provide more accurate market signals about costs and benefits. Taxes, fees and charges, and tradable permits are possible examples.
- Regulatory approaches. These “control” instruments need to be used with care, because they can have significant economic costs.

5. CHOOSING BETWEEN OPTIONS

Some options may be excluded at an early stage because: (i) they are not feasible; (ii) costs and/or risks are too high, and/or (iii) benefits are too limited. It is useful to note all options, and include a brief discussion of why options were excluded. In some cases, especially when an existing desirable law is being reformed, there may be few real options for reform.

Figure 3: Looking for Options to Minimize Government Intervention



A detailed cost-benefit analysis is usually not needed at this stage, but it is useful to include a summary matrix in the initial RIA that highlights the proposed action, and the costs, benefits and distributional impacts of each option. The matrix should include space to summarize findings from consultation on each options.

6. DRAFTING THE INITIAL RIA

Preparation of the RIA Statement (RIAS) should be an ongoing process, consisting of at least three phases:

- The initial RIA should be prepared as the policy idea is developed.
- The partial RIA should be produced prior to the consultation exercise and must accompany the consultation document.
- The full RIA builds on information and analysis in the partial RIA and incorporates consultation responses.

The following box summarizes what should be included in a typical initial RIAS.

Box 3: Content of Initial RIAS

The initial RIA should be included with the reform proposal submitted to the head of the responsible government agency. The initial RIAS should:

- State the problem being addressed and how the problem arose.
- Discuss any market or regulatory failure the proposal aims to address. What will happen if the problem is not addressed?
- Identify groups affected by the problem.
- Indicate why reform is proposed. What high level policy objectives are to be achieved?
- Discuss regulatory and non-regulatory options to address the problem, including 'doing nothing'.
- Briefly note any existing studies, policies, regulations or arrangements related to the problem. Describe responsibilities of key institutions.

After the first stage of a RIA is completed, the relevant government agency should be clear about what exist that warrants government intervention and what options exist for addressing the failure. The next step is to provide more detailed analysis of the costs and benefits of feasible options and to prepare background material for substantive consultations with affected groups.

Table 1. **Initial Assessment of Costs and Benefits: The example of changing FDI licensing arrangements**

Problem/Objective of proposed change	Proposed options	Anticipated impacts of proposed changes			
		Key intended benefits	Costs	Distribution of Impacts	Summary of key concerns raised during consultations
Problem. Licensing arrangement is provides opportunities for corruption and discourages investment.	1. "Do nothing"	No benefits	Continuing loss of competitiveness, and suboptimal investment and employment growth.	Most licensing costs are fixed and so impact on small investors (i.e. those most likely to invest in rural areas and in labour intensive industries.) This discourages balanced development and employment generation.	Government-private sector consultations have increasingly emphasised that "doing nothing" is likely to result in reduced FDI approvals (especially of smaller projects) as foreign investment approval regimes are simplified in neighbouring countries.
Objective. Reduce average costs	2. Replace current foreign investment licensing system with a unified business	Reduced costs and risk in securing FDI licence (x%: see Appendix x): this will encourage increased	No additional costs to businesses or consumers. Minor initial administrative	Reform should ensure more balanced investment and employment creation: this	Key concern is that many stakeholders want more detail of how the FDI l

involved in securing approval for foreign investment license to levels achieved in best practice countries in Southeast Asia.	registration system where all investment proposals that meet simple and transparent requirements are permitted.	investment and employment, reduce corruption, increase productivity, and reduce public administration costs.	costs to establish new procedures and to improve national business registration system.	could have major impact in reducing poverty.	
	3. Abolish all foreign investment registration requirements.	Removes all business licensing costs. This should encourage higher investment and employment growth.	Lack of publicly available company information may limit commercial transactions. Loss of instruments to monitor FDI.		Not considered a politically feasible option at this stage.

STEP 2

DEVELOP A PARTIAL RIA AND CONSULTATION PLAN

Following the decision by the relevant Government agency to proceed with preparation of detailed reform proposals, the next step is to prepare background material for the substantive stage of consultation and data collection. A major task is to further develop the initial RIA to a partial RIA for use as a core document in consultation and inter-ministerial discussions. A consultation plan should also be prepared during this stage.

1. PREPARATION OF PARTIAL RIAS

Preparation of the partial RIAS will typically require more wide-ranging informal consultations with stakeholders (business groups, consumer groups, other government agencies) than during step 1. The partial RIAS should include more detail on cost and benefit estimates and on description of options, and provide details of possible implementation, compliance and monitoring options. There should also be a detailed description of remaining gaps and

an action plan with clearly defined data collection instruments (e.g., with case study or surveys). It is particularly important that the partial RIA include a well developed consultation strategy. The analysts will spend a considerable part of their time during Step 2 in discussions, data collection and report writing.

2. THE CONSULTATION PLAN

The consultation plan should be prepared at an early stage of the RIA process, with a quite detailed plan included in the partial RIAS. The consultation plan should identify the experts, stakeholders, and business and community groups to be consulted during the RIA process. There may be need to consult separately with key sub-groups (e.g. household, small, medium and large businesses, and/or importers, exporters and/or firms supplying the local market) depending on the nature of the change under review.

A consultation plan needs to reflect both information needs, and the need to build public support for change, and will differ greatly for each RIA. The consultation plan should retain flexibility, to respond to new information needs, new findings, or changing public concerns.

Box 4: Content of Partial RIAS

The partial RIAS should build on the initial RIAS and follow a similar format, but with more substance. The partial RIAS provide details on:

- The problem being addressed and how the problem arose.
- Market or regulatory failures the proposal aims to address
- Groups affected by the issue, including business sectors and groups that may be especially affected. Include quantitative data and practical examples where possible.
- What high level policy objectives will be achieved by the proposal?
- Any existing studies, policies, regulations or arrangements related to the problem. Describe existing institutional responsibilities.
- Regulatory and non-regulatory options to address the problem, including 'doing nothing'.
- The costs, benefits and distributional impacts of each option, including and assessment of impacts on markets and competition.
- Risks and any potential unintended consequences
- Possible implementation, compliance and monitoring options.
- Additional information needs, and strategy to collect information.
- A consultation plan.

STEP 3

STAKEHOLDER CONSULTATIONS AND DATA COLLECTION

As noted earlier, stakeholder consultations should be an ongoing process. Nevertheless, there is also one step focusing primary focus on consultations, including formal consultations. Key aims of this stage in the RIA process include:

- Collect information to improve the cost-benefit analysis;
- Build a constituency to support approval and implementation of a regulation; and
- Increase the accountability of the RIA team. (Consultation helps because of public disclosure of about agency plans for reforms.)

1. THE CONSULTATION PROCESS

The RIAS-consultative process works both ways. The partial RIAS provides a structure for consultations; while the consultation process helps provide information need to develop a credible final RIAS. The process helps ensure that interest groups are aware of all the policy options considered, and the costs and benefits of each option. More generally, consultations provide stakeholders with opportunity to contribute towards policy development, and can thus help in achieving greater public support for regulatory reforms. In other words, consultation, information

collection and constituency building are closely related. Stakeholders, officials, experts and the general public are more likely to support reforms when they feel their views have been taken into account.

Effective consultations need carefully planning, and should consider the need to:

- Avoid consultations during Tet, and other holiday periods.
- Publish documentation in the press or on the web.
- Organize consultation in a number of different locations to ensure consultations with a wide range of interests. (Organize as small and informal meetings, or as formal public hearings, depending on the circumstances, including levels of public interest in the issue.)
- Invite stakeholders to prepare written submissions on consultation papers (including a partial RIAS, and draft regulation).
- Allow stakeholders adequate time (at least two months) to prepare written submissions.
- Publish summary of submissions, with a clear explanation of how key concerns were addressed (e.g., press of a web site). Changes to proposals resulting from the consultation process should be summarized in the final RIAS.
- Appoint an advisory body to provide advice throughout the RIA process.

2. SOME BEST PRACTICES IN RIA CONSULTATIONS

Organizing RIA consultation is not always a straightforward process. Many groups will have little experience with the details of Government policy and regulatory documents. They are unlikely to have had much exposure to policy making or RIA process; and may be concerned about how the information they provide will be used. Some groups may be distrustful, either of government generally, or of particular government agencies. Discussion documents needs to be targeted to the concerns of business and should minimize the use of administrative, economic and legal jargon. Confidence building measures (e.g. information dissemination and debate in the business media) can help ensure groups comfortable with the process.

