

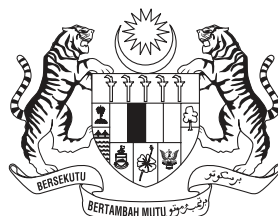


MALAYSIA

NATIONAL POLICY ON THE DEVELOPMENT AND IMPLEMENTATION OF REGULATIONS

JULY 2013

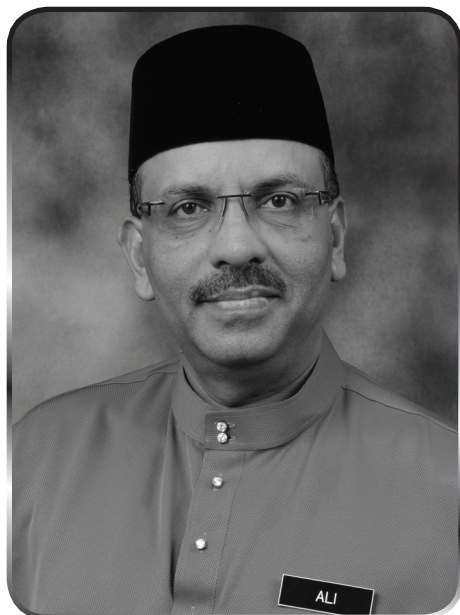




MALAYSIA

NATIONAL POLICY ON THE DEVELOPMENT AND IMPLEMENTATION OF REGULATIONS

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Foreword

from
Chief Secretary to the
Government of Malaysia

Malaysia is consistently ranked amongst the most competitive economies in Asia. The country is committed to its goal of achieving a developed nation status by 2020. This goal continues to be pursued against a backdrop of an increasing borderless and more demanding environment with the nation having to meet the challenges of enhancing competitiveness, achieving sustainable development and inclusive growth.

The Government is continuously striving for new avenues through which we can maintain and enhance our efficiency and competitiveness through a private-sector driven and people-centred growth. We also need to ensure that competitiveness is not eroded and gains made are sustained and transferred to citizens and businesses. Better regulation is one of the proven instruments available to achieve this.

Good regulations are required for good governance in these challenging times. Good regulations are also crucial for harnessing national efforts and resources for competitiveness and sustained economic growth. This necessitates that regulations and the rule-making process keep pace with changing times and circumstances. Effective regulations achieved through a more robust process of analysis and consultation with stakeholders enhances efficiency and accountability and at the same time promotes greater participation, inclusiveness and ownership of the problem resolution process.

Reflecting the desire to improve the rule-making process, the Government will introduce a new policy to transform rule-making in Government. Regulatory Impact Analysis (RIA) is required for all new regulations. This requirement is introduced to ensure that regulations are effective in addressing the desired public policy objectives and in serving the country in a balanced and equitable manner and implemented in a transparent manner. It is the government's intention to ensure that cumbersome regulations that create unnecessary burdens to society and business, discourage competition and innovation or alienate stakeholders are reduced or avoided.

The **National Policy on the Development and Implementation of Regulations** will address the gaps in the management system for regulations to put Malaysia in a position to meet international best practices in regulations or Good Regulatory Practice (GRP). This will help to enhance transparency and credibility of regulatory actions and create a climate for better quality of life and business environment. The Government recognises that this policy will contribute towards building an economy that attracts industries and investments that value good regulatory environment, hence generating quality jobs and increasing national wealth.

The capacity and capability of all institutions involved in the management, development and implementation of regulations will be upgraded and the governance and organisational structures reviewed to meet the requirements of international best practices. The interconnected nature of the issues dictates that this change be undertaken in an integrated manner by involving the various ministries, agencies, industry interests and other stakeholders.



