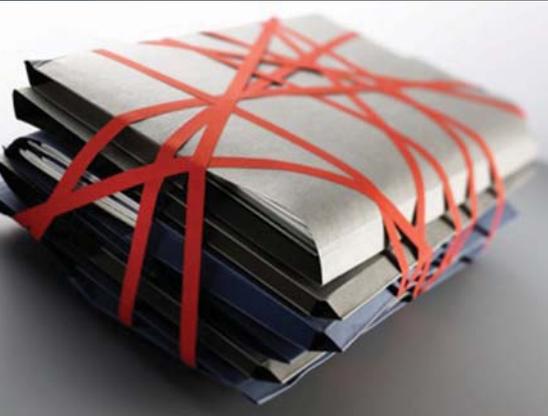


*Better Regulation for Growth*

# Making It Work: 'RIA Light' for Developing Countries



Investment Climate Advisory Services of the World Bank Group



With funding from FIAS, the multi-donor investment climate advisory service

in partnership with



# BETTER REGULATION FOR GROWTH

GOVERNANCE FRAMEWORKS AND TOOLS  
FOR EFFECTIVE REGULATORY REFORM

MAKING IT WORK: 'RIA LIGHT' FOR DEVELOPING  
COUNTRIES

INVESTMENT CLIMATE ADVISORY SERVICES  
WORLD BANK GROUP



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#### **About the Investment Climate Advisory Services of the World Bank Group**

The Investment Climate Advisory Services (IC) of the World Bank Group helps governments implement reforms to improve their business environment, and encourage and retain investment, thus fostering competitive markets, growth and job creation. Funding is provided by the World Bank Group (IFC, MIGA, and the World Bank) and over 15 donor partners working through the multi-donor FIAS platform.

The findings, interpretations and conclusions included in this note are those of the author and do not necessarily reflect the view of the Executive Directors of the World Bank Group or the governments they represent.

#### **Better Regulation for Growth Program**

The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and IC, the investment climate advisory services of the World Bank Group.

The objective of the BRG Program is to review and synthesize experiences with regulatory governance initiatives in developing countries, and to develop and disseminate practical tools and guidance that will help developing countries design and implement effective regulatory reform programs. Reports and other documentation developed under the BRG Program are available at: [www.ifc.org/brg](http://www.ifc.org/brg)

# Table of Contents

<b>Acknowledgments .....</b>	<b>vi</b>
<b>Acronyms .....</b>	<b>vii</b>
<b>Executive Summary .....</b>	<b>viii</b>
<b>Introduction .....</b>	<b>1</b>
<b>What is RIA and What are its Benefits? .....</b>	<b>3</b>
What is RIA? .....	3
Extent of Use of RIA .....	4
Who conducts RIA? .....	5
Potential benefits of RIA .....	6
Regulatory scrutiny vs. Budget scrutiny .....	7
Does RIA work in practice? .....	8
<b>Major Elements of a Best Practice RIA System .....</b>	<b>11</b>
Formally established RIA policy, with high-level political endorsement .....	11
Integration of RIA into the policy process .....	12
Consistent application of RIA .....	12
Appropriate methodological requirements .....	12
Targeting of RIA efforts .....	13
Consultation mechanisms .....	14
Data collection strategies .....	15
Central oversight of RIA .....	15
Development of adequate capacities .....	16
Oversight of legal quality .....	16
Applying RIA thinking to existing, and proposed laws .....	16
Adapting RIA best practice to developing countries: Challenges in implementation .....	18
<b>Making it Work: Identifying Basic Requirements for a Functional RIA System .....</b>	<b>19</b>
RIA in developing countries: Evidence from current experiments .....	19
Promoting a new approach to impact analysis: RIA Light .....	21
<i>Political commitment to establish and operate an effective, self-sustaining RIA process .....</i>	<i>22</i>
<i>A unit or group of regulatory reformers and quality control by an expert supervisory body .....</i>	<i>23</i>
<i>Clear criteria: What to subject to RIA and what questions to address .....</i>	<i>24</i>
Transparency in the process and consultation .....	27

<i>Building RIA capacities within government</i> .....	29
<i>RIA Light for developing countries: Summing up the new approach</i> .....	32
<b>Implementing and Institutionalizing RIA .....</b>	<b>33</b>
Initial implementation issues.....	33
Options for institutionalizing RIA .....	34
<i>Legal requirement to undertake RIA</i> .....	34
Options for RIA oversight .....	36
<i>RIA oversight within the administration</i> .....	36
<i>Oversight by independent or external bodies</i> .....	36
Integrating RIA with policy decision-making process .....	37
Challenges and obstacles in implementing RIA Light in emerging and developing countries .....	38
<i>Lack of compliance</i> .....	38
<i>Institutional resistance</i> .....	39
<i>Lack of credibility of RIA</i> .....	40
<i>Lack of influence of RIA outcomes on regulatory decisions</i> .....	40
<b>Conclusions .....</b>	<b>42</b>
<b>Bibliography .....</b>	<b>44</b>
<b>Annex 1: Defining Basic Terms in Regulatory Reform.....</b>	<b>45</b>
<b>Annex 2: Better Regulation for Growth Program .....</b>	<b>47</b>

# List of Boxes and Figures

## Boxes

Box 1: Features of High-Quality Regulation .....	4
Box 2: The Regulatory Reform Toolkit: Focusing on Different Elements of the Reform Process .....	9
Box 3: Capacity Building in a RIA System .....	16
Box 4: Elements to Consider When Looking for Political Support to Integrate RIA Light in the Policy Process.....	22
Box 5: Important Elements, Responsibilities of Regulatory Reform Units .....	23
Box 6: Clear and Consistently Applied Criteria and Rules Employed to Screen Regulatory Proposals.....	28
Box 7: Elements of Transparency and Consultation in a RIA Light System .....	29
Box 8: Capacity-Building and Monitoring and Evaluation Programs .....	31
Box 9: Legal Underpinning of RIA in Emerging and Developing Countries.....	34
Box 10: RIA Adopted Through Government Policy Statements.....	35

## Figures

Figure 1: The RIA Process - Seven Essential Phases .....	4
Figure 2: Components of a RIA Document .....	4
Figure 3: Regulatory Impact Analysis: Requirement for RIA, 1998, 2005 .....	5
Figure 4: Elements of RIA Best Practice and Challenges for Developing Countries .....	17
Figure 5: RIA Light Elements .....	32



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## ACRONYMS

BEST	Business Environment Strengthening for Tanzania
BRG	Better Regulation for Growth Program
COFEMER	Federal Regulatory Improvement Commission (Mexico)
DFID	British Department for International Development
EU	European Union
IC	Investment Climate Advisory Services
OECD	Organization for Economic Cooperation and Development
RBP	Regulatory Best Practice Program (Uganda)
RIA	Regulatory Impact Analysis
UMI	Uganda Management Institute



## EXECUTIVE SUMMARY

Regulatory Impact Analysis (RIA) is recognized by the Organization for Economic Cooperation and Development (OECD) and most developed countries as a key tool to improve the efficiency, transparency and accountability of regulatory decision making. RIAs assess the likely impacts of new regulations in both quantitative and qualitative terms, helping decision makers to make good choices. By providing a systematic, evidence based and consultative framework for regulatory policymaking, well-functioning RIA systems typically encourage “good governance” features and contribute to a better business-enabling environment.

An increasing number of developing and transition countries are developing and implementing new RIA systems, by adapting and integrating RIA within their existing policy-making processes and institutions. Several of these RIA initiatives look promising. However, some have faced setbacks and a slower- than-expected implementation. Evidence suggests this has been due to a combination of factors, including overly ambitious implementation targets, and a lack of underlying capacities and governance and/or support

from external donors, consultants, and other advisors. The latter group does not always seem to fully appreciate the long-term complexities of establishing functioning RIA systems. This has led to a broader question of whether and how RIA can or should be transferred and adapted to developing country contexts.

Extensive literature has been produced over the last two decades about RIA in developed countries. However there is very little evidence about its relevance to developing countries and how it might be best used in such countries. The existing literature on RIA provides good insights into the introduction and implementation of RIA systems, including challenges and lessons learned. Still, this literature is often based on the implicit assumption of the end-goal being a “gold-plated best practice model.” When viewed from the perspective of implementing RIA in developing countries, this approach is problematic for several reasons. First and foremost, it may lead to an overly rigid and inefficient RIA system that cannot be appropriately sustained in the low-capacity context of many developing countries. Second,

the so-called “best practice” end-target may not be achievable or relevant to strive for in part because there may be other higher priority reforms. Indeed, there are a range of different regulatory review and reform tools available to governments and RIA is just one of these.

This paper aims at identifying a set of minimum requirements for a well-functioning RIA Light-system that is tailored to the requirements of developing countries. Embracing the overall objectives and relevance of RIA, the paper explores the fundamental set of building blocks and activities required to establish and maintain a RIA Light system, taking into account what it is considered as good practice.

The paper argues that the following five basic criteria have to be in place for a functioning RIA system, which is referred to as “RIA Light”:

- 1) Political commitment to establish and operate an effective and self sustaining RIA process.
- 2) A unit or group of regulatory reformers – preferably based in a central area of government – which oversees, comments and reports on the quality of regulatory proposals before decisions are made about regulation.
- 3) Clear and consistently applied criteria and rules employed to screen regulatory proposals.
- 4) A transparent regulatory policy development process, which includes consultation with stakeholders.
- 5) A capacity building program, involving preparation of guidelines; training of officials preparing RIA and facilitating the required cultural changes, and establishing monitoring, evaluation and reporting systems.

The paper also suggests that these five criteria ideally should be established in sequential order. In other words, the set-up and sustainability of any RIA Light system is contingent on strong

political commitment and a cadre of reformers and experts focused on implementing the RIA Light system. Clear criteria for what should be subject to RIA should then be established – based on local priorities and conditions. It is also important that there are transparency mechanisms, including consultation processes which make sure that stakeholders’ views are taken into account when developing and implementing regulations and capacity building processes, such as training for officials.

The paper provides specific guidance and options for each of the five key requirements. Taken together, these institutional and conceptual building blocks provide the basis for establishing the framework for a “RIA Light,” which is conducive to the objectives, needs and capacities of developing countries.

Indeed, this paper argues that, on balance, there are significant benefits of applying empirically based scrutiny of the impacts of new regulatory proposals in both developed and developing countries. However, the approach taken to designing and implementing the RIA system must be cognizant of the specific circumstances of the country in question, of different reform priorities and of the resource constraints that apply.

RIA Light also implies that a number of components considered as key and integral parts of a well-functioning RIA system might *not* be included given institutional, technical and material constraints in developing countries. For example, the paper argues that a functional RIA Light system would not require a full integration of RIA in the policy development processes (clearly a desirable objective, but not fully achieved even in developed countries), the use of cost/benefit analysis, the heavy quantification of impacts, or a requirement to systematically consider alternatives. Having a RIA Light system can still add value to regulatory decision making through enhanced transparency, better quality information for decision makers and

stakeholders, and improved consultation regarding regulatory issues, among other things.

This paper is based not only on field research conducted by the IC of the World Bank Group in the framework of the Better Regulation for Growth (BRG) Program, but also on experiences accumulated over years of practical projects on

regulatory reform, and in setting up RIA systems in particular, in which IC has been involved.

The BRG is a joint initiative of the Dutch Ministry of Foreign Affairs, the British Department for International Development (DFID) and IC, the multi-donor investment climate advisory service of the World Bank Group. See Annex 2 for a detailed description of the BRG Program.



## INTRODUCTION

The economic, social and environmental costs to society of poor quality regulations are substantial. Governments need to work systematically to ensure that the regulations they develop and implement are of high quality, achieving intended objectives in a transparent manner while also minimizing costs. In particular, poor quality regulations lead to increased compliance costs for business and other groups. These costs are passed through to consumers in the form of higher prices for goods and services, such as food and energy. Poor quality regulations also substantially reduce levels of economic activity and impede employment and wealth creation.

RIA is a fundamental tool to help governments assess in a systematic manner the impact of regulations and the different options they might have to achieve policy objectives. RIA is used to examine and measure the likely benefits, costs and effects of proposed new regulations. The implementation of RIA supports existing processes of policymaking by contributing valuable evidence-based data to policy decisions and through the construction of a rational decision framework

which examines the implications of potential regulatory policy options. A key feature of RIA is its consideration of the potential economic impacts of regulatory proposals.

The discussion provided in this paper is based on lessons learned from existing literature, practical implementation and challenges encountered by governments as well as development organizations supporting these governments.

The main objective of this paper is to explore and identify “minimum requirements” for a functional RIA system. The paper is based on the dual premise that RIA systems provide net benefits and quality to regulatory decision making, but that a more simplified and streamlined model of RIA than that usually seen in developed countries may be more appropriate for developing countries. This approach is called “RIA Light.”

**Part One** of this paper identifies the key features of RIA and discusses the objectives and benefits of this tool. It compares the RIA process, which scrutinizes regulatory policy proposals, with

similar processes used in all countries to scrutinize spending proposals, as part of the budget process. It then focuses on how RIA works in practice, including other regulatory review and reform tools which can also be employed by governments.

**Part Two** presents the key features, elements and dimensions of best practice RIA systems. This discussion is based on extensive research and analysis undertaken by a range of governments and international organizations, particularly the OECD.

**Part Three** discusses the key building blocks and elements that can be pragmatically adapted to establish and operate a successful and sustainable RIA process, called RIA Light, which matches the capacities and constraints often experienced in developing countries. This discussion includes options for institutionalizing RIA Light, overseeing the RIA Light process and integrating RIA with existing policy decision-making processes.

**Part Four** concentrates on practical challenges and impediments to establishing, operating, and institutionalizing a successful RIA Light process.

# WHAT IS RIA AND WHAT ARE ITS BENEFITS?

## What is RIA?

RIA is a tool that helps policymakers ask systematic questions about the different policy options and consequences of government interventions. The output is an assessment report that provides high quality evidence comparing different policy options. The final objective of RIA is to improve the quality of regulation.<sup>1</sup>

Regulation only maximizes community welfare when it is effective, efficient and transparent (see Box 1). However, the impact of regulations, both positive and negative, is not always apparent. For example, the behavior of firms and individuals will often change in response to regulations, but these changes are often subtle and difficult to predict or measure. The problem of understanding regulatory impacts is especially acute when the longer-term is considered, because the impact of regulations can often change substantially as the economic and social environment in which it operates changes.

<sup>1</sup> See Annex 1 for a basic definition of regulatory reform terms, in particular regulatory quality.