The OECD has, in recent years, published considerable research on regulatory reform processes, including best RIA practices and the use of consultations in this process.[3] A summary of these best practices are presented on the following page. Some key lessons that are particularly relevant to Viet Nam include:

- The consultations process should start early.
- Consultations should be sustained over the whole RIA process, and should be structured as an ongoing dialogue (not focus on a single major meeting).
- RIA analysts should be pro-active in finding the most appropriate people and groups to participate in consultations
- Consultations should be transparent. Full details of the consultation should be published, both in the business media, and the final RIAS (see note below).

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[3] OECD (1999), Regulatory Impact Analysis: Best Practices in OECD Countries, OECD, Paris.

Box 5: Consultation: International Best Practices

Consistency and flexibility

- Consultation programs must be flexible enough for use in very different circumstances, while also meeting minimum standards, to ensure consistency and confidence in the process.
- Minimum standards allow all parties to assess whether the consultation has been properly undertaken, and provide clear guidance for regulatory policy makers.
- Adoption of a range of strategies and approaches will offer broad access to all interested parties, and maximise information gathering.

Consultation should be timely, balanced, broadly based and an ongoing process

- Early consultation helps identify optimal policy options.
- Consultation is most effective when information is made available early. Consultation documents should clearly identify both the policy objective and a wide range of alternatives.
- Cung cấp đánh giá tác động ban đầu cho công chúng sẽ góp phần tạo điều kiện thuận lợi cho quá trình đối thoại.
- Maximising participation (facilitate access by less organised interests), minimising discretion in deciding who participates, and making information widely accessible can be facilitated by: (i) innovative information dissemination including use of the public media and information technology; (ii) draft in plain language and use reader friendly formatting; and (iii) clearly set out key issues and their implications for key stakeholders.
- Structuring continuing dialogue enhances the benefits derived from consultation.

Transparency and responsiveness

- A systematic consultation policy gives the public an understanding of what opportunities can be used during the consultative processes. Consultation is more effective when organizers: (i) clarify why information is needed; (ii) explain the process of decision making and opportunities for participation; (iii) ensure public comments are appropriately taken into account; and (iv) respond substantively to public comments.

A habit of consultation should be made part of administrative culture

- Consultation policies must be explicitly supported at high political levels, and reinforced with staff training, incentives and resources.
- Regular monitoring, evaluation and improvement of consultation arrangements are important.

Source: Summarized from OECD, 2002. pp. 162-5.

3. DESCRIBE CONSULTATIVE PROCESS IN THE RIAS

The final RIAS should include details of those to be consulted, outline key views expressed, and major areas of agreement, as well as areas of difference. The final RIA should also include information on consultations with other official agencies. Where consultation was limited, the RIAS should state more detailed consultation was not undertaken. The RIAS should briefly note the key ways in which the consultation process influenced the final outcome of the findings and recommendations.

STEP 4

DATA COLLECTION, ANALYSIS AND DISCUSSION OF FINDINGS

1. INTRODUCTION

This is the main analytical step of the RIA. Potential benefits, costs and distributional impacts of each option -- including the 'doing nothing' option -- should be analyzed. The key aim of this analysis is to help determine whether the benefits from the various policy options justify the costs.

The depth of analysis should be sufficiently rigorous to inform decision makers, but also both (i) proportionate to the potential impact of the reform, and (ii) appropriate to the expertise, resources and information available to the agency responsible for conducting the RIA. Pragmatic professional judgment is needed to match available resources to be put into RIA against the potential net benefit or cost of the regulatory change.

Where feasible, the major costs and benefits of the proposal should be quantified. The assessment should include full economic costs and benefits, including social, environmental, and health and safety costs and benefits. Compliance levels also need to be assessed in order to assess likely benefits.

Box 7: A Word of Caution

Assessing costs benefits and of regulatory reform can often be problematic. Many different methodologies can be applied, but none is entirely satisfactory. Methodological problems are compounded by limitations in the data needed to estimate monetary values of regulatory impacts. And estimated benefits may be biased upwards, because those proposing reforms can be over-optimistic in evaluating reform benefits.

The major benefits from RIA derive from adopting a process of structured thinking and consultation. Adequate attention should be given to getting the processes right and ensuring that analytical resources are focused on the key issues. Limited analytical resources should not be diverted to unnecessarily complex methodology. This is particularly true for Viet Nam given the limited resources in many national agencies.

2. OVERVIEW OF POSSIBLE ECONOMIC APPRAISAL METHODOLOGY

Economic appraisal involves a systematic examination of all costs and benefits of alternative options to achieving an objective. A number of different approaches can be adopted depending on the nature of the problem. The major advantages and disadvantages types of three approaches are discussed below.

Table 2: Major Approaches to Economic Analysis in RIAs

Technique	Brief Description	Advantages	Disadvantages
Risk analysis	Quantitative assessment of the magnitudes of the risk affected by proposal.	Provides an indication of whether a proposal will be effective in significantly reducing risks. Recognizes trade-offs in risk-related policies.	The costs of achieving risk reduction and other non-risk impacts are not addressed. Risk impacts may be diverse and not commensurate.
Cost-benefit analysis	Involves the identification and calculation of all costs and benefits. An important criterion is if benefits exceed costs, a proposal is potentially desirable.	Reflects favourable and adverse effects of a proposal from the view of society as a whole. Addresses whether a proposal is in society's best interests.	Some important benefit and cost components may not be measurable, and may not be included in the assessment. Criterion may be less convincing if distributional impacts are considered important.
Cost-effectiveness analysis	Involves the calculation of a cost per unit of prescribed benefit achieved for different proposals.	Eliminates more costly proposals from consideration.	Does not resolve the choice of the optimal level of benefits.
	A proposal that can generate the same benefit at least cost compared to others is preferred.	Provides an index of the relative efficacy of proposals in generating a benefit	Does not resolve the question whether a proposal would lead to net social gains. Criterion is inconclusive when different benefits are generated by different proposals.

Source: Council of Australian Governments (2004) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies.

2.1. Risk analysis

Risk analysis is used to help address the initial key question of whether or not to regulate. Risk analysis involves: an appraisal of the level of risk associated with the problem; the reduction in risk likely to result from each option; and consideration of whether the proposed measures are the most effective available to deal with the risk. Risk assessment is generally used together with other quantitative approaches.

Risk analysis is particularly useful for analyzing regulations aimed at reducing risk and is often used to assess health and safety regulations. Risk assessment is more limited in scope than cost-benefit and cost-effectiveness analyses. Rather that focusing on the monetary costs and benefits of reducing risks, risk assessment focuses directly on the impact that regulation has on risk. Risk analysis can be incorporated into cost-benefit and cost-effectiveness analysis by multiplying costs and benefits by probabilities estimate expected costs and expected benefits in monetary terms.

2.2. Cost-benefit analysis

The cost benefit analysis approach involves quantifying major costs and benefits in monetary values. This allows the outcomes of a range of options to be readily compared in terms of their net social gains (or losses), thus facilitating evaluation and decision-making. When feasible, cost benefit analysis should generally be used in preference to cost-effectiveness analysis.

A problem with cost-benefit analysis is the difficulties that arise when trying to evaluate costs and benefits when there are no market prices (e.g., what is the market value of saving a human life). Cost-benefit analysis is should often be used in conjunction with other considerations, including the distribution of benefits and costs, as impacts that cannot be valued in monetary terms.

2.3. Cost-effectiveness analysis

Cost-effectiveness analysis differs from cost-benefit analysis in that benefits are expressed, not in money units, but in physical units. It compares the costs of different options with similar outcomes. This approach is useful when it is not possible to estimate the monetary value of major reform benefit.

Cost-effectiveness analysis is particularly useful in areas (such as health, accident safety, environmental protection and education) where it is often easier to specify

benefits than it is to value them. For example, it is easier to identify the number of lives that a proposed measure may save than to value those lives.

There are several limitations in using cost-effective analysis. Firstly, it involves a focus on a single type of benefit to the exclusion of others. Thus, the chosen benefit must be the clearly dominant benefit, and be closely related to the overall policy objective. Secondly, unlike cost-benefit analysis, cost-effectiveness analysis provides no guidance as to whether there are net gains to society from implementing a regulatory proposal.