TAN SRI DR. ALI HAMSA
Chief Secretary to the Government of Malaysia

Acknowledgement

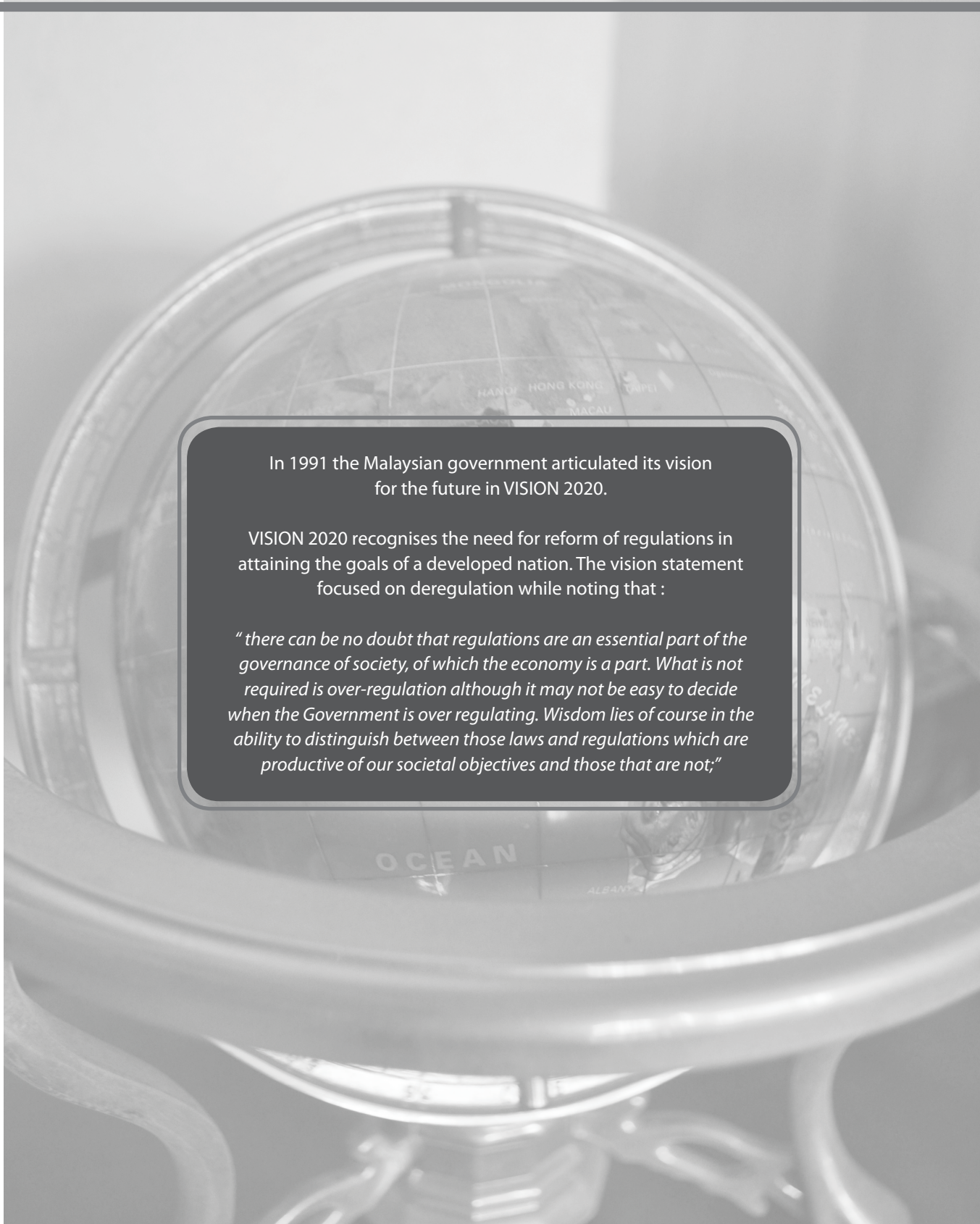
This *National Policy on the Development and Implementation of Regulations* has been developed through a consultative process coordinated by the Malaysia Productivity Corporation (MPC).

Consultations were held and inputs from a wide range of stakeholders within government that included representatives from all ministries and their agencies responsible for the development and implementation of regulations in four sessions held in February and March 2012. These documents were made available for review on the MPC website and all affected parties were invited to submit comments on the draft policy and *Best Practice Regulation Handbook*.

The current version of the Policy is the product of the extensive consultations held. The numerous useful and constructive comments received during the consultation sessions as well as those directly communicated to MPC have been incorporated after review.

MPC wishes to thank all who participated in the consultation sessions and especially to record the substantial contributions from the representatives of the Ministry of International Trade and Industry, Economic Planning Unit, the Malaysian Administrative Modernization and Management Planning Unit, the Ministry of Finance, Department of Standards Malaysia and the Attorney General's Chambers.