Indeed, decisions about regulation are often based on limited information and in some cases guesses regarding who is affected and how. Therefore, a systematic approach is needed to identifying and weighing regulatory effects. Only in this way can policymakers be confident that the benefits of a policy action are likely to be greater than the costs. Only if total benefits exceed costs will society as a whole be better off as a result of regulation.

While there is no one single definition of RIA, there are several common elements and features evident in all countries with functioning RIA systems. The first is that each country with RIA has used this process to strengthen existing decision-making processes, not to replace them. Second, existing RIA systems have two components:

- 1) *RIA process*, which is the process of systematically identifying policy options and assessing the expected effects of regulatory proposals, using a consistent analytical method, linked to policy decision making (Fig. 1);

2. *RIA document*, which is the final product of the process and is presented to policymakers summarizing potential alternatives, their impacts and implementation aspects of proposed measures (Fig. 2).

evidence based information about the different policy options for government intervention.

### Extent of Use of RIA

The RIA process, materialized in the RIA document, feeds the decision making process with

Over the last few decades there has been a significant increase in the use of RIA in developed coun-

## Box 1: Features of High-Quality Regulation

**Effectiveness and efficiency.** *Effective* regulation is that which achieves its objective(s). Regulation is *efficient* if it achieves the objectives of regulation at the lowest possible cost and at a cost that is *also* smaller than the benefit of achieving the objective.

**Transparency and accountability.** Transparency in regulation-making means that interested parties have the opportunity to provide their views to government via an open consultation process while the regulation is being developed. Transparency in regulatory implementation also means that people who must comply with regulation have access to the regulations and can readily understand their requirements. Accountability means that regulatory policy development, administration and enforcement are subject to public scrutiny, so that regulators are accountable for their actions.

**Proportionality.** The principle of proportionality means regulation should be proportionate and targeted at addressing the specific risks and problems that have been identified as requiring government action.

**Consistency.** Consistency requires that regulators take account of related areas of regulation and ensure similar treatment. It also focuses on the avoidance of regulatory duplication and overlap.

Figure 1: The RIA Process - Seven Essential Phases

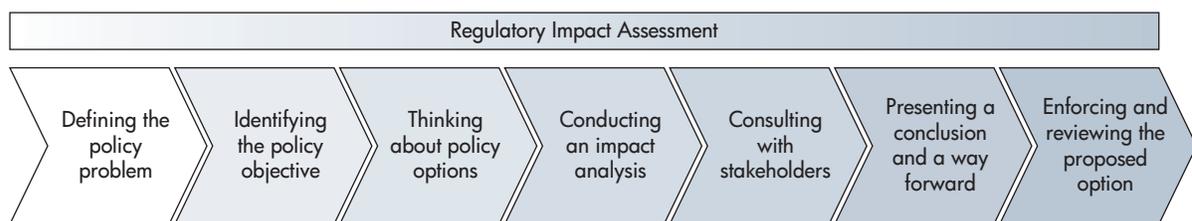


Figure 2: Components of a RIA Document

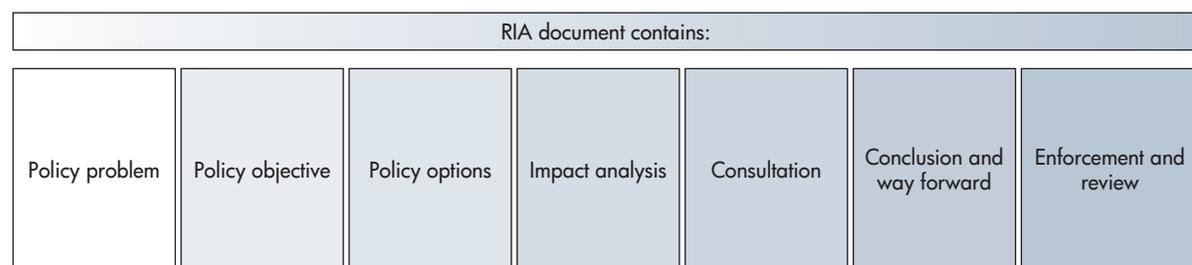
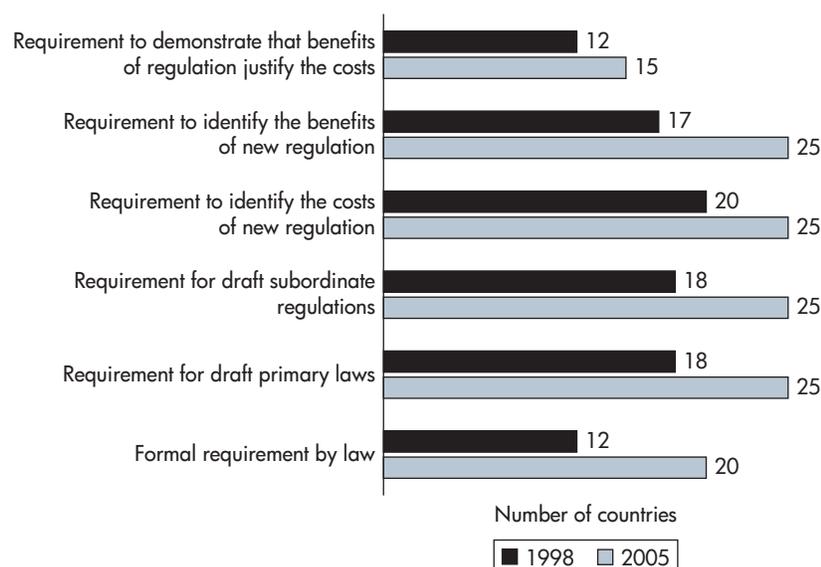


Figure 3: Regulatory Impact Analysis: Requirement for RIA, 1998, 2005



Source: Adapted from OECD Regulatory Indicators Questionnaire, GOV/PGC/REG(2005)ANN1.

tries. For example, in the early 1980s only a handful of OECD countries employed wide-ranging RIA processes. This increased to 50 percent by 2000 and at the present time over 90 percent of OECD countries claim to have RIA systems. A further 20 developing and transition countries, such as Poland and the Czech Republic, have recently established RIA processes. In addition, a large number of developing and emerging countries are implementing or actively exploring the potential to establish RIA type systems, including Macedonia, Turkey, Bangladesh, Kenya and Sri Lanka.

Figure 3 illustrates the features of RIA processes used in OECD countries in 1998 and 2005.<sup>2</sup> RIA programs have expanded over time in scope in the last few years. In 2005, 25 countries use it for primary laws and subordinate regulations. Thirteen countries had RIA units providing central oversight of the RIA process, which were based outside regulatory agencies sponsoring regulatory proposals.

<sup>2</sup> Jacobzone, S., C. Choi and C. Miguët (2007), “Indicators of Regulatory Management Systems”, *OECD Working Papers on Public Governance*, 2007/4, OECD Publishing.

As the table shows, RIAs are implemented differently in each country. Countries focus on particular components of RIA. But the table also suggests that a RIA that had none of these features would barely qualify itself as a RIA.

### Who conducts RIA?

RIA is prepared by regulatory departments, agencies or ministries – sometimes called regulators – which sponsor new or amended regulation. The regulators responsible for areas of regulation are generally best placed to understand regulatory problems, issues and possible solutions in their area of responsibility. Regulators also typically have links with affected stakeholders, a relatively good understanding of the impact of regulations on them, and are well placed to lead consultation processes on regulatory issues.

Such regulatory agencies also can have an entrenched culture that is risk averse or conservative and, therefore, is not open to new ideas or approaches to regulation. Regulators can be “captured” by the businesses they regulate and seek to

benefit these businesses, even if this is at the expense of consumers and broader society. Indeed, regulators may also benefit from particular regulatory outcomes, for example, because their budgets or staff can gain from particular regulatory solutions or approaches.

For these reasons, the RIA process is usually overseen by an independent unit or group based at the center of government. This unit should not be involved in regulating business and should not have vested interest in particular regulatory outcomes. Therefore, it can provide regulators and ultimately decision-makers with high quality, trusted and impartial advice about regulatory issues and the quality of analysis contained in RIAs.

## Potential benefits of RIA

As noted above, the main objective of RIA is to improve the quality of regulation. A common feature of poor quality regulation is that the underlying problem and objective of an existing (or proposed) regulation are not clearly identified. The RIA process facilitates the identification of both the underlying policy problem and also an objective that is focused specifically on addressing that problem. Only if the policy problem and objective are properly identified can a menu of relevant and feasible solutions be identified.

The RIA process is also inherently an evidence-based approach to scrutinizing and comparing several policy options. It involves not only comparing the impacts, positives and negatives (e.g. benefits and costs) likely to be associated with a particular policy action, but also compares these expected outcomes with those that would result from other possible policy actions that could be taken in pursuit of the same objective. RIA helps identify information gaps, thus highlighting where information collection programs should be focused. For example, the RIA process typically encourages the use of consultation with stakeholders in considering how identified problems might be fixed.

Only if governments choose a policy response – or mix of responses – that is based on high quality and reliable information can governments be confident that they are making the right choices. Indeed, if government decisions are based on poor quality information then such decisions are essentially based on guesses and, therefore, are likely to result in regulatory failure.

In addition to limited information, governments also have limited capacities to make, administer and enforce regulation. This is particular acute in developing countries where enforcing and compliance with regulation is a challenge that requires major changes in the regulatory system. This, in itself, means that governments must take care before committing to new regulatory requirements. Indeed, there are limits to the amount of regulation that any government can impose; however, regulatory inflation remains a trend in many countries.

Some critics of the use of RIA have questioned whether it is appropriate to all legal and constitutional contexts or whether its development simply reflects the specific circumstances of the common-law countries in which it has historically been largely developed. However, it is important to bear in mind that the expected result of applying the RIA model is the provision of better information to political decision-makers. This outcome is desirable regardless of political, legal and institutional contexts.

Another potential benefit of making use of RIA is that better quality regulation is less restrictive of business, effectively protects consumers, better protects citizens' rights, especially those of vulnerable groups, and reduces opportunities for corruption. RIA offers an opportunity to identify the possible costs and benefits of regulation on affected groups, relating to consultation mechanisms that increase transparency in the regulatory decision making process.

A further benefit of RIA is that it does not necessarily involve making significant institutional and

process changes. Rather, in many countries that use RIA, the process supports, reinforces and strengthens existing legal, political, economic and institutional processes.

Furthermore, RIA might not require significant additional resources or fiscal outlays. The RIA process itself is typically managed and overseen by a small unit of several regulatory experts (or a small advisory group) which is usually based in a central area of government.<sup>3</sup>

Finally, RIA is intended to result not only in more and better information being made available, but also that this information is presented in a systematic, logical manner. Indeed, according to the OECD:

*“...RIA’s most important contribution to the quality of decisions is not the precision of the calculations used, but the action of analyzing–questioning, understanding real-world impacts and exploring assumptions.”*

## Regulatory scrutiny vs. Budget scrutiny

Regulation imposes significant costs on governments, businesses and other groups who must comply with it. In this respect, the act of making regulation is conceptually very similar to that of raising taxes and adopting government spending programs. That is, in both cases private resources are being diverted to achieving public goals through government action.

This conceptual similarity strongly suggests that similar scrutiny and accountability processes should be applied to both types of government action. However, in most countries, there is a very substantial gap between the level of sophistication and scrutiny applied through the government’s

<sup>3</sup> See Part Three of this paper for further information on the core elements and building blocks required to have a functioning RIA system.

budgetary processes and that applied to regulatory actions. Budget decisions are generally subject to detailed scrutiny by Parliament and within the government administration, according to clearly established criteria and processes. The existing budget scrutiny processes have developed progressively over the last century and are essential to the operation of government. There is also a well-established “industry” of academia, constantly developing and improving tools of national accounting and budgeting. At the political and administrative level, budget policy has its own ministry and usually a very strong position among peer ministries.

This is far from the case for regulatory systems and regulatory scrutiny, despite the importance of regulatory policy to the economic potentials of any given country. Regulatory decisions are often made on an ad hoc basis with little information about likely impacts, little scrutiny or government-wide co-ordination. Thus, the sophistication and institutionalization of regulatory processes can be said to be at a much earlier stage of development than the equivalent tools used in budget and national accounting processes. This is to a large extent due to the relatively recent expansion in governments’ use of regulation as the preferred tool of intervention.<sup>4</sup>

Nonetheless a similar approach, based on the long term development of effective and appropriate scrutiny processes, is needed to support regulatory decision making. This becomes especially important given that governments are typically using regulation more often and more extensively than in the past.<sup>5</sup>

<sup>4</sup> Cf. Majone and the “Rise of the Regulatory State.”

<sup>5</sup> The greater use of regulation is a result of several factors. For example, community expectations tend to rise over time and also the growing complexity of technology and markets also generates additional demands for new regulation. Furthermore, existing disciplines on fiscal spending and the absence of effective quality control over the creation of new regulations can create a bias to regulate first and ask questions about the impacts of those regulations at a later stage. The rapid and exponential growth in regulation in many countries is sometimes called “regulatory inflation.”

In this regard the adoption of a RIA system should be seen as an important step in a long-term process of developing better controls over the use of the regulatory tool and thereby improving the quality of regulatory decision making and regulatory outcomes. In other words, RIA can help ensure that regulatory quality control processes are brought progressively into line with those adopted in other areas of government decision making, such as the budget and related processes.

### Does RIA work in practice?

The preceding sections have outlined the conceptual rationale for RIA and its potential benefits. It is also noted that scrutiny of the use of regulation is significantly less developed than scrutiny of the budgetary process. However, the experience of RIA in both developed and developing countries has led many to question the practical merits of this approach to improving the quality of regulation.

IC work on regulatory governance includes supporting developing countries in their efforts to establish RIA systems. There has been a trend in recent years of establishing RIA systems, sometimes as a complement to ongoing regulatory reforms, but also as a single component of existing mechanisms.

In the first case, RIA is sought as a mechanism to maintain the gains achieved through reforms that have improved the stock of regulations, such as licensing reform. In these cases, RIA will be used to ensure that new regulation meets certain quality criteria to keep the future regulatory stock up to date. This is the case of Kenya, Rwanda and Bangladesh, where RIA systems have not yet been implemented, but some form of impact assessment seems appropriate to screen new regulatory proposals and ensure the wins obtained do not get lost. It has been the case of Croatia, for instance, where RIA was introduced after a guillotine process that eliminated business regulations.

In the second case, RIA is not particularly a consequence of other regulatory reforms, but linked to existing regulatory processes or ongoing reforms, such as in the case of Brazil. In this country, RIA is foreseen as a mechanism that can empower regulatory agencies to make better decisions and increase transparency in the regulatory process, including stakeholders' views.

The following paragraphs describe why RIA is conceptually an attractive regulatory tool to be used, even in developing country contexts, despite the challenges it could impose.