2.4. Determining Data and Information Needs

The data and information needs will be determined by the nature of the problem; the approach taken to assess regulatory impacts; the resources available for the assessment; and some assessment of the value of information in arriving at the right decision. If the initial analysis identifies an option with positive net social benefits clearly greater than other options, there may be little value in spending more resources to provide a marginally more exact measure of net benefits.

Given the limited time and resources that will be available for a typical RIA in Viet Nam, most data will have to be collected as part of the consultation processes. When attempting to assess impacts on firms, the most cost-effective approach may be to prepare case studies on several representative firms (e.g. a small, medium and large firm) and extrapolate costs and benefits from this analysis. In other cases, it may make sense to undertake a formal survey of a large number of firms. This is a decision that needs to be made by the analysts.

Most major information needs should be clearly identified at this stage. The consultation stage provides the best (and often only) opportunity for substantive primary data and information collection. This is particularly true in the current context of Vietnam.

STEP 5

PREPARING THE FULL RIAS

The main activity at this stage is to prepare a full RIA Statement (RIAS). This section outlines the structure of the full RIA statement and the key issues that should be addressed in each section of the RIAS.

1. INTRODUCTION

- Name the proposed reform and any legislation linked to it. Include (in brackets) the common name (if any) of the proposal.
- Briefly (1-2 sentences) describe the nature of the proposed reform.
- Note the level of approval needed for the proposed changes.
- Describe the current status of the proposed reform initiatives and any prior actions or studies on this issue.

2. DESCRIPTION OF THE CONSULTATION PROCESS

Describe the consultation process. Formal and/or informal consultation provides valuable information about policy proposals, including alternative options, potential costs and benefits and possible risks. Providing a clear description of strong consultation processes can help build confidence in the findings presented in the RIAS.

3. PURPOSE AND NATURE OF PROPOSED REGULATORY CHANGE

Statement of the problem: What is the problem being addressed? How did the problem arise? Identify any groups that are particularly affected by the problem. Include quantitative data and practical examples of the issue where possible. Why is regulatory action being considered?

Review any prior actions. Describe and briefly summarize any existing studies, policies, regulations or arrangements for addressing the problem. Describe existing institutional responsibilities for addressing the problem.

Economic,[4] Social and/or Environmental Rationale for Intervention: What market failure does the regulation aim to address? Economic rationale for intervention is unlikely without evidence of market failure. What may happen if the problem is not addressed? Is the issue expected to continue at the same rate or get worse?

Objective of regulatory action: The regulatory objective should be stated in relation to the problem, with a time frame for achieving the objective. Regulatory objectives are the goals, outcomes, standards or targets which the regulation aims to attain to address the problem. The objective for a regulation should be stated has clearly as possible to define the expected outcomes of the regulation.

Statement of the proposed regulation and alternatives: Describe the proposed regulation and other options in sufficient detail to allow comparative assessment and evaluation in the rest of the RIS. One of the options should be to “do nothing”.

4. REVIEW OPTIONS FOR RESOLVING THE PROBLEM

4.1. List a range of options

- Include a range of options (preferably at least three) in the partial RIA.

[4] Market failure may arise if there is: imperfect competition; externalities; public goods; and imperfect or costly information.

- Include the "doing nothing" option to provide a benchmark for comparing other options. This will help clarify the impact of not acting.
- Consider alternatives to regulation.
- Include more detailed consideration of a range of options in the partial RIA. As a minimum, carry forward the 'do nothing' option and at least one other option. Where feasible include an alternative to regulation.
- Explained why options are removed, in case where options are not carried forward from the initial to the full RIA.

4.2. Briefly assess the risks of each option

- Briefly note and describe any risks of each option. The risk analysis should include an analysis of possible unintended consequences.
- What are the consequences of the risks? Is realization of policy objectives at risk?
- Note any implementation risks (for each option), drawing where possible on experiences from similar policy initiatives.
- Discuss ways in which risks could be reduced.

4.3. Compliance and enforcement

Regulation will not automatically achieve full compliance. Expected compliance rates and enforcement issues will affect the choice of options. While detailed discussion of proposed compliance strategies will be discussed later in this report, likely compliance rates and enforcement issues (and costs) should be reviewed here as input to the economic analysis of each option.

5. ECONOMIC ANALYSIS OF FEASIBLE OPTIONS

This is the main analytical section of the full RIAS. Potential benefits and costs of each option including the 'doing nothing' option should be reported. The analysis in this section will help determine whether the benefits from the various policy options justify the costs, and should provide evidence to support final policy recommendation. Where possible, the costs and benefits should be quantified. A review of possible approaches was presented in the previous step.

As noted earlier, the depth of analysis in an RIA needs to be sufficiently rigorous to inform decision makers. But it also needs to be both (i) proportionate to the potential impact of the reform, and (ii) appropriate to the expertise, resources and information available to the agency responsible for conducting the RIA. Pragmatic professional

judgment is needed to match available resources to be put into RIA against the potential net benefit or cost of the regulatory change.

The same basic principles apply to an initial, partial and full RIA, but the depth of analysis will increase, and be much more developed in the final RIA. The material should be presented in a clear and non-technical manner that can readily be understood by policy makers. Relevant technical analysis should be included as an annex to the RIA. This section has the following main sub-sections:

- Sectors and groups affected
- Analysis of costs and benefits (of each option)
- Sensitivity to key assumptions
- Summary of the costs and benefits (of each option).

5.1. Sectors and groups affected

This section should describe the key groups in society affected by the proposed changes. Informal consultations at the early stage of the RIA process can help identify those groups likely to be affected (positively and negatively). As part of this process it is important to think of the impact of proposed changes on:

- Businesses. Consider the impact on different firm sizes, rural and urban firms, and on specific industries as appropriate.
- Consumers and the broader community
- Non government organizations, business and community associations.
- Different social and ethic groups – including ethnicity, gender, age, health and income. The proposals may also have different effects on disabled people, those living in different regions or in rural communities.
- Government departments, the budget, and public bodies responsible for implementing and enforcing changes.

5.2. Analysis of costs and benefits

- Describe the costs and benefits of each option, including 'doing nothing'.
- Include only those costs and benefits that are additional to those which would have been incurred with no action.
- Provide a separate breakdown of administrative and policy related costs in estimates of total costs.
- Where it is difficult to accurately predict costs and benefits, consideration should be given to presenting a range of possible outcomes.
- Recognize that 100% compliance is unlikely with both the existing policy and the proposed policy reform. Note any additional costs and benefits arising from efforts to improve compliance with existing law.

- Assess what impact the risks (identified in the risk analysis) would have on costs and benefits.
- Specify and discuss key assumptions, and provide references to any data sources or methodologies used.

The description of costs and benefits should indicate the magnitude, timing and likelihood of the positive and negative impacts. The costs and benefits should be quantified wherever possible, preferably using monetary values, to allow different types of costs and benefits to be aggregated to give a net economic benefit. However, is not always feasible; and there is little point wasting resources preparing estimates that lack credibility. Moreover, there are cases where non-monetary quantification may convey useful additional information (e.g., new jobs created, lives saved, or changes in emission levels.)

The calculation of first-round (direct impact) effects of proposed measures is generally adequate for most RIAs. Potential macroeconomic or second-round effects can be noted, but, in most cases, there is no need to quantify these[5] . Any significant transitional or regional effects should be mentioned (e.g. regional declines in investment and employment), and any measures to mitigate these effects should be discussed. Major gainers and losers from the proposed reforms should be identified.

Most benefits and costs are incurred over a period of years. Where a flow of costs and benefits have been identified over more than one year, these costs and benefits should be discounted and expressed as a Net Present Value (see Appendix 5). Economic expertise may be required to assist with this exercise.

5.3. Sensitivity to Key Assumptions

Assumptions need to be made to assess the impact of different options. Key assumptions should be clearly highlighted and tested to identify specific risks or areas of uncertainty that may impact on the levels of costs and benefits. It is often important to discuss the impact of relaxing key assumptions. Consider including sensitivity analysis in the form of a matrix showing the impact of changes to key assumptions.

As noted earlier, total compliance will rarely be achieved and cannot be automatically assumed. Include some discussion on the level of compliance needed for the benefits to exceed costs.