MPC also wishes to thank the *Regulatory Reform Group, The Netherlands 2007, Office of Best Practice Regulation (OBPR), Ministry of Finance and Deregulation, Australian Government Productivity Commission (AGPC), Australia, Regulatory Impact Assessment Team (RIAT), The New Zealand Treasury, Organisation for Economic Cooperation and Development (OECD), Paris and Jacobs, Cordova and Associates* for the technical assistance provided to enhance the competency and capacity in developing RIA system.



In 1991 the Malaysian government articulated its vision for the future in VISION 2020.

VISION 2020 recognises the need for reform of regulations in attaining the goals of a developed nation. The vision statement focused on deregulation while noting that :

“there can be no doubt that regulations are an essential part of the governance of society, of which the economy is a part. What is not required is over-regulation although it may not be easy to decide when the Government is over regulating. Wisdom lies of course in the ability to distinguish between those laws and regulations which are productive of our societal objectives and those that are not;”



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SECTION 1 Introduction

The National Economic Advisory Council (NEAC) that developed the New Economic Model (NEM) concluded that the vision to be a developed economy by the year 2020 requires economic, social and government transformation. The New Economic Model (NEM) thus prescribed an Economic Transformation Programme (ETP) which constitutes a key pillar that will propel Malaysia towards the goals of Vision 2020. The ETP is in turn supported by policy measures and a corresponding Government Transformation Programme (GTP).

The NEM strongly indicates the need for regulatory management to improve regulatory quality. The 10th Malaysia Plan in Chapter 3 on Modernising Business states :

“The regulatory environment has a substantial effect on the behaviour and performance of companies. Private sector participation in the economy and innovation require a regulatory environment that provides the necessary protections and guidelines, while promoting competition”. Too often, Malaysian firms face a tangle of regulations that have accumulated over the years and now constrain growth. At the same time, regulations that would promote competition and innovation are absent or insufficiently powerful”. “To achieve this goal, the Government will begin with a comprehensive review of business regulations, starting with regulations that impact the NKEAs. Specifically, MPC will :

- *Review existing regulations with a view to removing unnecessary rules and compliance costs. Regulations affecting NKEAs will be prioritised;*
- *Undertake a cost-benefit analysis of new policies and regulations to assess the impact on the economy; and*
- *Make recommendations to the Cabinet on policy and regulatory changes that will enhance productivity”*

The current rule-making processes are based largely on practices that have evolved over time and have not been consolidated into laws or officially issued guidelines. The absence of an official guideline has on occasion created gaps in the rule-making process resulting in ineffective regulations and unnecessary regulatory burdens on industry and businesses.

The current regulatory system will be improved through the adoption of the best practices in the field of regulatory management that have been implemented in the OECD countries and now increasingly adopted by regional and global competing economies.

The National Policy on the Development and Implementation of Regulations (NPDIR) has been developed to support the modernisation of the regulatory regime. There is increasing recognition that over-regulation, poorly designed regulations or in some cases under-regulation leads to regulatory failures which undermines the intentions of good policies. Global competition, social, economic and technological changes requires the government to consider the inter-related impacts of regulatory regimes, to ensure that regulatory structures and processes continue to be relevant, robust, transparent, accountable and forward-looking.

The goal of good regulatory policy is to achieve coherence, effectiveness, efficiency and accountability in the rule-making and implementation process. This modernization is also an essential part of realizing several of the policy objectives of the NEM that include:

- *Removal of barriers and reduce cost of doing business;*
- *Improvement in decision making for policy implementation; and*
- *Improvement in economic efficiency through enabling fair competition.*

The Special Task Force to Facilitate Business (PEMUDAH) was established by the government to ensure that Malaysia remains an attractive and competitive investment location. PEMUDAH has been addressing service delivery issues that relate directly to investment and starting a business. It has recognised that changes in rules and legislation are also required. NPDIR policy complements PEMUDAH's efforts and will ensure that any new regulation does not result in disincentives to business, investment and trade.

NPDIR guides the development of good regulations, which is essential in achieving the NEM policy objectives. It sets out core principles that regulatory authorities should adhere to in regulating and outlines a number of steps that will be taken to put the principles into practice. It will also seek to reduce, if not eliminate, cumbersome and inappropriate bureaucratic procedures that affect the cost of investing and the potential returns on investment.