RIA systems have been promoted for many years as key contributors to economic growth and good governance. RIA has been seen by many observers as an obvious and logical component of sound regulatory management systems. In fact, despite the intuitive logic and intellectual attraction of RIA, there is relatively limited evidence of the success of RIA systems, as implemented to date, in improving regulatory quality.

Despite many years of implementation, trials and errors, the evidence of their positive contribution to better regulation and lower costs and risks for businesses is relatively scarce. This conclusion is true even for many developed countries that have extensive experience and relatively well-developed RIA systems. Critics point out that proposed regulation is halted or amended following RIA scrutiny in only a minority of cases. Even where regulation has been improved following RIA scrutiny, the causal role of RIA in achieving the change is often debatable.

RIA proponents tend to argue that the presence of the RIA discipline means that ill-justified proposals are less likely to be brought forward in the first place, suggesting that many RIA benefits may be hidden. However, this dynamic is inherently almost impossible to measure. Indeed, a key issue in this debate is that information about the impacts of RIA are very difficult to monitor and measure, because RIA is only one part of the

complex machinery of government involved in reviewing, making and applying regulations. Separating the impacts of RIA from other possible impacts is in practice very difficult to do.

Therefore, in considering the usefulness and applicability of RIA in developing country contexts, donors and governments interested in implementing or strengthening RIA systems should consider the potential benefits of RIA against such criticisms. Should RIA systems be dismissed as a utopian, over-rational approach to improving decision making? Furthermore, even if RIA does generate net gains for a country using RIA, it is also important to weigh the merits of RIA (as one means of improving regulatory quality) against those of other available approaches and tools. Indeed, a range of regulatory tools are available that can be either complementary to RIA or in some cases alternatives to RIA. Some of these options are provided in Box 2 and are discussed in depth in the sister paper “Tools and Approaches to Review Existing Regulation.”

In many ways, these different regulatory quality tools are complementary. For example, RIA as a methodology is equally applicable to the task of revising and streamlining existing regulation as it is to ensuring the quality of proposals for new regulation. However, where limited resources are available to support regulatory quality programs, the merits of these different programs will often need to be weighed comparatively.

Some have argued that RIA imposes significant fiscal and resource costs of governments. However, as implied above, there is little evidence to support this claim. The main cost of a RIA process is establishing and operating a central unit to oversee and report on the RIA process. Regulators may incur costs in preparing RIA, but these costs are typically not significant. For example, in Australia in 2004-5, the average labour cost to departments and agencies preparing RIA for decision makers averaged around US\$3500 per RIA.

This paper argues that, on balance, there are significant benefits of applying empirically based

### Box 2: The Regulatory Reform Toolkit: Focusing on Different Elements of the Reform Process

Focus on strengthening Institutions	Focus on the flow of new regulation	Focus on the stock of existing regulation	Focus on reform process as a whole
<ul style="list-style-type: none"> <li>■ Central Unit</li> <li>■ Regulatory reform committee</li> <li>■ Business advisory panel</li> <li>■ E0reguistry</li> <li>■ One stop shop</li> <li>■ Improved communication</li> <li>■ Better enforcement</li> </ul>	<ul style="list-style-type: none"> <li>■ Regulatory Impact Assessment (RIA)</li> <li>■ Forward planning</li> <li>■ Business cost calculator</li> <li>■ Administrative procedure law</li> <li>■ Silent is consent</li> </ul>	<ul style="list-style-type: none"> <li>■ Scrap and build</li> <li>■ Processre-engineering</li> <li>■ Staged repeal</li> <li>■ The guillotine</li> <li>■ Regulatory performance indicators</li> <li>■ Administrative simplification</li> </ul>	<ul style="list-style-type: none"> <li>■ Mandatory public consultation</li> <li>■ Transparent decision making</li> <li>■ Reviews of regulatory system</li> <li>■ Improved data collection strategies</li> <li>■ Better monitoring</li> <li>■ Evaluation and reporting</li> </ul>

scrutiny of the impacts of new regulatory proposals in both developed and developing countries. Despite the lack of strong evidence, the value and cost-effectiveness of RIA appear extremely plausible because impact assessments introduce:

- awareness of unintended effects of regulations that otherwise could result in regulatory failures;
- transparency and efficiency in the way regulations are prepared and communicated; and
- accountability in the policy process.

For RIA to work, however, the approach taken to designing and implementing the RIA system

must be cognizant of the specific circumstances of the country in question, different reform priorities, and the resource constraints that apply. In developing country contexts, these issues have particular relevance, as a sustained RIA system with a lower degree of institutional capacities and limited resources is more challenging to introduce.

Little evidence, however, is available to confirm that RIA makes a difference in the policymaking process of developing countries. In many countries, such as Tanzania, Uganda, Serbia, Croatia, Vietnam, Uzbekistan, etc., this tool has been integrated only recently in the regulatory process and results have not been properly monitored and evaluated.

## MAJOR ELEMENTS OF A BEST PRACTICE RIA SYSTEM

A number of OECD publications<sup>6</sup> have sought to identify the elements of a best practice RIA system, based on extensive analysis of the experiences of member countries in implementing RIA since the 1980s. These publications and reports argue strongly that a best practice RIA system contains a number of interconnected elements. This means that the most successful RIA systems, in terms of their credibility and capacity to improve regulatory quality, are those in which the various elements are designed and implemented to be mutually supportive of each other. In addition, such best practice RIA systems support and strengthen existing regulation making processes.

The following discussion identifies each of the main elements of a ‘best practice’ RIA system, highlighting the importance of each as well as

some of the main linkages between RIA system elements and features.

### Formally established RIA policy, with high-level political endorsement

A formally announced policy, which is endorsed by the head of government or senior minister, is essential – but not sufficient – to ensure that regulators actually comply with the RIA requirement. A formal policy also helps ensure that consistent approaches to RIA are taken, so that the same disciplines are applied to different policy areas. Endorsement at the highest political level ensures that the policy has adequate authority within government to support its effective implementation.

The RIA policy must be contained in an authoritative document. In some cases, RIA requirements are established in law, providing them with the highest possible level of formal authority. More commonly, the policy is contained in a Presidential Decree, or Prime Ministerial Instruction, or

<sup>6</sup> See, in particular, *Regulatory Impact Analysis: Best Practices in OECD Countries, 1997, and Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance*, 2002. See also *Building an Institutional Framework for Regulatory Impact Analysis. Guidance for Policy-Makers*, 2008 and *Regulatory Impact Analysis: A Tool for Policy Coherence*, 2008, forthcoming.

in the Cabinet Handbook setting out the procedural arrangements for government decision making. The specific mechanism used to establish the political authority of the policy must be appropriate to the broader political and institutional culture of the country.

Strong support from senior government ministers is needed, in particular in the early stages of RIA implementation, to establish the authority of the policy and encourage officials to incorporate it effectively into existing policy development processes.

### Integration of RIA into the policy process

RIA is most effective when it forms an integral part of the existing regulatory policy development, rather than a procedural hurdle towards the end of the policy development process, when ministers and/or regulators are committed to particular regulatory positions. RIA has to be undertaken early in the policy development process and before a decision to regulate has been made.

Integrating RIA into existing policy development processes is usually a long-term process and is the result of several factors. A necessary part of this process is to maximize understanding of those involved in regulatory policy of the underlying logic and elements of the RIA process. That is, senior government officials as well as those directly responsible for preparing RIA documents should understand the objectives and core features of RIA, as part of a good decision-making process.

RIA can only become integrated into the existing policy process if the primary responsibility for its implementation lies with line ministries and regulatory agencies themselves. While a central agency with specific RIA responsibilities can act as a source of technical advice and perform an important oversight and quality control function, regulatory agencies should prepare and complete RIA in relation to their own regulatory proposals.

Another important contributor to integrating RIA with the policy process is to ensure that practical benefits for regulatory quality achieved due to the use of RIA are documented and disseminated, enhancing understanding and underpinning support for its use. For example, partial measures of the impact on RIA on regulatory outcomes include the proportion of RIA where the recommended options change during the policy development process, or where decision-makers reject a regulatory proposal that is accompanied by RIA which fails to meet minimum requirements established by the government.

### Consistent application of RIA

If possible, RIA should be applied to major regulations in all policy areas rather than only to selected portfolios or minor regulations. Only in this way can RIA maximize its potential to improve the quality of regulations. In practice, RIA requirements are sometimes not applied in particular policy areas (e.g., environmental regulation) because of concerns about the feasibility of assessing benefits, or even costs. However, while such practical problems may be significant, the process of subjecting policy proposals to the basic RIA logic (i.e., clearly specifying policy problems, objectives, identifying alternative options, weighing all benefits and costs and seeking the option with the most net benefits) will still improve decision making and policy outcomes.

### Appropriate methodological requirements

Consistent decision making on regulatory issues, across the range of policy areas, can only be applied if broadly consistent methodological approaches are also taken in RIA. This means that the basic elements of the required methodology and approach should be specified in the RIA policy and/or supporting guidelines. This includes requirements to specify the policy problem and objective, identify all feasible policy tools for

achieving the objective – both regulatory and non-regulatory – and assess the impact of each in a consistent, evidence-based way.

Any important impacts on business and other stakeholders should be documented in the RIA. This analysis should also include impacts on disadvantaged or vulnerable groups. The weights given to impacts, benefits and costs could also be identified in a transparent manner in the RIA.

Where major impacts cannot be quantified, a systematic approach (such as Multi-Criteria Analysis)<sup>7</sup> should be used to maximize the objectivity and transparency of decision making.

Whatever methodology is employed with RIA, the core criteria and principle underpinning RIA is that regulations should only take place where their benefits are greater than the costs. Furthermore, the preferred approach should also be the best way forward (e.g., maximize net gains) compared to other options considered in the RIA.

## Targeting of RIA efforts

Depending on the approach taken, RIA can generate resource demands both at the implementation stage and on an ongoing basis. For example, RIA can create significant demands for analytical skills that may be in short supply within government.

This is one reason why all governments that use RIA focus their efforts on particular types and areas of regulation, often by employing screening

processes to focus on the most significant regulations. Alternatively some governments establishing RIA processes for the first time focus RIA on particular areas of regulatory activity. For example, one approach to targeting is to apply RIA only to primary legislation, since it is usually at this level that the most far-reaching impacts are found. Another approach is to require the government body responsible for overseeing RIA to conduct a preliminary analysis and decide which proposals will need to be subjected to a full RIA. Several criteria can be used to determine whether a RIA is needed. The most important are likely to be the size of the expected monetary impacts, whether there are major competition concerns, and whether there are important citizen's rights issues or sensitive policy issues affecting equity, the environment or other issues.

Such targeting is essential to ensure that RIA efforts are focused on the most important areas of regulatory policy, where improvements in the quality of regulation will have the greatest impacts in terms of enhancing economic activity, transparency and community welfare. Therefore, in considering how to target RIA, it is important to focus on the size of the expected impacts of the policy, rather than the formal status, or legal form, of the policy instrument. For example, in the European Union, RIA can apply to most types of regulation, but a screening process is employed so that RIA processes focus only on the most important regulatory issues. In Australia, RIA is applied to the most important 5 per cent and 10 per cent of all regulations made.

Embedding this important distinction in a formal policy statement on the application of RIA can prove difficult. Therefore, one response is to give the RIA oversight body (or some other appropriate organization) responsibility for conducting preliminary assessments to determine whether RIA is required in particular cases. Such a role should be conducted in accordance with published guidelines setting out the broad criteria to be used in determining when RIA is required. The criteria employed should be transparent and

<sup>7</sup> Multi-Criteria Analysis (MCA) is a methodology that allows systematic and transparent decisions to be made even where quantification of major regulatory impacts is not possible. MCA involves identifying the underlying policy objectives and then determining all of the factors (the criteria) that would indicate achievement of these objectives. These criteria are then ranked in terms of their relative importance. Once this has been done, each of the available policy options can be "scored" on each individual criterion. The weighted scores can then be added together to determine which option best meets the policy objectives. OECD, *Introductory Handbook for Undertaking Regulatory Impact Analysis (RIA)*, Paris (forthcoming).

objective, in part, to minimize the risk that the process could be politicized.

Also important in terms of targeting is the question of proportionality. Generally, this means that the amount of resources devoted to conducting RIA on a policy proposal should be proportionate to the size of the expected impacts of the proposal. Therefore, a far-reaching proposal should be subject to a more detailed RIA than a proposal whose impacts on stakeholders are less broad and/or intense.

## Consultation mechanisms

Consultation with affected parties and other stakeholders is an essential element of a best-practice RIA system. Consultation with stakeholders and the public supports the decision-making process and RIA in several important ways. First, consultation provides a cost-effective way to gather the information and data needed to complete a high quality RIA. Those affected by proposed regulations will often be best placed to provide information that will allow likely impacts to be documented and understood. However, when conducting RIA, officials must be aware that the information sought may be biased to favor the interests of the parties supplying it. Therefore, it is important in a consultation process to not only collect information, but also assess, consider and test its validity.

A second benefit of consultation is that it is a very effective way of identifying faulty reasoning, as well as those proposals that are likely to fail because they lack acceptability by major stakeholders who must comply.

A third benefit is that consultation increases transparency and helps build trust and understanding. This in turn generates several important benefits, including improving business and community confidence in governments, their regulatory systems and particular regulations.

Enhancing business and community confidence is a very important ingredient in increasing investment. For example, in many cases stakeholders will be primarily concerned with how a proposed regulation is to be implemented, rather than whether a particular regulation should be applied. In such cases, consultation provides insightful information about the views of stakeholders and can facilitate a dialogue focused on how the agreed objectives of the regulation can be achieved, while minimizing administrative and compliance costs on business and other affected parties.

There are many different types of consultation, including informal consultation, notification of pending regulatory reviews (or decisions), public notices, circulation of draft regulations and RIA for comment, public hearings, focus groups, business test panels and business and/or community advisory bodies, etc. In best practice RIA systems, consultation should commence early in the decision-making process and before a decision to regulate is made. For example, where appropriate, consultation can be assisted by public release of a draft RIA document as part of the consultation process. This can be followed by release of a more detailed final RIA informing stakeholders of the government's final decision, reasons for the decision and how the views of stakeholders were considered during the policy development process.

There are potential risks that should be taken into account when planning and implementing consultation. Consultation processes should focus on the most important issues, to minimize resources costs and avoid "consultation fatigue." It is important that the consultation process not simply reinforce vested interests, is accessible to a wide range of community and business interests, and communicated effectively. Furthermore, failing to take account of comments collected through a consultation process can significantly increase the risk of regulatory failure.

## Data collection strategies

While consultation with stakeholders can provide an essential source of information and data for RIA, other strategic approaches are also needed to ensure that the RIA is based on high quality, accurate and timely information.