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[5] Such effects are difficult to estimate and are likely to be speculative, and, in most cases represent simply a re-distribution of resources within the economy, without any net overall economic effect

5.4. Summary of costs and benefits

Present a summary of costs and benefits to facilitate easy comparisons of the costs and benefits of alternative options. The summary should include:

- Incremental costs and benefits of feasible options, compared with the "do nothing" option.
- A description of major groups and/or sectors affected by the change and a summary of distributional impacts.
- Aggregate measures of costs and benefits such as EIRR and NPV (when available)[6] .

6. COMPLIANCE, ENFORCEMENT AND MONITORING

6.1. Compliance and enforcement

Compliance is frequently overlooked in the regulatory reform process. A range of compliance options should be analyzed to help identify the best option. It is important that the RIAS recognizes that:

- The design of compliance and enforcement mechanisms will have a major impact in terms of achieving policy objectives.
- Compliance levels will be higher if it is easy to comply.
- Compliance costs should be less than the penalty for not complying.
- Vested interests will actively seek to identify any potential loopholes in the policy. The analyst should try to identify any loopholes first.

The RIA should include a substantive analysis of compliance issues, including:

- The expected level of compliance under each option;
- Possible reasons for noncompliance;
- Possible enforcement mechanisms for each option;
- Costs to the government of each enforcement option;
- Costs to businesses and consumers of each enforcement option.

Understanding the reasons for non-compliance is particularly important in developing the best compliance strategy. A list of 11 key determinants of compliance produce by the Netherlands authorities (see Appendix 6) provides a useful checklist when considering compliance uses.

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6 EIRR stands for Economic Internal Rate of Return and NPV for Net Present Value.

6.2. Enforcement and sanctions

Enforcement measures should be proportionate to the seriousness of the issue being addressed and the probability of non-compliance. Preference should be given to non-criminal sanctions. The RIAS should discuss key enforcement issues, including:

- The expected costs and impacts of different enforcement options.
- A summary of consultations with enforcement bodies and other stakeholders on enforcement issues.
- Describe implementation and any coordination arrangements aimed at facilitating enforcement.
- A review of options for sanctions to facilitate enforcement.
- Identify fair, speedy, independent and inexpensive appeals processes for resolving disputes.

Forms of sanctions that could be considered include:

- Warnings;
- Adverse publicity;
- Fines;
- Increased regulatory burdens (e.g., more stringent reporting requirements, more regular inspections);
- Licensing sanctions (e.g., suspension, restricted licenses); and
- Criminal prosecution.

A system to encourage voluntary compliance might include incentives such as:

- Simplify licenses and permits for firms with good compliance records;
- Permit firms with strong compliance records to use a mark certifying this high level of compliance;
- Provide indemnities for voluntary disclosure and correction of unintentional violations.
- Positive publicity (e.g. awards).

6.3. Implementation

Outline the key steps needed to implement the policy, and provide details of responsibilities for implementation:

- Describe responsibilities for implementation, review and decision-making. Specify indicators of successful implementation.
- Set target dates for key decision points and milestones.
- Describe the key stakeholders involved in implementation
- Provide an initial communication strategy aimed at informing those affected by the policy change (including those responsible for implementation).

6.4. Monitoring

An effective monitoring and reporting system needs to be outlined that includes:

- Proposed mechanisms for monitoring implementation to measure compliance and progress in meeting policy objectives.
- Ensure that monitoring indicators are Specific, Measurable, Achievable, Relevant and Time-bound (SMART). Where possible, these should be linked to existing data sources.
- Include feedback mechanisms to identify any complaints about implementation.
- Specify responsibilities for, and frequency of, monitoring and reporting.

7. SUMMARY AND RECOMMENDATION

Provide a brief summary in the full RIA of the evidence and analysis presented in the RIA. Include a summary of costs and benefits table of viable options. State clearly the recommended option, and explain why, based on the evidence and analysis in the RIA. Briefly note why other options were not chosen.

STEP 6

RIAS APPROVAL

The process of officially approving a RIAS, and publicly releasing the RIAS should follow standard Vietnamese administrative procedures. Thought RIA is yet to be officially required in Vietnam, the process is somehow already required by the Law on the Making of Nominative Legal Document. Referring to the law can provide useful hints and implication on the proper and effective implementation and approval of a RIAS.

The credibility of the RIA process will be enhanced if the head of the ministry (or other relevant government agency) that prepares a RIAS “signs off” on the RIAS and takes responsibility for its contents. The RIAS should be “signed off” and made publicly available as soon as possible after completion of the study.

APPENDIX 1

UK GUIDELINES FOR INITIAL, PARTIAL AND FULL/FINAL RIA [7]

The RIA process is a continuous, consisting of three phases:

- Initial RIA – Should be prepared as soon as a policy idea is generated.
- Partial RIA – Should be produced prior to the consultation exercise and must accompany the consultation document.
- Full/final RIA – Builds on information and analysis in the partial RIA and incorporates consultation responses.

Advice should be sought from specialists (economists, lawyers, and scientists) as early as possible in the RIA process. Research may need to be commissioned to assess regulatory impacts.

7 Source: Adapted from http://www.cabinetoffice.gov.uk/regulation/ria/overview

1. INITIAL RIA

The initial RIA should inform and ideally accompany your submission to your own ministers seeking agreement to a proposal. It should include your best estimates of the possible risks, benefits and costs, and will help you to identify areas where you need more information.

An initial RIA should:

- provide a clear statement of the high level policy objectives - what you want your policy to achieve
- describe the issue and, where possible, quantify the scale of the issue you want to address
- identify a range of regulatory and non–regulatory alternative options, including 'do nothing'.
- consider the pros and cons of each option and the fit with existing requirements on the relevant sector
- identify who is affected, including business sectors and groups on which there may be a disproportionate impact.
- set out what you already know about the costs and benefits
- highlight any potential unintended consequences
- try to identify markets that may be affected and flag up any potential competition issues
- consider how to secure compliance and how you will review whether the policy is.

2. PARTIAL RIA

The partial RIA builds on the initial RIA. The partial RIA must be submitted with any proposal needing collective agreement from Cabinet, Cabinet Committees, No 10 or other interested ministers. It must also accompany the public consultation. It should be informed by more discussions, data gathering and informal consultations. You will have refined your cost and benefit estimates. You will also have worked up the options and developed your thinking on implementation and delivery, enforcement, compliance and monitoring. This is very important, as it will be too late to cover these issues meaningfully if left until the full RIA stage.

A partial RIA should:

- provide a clear statement of the policy objectives and the issue
- describe and quantify the scale of the issue you want to address
- identify regulatory and non-regulatory options
- consider the pros and cons of each option and the fit with existing requirements on the

8

relevant sector

- include high level implementation and delivery plans for each option.
- identify who is affected, including the business sectors and groups on which there may be a disproportionate impact.
- estimate the benefits and costs and identify the key risks associated with each option
- highlight any potential unintended consequences
- include the outcome of the Small Firms Impact Test
- provide a competition assessment that includes a clear statement of anticipated competition impacts for each option
- consider options for enforcement, sanctions and monitoring of each policy option and how the risk factors identified would affect this

3. FULL/FINAL RIA

The full RIA builds upon the analysis in the partial RIA, and should include a detailed implementation and delivery plan as well as plans for post-implementation review for the recommendation option. The full RIA should be submitted to policy makers (e.g. ministers) with clear recommendations. It becomes a final RIA when it is signed and publicly released by the responsible minister.