SECTION 2 *National Regulatory Policy and Principles*

2.1 Policy Objective

The objective of the policy is to ensure that Malaysia's regulatory regime effectively supports the country's aspirations to be a high-income and progressive nation whose economy is competitive, subscribes to sustainable development and inclusive growth.

The policy is implemented to promote a regulatory process that is effective, efficient and accountable as well as to achieve greater coherence among the policy objectives of government. To achieve this, the government has decided to adopt current best regulatory practices as broadly defined in the *"OECD GUIDING PRINCIPLES FOR REGULATORY QUALITY AND PERFORMANCE"*. (Annex 1)

2.2 Principles

This policy applies to all federal government ministries, departments, statutory bodies and regulatory commissions. It is also applicable for voluntary adoption by state government and local authorities.

Regulators must, in the course of regulating, ensure that:

1. Government intervention is justified and regulation is the best alternative addressing defined problems with clearly established objectives.
2. Stakeholders are effectively consulted and they have an opportunity to participate in the regulatory development process.
3. An impact analysis is conducted to demonstrate that the benefits outweigh the costs to citizens, government and businesses.
4. Adverse impacts on the capacity of the economy to generate wealth and employment are minimized and no unnecessary regulatory burden is imposed on any party.



In particular, regulators must ensure that:

- i) All regulations implemented are supported by appropriate legislative provisions;
 - ii) Information and administrative requirements are limited to what is absolutely necessary and that they impose the least possible cost;
 - iii) Regulatory initiatives are not based on narrow interests of particular interest groups but address overall national concerns in a balanced manner; and
 - iv) Special circumstances of small businesses are addressed, equivalent means to conform to regulatory requirements are given consideration.
5. Systems are in place to manage regulatory resources effectively. In particular, regulators must ensure that:
- i) The Regulatory Process Management Requirements are followed;
 - ii) Feasible alternatives are considered and the optimum approach that efficiently and effectively address the issue is selected;
 - iii) Implementation of regulations is undertaken in transparent manner;
 - iv) Regulations promote implementation based on fairness and integrity;
 - v) Resources have been approved and are adequate to discharge enforcement responsibilities effectively;
 - vi) Adequate preparation is made for implementation;
 - vii) Early circulation/announcements are made to create awareness and facilitate implementation; and
 - viii) All related directives from Cabinet concerning policy objectives and law making are followed.

6. Regulations are consistent with Malaysia's commitments in international and inter-governmental agreements.
7. Regulators must ensure that all regulations are reviewed once every 5 years.

2.3 Periodic Review

MPC shall initiate a review of the National Policy on the Development and Implementation of Regulations after 5 years or earlier if the need arises. The review of the Policy will be undertaken with active participation of stakeholders. The review will take into account successes achieved, constraints encountered in implementation over the 5 year period, the changes in national priorities in international business environment and the impact of other national policies that have direct relationship with this policy.

2.4 Implementation

NDPC will oversee the implementation and will be assisted by MPC and INTAN as follows:

2.4.1 National Development Planning Committee (NDPC)

NDPC is responsible for:

- Overseeing the implementation of this policy, assessing its effectiveness and recommending improvements; and
- Examining Regulatory Impact Statements (RIS) for adequacy and making appropriate recommendations.

2.4.2 Malaysia Productivity Corporation (MPC)

MPC is responsible to NDPC to implement its functions on this policy. In performing this function MPC shall assist in the coordination for implementing the policy. It shall perform these duties by:

- Developing guidelines and programmes for the implementation of NPDIR;
- Ensuring that capacity building programmes for regulators are available;
- Assisting NDPC in assessing RIS;
- Providing guidance and assistance to regulators in RIA and preparation of RIS;
- Conducting periodic reviews of progress made and submitting reports to NDPC; and
- Promoting transparency of RIS.



2.4.3 National Institute of Public Administration (INTAN)

INTAN is the agency responsible for providing training on RIA.

2.4.4 Regulators

Regulators comprising of government agencies such as Ministries, departments, statutory bodies and regulatory commissions that are responsible for developing, maintaining and enforcing regulatory programs, are to observe this policy and meet the Regulatory Process Management Requirements.

2.4.5 Stakeholders

This policy is also dependent on the input of stakeholders such as business community, employees, interest groups, professional organisations and individuals into the design and review of regulations.