The RIA oversight body should provide general guidance on sources of data that regulators should seek out in preparing RIA, while the formal RIA policy should set out expectations regarding the quality and type of information that should be included in RIA. For example, in many countries regulators preparing RIA are expected to estimate administrative burdens on business of the various options considered in the RIA, often by using the Standard Cost Model.<sup>8</sup> There are several other ways to collect data for RIA. For example, a good starting point can be government statistics and data bases, which often identify the number of businesses, size of particular sectors of the economy, features of the operation of markets, etc. Expert academic, consultants and research organizations can also be consulted and, where appropriate, tools such as surveys, synthetic analysis (e.g., estimating impacts on a hypothetical business) and related tools can also be used. Some countries, such as Denmark, have also adopted formalized mechanisms for data gathering, including standing business consultative groups.

## Central oversight of RIA

Regulating ministries often have a range of incentives to proceed with regulations, even where they are not aware of their likely impacts, or where regulations impose significant and unnecessary costs on stakeholders and the community. This means that scrutiny of RIA by a central unit, body or agency is essential to ensure that high quality analysis is undertaken in a timely manner

in RIA. Political backup for such a role is fundamental. Central units that are powerful are better positioned to impose quality criteria and create incentives for better regulations prepared by regulatory agencies.

In a best practice system, the oversight body should be located in a central agency (i.e., in the President or Prime Minister's Ministry, or in the Finance Ministry). In most cases, such central agencies are neither regulators, nor advocates for particular sectional groups. Therefore, they are better able to exercise the RIA scrutiny role credibly, without major concerns over conflict of interest. Another important requirement is that the oversight body brings a "whole of government" perspective to its role, rather than favoring any sectional interest.

Central oversight also provides an opportunity for technical assistance to be provided to improve the RIA. Particularly in the early stages of RIA implementation, regulators sometimes need assistance in developing high-quality analysis. The central oversight body is in the best position to develop specific expertise in RIA-related topics and disseminate this knowledge to regulatory agencies preparing RIA. Indeed, a related role is that the central RIA authority can and should focus on capacity building within regulatory agencies. This will improve RIA standards over time and improve compliance by encouraging greater understanding and acceptance of RIA within government. The oversight unit should be creative in improving RIAs based on technicalities and encouraging regulators to perform better in the future by providing guidance and comments (see Box 3 for some key capacities required from regulators).

The central RIA authority can also act as an advocate for RIA, encouraging compliance and highlighting cases of non-compliance. More broadly, it can also assess the performance of the RIA system overall and recommend improvements that can enhance the performance of RIA over time and ensuring it remains a best practice system.

<sup>8</sup> A detailed explanation of the Standard Cost Model (SCM) can be found in the paper Tools and Approaches to Review Existing Regulation prepared for the BRG Program.

### Box 3: Capacity Building in a RIA System

The success of a RIA system depends substantially on regulatory officials having effective incentives to prepare high quality RIA in a timely manner. Officials also require capabilities to play their roles effectively. The main capacities in question are:

1. An understanding of the RIA system that has been adopted by government and their responsibilities within it.
2. Understanding of the logic of RIA as a tool to improve policy. This involves understanding the limits to government regulatory action and the need to make rational choices between alternatives based on comparative analysis.
3. Understanding of the specific methodological tools used in RIA, such as benefit/cost analysis.
4. More broadly, developing the RIA system must include making sure there are adequate links between government and stakeholders to allow for the necessary consultation and information-gathering to underpin the system.

The transparency and credibility of the RIA process can be enhanced further if there is an independent advocacy body, often comprising a mix of senior officials and representatives from business and other stakeholders, who are able to monitor and report to senior political leaders on the effectiveness of the RIA process (including the role of the RIA unit, quality of RIA, etc).

#### Development of adequate capacities

The skills required to complete high-quality RIA are specialized and may not be widespread within the administration. Consequently, a major goal of a best practice RIA system must be to develop the relevant capacities of regulators progressively over time. In addition to providing technical expertise on an *ad hoc* basis, as suggested above, a central agency unit with responsibility for the RIA program should focus strongly on training

officials responsible for RIA. Such training should provide a broad understanding of the role and importance of RIA, the specific procedural requirements in place and the technical skills required to prepare RIA.

Training efforts must also be maintained over the long term. Movement of officials between ministries and changing roles means that there will be a constant supply of new official demand for RIA training. Moreover, RIA standards should be progressively increased over time as expertise develops. This also means that additional training will be needed.

An important corollary to training provision is the publication of relevant guidance materials on RIA processes and methodological issues. While a wide range of guidance materials is available, RIA authorities should focus in particular on ensuring that the guidance they provide is suited to the specific RIA context involved and the particular needs of their RIA officials.

#### Oversight of legal quality

Regulation must be of high legal quality if it is to be fair, enforceable and consistent. Proposed regulation should also be scrutinized for legal quality during the development process. This is a role for a specialist agency, with specific training in high-quality legislative drafting. This issue is, in itself, outside the scope of the formal RIA system, in part, because legislation is usually drafted only after a RIA has been considered and a decision to regulate has been made. However, checking to ensure that this element of quality control has also been considered is usually seen as forming one part of the RIA system.

#### Applying RIA thinking to existing, and proposed laws

Reforming existing regulation is a high priority in most countries and may be particularly so for

Figure 4: Elements of RIA Best Practice and Challenges for Developing Countries

### 1. Formally established RIA policy, with endorsement at a high political level

- Key in both developed and developing countries, but in the latter even more relevant as these countries are characterized, in most cases, by top-down policy and decision-making process. RIA champions inside the administration in developing countries are fundamental to introduce the use of this tool and to support it over time.

### 2. Integration of RIA into the policy process

- One of the major challenges for a successful RIA system, both in developed and developing countries. Hardly achievable in the short term, but fundamental to make RIA relevant in the medium and long term. In developing countries it is difficult to expect that line ministries and regulators can take full responsibility of RIA and make use of it in the decision process. This is something that gradually has to be integrated and improved.

### 3. Consistent application of RIA

- Key in establishing clear criteria that have to be followed by all regulators. In developing countries, this is fundamental to introduce changes in the administrative culture and provide guidance on screening mechanisms.

### 4. Appropriate methodological requirements

- In developing countries, a full cost/benefit analysis is difficult to conduct. Some methodological requirements are needed, but they should be expanded gradually over time.

### 5. Targeting RIA efforts

- In developing countries, it is fundamental to apply RIA initially to the most significant regulations to show the usefulness of the tool. A good selection of draft proposals to be subject to RIA is key in developing countries to measure the magnitude of the efforts needed.

### 6. Consultation mechanisms

- Key in any RIA system, and fundamental in developing countries in order to open up the decision-making process, to reduce discretionality in decisions and to ensure proper inclusion of stakeholder's views.

### 7. Data collection strategies

- In developing countries, data collection might be challenging as information is not available and data are not systematically gathered. It is however essential to introduce some basic estimations in the initial RIAs to provide decision-makers with evidence based information.

### 8. Central oversight of RIA

- Key in any regulatory system to ensure the quality of RIAs. In developing countries is particularly relevant to promote coordination, to establish clear criteria to be applied across the administration and to build capacities inside the administration.

## 9. Development of adequate capacities

- Key in developing countries, whose public administrations lack in most cases of experts and capacities to undertake tasks associated to RIA.

## 10. Oversight of legal quality

- This element is present in most countries, and some developing countries have well-staffed bodies looking at the legal quality of law proposals. A challenge in developing countries is to link the existing capacities to oversight legal quality with the RIA process.

## 11. Apply RIA thinking to existing, as well as proposed laws

- In developing countries, a choice on RIA application has to be made, starting with new proposals, and gradually be expanded to other existing laws. In the short term, it is difficult to envisage a full application of RIA to all regulations.

developing countries. The principles of RIA are equally applicable to the review of existing laws as it is to the assessment of new regulatory proposals. When applying RIA to existing laws the same issues arise in relation to its use with new regulatory proposals. Thus, the best practice elements highlighted in the above sections remain generally relevant to both the stock of existing regulation and the flow of new regulation.

However, processes for reviewing existing regulations will often be fundamentally different from using RIA to review the flow of new regulations. A “stock review” for example, will often be anchored to a specific decision to review a defined number or types of regulations, with a dedicated task force charged with the assignment. Furthermore, reviews of existing regulation generally – and appropriately – are undertaken at a much more aggregated level than is RIA for specific new regulatory proposals.

### Adapting RIA best practice to developing countries: Challenges in implementation

OECD experience shows that RIA best practice is difficult to achieve. In many OECD countries

most of the best practice elements are not in place and RIA systems are not fully operational. OECD countries show a great degree in diversification of RIA systems. Best practice elements have been an important driver to improve them, but limitations have been documented.<sup>9</sup> For developing countries, the benchmark is certainly relevant, but difficult to be measured against it.

Figure 4 presents some of the challenges of adapting RIA best practice elements to developing country contexts. Acknowledging the relevance of each one of them, the table is an attempt to identify which ones are essential to start designing a RIA system and which others can be integrated gradually, once implementation has taken place:

The following section focuses on identifying basic requirements for RIA in developing countries, given the above-mentioned challenges to establish far-reaching RIA systems that are fully operational in very few developed countries.

<sup>9</sup> OECD country reviews on regulatory reform, and particular the background chapters on “Government Capacities to Assure High Quality Regulation” assess practices against RIA Best Practices.



## MAKING IT WORK: IDENTIFYING BASIC REQUIREMENTS FOR A FUNCTIONAL RIA SYSTEM

The previous section identified the major elements of a best practice RIA system. However, where RIA processes are being established or significant capacity constraints exist, less ambitious approaches will be needed. Indeed, the development of a RIA system is a long-term undertaking and analytical and process standards should be progressively improved over time as experience and capacities allow. RIA can yield important benefits for decision-makers even where a best practice system is not yet feasible.

Developing countries can take advantage of RIA systems if they are not only adapted to their particularities, but also integrated gradually in the policy-making process and ensure that existing mechanisms can be used and improved over time. Best practice RIA does not seem to be the best way to introduce and design RIA systems in developing countries, as they do not have the same amount of resources, capacities, technical skills and degree of transparency in decision-making processes. RIA is also a tool that requires democratic principles and mechanisms to be effective. These constraints are acute in developing countries and overcoming

them needs time and perseverance, as well as strong commitment to introduce changes in the administrative and political culture.

### RIA in developing countries: Evidence from current experiments

In emerging and developing country contexts, few examples of successful RIA implementation have been documented. A number of emerging and transition economies, such as Mexico, Korea, Poland and the Czech Republic have set up RIA systems that mirror those of highly advanced OECD countries. Results in countries that recently joined the EU, such as Latvia, Slovenia, and Hungary, have often indicated that RIA processes exist more “in form, rather than in substance.”<sup>10</sup> In most cases, existing formal mechanisms are sometimes ignored due to the lack of appropriate skills, support structures and real commitment to their operation. This makes RIA implementation challenging, as many countries try to reinvent the

<sup>10</sup> SIGMA (2007), p. 51

wheel, instead of making use and improve existing mechanisms already in place.

A small number of developing countries are now also trying to set up RIA processes, but little evidence has been compiled on the results and impacts of such systems. In some cases, such as Tanzania and Uganda, RIA experiments have replicated OECD best practice with very few positive results to document. Countries driven by a possible EU partnership are closer to the OECD benchmark, but still far away from showing results. It is therefore relatively early to extract conclusions, since in most cases these process are at early stages of design and implementation. However, even at this early stage actual and likely challenges are becoming identified that suggest that best practice RIA as described in Section 2 is unlikely to be achievable in the short to medium term.

Concerning some of the key elements that any RIA system should contain, such as political support and building capacities, experiences in emerging and developing countries seems to be challenging. Even if political support for regulatory reform has been observed in some developing countries, such as Tanzania, Kenya and Bangladesh, there is no clear evidence of the creation of capacities within governments to integrate the use of this tool in the long term. These kind of concerns are also seen in middle income countries such as Mexico, Korea and Croatia, where developing skills among regulators in charge of RIA has been a core task of the institution in charge of RIA, but results have been uneven.

Another evidence observed in many developing countries refers to the role of regulatory reform as a stand-alone policy area in the reform process of these countries. In many cases, regulatory reform initiatives are only a minimal part of broader public and private sector reforms. Countries such as Tanzania, Uganda and Kenya<sup>11</sup>, which are trying

to integrate RIA into their policy-making process, are embarked in a number of policy reforms (civil sector reform, decentralization, anti-corruption programs, etc) that are difficult to manage and coordinate at the same time. The amount of resources that can be particularly dedicated to establish RIA systems gets reduced by an overwhelming number of reforms that also require attention by government officials. RIA seems to compete with other reforms and it is not always a top priority in the reforms to be implemented.

In many developing countries, and in particular in the African ones, the actions of leading decision-makers within the government have to match their public commitment to regulatory reform. A commitment to evidence-based decision making and consultation with all stakeholders introduced into individual regulatory areas has to be supported by clear and broad adoption of such an approach by the champions themselves. However, commitment to this principle has not always been observed in the developing countries reviewed by IC. In the case of Uganda, for example, incentives for lower-level staff in the ministries to promote the regulatory reform agenda have been significantly weakened by the fact that in several high-profile cases the evidence-based, decision-making process has been replaced at crucial times by political considerations.

Another region attempting to establish RIA is southeast Europe. While significant progress has been made, each country reviewed<sup>12</sup> has found the application of RIA to more than a limited number of laws extremely challenging. Serbia is the most advanced in the region, with the introduction of mandatory RIA for legislation proposed by the government. Although the implementation of this requirement has been hampered by limited resources, RIAs are now being selectively conducted by the Council for Regulatory Reform. In the cases

11 In the framework of the Better Regulation for Growth (BRG) Program, IC has conducted country regulatory capacity reviews of Tanzania, Kenya, Uganda, Rwanda and

Zambia, as part of the evidence base of regulatory reforms in developing countries.

12 Albania, Bulgaria, Bosnia and Herzegovina, Croatia, Moldova, Macedonia, Romania, Serbia and Montenegro.

of Bulgaria and Moldova, although there are requirements for mandatory RIA for primary and secondary legislation, this tool is not being applied systematically. Croatia has completed pilot RIA exercises and is currently applying the RIA to assess the potential impact of selected draft laws.<sup>13</sup>

In southeast Europe, the view that regulatory quality is a determinant for private investment and growth has increased over time. These countries have made use of opportunistic approaches, building on administrative simplification initiatives and taking advantage of opportunities to conform to international practice with the assistance of international donors. Another important driver has been the “pull” of EU accession, and the need to comply with international membership requirements. Clear impacts on the use of RIA, however, are not recorded so far.