A full RIA should:

- identify the policy objectives
- identify and quantify the scale of the issue you want to address
- describe the remaining options, explaining how each option would fit with existing requirements and describe the key risks associated with the options, and how these can be mitigated
- identify who is affected, including the business sectors and groups on which there may be a disproportionate impact.
- compare the benefits and costs for each option considered in the partial RIA
- consider and record separately the 'other' costs and benefits – i.e. not just those to the public sector, firms, charities and the voluntary sector but also to consumers/individuals and to the economy at large, taking account of the economic, social and environmental effects. Record these costs separately from the costs to business, charities and the voluntary sector
- summarize who or what sectors bear the costs and benefits of each option
- address any unintended consequences and indirect costs

- include details of the Small Firms Impact Test and any comments from the Small Business Service
- summarize the impacts, including the impact of each option on small firms and any measures for helping them comply
- include a simple or detailed competition assessment according to the result of the filter test
- set out the enforcement arrangements for securing compliance with each of the proposed options, as well as a consideration of the risks involved.
- set out how you would communicate the changes the each option would bring including any guidance you will need to produce
- set out how the policy will be monitored
- summarize the results of the consultation exercise, responses received from different sectors or types of business and set out any changes you have made to the RIA such as to the assumptions, costings and recommendations following consultation
- include a detailed implementation and delivery plan for the option you are recommending
- include detailed plans for post-implementation review
- recommend a preferred option, giving reasons based on the elements of the RIA, in particular the analysis of the benefit and costs

APPENDIX 2

SUMMARY OF RIA PRACTICES IN SELECTED COUNTRIES LINKED TO OECD BEST PRACTICES

OECD Best Practice	Selected RIA practices from OECD countries
Maximise political commitment to RIA	▪ Examples of high level ministerial committees responsible for the oversight, review and coordination of regulations include the Special Committee of Council in Canada (Cabinet level) and the Regulatory Reform Committee in Korea (includes Prime Minister and six ministers as well as non-government members). ▪ In the UK, ministers for Regulatory Reform assigned to key departments are required to report to Panel for Regulatory Accountability. ▪ Ministerial sign-off or certification of RIA, for example, in the UK and Canada. ▪ Sign-off or certification of RIA by senior officials in Mexico and New Zealand.
Allocate responsibilities for RIA program elements carefully	▪ Agency heads must also review validity of RIA in Korea. ▪ UK Cabinet Office Regulatory Impact Unit at the centre of a system of satellite departmental Regulatory Impact Units. ▪ In the US, agencies are required to issue their own guidance to ensure and maximise the quality and objectivity of information, including RIAs. ▪ Regulatory authorities in the USA and Canada have the power to return proposals. In Mexico, the Office of the President's Legal Council will not consider any proposals submitted without a RIAS. ▪ In the Netherlands, comments on RIAS are received from other ministries. ▪ In several Australian states, Parliament has specific responsibilities for ensuring RIA requirements are met. ▪ OIRA in the USA and the UDE in Mexico publish information on their web pages on current proposals under review, including RIA compliance status. ▪ In NZ, Cabinet papers, which include comments on adequacy of RIAs are generally released to the public on request.
Train the regulators	▪ In the UK, RIA has comprehensive approach to training, including providing training through Civil Service College training courses on policy making (Italy and Korea also include such training for officials as part of their overall strategies). ▪ Help desks offer a means of providing expert advice (used for example in the Netherlands).

OECD Best Practice	Selected RIA practices from OECD countries
	▪ Detailed guidance available on different aspects of conducting RIA in the UK, USA and Canada. ▪ In Canada, departments offer extensive in-house training, and develop regulatory process manuals tailored to the specific regulatory programs they manage, and many have hired cost-benefit specialists.
Use a consistent, but flexible analytical method	▪ US implements rigorous and comprehensive quantitative analysis, but this detailed benefit-cost analyses is targeted at major regulations. ▪ Explicit net-benefit test (for example, US, Canada and Australia). ▪ In Mexico, three broad levels of analytical rigour and effort are distinguished by guidelines, depending on the importance of the regulations. ▪ Many jurisdictions use a two or three-stage RIA process to improve cost-effectiveness (for example, Italy, Canada, the US and the UK). ▪ guidance on compliance cost assessment (for example, UK and NZ). ▪ Implementation and enforcement issues are addressed well in the RIA requirements of Mexico and the Netherlands. ▪ Mexican RIAs must include a very detailed description and justification of any formalities created, modified or maintained by the proposed regulation.
Develop and implement data collection strategies	▪ Denmark's Business Test Panels and Model Enterprise Program are used for collecting information on compliance costs. ▪ Two cost-estimating aids are used in Canada – 'Business Impact Test' software and a Business Impact Cost Analysis Protocol – to improve data collection for RIA. ▪ Netherlands Help Desk assists ministries with the design of analyses, data collection, the analysis and interpretation of data, access to a statistician and funding for necessary research.

Thông lệ Ưu việt của OECD	Thông lệ về Đánh giá Dự báo Tác động Pháp luật được lựa chọn từ các Quốc gia Thành viên OECD
Target RIA efforts	▪ Several jurisdictions use monetary tests as a 'rule of thumb' for determining those regulations that meet threshold significance requirements, or a combination of a monetary and other tests (for example, USA, Korea and the UK) ▪ Independent review of RISs by oversight bodies is typically selective, focusing on RISs for more important regulations only (for example, UK and US).
Integrate RIA with the policy-making process	▪ Adoption of a staged RIS process can facilitate integration and improve cost-effectiveness (for example, the UK, Canada and the US). Release of draft RISs for consultation can also contribute to better integration. ▪ In Denmark, preliminary RIA is required at the time of consideration of proposals for inclusion on the legislative program at the start of each parliamentary year.
Involve the public extensively	▪ Releasing draft RIAs for consultation can improve the quality of information on impacts of regulatory proposals. This practice is used, for example, in Canada, the US and most Australian states. ▪ Denmark employs several strategies to ensure public involvement including: standard use of consultative committees for developing legislative proposals; release of proposals for broader public consultation; business test panels; and publication on the Internet of business impact assessments (part of RIA process).
Communicate the results	▪ Executive summary or page limit (for example, NZ) may maximise usefulness in informing decision making, provided that supporting detail is available on request. ▪ In NZ, RIS must be attached to the press statement announcing any new policy and published on the web.

N.B. RIA = Regulatory Impact Assessment; RIAS = RIA Statement; RIS = Regulatory Impact Statement. The RIAS and RIS are generally equivalent.

Source: Summarized from Argy, S, and Johnson, M, 2003. pp. 78-80.

APPENDIX 3

OVERVIEW OF COST-BENEFIT ANALYSIS [9]

1. WHAT IS COST-BENEFIT ANALYSIS?

Cost-benefit analysis (CBA) is a decision-making tool and is used for analyzing the economic and social impact of government action by reference to the 'net social benefits' that action might produce. Two key features of this tool are that:

- costs and benefits are each as far as possible expressed in money terms and hence are directly comparable with one another; and
- costs and benefits are valued in terms of the economy as a whole, so the perspective is 'global'. This contrasts with, for example, a financial evaluation, which is conducted from the vantage point of an individual, a firm, an organization or group.

[9] Summarized from: Council of Australian Governments (2004) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies.

Decisions about the overall effectiveness of regulatory action should not be made on the basis only of its effect on particular groups in society. Public policy makers are expected to make judgments based on what is best for the community as a whole. By measuring 'social', as opposed to only private, market-based costs and benefits, CBA helps to ensure good policy responses to regulatory issues. As a general rule, government action is only justified where positive net social benefits expected to be gained from the proposed regulatory intervention.

But not all costs and benefits can be readily express in dollar values. Such costs and benefits should be reported separately so that decision-makers can make their assessment using both monetary values and other information.

A major advantage of CBA is that costs and benefits occurring at different points in time can be explicitly compared. The 'factoring down' of benefits and costs that will occur in the future into present values is known as 'discounting'. In the same way interest rates are used to calculate the present value of a given amount of money in, say, 10 years time, discount rates are used to determine equivalence between the current value of a dollar and the dollar value of costs and benefits occurring in the past or future. Since a dollar in the future is usually worth less than a dollar today, future costs and benefits need to be discounted to their equivalent 'present value'. Conversely, in a retrospective analysis, past costs and benefits are compounded forward to their present value.

Under the net present value rule, a regulatory activity should only be undertaken if its net present value (i.e., benefits minus costs) is positive. Accordingly, CBA is a valuable tool for decision makers when assessing the issue of whether a particular proposal is appropriate. If comparing a number of options, the alternative with the highest positive net present value would be preferred.

CBA can provide guidance on the implications of regulatory activity, where there are grounds for mistrusting the signals provided by market prices or where no markets exist. CBA is also helpful where regulations impose 'spillover' costs or benefits on third parties. Often these do not receive due recognition because no formal market transactions take place. Through the use of shadow prices, values can be placed on non-market 'spill over' effects (e.g., pollution, safety) and compared with market transactions.

Examples where the signals that market prices normally provide are either absent or fail to reflect the true costs of regulatory action arise when valuing:

- intermediate goods - such as savings in travel time resulting from transport regulations;
- 'externalities' - or non-traded positive or negative spillover effects such as those arising from pollution, vaccination programs or banning a dangerous product;
- goods affected by taxes and subsidies, and;
- labor in the presence of unemployment.