Looking at the different efforts across countries, RIA in emerging and developing countries requires adaptation from the OECD “best practice” discussed in Section 2. Having the international benchmark is important, but for RIA to be feasible and effective in other contexts, it has to be adapted to the limited capacities that most developing countries face.

## Promoting a new approach to impact analysis: RIA Light

There is considerable merit in focusing on establishing “RIA Light” systems that perform the basic functions of a RIA system and are self-sustaining. The RIA process and documents under this system are nevertheless limited in scope and application because of capacity constraints and/or political priorities.

The rationale behind establishing RIA Light systems is to improve gradually the quality of

regulations by making decisions based on more transparent mechanisms and evidence-based information, as well as in consultation with relevant stakeholders. This should acknowledge the particularities of developing countries, especially the limited institutional and human capacities, the discretionary nature of policymaking and the scarcity of reliable data.

The following discussion identifies the five minimum requirements for a functional RIA Light system:

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

Taken together, these institutional and conceptual building blocks provide the basis for establishing and operating the framework for a RIA Light system that is conducive to the objectives, needs and capacities of developing countries. However, it is important to note that no country today with a RIA system employs all of the concepts and issues identified here. Therefore, the building blocks contain a menu of RIA elements that can be used both as a diagnostic tool and also to help identify elements that could be considered and adopted.

<sup>13</sup> Thomas, Margo (2007), “South East Europe: opportunities and challenges for improving regulatory quality” in Kirkpatrick, (2007), pp. 253.

Furthermore, it is important to note that these issues and elements where they are to be used need to be considered and employed in a planned, sequential and phased manner. Ideally, these five minimum requirements for establishing and operating a RIA Light system should be applied sequentially. It is important to note, however, that many countries have some of the components of RIA – such as consultation policy and process – but not a functioning RIA Light system. In this case, the existing institutions and processes can provide a basis for the establishment of RIA Light.

In the following subsections the building blocks are developed. The information presented in each one of the boxes of the different building blocks is intended to provide more operationally relevant information on how RIA Light systems can

be set up. RIA Light systems in developing countries will have some of those elements, not all of them. The boxes essentially provide a menu for developing countries to select RIA components that will work best for them when establishing or strengthening their RIA processes.

### **Political commitment to establish and operate an effective, self-sustaining RIA process**

Formally establishing RIA policy with high-level and ongoing political support is a fundamental first step in implementing RIA (see Box 4 for some issues to consider when looking for political support). The importance of high-level political support is at its greatest at the time that RIA is being introduced as a new concept to government administrations and policymakers.

#### Box 4: Elements to Consider When Looking for Political Support to Integrate RIA Light in the Policy Process

- **There must be high level political commitment** from the head of government or senior minister that can be sustained over time.
- **There should be high-level endorsement**, usually through a formal government policy, with a senior minister being responsible for the RIA process.
- **RIA can be established under law, or through a policy statement** of the executive arm of government (eg., Presidential Decree, Prime Ministerial Instruction, Cabinet Handbook etc).
- **RIA law or policy statements should establish the core elements of RIA**, and also provide flexibility for the RIA process to be amended over time, as priorities change.
- **Policy statements could include the following details:**
  - who is responsible for the policy at the political level.
  - area of government that is (or will be) responsible for administering the policy, governance and reporting arrangements – including who should provide central oversight of the RIA process and RIA documents.
  - when RIA will be prepared and by whom, rules about the targeting of RIA efforts.
  - how RIA will be integrated within policy-making consultation and decision-making processes (eg., presentation of RIA to decision makers for consideration before regulations are developed).
  - how RIA documents are to be used in public forums (eg., should draft RIA be used as part of community consultation processes; should final RIA be published after a decision has been made, etc.)
  - clear criteria for deciding and indicating in government policy when RIA should be prepared. It is not feasible to prepare RIA for all new regulatory issues and proposals, so RIA efforts need to focus on particular types or areas of regulation (see Box 5 below for further information).

*(Continued)*

## Box 4: Elements to Consider When Looking for Political Support to Integrate RIA Light in the Policy Process (*Continued*)

- broad methodology to be used as the basis of RIA (eg., cost, benefit and risk analysis, cost effectiveness analysis, etc.)
- core issues and types of impacts that should be considered in RIA, such as economic, impacts on business, administrative and/or compliance costs, social, environmental, regional, equity etc
- **Transitional arrangements should be made.** Establishing a functioning RIA process takes time and needs to be implemented sequentially over time. Often a set of milestones and target dates are included in the RIA policy.

## Box 5: Important Elements, Responsibilities of Regulatory Reform Units

### Important elements of regulatory reform units:

- The unit needs clarity on which area (or areas) of government will oversee, provide quality control and report on the RIA process and/or of RIA documents.
- The unit should have a high level of independence from regulatory agencies and be able to provide impartial, objective and expert advice about RIA processes and documents. This is one reason why such units are usually based in a central agency not actively involved in making and administering regulations.
- The RIA unit, as in some countries, could focus on assessing and commenting on RIA documents, while a separate high-level advisory body – often comprising senior business and community leaders and independent experts – could monitor and report on the operation of the RIA process. In other countries the RIA unit performs both functions.

### Possible responsibilities of regulatory reform units:

- advise departments, agencies, ministries on when RIA should be prepared and type of information that should be included in the RIA.
- examine draft RIA and advise whether they meet minimum requirements.
- advise decision makers about the quality of analysis contained in the final RIA. This role does not usually extend to verifying the accuracy of data included in the RIA, as this is the responsibility of the sponsoring agency.
- provide training to officials preparing the RIA.
- provide technical assistance and advice to officials preparing the RIA.
- prepare reports on the functioning of the RIA process.

For the same reason, having ministers take a formal role during the early stages of implementation may be a particularly useful strategy. In Brazil, the Civil House of the Presidency of the Republic is the body in charge of RIA design and implementation. In Moldova, the Ministry of Economy has taken the lead in assessing draft laws for their potential impact on business.

### **A unit or group of regulatory reformers and quality control by an expert supervisory body**

The role of a central unit or authority with responsibilities for overseeing and reporting the RIA program is of even greater importance when a new RIA system is being developed and capacities

are relatively low. Thus, particular attention should be paid to the responsibilities given to this body and to the resources provided to it to carry out its functions.

In the best practice model discussed in Part Two of this paper, it is argued that regulators should conduct RIA themselves, subject to quality control at the center of government. This is seen as an important means of integrating RIA disciplines with the broader policy process. The potential benefit is in ensuring that the quality of analysis is high enough to have real impacts on the quality of information provided to decision makers. A key point is to ensure that the RIA unit works cooperatively with relevant regulatory agencies in developing the RIA. Regulating agencies must have a clear understanding of the policy proposal and provide information inputs into the RIA. Furthermore, RIA units must also involve regulators in the analytical process as a practical way of enhancing RIA skills.

RIA units also need to have the option of requesting that regulators commence the RIA, with the analysis subsequently being refined by the RIA units. Practices in this area should evolve having regard to the need to balance several factors: to ensure timely information is provided to decision-makers, that capacities are not over-stretched and that learning occurs over time.

Finally, RIA units should be able to report to the decision-makers, and identify areas where RIA does not meet minimum standards, without fear or favor. In many cases, such units also produce publicly available reports that describe the operation and impacts of the RIA process over time, the role of the RIA unit, and compliance with the RIA requirements (see Box 5 for a list of elements and responsibilities of RIA units).

In developing countries, this criteria has been met in leading reformers. Croatia, for example, established the Office of RIA, a single reform unit, at the center of the government, independent of the

institutions being reformed and with political power inside the government. Mexico assembled a small, high-level group of professionals outside the bureaucracy, called the Economic Deregulation Unit, at the early stages of RIA implementation. Over time, this institution became the Federal Regulatory Improvement Commission (COFEMER).

In other developing countries, institution building has to increase gradually. In Macedonia, for instance, the government created in 2006 a Committee for Implementation of Regulatory Reform. This committee supported the guillotine process, coordinated by a Sector for Regulatory Reform. This institution, which consists of 34 working groups (14 within ministries and 20 within other government bodies), will also be responsible for introducing RIA, developing a RIA manual and RIA forms. Kenya, for instance, started a licensing reform process in 2005. The Ministry of Finance established a small unit, the Business Regulatory Reform Unit (BRRU) in 2007, which will be in charge of introducing RIA. In these cases, the role of the central units has been essential to move forward the reform agenda.<sup>14</sup>

### **Clear criteria: What to subject to RIA and what questions to address**

Establishing clear criteria to conduct RIA is an important step to create a new administrative culture. Most countries using RIA have established those criteria in a legal document (primary law, presidential decree, Cabinet order, etc.) to make them compulsory for all regulatory bodies, defining in this way how the RIA process has to take place. Criteria refer not only to what is going to be subject to RIA (regulatory proposals concerning primary laws, secondary laws, sectoral regulations, licenses, etc), but also those questions that need to

<sup>14</sup> For detailed information on the role of institutions for regulatory reform, please refer to the BRG paper on Building and Strengthening Institutions for Regulatory Governance at the Center of Government.

be addressed during the RIA process and have to be part of the RIA document.

Governments typically provide written guidance describing how the RIA process works, with checklists and criteria establishing minimum standards for the RIA. As noted above, the importance of targeting RIA efforts is greatest where capacities are low. It is preferable that RIA Light is applied to major regulatory proposals for several reasons, including:

- a more consistent application of RIA to major issues will help to establish it as an integral part of the policy process;
- even relatively limited scrutiny can be effective in screening out some of the least well-considered policy proposals; and
- the policy will be more credible if applied to major issues in all portfolio areas.

Given the above, targeting means that RIA should be applied only to the most important policy proposals. Therefore, some kind of screening mechanism is needed to ensure that RIA efforts are properly targeted. This should be based on the application of known rules and should occur at the center of government (Prime Minister's Department or Ministry of Finance) so that the decisions made are seen as authoritative.

#### *Screening mechanisms: Where to start?*

RIA Light can be applied to a legal instrument (law or regulation) or to a policy proposal. It is important to assess the amount of possible impacts, so efforts to apply RIA Light can concentrate on the most significant legal instrument or policy proposal.

A first step in conducting RIA Light is to identify the policy problem and policy objectives. The key point is to identify the size of the gap between the problem and the objective of government actions. A common error is to set an objective that requires

a magnitude in change that is unattainable. RIA Light should be designed to prevent this.

Once this criteria has been formally established, screening becomes a necessary tool to make the best use of existing capacities to undertake the analysis per se. When regulators approach an issue for the first time, they should consider all options to undertake RIA. However, it is not feasible in a RIA to consider 10 or 15 options and undertake a full impact analysis on each. The screening process is designed to weed out options that are simply not sensible to consider further. Unrealistic options that usually involve a disproportionate or high risk response should be discarded. The RIA Light then should consider in a more careful manner the remaining options and the use of alternatives. A consideration in detail between two to five options seems reasonable in countries that are starting the process.

The screening process can help determine the "significance of impacts." Even if there is degree of subjectivity in this process, in the context of RIA Light the significance is generally considered to be the scope of impacts (e.g. wide impacts or narrow impacts) compared to the intensity of impacts (e.g. high, medium, low intensity). A matrix can be used to identify in the horizontal axis the intensity of impacts and the scope of impacts in the vertical axis. The most significant regulations in terms of impact will therefore qualify for a RIA Light.

#### *Consistent application of RIA and use of 'pilots'*

It is a good practice to apply RIA in consistent ways across all policy areas. This includes the levels of analysis in RIA being proportional to the likely size of the regulatory impacts in question. Regulatory proposals of similar importance should therefore be treated consistently under RIA.

Some countries have chosen to adopt pilot programs, which may apply in only one or two policy areas, or to a defined set of policy proposals, before fully implementing their RIA processes.

The advantages of RIA pilots are, among others, the following:

- They may be used to provide practical evidence of the benefits of RIA in the particular country context before the government commits itself to full introduction of the policy.
- They may reveal weaknesses in the proposed RIA system design, or highlight areas in which changes may better adapt the policy to the relevant institutional and cultural contexts.
- They help develop RIA expertise and capacities that can then be applied to a wider range of regulatory issues.

The question of whether a pilot program is desirable must be considered in the specific context of the individual country. A pilot program may result in useful lessons as to how best to tailor the RIA system to the country's specific circumstances and so increase the prospects of success of the larger RIA program. Moreover, where support for RIA is limited or uncertain, a carefully designed pilot program may help to make the case for its wider adoption by helping to demonstrate the practical benefits of RIA in the specific country context. A pilot may also highlight specific implementation issues and help RIA authorities to "fine tune" RIA requirements to better suit the circumstances of the individual country.

That said, expectations must be carefully managed, given the difficulties of demonstrating concrete benefits from RIA in the very short term. Furthermore, such approaches, if employed, should have a finite lifespan and ultimately be replaced with a broadly applicable and consistently applied program.

#### *Appropriate methodological requirements*

The choice of a method to conduct the RIA is of key importance. A variety of methodological approaches exist, the benefit/cost principle being the most widespread and used in OECD coun-

tries. However, in a newly established RIA system or in circumstances of limited capacities, like the case of transition and developing countries, a formal benefit/cost analysis may not be feasible due to the lack of proper data, skilled expertise, etc.

Efforts to introduce RIA methodologies in developing countries have not proceeded smoothly to date. Less progress has been made in the area of analysis of options and cost benefit calculations in countries such as Tanzania and Uganda. The entry point of regulatory reform has been licensing systems (in the case of Tanzania, the entry point has been wider, involving land and labor regulations), and RIA as a technique has not been broadly applied. The effort to measure costs and benefits has been at best limited to application of the standard cost model, where calculations have been possible to date only through use of heroic assumptions. Efforts to introduce RIA in Uganda and Tanzania, for example, have been characterized by a large gap between best RIA practice and what is feasible in a data-poor economy.

This evidence shows that an exhaustive impact analysis, such as the kind recommended by OECD best practice, is rarely feasible in developing countries. In the case in Uganda, for instance, the RIA Handbook includes the impact of regulation on groups that are "particularly susceptible to disproportionate regulatory impact," namely SMEs, vulnerable groups (the poor, women, children, the elderly, the disabled, people living with HIV/AIDS, etc), different districts, tribes and religions, and civil society and NGOs. It is not clear whether any RIAs that incorporated such a distributional analysis were carried out in fact so far. Even if poverty reduction is a goal in many developing countries, there is no evidence about the particular use of RIA to tackle this concern.<sup>15</sup>

<sup>15</sup> It has been observed that one of the possible reasons why RIA has not been widely used in developing countries is that "the methodology proposed in the OECD guidelines does not readily transfer to these countries with their very different economies and their greater focus on sustainability and poverty goals." The suggestion is therefore to have RIAs that are "pro-poor, placing an explicit heavy weighting on poverty reduction and skewing the assessment in favor of

Therefore, a basic RIA Light methodology should be used that is tailored to the newly implemented RIA system and/or available capacities and resources, by:

- identifying clearly the problem and then the objective of the policy proposal (i.e., clarifying the end to be achieved, and avoiding confusing the end with possible means of achieving it);
- identifying and considering feasible alternatives (including no action) and their expected impacts. In the relatively rare cases where it is concluded there is no alternative, RIA should explain how this conclusion was reached;
- using quantitative data and estimates (especially monetary costs) where available to identify and discuss the impacts of each option. It is likely that only quite limited quantification will be achievable in new RIA systems, particularly in developing countries. However, opportunities to present quantitative data should be taken, even where significant gaps will inevitably exist. Furthermore, qualitative data can also be useful in identifying impacts;<sup>16</sup>
- Documenting the extent of consultation, along with a description of the views of major stakeholders; and
- Including in the RIA a conclusion identifying the preferred option and explaining why it has been recommended. This discussion should also focus on who, how and when the preferred options could be implemented and

identify how it will be monitored and reviewed in the future.

The analysis itself has to be of qualitative and quantitative nature. As RIA Light is intended to establish a process of thinking about policy and regulatory options, a discussion of major issues is fundamental. This qualitative assessment has to be complemented with quantitative information that over time, as resources and skills increase, can support more evidence-based decision making (Box 6 describes some issues involved in setting clear and consistent criteria for screening).

If the RIA policy has high-level political authority (as identified above as a fundamental system element) the likely political costs of ignoring RIA requirements will help ensure that regulators comply with these requirements. Moreover, if the central unit or body has sufficient authority and acquits its function properly, there will be a powerful mechanism to encourage preparation of a high quality RIA.

Even in developing country contexts then, clear and consistently applied criteria should be employed to screen proposals. Where this has not happened, RIAs have been rather poor in data and systematic analysis has not been conducted. In Mexico, for instance, even with criteria established by law, the quality of the RIA analysis has been poorly rated by the COFEMER, which accepts that much remains to be done to improve the level of quantification and data analysis. There are challenges to securing this, but these can be overcome by extensive training of government officials and a rather modest methodological component for the impact analysis with quantifications that can be expanded over time.

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regulatory changes that assist the poor” (Kirkpatrick, 2003, p. 11). However, in Uganda there was explicit incorporation of poverty issues in the criteria to apply RIA. The results in that respect have been rather disappointing.

16 Some have argued that the identification of impacts on vulnerable groups is an essential part of a credible RIA methodology in a developing country context, since distributional factors are likely to be particularly important in government decision making. However, it must be recognized that this is a demanding task and one that may be beyond the capabilities of a newly adopted RIA system.

## Transparency in the process and consultation

The role of consultation and transparency is particularly important in newly implemented RIA systems in low-capacity contexts. As noted above,

## Box 6: Clear and Consistently Applied Criteria and Rules Employed to Screen Regulatory Proposals

Issues involved in setting clear and consistent criteria and rules to screen regulatory proposals:

- **When should RIA be prepared?** It is not possible to prepare RIA for all new regulations, so RIA efforts need to be focused on important high-priority regulatory issues and proposals. It is very important that clear criteria for deciding when RIA should be prepared are set. Such criteria can include:
  - particular types of regulation, such as primary legislation considered by parliaments;
  - particular forms of regulation, such as licenses, restrictions on competition;
  - significant regulations that are of particular concern to business or the community;
  - regulations that impact businesses; and
  - regulations administered by a particular area of government, such as a particular agency or level of government.
- **Who should prepare RIA and when?** Draft RIA should be prepared early in the policy development process when regulatory issues are being considered and before a decision is formally or informally taken to regulate.
- **How should effectiveness of RIA processes be ensured?** Ensuring effectiveness requires setting incentives as well as sanctions for non compliance with the RIA process. These include:
  - Decision makers being advised by the RIA unit that a RIA document does not meet minimum requirements established by government policy;
  - public identification of regulatory proposals where the RIA was inadequate, in the Parliament or through public reporting processes (eg., annual reports etc.);
  - mandatory review of regulations, maybe within two years, where a regulation is made but the RIA was inadequate; and
  - performance contracts and appraisal processes for senior officials that explicitly include reference to complying with RIA policy and processes.

consultation generates information about stakeholders and impacts on them. This information should be included in RIA and will help address information gaps.

Formal requirements to publish easy-to-read RIAs in parallel to consultation can assist the consultation process and help focus stakeholders on key issues and impacts. Presenting final RIA to the Cabinet or Parliament may also create strong incentives for regulators to observe due process and not submit proposals that would be potentially embarrassing and insufficiently thought through. Experiences from Mexico have shown that such publication obligations had strong disciplinary

effects on the level of analysis and preparation put into draft regulatory proposals and RIAs.

More generally, capacity building efforts may need to be undertaken with major stakeholders (e.g., business associations, consumer groups) to help them play an effective role in consultation conducted as part of RIA – and so contribute to RIA (hence regulatory) quality. For example, providing information explaining the nature of the regulatory proposal, the reasoning underlying it and the alternative proposals that have been considered will provide a basis for stakeholders to respond. Asking specific questions can also help guide their responses and ensure their relevance.

This synergy between RIA and consultation means that implementing RIA may require simultaneous action on both policy fronts. Where consultation processes are not well-established, consideration should be given to developing such processes concurrently with the RIA policy, while the needs of RIA should be reflected in the design of the consultation process. Developing a “consultation culture,” with stakeholders being confident and willing to engage with government on policy issues may also be a medium-term task. That said, practical constraints on the development of a consultation policy should not be seen as an absolute impediment to implementing RIA Light. Box 7 describes some issues to consider regarding transparency and consultation in RIA Light.

In the case of Rwanda, Tanzania, Kenya, Uganda, and Zambia, there has been clear focus and progress in the area of consultation. Consultative procedures have been introduced for reforms well beyond the strictly regulatory arena – all five countries have, for example, produced long-term “vision” statements, and they have all involved intensive and broadly inclusive consultation within government and with business and civil society groups. Much work remains to be done in

including groups that do not have ready access to the government and in educating all parties in how to conduct consultation, but the principle of consultation that is an essential element of RIA is accepted and is being implemented. This should provide a good basis for RIA going forwards.

### **Building RIA capacities within government**

The capacity-building role of the RIA unit is especially important when a RIA system is being established and, in particular, where this is occurring in a context of low policy, institutional, and resource capacities. This implies that the RIA unit should devote a significant proportion of its resources to training and support functions. The various strategies cited in the previous section are all relevant to this context. However, the issue also arises as to whether RIA training should be integrated with broader training in public policy issues. That is, if policy development and advice capacities in general are low, teaching RIA related skills might be most effectively done if integrated into a broader program of training officials on policy skills.

## Box 7: Elements of Transparency and Consultation in a RIA Light System

Transparency and consultation are essential for a functional RIA Light system. Some of the issues to consider in this area:

- Transparency and reporting processes generate the right incentives for participants in the policy development process and should apply to all participants.
- Processes can include public reporting and oversight by independent advisory bodies, reporting requirements that apply to the regulation review unit and to regulatory agencies, departments and ministries, via publication of draft and final RIAs, annual reports, etc.
- RIA processes should be integrated with a broader government policy on community consultation. This policy should include information about who should be consulted, when consultation will occur, how consultation will occur, and how to manage any risks that arise.
- Transparent and effective consultation provides valuable information about the views of stakeholders on regulatory issues, including the impacts and risks of regulatory options under consideration.
- Consultation generates greater trust between governments and the community, creating a greater sense of shared ownership and responsibility for regulatory issues and how such issues should be best managed. This also helps generate higher levels of compliance with existing and proposed regulatory requirements.

In the medium term, as practical experience with RIA develops, a number of supporting strategies can be adopted to help improve the quality of RIA outcomes. The role of the central RIA oversight body in proposing data collection strategies is also particularly important when RIA is first being introduced, since regulatory officials will have little experience in obtaining and interpreting RIA related data. A related function that the RIA oversight body should help regulatory officials gather and analyze data in the course of the development of specific RIA. This kind of practical assistance can potentially function as a very effective means of developing regulators' skills in this area.

Some examples of the importance of training government officials to conduct RIA are found in two emerging countries: Mexico and Korea. In Mexico, for instance, COFEMER trained more than 740 public employees from October 2001 to February 2005. The objectives of the RIA courses covered different aspects: public servants were thought not only how to use the online system for RIA development and how to elaborate a RIA, but also to improve communication and the relationship with the oversight body itself and the public servants in charge of the proposals. They also developed skills in quantifying effects of regulation and how to integrate regulatory and non-regulatory alternatives in the options assessed. The Korean regulatory reform, for example, had as shortcomings the lack of investment in expertise at initial stages of the introduction of RIA. Since 2005, the Korean Government has introduced a range of training programs for civil servants on RIA. The Prime Minister's Office has been instrumental in establishing many of them.

In Uganda, where a RIA system has been introduced, capacity building activities are at the core of the regulatory reform program. From the beginning of the Regulatory Best Practice (RBP) Program, attention was given to training and creation of skills related to RIA. In addition, steps were taken to emphasize the importance of skills in RBP and RIA by including demonstrated

ability in these fields as a criteria for promotions to high-level jobs in the civil service. Between 2000 and 2003, a major emphasis of the program was to build understanding and awareness of regulatory reform among top-level officials. Training courses and materials were developed, including modules on social and environmental dimensions of RIA, and were delivered to government, private sector, and civic society. More than 350 persons received training, including 65 policy analysts, 60 or so media and public relations representatives of regulatory agencies, senior business reporters/editors, and parliamentary technical and analytical staff.

The RBP project developed the capacity of a local training organization, the Uganda Management Institute (UMI), to deliver training in RIA to Ugandan officials. A business plan for UMI's RBP/RIA training was developed, and the initial training curriculum was modified so that it could meet the diverse requirements of the market. One core program was a one-week training course in basic RIA, which was offered to government's policy analysts before the RIA requirement was formally introduced. However, following the end of the RBP Program, funding from government for training courses dried up, and it appears that UMI is no longer active in providing training to civil servants. The RBP Program provided evidence that, when an institution is at the very early stages of its development, it is necessary to couple advocacy capacity building with institutional and other forms of capacity building.

These examples illustrate the fact that building capacities within the administration to ensure that officials are able to carry out impact analysis following established criteria and are trained on regulatory reform issues on a regular basis is fundamental in the medium and long term. A RIA Light system will depend highly on the efficiency and sustainability of those capacities created inside the administration. Box 8 lists some issues to consider when strengthening capacities in the administration.

## Box 8: Capacity-Building and Monitoring and Evaluation Programs

Communicating rules and processes underpinning RIA systems is fundamental for strengthening capacities within the administration. Some issues to consider in this respect are:

- **Government-endorsed manuals, provided in most countries, which contain detailed information** about the rules and RIA processes, such as:
  - objective of the RIA process, why there is a RIA process etc;
  - how the RIA process operates;
  - role clarity – who does what and when;
  - the rules and requirements regarding RIA, when a RIA should be prepared;
  - if a RIA needs to be prepared, the steps involved in preparing RIA;
  - consultation processes that should be used within government and with the community;
  - the information that needs to be included in RIA – structure of RIA, methodology, data etc.;
  - how the central unit will assess each RIA, what criteria are used to determine whether a RIA meets minimum standards; and
  - examples of real RIA provided to assist officials.
- **RIA training program and RIA pilots, which can be provided by central RIA units**, or by other bodies (such as consultants). Such training programs build internal capacity within governments by providing helpful information to officials working on regulatory policy issues. This can include information about how to correctly apply the RIA requirements, where to go for help when deciding if a RIA should be prepared and how to prepare a RIA document.
- **Monitoring, evaluation and reporting processes**, including evaluation of the RIA process and RIA documents (as discussed above).
- **Internal monitoring and reporting systems** that can include:
  - the operation of the broader regulatory system, such as the number and type of existing regulation and new regulations made, regulatory “hot spots” and issues of concern to stakeholders and broad regulatory trends (such as a country performance according to international measures of the quality of regulations and regulatory systems, including Doing Business, Transparency International, etc.);
  - the number of RIAs prepared and considered by decision-makers;
  - number of these RIA that met minimum requirements;
  - how RIA documents are used, types of issues undergoing RIA analysis;
  - impacts of RIA process on decision-making processes and outcomes, such as cases where the recommended option changes during the policy development process, citations of RIA documents by ministers, senior officials, in the Parliament and media, etc;
  - views of key stakeholders about the RIA process; and
  - RIA unit performance, including responses from officials about the quality of RIA training, quality and timeliness of advice about RIA to agencies, departments and ministries etc.

## RIA Light for developing countries: Summing up the new approach

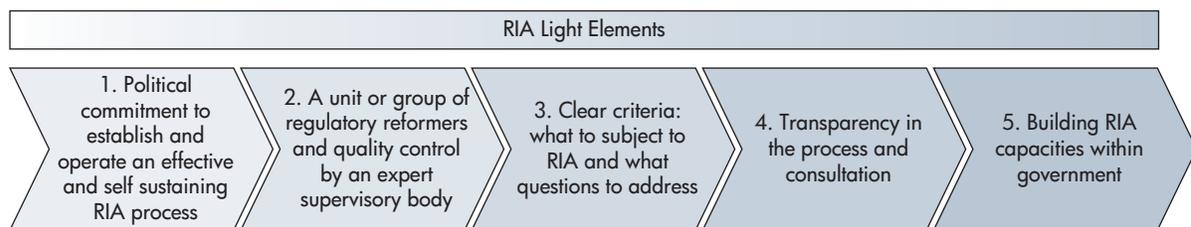
RIA Light is a new approach to integrate evidence base to decision making without imposing heavy burdens in terms of resources and capacities to countries where institution building, transparency and skills remain limited.

This approach is not free of challenges, but has the advantage of advocating for a gradual integration and improvement of capacities and expertise, as well as an adaptable framework to improve

decision making. The RIA Light approach acknowledges that rationalizing the decision-making process is not an easy task and requires much more than simple political will. It offers the possibility for countries to make use of existing and new processes that can contribute to the improvement of their regulatory decisions.

Figure 5 presents a summary of the five building blocks of any RIA Light system, assessing their viability in developing country contexts and making links between each element.