2. WHERE CAN COST-BENEFIT ANALYSIS BE USED?

Cost-benefit analysis is employed in various ways, for example, when deciding:

- whether a regulatory proposal should be undertaken;
- if an existing regulation should be maintained, or;
- between alternative regulatory proposals (usually aimed at similar objectives).

CBA can be applied to a broad range of government activities from investing in infrastructure projects, to mandatory product standards, occupational registration requirements or health and education policies.

The main practical constraint to using CBA is the feasibility and appropriateness of assigning money values to the costs and benefits generated by government action. In circumstances where these constraints are overwhelming, cost-effectiveness analysis is frequently a viable alternative approach.

3. HOW CAN COSTS AND BENEFITS BE QUANTIFIED?

Cost-benefit analysis compares costs and benefits using a common measure, usually dollars. Therefore, dollar values must be assigned to as many of the costs and benefits as possible. Market prices, where they exist, provide a great deal of information concerning the magnitude of costs and benefits. However, actual prices sometimes have to be adjusted to convert private costs and benefits into social ones, that is, costs and benefits which reflect gains and losses to the economy as a whole, rather than to individuals or groups.

4. HOW SHOULD NET PRESENT VALUE BE ASSESSED?

The values assigned to costs and benefits should be based on an explicit assumption about price inflation; normally, costs and benefits will be valued in real terms with the base being that of the current year. Total costs in each year of the project's life are subtracted from total benefits in that year to yield net benefits in each year. Annual net benefits are then discounted back to today's dollars. The stream of discounted net benefits is then summed to yield the net present value. The formula for the net present value is:

$$NPV = \sum_{t=0} \frac{(B_t - C_t)}{(1+r)^t}$$

where B denotes the value of the benefits received in any future year, C refers to the costs incurred in any future year, r is the discount rate and t refers to the year (where the current year is denoted year zero).

Subject to a consideration of budget constraints, intangibles and distributional issues, a CBA will support a proposal if the net present value is equal to or greater than zero. Similarly, if there are a number of ways of achieving the desired outcome, a CBA will support the alternative with the highest net present value, where that is equal to or greater than zero.

5. HOW SHOULD UNCERTAINTY BE DEALT WITH?

The values included in a CBA are the 'most likely' or 'best' estimates. Sensitivity analysis is a simple procedure for providing the decision-maker with information about the impact of estimation errors on the viability of the proposal. The first step in a sensitivity analysis is to substitute the most pessimistic estimates for each variable simultaneously, and see how much the net present value is affected. If the result is still greater or equal to zero, then we are able to say that even under worst case assumptions, the CBA supports the proposal.

The second step is to try to assess how risky the proposal is, that is, which variables significantly affect the net present value and which do not. This can be established by varying each variable one at a time, holding all other variables unchanged.

6. DEPTH OF ANALYSIS?

Obtaining and analyzing information incurs costs. Hence, there are important choices to make regarding the level or depth to which the analysis is conducted. The more significant a proposal and the greater the likely economic and social implications, the more expenditure on a CBA can be justified. The viability of smaller proposals can be threatened by investing too much in analysis. This possibility sets limits on the level and depth of the analysis required.

The likely benefits of obtaining and analyzing additional information should always exceed the costs of so doing. Better information often reduces the uncertainty surrounding estimates, however, if a proposal is already known to be clearly viable or unviable, the pay-off from obtaining extra information may be negligible. Detail and complexity are not the same as rigor - which is ultimately more important. An elaborate and detailed analysis of a problem that has been wrongly conceptualized may well be worthless. But a 'back of the envelope' analysis of a problem that has been thought through correctly will, at the very least, be a helpful first step.

7. LETTING DECISION-MAKERS DECIDE

Distributional implications can be obscured by the aggregating character of the cost-benefit process. Analyses should include all the information available to ensure that decision-makers are aware both of

the identity of the groups likely to gain and to lose as a result of government action, and of the nature and size of the gains and losses. This information should be carefully presented, most usefully in the form of a distributional incidence chart or matrix.

Distributional judgments are properly made at the political level. In the interests of avoiding subjective bias, analysts should, by and large, refrain from attaching distributional weights to cost and benefit streams. Exceptions might be where there are unambiguous government policy objectives to assist specific groups in the community, and where the justification for special assistance to these groups relative to other groups is clearly established. However, for reasons of transparency, decision-makers and the public should be made fully aware of the costs of government action aimed at benefiting particular individuals or groups in the community.

APPENDIX 4

COST-EFFECTIVENESS ANALYSIS [10]

1. WHAT IS COST-EFFECTIVENESS ANALYSIS; HOW AND WHERE CAN IT BE USED?

1.1. What is cost effectiveness analysis

Cost-effectiveness analysis (CEA) is a technique that can be used to compare the costs of different options with the same or similar outputs or benefits. Because CEA expresses benefits in physical units (eg lives saved, tonnes of coal) rather than in dollars, CEA is particularly useful in assessing proposals where it is easier to identify benefits than to value them. CEA can often be a viable alternative to cost-benefit analysis where using CBA is not feasible because of difficulty in assigning money values to the costs and benefits generated by Government action.

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10 Summarized from: Council of Australian Governments (2004) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies.

What cost-effectiveness offers is a priority ranking of proposals on the basis of comparative 'cost per unit of effectiveness', or alternatively, of 'units of effectiveness per dollar'. Sometimes analyses which compare only the costs of alternatives are described as cost-effectiveness analyses. For the description to be valid, however, the value of output of the alternatives must be the same, that is, the alternatives must be equally effective.

Cost-effectiveness analysis is widely used in health, safety and education fields where there are, at the least, some difficulties in expressing in money terms the benefits of output values such as reduced mortality, morbidity or improved educational outcomes.

One advantage of CEA as an analytical technique is that it eliminates more costly options from consideration. Another is that it provides an index of the relative efficacy of options, allowing a ready comparison of alternatives.

There are at least three contexts in which cost-effectiveness analysis is appropriate and useful. However, in each it is a precondition that the alternatives being compared should have a common predominant effect.

First, cost-effectiveness is useful when the issue at hand is the optimal use of a fixed (or substantially fixed) quantity of resources. That is, where it is necessary to set priorities between alternative expenditure options but where the more fundamental questions of whether the government should be involved in the activity at all, or of how much the government should be willing to spend, are not at issue.

Second, the method is applicable when projects or programs are already in place and are expected to continue, but not necessarily in their current form. That is, where there is an interest in improving the allocation of resources within a framework of set policy objectives.

Third, cost-effectiveness analysis is a powerful tool when a particularly large number of alternatives are under consideration. Because cost-benefit analysis is oriented towards comprehensiveness in measuring costs and benefits, there is usually a low limit (in practice, if not in theory) on the number of alternatives which can be compared. This is not an impediment in cost-effectiveness analysis where the benefit categories that are analyzed are restricted in number. Cost-effectiveness rankings are also very readily intelligible for purposes of comparison.

1.2. The limitations of cost effectiveness analysis

Unlike cost-benefit analysis, cost-effectiveness analysis provides no absolute criterion for accepting or rejecting projects. In CBA, a proposed regulation would be acceptable (subject to budget constraints) if its net present value is equal to or greater than zero. In cost-effectiveness analysis, however, we have only a self-referencing ranking of projects. Because of this difference, cost-effectiveness analysis should as far as possible be avoided when decision-makers are seeking information to aid a decision

on the level of resources to allocate to a particular area. In some cases it is possible to introduce an 'external' monetary benchmark, in effect superimposing a rough and ready cost-benefit framework on the cost-effectiveness analysis.

Secondly, cost-effectiveness analysis should not be used when alternatives differ significantly in their predominant effects (output values). Any cost-effectiveness ranking which ignores such differences can only be misleading.

1.3. What is the predominant measure of effectiveness?

Considerable care is needed in identifying appropriate measures of effectiveness in CEA. As a general rule, the closer the measure is to the ultimate objective of the activity, the more likely it is to avoid the dangers of overlooking significant forms of benefits from the activity, and of not being comparable with the alternatives under consideration.