Figure 5: RIA Light Elements



As some country examples have shown, political commitment in developing countries can be found in a number of key institutions and in almost all cases where other public and private sector reforms have been previously introduced. Sustainability of the political commitment and support over time remains however challenging. Expanding support over the initial stages has to be linked to the creation of capacities and the role of the regulatory unit in charge of RIA quality control.

For RIA Light to be operational, a unit in charge of it has to be in place, with the goal to look after its quality. In developing countries, these units have to be entrusted with basic functions, such as to establish clear criteria for RIA, ensuring consultation with stakeholders and building capacities within the government. Units need continued political support to operate.

In developing countries, a careful management of what is subject to RIA is fundamental to make regulators acquainted with the new tool. Clear criteria have to be established by the regulatory reform unit to ensure that the administration follows the same instructions. Those criteria have to be adapted to the capacities in place. They also need to consider the way they can be improved over time, once regulators start using the tool.

In developing countries, transparency in the regulatory process and consultation with stakeholders cannot be taken for granted. RIA Light can only be effective if the central unit develops a strategy to improve both aspects and ensures that more open mechanisms to discuss regulatory proposals are put in place. RIA Light requires as precondition some existing fora that can be reinforced over time.

RIA Light does not mean an extensive assessment of costs and benefits of regulatory proposals. But even qualitative and some quantitative analysis requires the development of skills within the administration. Capacities are therefore also linked to the clear criteria that regulators have to comply with and to the continued support that the central unit can provide.



## IMPLEMENTING AND INSTITUTIONALIZING RIA

The previous sections identified five key dimensions of a functional, self-sustaining RIA system. This section explores practical issues and options governments should consider in the process of designing and establishing the RIA Light system.

### Initial implementation issues

As stated previously, a fundamental requirement when first implementing RIA is to ensure that the policy has clear political authority, which is supported at the highest levels of government. Only this level of authority will ensure high levels of compliance, particularly in the early years when many regulators will not perceive the intrinsic benefits of the RIA process. It is also essential that the analytical requirements and standards set are appropriate, given the capacities that exist within government and the other environmental constraints likely to exist (e.g., limited support for, and understanding of, RIA). Thus, a careful review of the country's policy and administrative processes is needed as a first step in designing a RIA system. RIA Light implementation might involve

requiring a screening of regulatory proposals, which employs the logic of RIA but does not demand sophisticated analysis.

As noted above, another means of ensuring limited RIA resources are best employed is to adopt a well-considered targeting of RIA requirements. This could involve an initial piloting of RIA in one important policy area. This may be an appropriate approach where there is substantial doubt or concern as to the capacity of the government process to adopt RIA successfully, or where there is a lack of clear support for the introduction of RIA. A successful pilot program can provide tangible evidence of improvements in regulatory quality due to RIA that will increase support for its wider use.

Securing compliance with the assessment requirements is likely to be a major challenge for the RIA unit, particularly when RIA is first implemented. Implementation efforts must be designed in ways that encourage and require high levels of compliance. An essential first step is to educate regulators about the logic of impact assessment. Regulators

should understand the purpose of the policy, while there should be a focus on its potential to assist them in completing their policy roles more effectively and efficiently, particularly by using RIA in ways that are integrated with their own processes for developing proposed laws. This implies providing general information on RIA to public sector managers, as well as providing training and supporting materials to officials with specific RIA responsibilities within regulatory agencies.

As noted in previous sections, developing a best practice RIA program is a long-term undertaking, while initial RIA implementation often must be based on a limited RIA model, particularly where capacity constraints are significant. This implies that there will be a need for the initial RIA program to be reviewed and revised relatively soon after implementation. This review process should focus on questions such as:

- whether the requirements are set at the right level and, if not, what changes are required;
- what specific problems can be identified with the institutional model of RIA Light adopted, and how can they be addressed; and
- how can required standards (and hence the benefits of RIA Light) be increased progressively as capacities and experience with the system develop.

## Options for institutionalizing RIA

### Legal requirement to undertake RIA

The option of establishing RIA requirements in laws is not widely used internationally in the OECD context, though it appears to be more common in developing countries (see Box 9).<sup>17</sup> This approach can enhance the authority of the

<sup>17</sup> Very few OECD countries have established RIA by law, such as Mexico (Federal Administrative Procedures Law), Italy (Law No. 50 of 1999), Korea (Basic Act on Administrative Regulation), Hungary (Act on Legislation), etc.

## Box 9: Legal Underpinning of RIA in Emerging and Developing Countries

Emerging and developing countries have established the use of RIA mostly in laws, which might be understood as a way to show strong commitment to the use of the tool and as making its amendment or elimination more difficult. These variables are relevant in developing country contexts, as the political volatility in these countries can interfere in the sustainability of the RIA system. For example:

- In Vietnam, a draft Law of Laws (2008) requires RIA to be conducted for legal instruments issued by the National Assembly, the Standing Committee of the National Assembly and the government.
- In Kenya, a draft Business Regulation Bill envisages the introduction of RIA to support the licensing reform.
- In Moldova, a Guillotine Law approved in 2006 introduced basic principles for regulatory quality, such as the use of RIA.

RIA policy and, consequently, the degree of compliance achieved. It can also allow Parliaments to reject regulations that have not met RIA requirements, potentially providing a further means of quality control that is outside, or independent, of the government. It can allow affected (i.e., regulated) groups to challenge the validity of such laws in the courts, with the possibility of the laws being struck down as a result. This option provides the highest level of authority for the RIA policy and has significant advantages in terms of ensuring that a high level of compliance can be achieved within a short period after the RIA policy is adopted.

On the other hand, if regulations are frequently and successfully challenged in the courts on the grounds of failure to meet legislated RIA requirements, there may be problems of confusion and uncertainty as to compliance obligations. This approach can also be inflexible, for example not being able to cater for genuine emergencies, etc.

Another potential problem is that it is often difficult to amend laws frequently.

However, the option of setting out only the broad outlines of the RIA system in legislation, while supplementing these provisions with more detailed material contained in guidelines, directives and the like can enable the benefits of enshrining RIA in law to be attained, while minimizing or avoiding any problems of lack of flexibility.

A second and more commonly used option is to adopt the RIA requirement through an explicit policy statement by the head of government, or by the Cabinet. RIA based on a Cabinet decision or directive, or equivalent, is used in a wide range of countries including Canada, Denmark, Finland, Germany, Ireland, Japan, New Zealand, Norway, Poland, Portugal, Sweden and the United Kingdom (see Box 10 for some examples).

RIA is based on a Prime Ministerial decree or guideline in countries including Australia<sup>18</sup>, Italy and the Netherlands, and by Executive Order in the United States.<sup>19</sup> These instruments are more readily amended than Acts. Indeed, the U.S. RIA system has seen several amendments to the main Executive Order setting out its essential requirements. Nonetheless, this option ensures that a high level of authority is still accorded to the RIA policy, including the possibility of challenging regulations on the basis of non-compliance with RIA requirements.

The main potential disadvantage of this approach is that RIA requirements can be changed easily and significant changes can be made, say after a new government is elected. This could reduce the continuity and effectiveness of the RIA process. That said, in most developed countries RIA is supported by all major political groups and, as a result, changes to RIA over time have typically

## Box 10: RIA Adopted Through Government Policy Statements

In Canada, RIA has been adopted in the framework of the Cabinet Directive on Streamlining Regulation which came into effect on April 1, 2007. This Directive introduced several key improvements, including a more comprehensive management approach with specific requirements for the development, implementation, evaluation and review of regulations.

Denmark adopted a RIA requirement in a revised Prime Ministerial circular on drafting laws in 1998. Thus, the RIA requirement is established among a broader range of procedural requirements for law-making. Ministries are advised to use RIA where proposed laws are expected to have substantial economic impacts. The Ministry of Finance guides to benefit/cost analysis are expected to be used as the basis for conducting RIA. However, other assessments of administrative impacts on government and citizens, the environment, business, and industry are also required. The circular requires RIA to be included among explanatory notes circulated with draft laws.

Poland adopted in 2006 its Regulatory Reform Program, which was the first comprehensive program defining an integrated approach to regulatory management policy. Among the priorities, a revised RIA methodology was adopted by the Council of Ministers, and integrated in the Guidelines for Regulatory Impact Assessment. Institutional arrangements for RIA were implemented in 2006 to strengthen the RIA system, including placing responsibility for the review of RIA in the Chancellery of the Prime Minister instead of the government Legislation Center where it was until July 2006.

been evolutionary and have involved progressively strengthening the RIA process.

Adopting RIA Light through non-legislative arrangements effectively requires monitoring and enforcement activity to be conducted within government, with the RIA unit performing this role. However, in some cases other areas of government can also do this. For example, a Cabinet office or similar body can be given responsibility for ensuring regulatory proposals meet the RIA

<sup>18</sup> A Prime Ministerial order is used by the national government in Australia, whereas most States establish RIA in laws.

<sup>19</sup> See: <http://www.whitehouse.gov/omb/inforeg/eo12866.pdf>

requirements before they are considered and approved by the Cabinet. In this context, detailed requirements may be set out in more general procedural guidance documents, such as a “Cabinet Handbook” or equivalent document summarizing all process requirements for making laws. This can ensure that the RIA requirement is widely known and helps to enhance its perceived authority.

## Options for RIA oversight

### **RIA oversight within the administration**

The OECD best practice is that there should be a body within the government administration that has specific responsibility for exercising oversight and quality control over RIA. The RIA oversight unit, body or authority should be located at the center of government, such as in the President/Prime Minister’s Department or the Ministry of Finance. This ensures that it wields appropriate authority and helps prevent conflicts of interest, since these agencies do not have direct regulatory functions in most cases. It also helps underline the view that RIA (and regulatory reform) is not a program intended to confer benefits on any one sector of society but, rather, is intended to enhance regulatory quality from the viewpoint of society as a whole.

The main alternative adopted in some countries has been to locate the RIA body and other regulatory reform functions within the industry department. This has generally reflected a primary focus of regulatory reform policies on improving business conditions. However, a major problem with this approach is that it reduces the authority of the RIA body within government. Also, the RIA unit and process can be seen to be an advocate of sectional (i.e., business) interests, rather than taking a broader view and promoting regulatory policy that is in the interest of society as a whole.

In some other cases, the RIA oversight body has been located in the law department, reflecting the

traditional primacy of legal perspectives in considering regulatory quality issues. However, law drafting experts do not usually have strong RIA-related skills, while the regulatory quality concepts underpinning RIA are much broader than those relating to law drafting. This can mean that RIA does not receive adequate prominence and that the RIA body does not function as a powerful advocate of the importance of RIA in regulatory quality.

In all options described above the importance of locating the unit at the center of government lies primarily in ensuring its credibility vis-à-vis other institutions and stakeholders and to use a system of checks and balances to prevent any other ministry or regulator from dominating the choice of regulatory options. The unit can serve to balance opposing interests by providing credible and impartial opinion on the impact assessment and requesting regulators to improve the analysis.

As discussed above, RIA oversight bodies in most countries have both a role in assessing the quality of RIA (e.g., approving RIA documents as meeting quality standards) and also advising and training regulators in the preparation of their RIA. There can be a perception of a conflict between the former policing role and the latter role of providing positive assistance. Moreover, this latter role potentially requires the RIA unit to have a wide range of expertise in particular regulatory issues and areas. One option adopted in the Netherlands to address these issues is to establish a separate ‘RIA Helpdesk’ to focus on providing positive assistance. The Helpdesk has been structured to ensure that a wide range of expertise is available by including staff from the Ministries of Economic Affairs, Justice and the Environment. However, this option may be too resource intensive for many developing countries. It is therefore preferable to reinforce resources in the oversight body.

### **Oversight by independent or external bodies**

The main reasons for adopting the concept of a central RIA oversight body are that it can

bring specialist expertise to bear in assessing RIA quality and provide an independent perspective, rather than approaching RIA as regulators with a specific area of policy responsibility and interest. This logic can also be applied to bodies other than RIA units within the government administration. Some OECD countries have established different forms of RIA oversight, either as an alternative to a body within the government administration or as an additional level of scrutiny.

One example was the Better Regulation Commission in the United Kingdom.<sup>20</sup> The Commission was composed of external stakeholders from various parts of society including business, charities and other non-profit organizations. Similarly, the Netherlands has used an external watchdog (Actal – the Dutch Advisory Board on Administrative Burdens) to provide advice to government on reducing the administrative burdens imposed by regulation. In some cases, these bodies report annually to Parliament, providing another form of independent scrutiny. Similarly, in some countries (e.g., Australia) there are specific parliamentary committees with responsibility for RIA oversight. In the Australian model, this oversight is in addition to that of a body within the government administration.

In a RIA Light system, this independent oversight can bring positive results, but it is not compulsory at early stages of the reform process. A body that is entirely independent of government has the advantage of being freer to provide objective advice on RIA issues. However, a problem with many such bodies is that their scrutiny is exercised late in the regulatory process – often after a regulation has been published. This tends to reduce their effectiveness in practice.

<sup>20</sup> The Better Regulation Commission has been replaced by the Risk and Regulation Advisory Council (RRAC), which is also an independent advisory body responsible for developing some work on public risk and how best to respond to it.

## Integrating RIA with policy decision-making process

The OECD best practice states that RIA must be integrated with the existing policy decision-making process if it is to be fully effective in improving regulatory quality. This means that those responsible for developing regulation should understand the RIA and prepare RIA, where appropriate, early in the policy development process and before a decision is made. In practice, this can be difficult to achieve, especially in the short term. Indeed, OECD documents speak of the need to achieve a process of “cultural change” through a medium to long-term effort.

Practical initiatives that can help facilitate cultural change:

- ensuring that RIA training is provided at middle management levels, so that those responsible for developing regulation understand RIA and how it can help them to work better;
- monitoring the impact of RIA and publicizing cases in which it has improved regulatory outcomes, to reinforce understanding of its merits; and
- ensuring that RIA process requires preparation of RIA at a relatively early stage of the policy process.

RIA conducted at an early stage is likely to be influential in that the results are considered before there is any firm commitment to a particular policy approach. On the other hand, RIA conducted at this point is likely to be assessing general policy options, rather than well-developed regulatory proposals, and is therefore limited in the firmness of conclusions that can be drawn. By contrast, RIA conducted later in the policy process can usually provide a more precise analysis of expected impacts, but may be less effective in altering policy outcomes if an explicit or an implicit decision has already been taken to regulate.

This trade-off must be borne in mind when designing RIA system requirements. In some OECD countries, this issue is addressed by requiring that RIA be commenced at an early stage in policy development and then continually refined as more detailed proposals are developed. Thus, an internal RIA might be developed, based on limited consultation, to guide broad policy decisions. A more detailed RIA might subsequently be released for public consultation once a firm proposal has been developed.

For example, this approach is required in the United Kingdom, where the RIA guidelines<sup>21</sup> specifically state that RIA activity should commence early in the policy process and should continually be updated over time. In some Australian RIA contexts a two part RIA process is required. In this case, there is a requirement that a draft RIA be released for public consultation. Comments received are used to improve the analysis and, in many cases, drive revisions to the regulatory proposal before the final RIA is presented to ministers or other decision-making body for decision.<sup>22</sup>

This approach has been criticized for increasing the resource costs of completing RIA. However, as noted above the fiscal cost to government of preparing RIA is modest. Furthermore, the cost will be negligible where regulators are already applying good practice in developing regulatory options and proposals, since in such cases the RIA simply documents the existing policy development process.

Developing countries, introducing a RIA Light system, are not excluded from this trade-off. They can, however, mitigate the problem by selecting RIA pilots in which particular attention is paid to the way RIA results can be integrated into the decision-making process, so regulators

and decision-makers understand the rationale for conducting RIA.

## Challenges and obstacles in implementing RIA Light in emerging and developing countries

Despite the clear conceptual merits of RIA, experience in a wide range of developed and also developing countries shows that there are considerable practical challenges in implementing an effective functioning RIA process. In some cases, the achievements of RIA have fallen short of initial and often high expectations. Furthermore, developing the RIA system and increasing its ability to affect policy outcomes also often takes longer than expected.

The following discusses some of the most important issues and challenges to establishing functioning and self-sustaining RIA processes, based on experiences in developed countries and developing countries that have already set up a RIA system . It is important to note that many of these challenges are operational and can be managed or resolved through administrative decisions. By contrast, some require decisions to be made at the political level. This is particular relevant when a RIA Light process is designed and implemented as expectations have to be properly managed and its sustainability will depend highly on the way obstacles are overcome.

### **Lack of compliance**

The most basic problem is the need to ensure that regulators comply with the RIA requirements. Because of institutional resistance (see below), voluntary compliance with RIA is generally low. This means that attention must be paid, firstly to incentives for officials to prepare RIA when they are required to do so. These incentives can include monitoring and encouraging compliance with the RIA requirements and process. Sec-

21 Impact Assessment Guidance, Better Regulation Executive, available at: <http://www.berr.gov.uk/files/file44544.pdf>.

22 This process is used whenever State/Territory Ministers agree to adopt nationally uniform regulation. See: [http://www.coag.gov.au/docs/COAG\\_best\\_practice\\_guide\\_2007.pdf](http://www.coag.gov.au/docs/COAG_best_practice_guide_2007.pdf)

ondly, there should be incentives which ensure that there are effective sanctions available for non-compliance.

High level political support for the RIA program is particularly important in ensuring that RIA compliance is a pre-condition for regulatory proposals being considered by decision-makers.

This is particularly problematic in developing countries where RIA might be seen as a new bureaucratic layer. Changes in the administrative culture are difficult to introduce in the short term. In Tanzania, for instance, training and RIA awareness were stimulated at the beginning of the BEST Program by the RIA champion, the Cabinet Secretariat. Even if the Principles of Good Regulation called for the use of RIA whenever “the proposed new law has significant compliance costs for businesses or significant economic or social consequences”, results indicate that RIAs have not been conducted neither in general nor for the components of the BEST Program.

### **Institutional resistance**

RIA can often be seen by regulators as undermining or limiting their ability to serve their ministers and other constituencies. RIA is also sometimes seen as time consuming and expensive, while its benefits may not be understood or accepted. This means there are strong incentives in Ministries and regulatory agencies to avoid the RIA requirements. While looking at RIAs prepared by regulators, the unit has to explain why assessments have not been properly done, based on the established criteria that apply to all regulators. This is a way to build authority over time.

To counteract those negative incentives, the quality control unit has to be proactive and creative. Initially, RIA can be used as a “damage control” tool, more than a systemic tool. It is always easier to pinpoint the damage that has been prevented than the hardly measured benefits that will require a lot of persuasion.

In Serbia, for instance, the regulator must receive the opinion of the Council for Regulatory Reform for the legislative proposal prior to submitting such proposal to the government. When the opinion of the Council is negative, the government refers the legislation back to the regulator or ministry with a request to revise the RIA. If the analysis is inadequate and the RIA unit finds that it is not difficult to improve the analysis, e.g. to collect additional data and to calculate additional costs, the RIA unit remains authoritative and the RIA does not go through.

Where RIA documents are reluctantly prepared, it is often a case of “formal compliance,” or “going through the motions,” rather than RIA actually influencing policy thinking and outcomes. Action to minimize this obstacle includes ensuring that senior officials, and not simply officer-level staff responsible for conducting RIA, are given training in the nature and importance of RIA. Demonstrating how RIA has improved policy outcomes and even how it has benefited regulatory agency officials can be an important means of helping to overcome institutional resistance. Furthermore, it is important that senior officials have effective incentives to properly implement RIA. These can include RIA compliance being included as part of the criteria used to assess the performance of senior staff, and reporting to decision makers (and ultimately the public) when a particular RIA fails to meet minimum standards.

That said, the most important incentive for officials and regulators to properly implement RIA is having high level and ongoing political support for the RIA process. Such support is essential to the establishment and operation of a successful, functioning and self-sustaining RIA process. Such support is attainable in developing countries, but lack of commitment over time has been observed in many cases as well. For instance, in Uganda, the Ministry of Finance, Planning and Economic Development (MFPED) played a pivotal role in supporting the introduction of RIA into public policymaking. It had a strong team of

senior managers and staff who benefitted from the project and gave active support to RIA implementation. As the project entered its second phase, however, it became clear that MFPED was not demonstrating commitment and ownership needed to guarantee sustainability. MFPED had many calls on its time and resources, and its responsibility for economic management was diverted increasingly to fiscal and macro issues; changes in key staff also resulted in less engagement with private sector issues.

### **Lack of credibility of RIA**

Capacity and resource constraints can mean that the quality of RIA documents in the short term can be too low to achieve credibility and have a meaningful input into decision making. RIA officials and donors can address this challenge by ensuring that a high level of technical assistance is provided to regulators conducting RIA. This might be achieved either through making their own staff available, providing training and/or providing resources to enable external consultants to be used.

In Tanzania, for instance, a RIA was conducted on two labor laws in 2004, and it was discussed at one or more workshops with stakeholders involved in the reform process. The RIAs have not been widely publicized; they appear to have been qualitative and general, oriented to the consultation process, and they did not contain detailed information on costs or savings of the proposed reforms, did not specify the institutional consequences of the reform and did not indicate implications for the operation of labor markets. These features have contributed to undermine the credibility of the tool.

#### *Inconsistent implementation*

High-level support for RIA can often weaken, or even be withdrawn, early in the implementation process. This is often the result of a combination

or unrealistically high initial expectations and disappointments due to limited early successes.

Minimizing these obstacles involves managing initial expectations, including emphasizing the medium-long term nature of the commitment to RIA that is needed for success. Indeed, RIA is not a quick fix for existing regulatory problems. Rather, it is about strengthening capacities and institution over time, with the ultimate objectives of creating a more effective and efficient regulatory system.

Furthermore, it is important that early gains due to RIA are clearly documented and communicated to ministers, senior officials and other stakeholders. This can include documenting individual cases where RIA added significant value to the quality of a submission to decision-makers. More complex and comprehensive monitoring and evaluation systems focusing on RIA can also be developed and applied over time. In countries such as Uganda and Tanzania, monitoring and evaluation have been rather limited on the quality of RIAs conducted so far. The lack of evaluation of the experiences has also limited the communication concerning RIA to a broader audience.

Indeed, broadening the constituency in favor of RIA, by encouraging business and other stakeholders to see its benefits and argue in favor of it can also be very important to ensuring the viability and success of RIA in the medium and longer terms.

### **Lack of influence of RIA outcomes on regulatory decisions**

Regulatory decision making often fails to reflect the conclusions of RIA. To some extent, this is because politicians retain the power and responsibility to make regulatory choices and RIA is only one source of information to decision-makers. For example, in some cases RIA results can be ignored because of strong lobbying from interest groups that can allow them to prevail over broader community interests.

Meeting this challenge involves designing the RIA process so that it and its results are as transparent as possible, and regulatory decision making is made as accountable as possible. These transparency mechanisms can include providing a high level of independence to the RIA unit,

publicly releasing the opinions of the RIA unit regarding each RIA, publishing final RIA, requiring ministers to personally sign-off and endorse the final RIA and requiring that regulations agreed without support from a RIA be publicly reviewed after their implementation.



## CONCLUSIONS

Integrating RIA into the decision-making process is one of the tools available to countries to improve their regulatory decisions. RIA offers decision makers a range of options and a systematic analysis of the benefits of each one, while preventing regulations that are not well designed from being approved. Many emerging and developing countries are confronted with the need to make wiser decisions in order to avoid regulatory failures, attract more investment, and stimulate entrepreneurship by reducing costs to businesses.

Regulatory reforms are currently under way in many emerging and developing countries. In those that have already made an effort to tackle the stock of existing regulations, for instance through licensing reform, RIA is an appropriate tool to deal with the flow of new regulations. It might also be useful to reinforce capacities to strengthen regulatory management systems.

Establishing a RIA system is, however, a challenging task. International experience shows that many countries still struggle for effective and

efficient RIA processes. International benchmark has paved the way for setting up high standards of what is considered RIA best practice. In the OECD context, many countries find challenging moving towards those standards, as RIA requires a high amount of political support, changes in the administrative culture and ensuring that the policy-making process takes into account RIA proposals.

These goals are even more difficult to achieve in countries with low capacities, as well as limited resources and skills. However, emerging and developing countries still can make use of such a tool if it is conceived in a less rigid way than very sophisticated RIA systems of OECD countries and it is built over existing mechanisms that can be improved over time, such as consultation with stakeholders or existing legal quality controls. This RIA Light approach is pertinent for a number of countries that want to move from discretionary to more evidence based decision making in a gradual way and without compromising sustainability over time.

As this paper has shown, a RIA Light system is comprised of five building blocks that are mutually supportive. They correspond to those indispensable elements of good practice that any RIA system requires to be operational, effective and efficient. RIA Light differs from OECD best practice in reducing the scope and limiting the methodological approach of the impact analysis, in acknowledging more limited capacities for data collection, and in advocating pilot projects as a basis for further improvement and maturity of the RIA system.

For RIA Light to be implemented, emerging and developing countries have to show continued political support for integrating this tool. A careful selection of the group of reformers in charge of introducing RIA is also important, in particular entrusting existing bodies dealing with regulatory reform with expanded responsibilities and more

capacities to deal with the application of this tool. RIA Light will highly depend on choosing a right institution to take over these responsibilities.

The selection of clear criteria for RIA has to be measured against country's expectations. A modest approach can be more suitable than using RIA for any single piece of regulation. Selecting a pilot based on a real case brings the opportunity to test the way such a system could work.

Application of RIA Light systems will start in the coming months in several emerging and developing countries with the support of IC. Given the experience accumulated until now, it is worth noting that moving gradually is essential to keeping momentum for reform and expanding the constituencies needed to make changes in the regulatory decision-making process of these countries.

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## ANNEX I: DEFINING BASIC TERMS IN REGULATORY REFORM

**Regulation:** The diverse set of instruments by which governments set requirements on businesses and citizens. Regulations include laws; formal and informal orders and subordinate rules issued by all levels of government; and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers.

**Deregulation:** Elimination of regulatory requirements for which social welfare costs are judged to be higher than social welfare benefits.

**Regulatory relief:** Cutting regulatory costs to businesses with the intent of stimulating business growth. “Regulatory relief” initiatives do not assess the benefits of regulation, it merely focuses on cost reductions.

**Regulatory quality:** A regulatory framework in which government agencies seek to develop and implement regulations and regulatory regimes that are *efficient* in both a static and dynamic sense in terms of using economic, social, and environmental resources to their greatest value; *effective* in terms of achieving a clear public policy purpose; *transparent*; and *accountable* for results.<sup>23</sup> To these quality standards, this report adds *flexibility*, since regulatory rigidities in the face of changing context and needs are common and among the main contributors to regulatory failures.

**Regulatory reform:** This refers to a wide range of measures of deregulation, regulatory relief, regulatory quality initiatives, re-regulation, and institution-building. The term is a generic reference to any change in regulatory policies, functions, procedures, instruments, or capacities.

**Regulatory management:** Refers to the construction and exercise of a management capacity in the machinery of government to control the quality of regulatory activities. A key feature of good regulatory management is the capacity to design and manage *policy mixes*. Good regulatory management is not about choosing one particular instrument (i.e. self-regulation), but often about managing complex mixes, where one instrument works alongside others.

<sup>1</sup> Adapted from OECD (2004), *Taking Stock of Regulatory Reform: A Multidisciplinary Synthesis*, Paris.

**Regulatory policy:** This term has two distinct meanings. 1) It refers to the substantive policy content of regulation. Some reforms seek to distinguish between regulatory policy and regulatory design. For example, the Doing Business indicators and the Standard Cost Model are based on the assumption that regulatory costs can be reduced while leaving regulatory policy unchanged; 2) "Regulatory policy" is also used by the OECD as a *meta*-narrative for the multifaceted program of a government to improve its use of regulation. The national regulatory policy agenda aims to improve four major elements: regulatory policies, regulatory tools, regulatory development (policy) processes, and regulatory institutions.

**Regulatory governance:** Describes the systematic implementation of government-wide policies on how governments use their regulatory powers to produce quality regulation within the procedural values of the governing system (such as democratic processes). Good regulatory governance is grounded in the view that ensuring the quality of regulation is a permanent and essential role of government, not a one-off set of improvements, and that institutional capacities should be designed around a clear view of the appropriate use of regulation in society.



## ANNEX 2: BETTER REGULATION FOR GROWTH PROGRAM

The Better Regulation for Growth (BRG) Program was launched in 2007 by the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and IC, the investment climate advisory service of the World Bank Group.

The objective of the BRG is to improve the regulatory and investment climate in developing countries, thereby stimulating private sector investment, economic growth and poverty reduction. The BRG program aims to achieve this by developing and disseminating for the first time widely practical and operational guidance that will help developing countries design and implement effective regulatory reform programs.

The BRG Program has resulted in preparation of eight policy papers on regulatory governance issues, covering a broad spectrum: from regulatory governance, links to competition policy, regulatory institutions and tools to indicators for regulatory quality. It has also involved preparation of five country case studies on regulatory capacities in selected African countries.

The web portal [www.ifc.org/brg](http://www.ifc.org/brg) is part of the BRG Program and contains key documents, including references extracted from a comprehensive compendium of resources on regulatory management and reform and a newly developed Regulatory Impact Analysis (RIA) database.