The end product of a cost-effectiveness analysis is the ratio of cost to the measure of effectiveness for each alternative being considered. Because cost-effectiveness analysis is well suited to the analysis of measures that have been in place for a period of time, it should usually be possible to obtain a substantial amount of information in both the cost and effectiveness categories. Additionally, a large amount of feedback can be expected from the measure's 'community', that is, those involved in implementation, its supporters, clients and critics. These considerations imply the need for a particularly high standard of care and thoroughness in the collection and analysis of data, and presentation of results.
It is also important in cost-effectiveness studies to try to separate out the impact of the measure from that of other variables.

CEA tends to focus on a single criterion of effectiveness and therefore care must be taken to ensure that the criterion used is the primary output of all the options under consideration. Otherwise, the ranking shown by the CEA may be misleading.

2. COST SAVINGS APPROACH

A cost savings approach is adopted in which the costs of persisting with an existing situation are compared with the costs of introducing a new measure. The comparison yields a net benefit profile - that is, a cost savings profile - of the new system.

To overcome the problem of potential differences in output values of alternative approaches, agencies are required to include in the analysis, supplementary statements which describe those differences (for example, in levels of customer service, levels of performance, or levels of flexibility).

Costs (Existing situation)	-	Costs (New measure)	+	Unquantified output benefits (New measure)	=	Net Benefits (New measure)

This approach is very much akin to the inclusion of intangible effects in a cost-benefit analysis and is considered adequate where the relevant differences are relatively minor. However, in general, the greater the difference in output values between alternatives, the greater the justification for investing time and money in quantifying them as precisely as possible. This is likely to result in a more comprehensive and more accurate analysis and, hence, a better basis for decision-making. To ensure clarity, however, the relevant accompanying statement setting out the assumptions of the analysis would also be required.

3. COST EFFECTIVENESS APPROACH

An alternative approach to the problem of quantifying differences in output values is to undertake a specified cost-effectiveness analysis. This would compare the costs of each option (calculated in present value terms) with a relevant performance measure, or index of performance measures. The cost-effectiveness approach represents a simpler and more practical solution to the problem of taking account of differences in output values than attempting to integrate those differences into the cost savings approach.

Where quantifiable performance differences between options exist, analysts should include with their cost savings analysis a cost-effectiveness analysis of this type.

Provided that a cost-effectiveness analysis is undertaken for the existing situation as well as for the proposed measure, the addition of this further step should provide decision-makers with significantly more information, improving the decision-making process.

To clarify further, a cost saving analysis should be used to determine whether a proposed option or solution is worth pursuing. This applies to all situations where the agency has a choice between the existing situations and a new measure, and where, therefore, any new measure requires fundamental justification. In these situations a cost-effectiveness analysis is also desirable (where quantifiable performance differences exist) both as a way of checking on and throwing additional light on the justification provided by the cost savings analysis.

Finally, in cases where a decision has already been taken to implement a new measure, a cost-effectiveness analysis on its own may be appropriate. However, even in these cases, the additional availability of a cost savings analysis will normally provide a much sounder basis for decision-making.

APPENDIX 5

AUSTRALIAN REGULATORY PRINCIPLES [10]

This Appendix outlines what Australia has adopted as the principles of regulation in a general sense and the broad parameters within which standards and regulations should be developed. The first of these is that, as a general rule, the burden of proof that a regulation is necessary remains with the proponents of regulatory action.

1. PRINCIPLES OF GOOD REGULATION

1.1. Minimizing the impact of regulation

Working from an initial presumption against new or increased regulation, the overall goal is the effective enforcement of stated objectives. Regulatory measures and instruments should be the minimum required to achieve the

[11] This section is adapted (with minimal changes) from the Council of Australian Governments (2004) Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies.

pre-determined and desirable outcomes. It may be necessary to introduce new regulation which replaces existing and less satisfactory regulation.

Legislation should entail the minimum necessary amount of regulation to achieve the objectives. Only those parts of a product standard originally developed for voluntary compliance by private standards writers which are necessary to satisfy regulatory objectives should be referenced in mandatory regulatory instruments adopted by government. Referencing of such voluntary standards should only occur following the application of these guidelines and principles.

Any assessment process for the development of regulations and/or standards should be scientifically rigorous, including, where appropriate, a risk assessment process which takes into account public health and safety and environmental protection.

1.2. Minimizing the impact on competition

Regulation should be designed to have minimal impact on competition. Although it may be necessary, for example, to regulate some aspects of commercial practice, regulation should avoid imposing barriers to entry, exit or innovation. Regulation should not restrict competition unless it can be demonstrated that:

the benefits to the community from a restriction on competition outweigh the costs; and
that the objectives of regulation can only be achieved by restricting competition.

1.3. Predictability of outcomes

Regulation should have clearly identifiable outcomes and unless prescriptive requirements are unavoidable in order to ensure public safety in high-risk situations, performance-based requirements that specify outcomes rather than inputs or other prescriptive requirements should be used. This principle should also apply to any standards that might be referred to in regulation.

1.4. International standards and practices

Wherever possible, regulatory measures or standards should be compatible with relevant international or internationally accepted standards or practices in order to minimize the impediments to trade. Compatibility in this context does not necessarily imply uniformity, however.

National regulations or mandatory standards should be consistent with Australia's international obligations. Australia has obligations under the GATT Technical Barriers to Trade Agreement (Standards Code) and the World Trade Organization's Sanitary and Phytosanitary Measures (SPS) Code. Regulators may refer to the Standards Code relating to the International Standards Organization's Code of Good Practice for the Preparation, Adoption and Application of Standards.

1.5. Regulations should not restrict international trade

There should be no discrimination in the way regulatory measures, mandatory standards or conformity procedures are applied between domestic products or imported products, nor between imports from different supplying countries. Regulations should not be applied in a way that creates unnecessary obstacles to international trade. Even if they differ, standards from other countries should be accepted as equivalent to Australian standards if they adequately meet the objectives of Australian standards.

1.6. Regular review of regulation

Regulation should be reviewed periodically. Review should take place at intervals of no more than 10 years. This may be achieved through agreements to incorporate sunset provisions in legislative instruments.

1.7. Flexibility of standards and regulations

Specified outcomes of standards and regulatory measures should be capable of revision to enable them to be adjusted and updated as circumstances change. However, it is important to ensure that amendments to regulatory measures and instruments do not result in undue uncertainty in business operations and in so doing, impose excessive costs on that sector.

1.8. The exercise of bureaucratic discretion

Good regulation should attempt to standardize the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce uncertainty and lower compliance costs. This, however, should not preclude an appropriate degree of flexibility to permit regulators to deal quickly with exceptional or changing circumstances or recognize individual needs. Nor should it ignore the danger of administrative action effectively constituting regulation and thus avoiding disciplines of regulation review. There is a need for transparency and procedural fairness in regulation review and administrative decisions should be subject to effective administrative review processes.

2. FEATURES OF GOOD REGULATION

In formulating national standards and regulatory measures according to the above principles, Ministerial Councils and other regulatory bodies should also take into account the following practical objectives.

2.1. Minimizing regulatory burden on the public

Legislation should entail the minimum necessary regulation to achieve the objectives. When designing measures or standards, regulators should ensure that the potential regulatory burden of alternative measures on the community is identified. Non-regulatory alternatives to regulation should be explicitly considered, including the option of not introducing new regulation.

2.2. Minimizing administrative burden

Regulators should develop standards or regulatory measures in a way that minimizes the financial impact of administration and enforcement of regulation on governments and the sectors of the community which will be affected by them.
Particular attention should be paid to minimizing financial impact in instances where different levels of government are involved. A regulator at one level of government may impose enforcement responsibilities on another level of government that the latter does not have the resources to carry out. This may undermine the effectiveness of regulation.

2.3. Regulatory impact assessment

Proposed regulation should be subject to a regulatory impact assessment process, which quantifies the costs and benefits of the proposal to the greatest extent possible. Incentive effects should also be made explicit in any regulatory proposal.

2.4. Accountability

As set out in the protocols for the operation of Ministerial Councils, it is the responsibility of Ministers to ensure that they are in a position to appropriately represent their Government at Council meetings. Therefore, to the greatest extent possible, Ministers should obtain full government agreement on matters which may involve regulatory action before they are considered at Ministerial Council level.

Where a Minister is dissatisfied with the outcome of the impact assessment process, the Minister may seek the agreement of his/her Head of Government to request an independent review of the assessment process.

2.5. Compliance strategies and enforcement

Regulatory measures should contain compliance strategies which ensure the greatest degree of compliance at the lowest cost to all parties. Incentive effects should be made explicit in any regulatory proposals. Measures to encourage compliance may include regulatory clarity, brevity, public education and consultation and the choice of alternative regulatory approaches with compliance in mind.

The special characteristics of process regulation need to be considered. For example, the number of licenses, certifications, approvals, authorities etc. should be kept to the minimum necessary to achieve the regulatory objectives.

The regulatory burden can be reduced if the public is required to undertake a minimum level of interaction with government to, for example, renew permits/ licenses or file information. This can be achieved through measures such as 'one stop shops'; mutual recognition of approval processes within government as well as between governments; better forms and process design.

Having taken these steps to facilitate compliance, regulators also need to consider the feasibility of enforcing regulatory requirements through the detection of non-compliance.

Mandatory regulatory instruments should contain appropriate sanctions to enforce compliance and penalize non-compliance. However, enforcement options should differentiate between the good corporate citizen and the renegade, to ensure that 'last resort' penalties are used most effectively (rarely) but model behavior is encouraged. Enforcement measures should not have the effect of encouraging otherwise good corporate citizens to subvert compliance measures.

2.6. Consideration of secondary effects

Regulatory measures should be designed and/or alternative approaches to regulation chosen with explicit consideration of secondary effects and the nature of these effects outlined.

2.6. Inclusion of standards in appendices

Standards should be referenced as current editions in appendices to regulatory instruments rather than embodied in such instruments themselves. It may be appropriate in some circumstances for regulations to reference a specific standard.

2.8. Performance-based regulations

Regulatory instruments should be performance-based, that is, they should focus on outcomes rather than inputs. 'Deemed to comply' provisions may be used in instances where certainty is needed. In such cases, regulations might reference a standard or a number of standards deemed to comply with the regulation. There should be no restrictions on the use of other standards as long as the objectives of the regulation are met.

2.9. Plain language drafting

Where possible, regulatory instruments should be drafted in 'plain language' to improve clarity and simplicity, reduce uncertainty and enable the public to understand better the implications of regulatory measures.

2.10. Date of effect

The dates of commencement of proposed standards and regulatory measures should be carefully planned to avoid or mitigate unintended or unnecessary market consequences, such as the necessity to discard non-complying stock and to allow transition to compliance with new regulatory requirements.

2.11. Advertising the introduction of standards and regulations

Public consultation usually only involves interested parties. Therefore, once produced, new regulatory measures should be advertised to bring them to the attention of the wider community.

2.12. Public consultation

Public consultation is an important part of any regulatory development process. Consultation should occur when the course of regulatory action is being considered and a draft impact assessment statement is being produced. This will give interested parties a firm proposal to consider. Consultation should occur as widely as possible but at the least, should include those most likely to be affected by regulatory action (e.g., consumer and business organisations) which might provide valuable feedback on the costs and benefits of regulation and on the impact assessment analysis generally. Consultation will also provide feedback on the level of support for the proposed regulation.

APPENDIX 6

NETHERLANDS: 11 KEY DETERMINANTS OF COMPLIANCE

Spontaneous compliance dimensions (factors that affect the incidence of voluntary compliance; that is, compliance that would occur in the absence of enforcement):

1. Knowledge of rules: Target group familiarity with laws and regulations, clarity of laws and regulations.
2. Cost-benefit considerations: Material and non-material advantages and disadvantages resulting from violating or observing regulation.
3. Level of acceptance: Extent to which the target group (generally) accepts policy, laws, and regulations.
4. Normative commitment: Innate willingness or habit of target group to comply with laws and regulations.

5. Informal control: Possibility that non-compliant behavior of the target group will be detected and disapproved of by third parties and the possibility and severity of sanctions that might be imposed by third parties (for example, loss of customers/contractors, loss of reputation).

Control dimensions (the influence of enforcement on compliance):

6. Informal report probability: The possibility that an offence may come to light other than during an official investigation and may be officially reported (whistle blowing).
7. Control probability: Likelihood of being subject to an administrative (paper) or substantive (physical) audit/inspection by official authorities.
8. Detection probability: Possibility of detection of an offence during an administrative audit or substantive investigation by official authorities.
9. Selectivity: The (increased) chance of control and detection as a result of risk analysis and targeting firms, persons or areas (i.e., extent to which inspectors succeed in checking offenders more often than those who abide by the law).

Sanctions dimensions (the influence of sanctions on compliance):

10. Sanction probability: Possibility of a sanction being imposed if an offence has been detected through controls and criminal investigation.
11. Sanction severity: Severity and type of sanction and associated adverse effects caused by imposing sanctions (for example, loss of respect and reputation).

Source: OECD (1999) Regulatory Reform in the Netherlands, OECD, Paris.

APPENDIX 7

APEC PRINCIPLES TO ENHANCE COMPETITION AND REGULATORY REFORM

Open and Competitive Markets are the Key Drivers of Economic Efficiency and Consumer Welfare

Recognising the strategic importance of developing competition principles to support the strengthening of markets to ensure and sustain growth in the region and that these principles provide a framework that links all aspects of economic policy that affect the functioning of markets;

Recognising that these principles are non-binding and will be implemented by each member economy voluntarily, consistent with the way APEC operates;

Recognising that the adoption of these principles for policy development needs to take account of, and encompass the diverse circumstances of economies in the region and the different priorities that arise from these circumstances;

Recognising that member economies will have flexibility to take into account their diverse circumstances in implementing this framework;

Recognising that policy and regulation in APEC economies may properly have objectives other than promoting competition;

Recognising that exemptions and exceptions from a competition driven regulatory framework may be necessary and that these will be implemented in a way that minimises economic distortions, giving consideration to this framework;

Recognising that an improved competitive environment is beneficial to small and medium sized enterprises, and that extensive consultation has occurred with the business community in developing these principles; and

Drawing upon relevant inputs from various APEC fora and the Pacific Economic Cooperation Council's "Principles for Guiding the Development of a Competition-Driven Policy Framework for APEC Economies";

APEC endorses the following principles:

Non Discrimination

Application of competition and regulatory principles in a manner that does not discriminate between or among economic entities in like circumstances, whether these entities are foreign or domestic.

Comprehensiveness

- (Broad application of competition and regulatory principles to economic activity including goods and services, and private and public business activities.
- The recognition of the competition dimension of policy development and reform which affects the efficient functioning of markets.
- The protection of the competitive process and the creation and maintenance of an environment for free and fair competition.
- The recognition that competitive markets require a good overall legal framework, clear property rights, and non discriminatory, efficient and effective enforcement.

Transparency

- Transparency in policies and rules, and their implementation.

Accountability

- Clear responsibility within domestic administrations for the implementation of the competition and efficiency dimension in the development of policies and rules, and their administration.

Implementation

To achieve this[11] , APEC Member Economies will make efforts to:

- Identify and/or review regulations and measures that impede the ability and opportunity of businesses (including SMEs) to compete on the basis of efficiency and innovation.
- Ensure that measures to achieve desired objectives are adopted and/or maintained with the minimum distortion to competition.
- Address anti-competitive behaviour by implementing competition policy to protect the competitive process.
- Consider issues of timing and sequencing involved in introducing competition mechanisms and reform measures, taking into account the circumstances of individual economies.
- Take practical steps to:
  - ✓ Promote consistent application of policies and rules;
  - ✓ Eliminate unnecessary rules and regulatory procedures; and
  - ✓ Improve the transparency of policy objectives and the way rules are administered.
- Foster confidence and build capability in the application of competition and regulatory policy. This will be achieved, inter alia, by:

✓ Promoting advocacy of competition policy and regulatory reform;
✓ Building expertise in competition and regulatory authorities, the courts and the private sector; and
✓ Provide adequate resources to regulatory institutions, including competition institutions.

[12] Recognizing that efforts will seek to avoid the duplication of work of other fora, as appropriate.

- Provide economic and technical co-operation and assistance and build capability in developing economies by better utilizing the accumulated APEC knowledge and expertise on competition policy and regulatory reform, including by developing closer links with non APEC sources of technical expertise.
- Build on existing efforts in APEC to help specify approaches to regulatory reform and ensure that such approaches are consistent with these principles.
- Develop programs, including capacity building and technical assistance, to support the voluntary implementation of the approaches to regulatory reform developed by relevant APEC fora.
- Develop effective means of co-operation between APEC economy regulatory agencies, including competition authorities, and ensure that these are adequately resourced.

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