2.4.6 Attorney General's Chambers (AGC)

AGC is responsible for offering legal advice to the cabinet or any minister. The Chambers may provide legal opinions on regulatory solutions, drafting of regulations, harmonisation of regulatory requirements, provisions on compliance and enforcement as well as compliance with obligations of international treaties and relevant agreements.

SECTION 3 *Regulatory Process Management Requirements*

3.1 Application

These requirements apply to all federal government regulators¹ and are confined to regulations that relate to or impact business, investment and trade. The requirements do not apply to matters concerning national security and sovereignty.

The process is also applicable for voluntary adoption by state government and local authorities.

3.2 Requirements

3.2.1 General Responsibility

Every federal government regulators should appoint Regulatory Coordinators and notify the appointment to MPC. Regulators must ensure that the development of regulations meet the Regulatory Process Management Requirements set out below. It is the responsibility of regulators to develop and maintain an internal system to document clearly how they are met in each proposal to create or amend regulations.

3.2.2 Regulatory Process

The creation of all new regulations or review of regulations must be in accordance with the process that is defined in these requirements. In this requirement, regulators are to notify MPC on proposals to introduce or amend regulations. MPC will assess whether the regulator is required to submit RIS for the proposed regulation. If RIS is required, it needs to be submitted to NDPC which will examine RIS for compliance with the regulatory process management requirements. This process is defined in Chart 1: RIS Process. RIS shall be prepared as per these requirements. Guidance for implementing the regulatory process management requirements and preparation of RIS is provided in Best Practice Regulation Handbook issued by MPC.

3.2.3 Regulatory Impact Analysis (RIA)

Regulators proposing new regulations or regulatory changes must undertake the regulatory impact analysis involving the following components :

Problem Identification

Regulators must establish clear objectives, evidence that a problem has arisen and government intervention is required. When any risks are involved, regulators must ensure that risks are of sufficient significance to justify intervention.

This process is applicable to regulations and other legally binding instruments which are issued by regulators.

¹The requirements are mandatory for all ministries and agencies of the federal government that have regulatory powers. State governments and their agencies and local authorities may choose to adopt and apply the provisions of this policy.

Objectives

The desired objectives of the proposal or the problem that is being addressed must be identified, described, analysed and documented clearly and concisely. Interested parties must be consulted on alternative ways to achieve the objectives or solve the problem.

Instrument Options

A range of options (regulatory and non-regulatory) that may constitute feasible means for achieving the desired objectives must be analysed to ensure the most effective and efficient option is chosen. It must be demonstrated that new regulations will help solve the problem.

Assessment of Impact

An assessment of the impact (costs, benefits and where relevant, levels of risk) of a range of feasible options for consumers, business, government and the community must be carried out to assess potential effects. It must be demonstrated that the benefits are greater than their costs. When regulations address health, social, economic or environmental risks, it must be demonstrated that regulatory effort is directed where it will do the most good. Information obligations should be limited to what is absolutely necessary and impose the least possible cost on affected parties. The impact of additional regulatory burden on small businesses in particular must be considered, and the least burdensome but effective alternative for their circumstances should be chosen.

Consultation

Regulators proposing new regulations or changes must carry out timely and thorough consultations with affected parties. The consultation effort should be proportionate to the impact of the proposed regulation. Notice of proposed regulations and amendments must be given so that there is time to make changes and to take comments from affected parties into account. Regulators must clearly set out the processes they use to allow affected parties to express their opinions and provide input. In particular, regulators must be able to identify and contact stakeholders, including, where appropriate, representatives from public interest, employees and consumer groups. Consultations should begin as early as possible in order to get stakeholder's input on the identification of the problem, as well as on proposed solutions.

Other regulators having an interest in the matter must be consulted. Regulators must determine what, if any, related regulations already exist and which other departments and agencies are involved. New regulations must be coordinated with existing ones to avoid duplication and to take advantage of possible efficiencies.



Conclusion and Recommendation

RIS should include a statement identifying the preferred option based on the impact analysis.

Implementation

The implementation strategy and a review of the preferred option must be described comprehensively in RIS. The plans, procedures and resources that will be used for compliance and enforcement should be described. Obligations arising from treaties and international agreements must be complied with.

Publication of RIS

RIS is to be published on the regulator's and MPC website as soon as practicable from the date of official announcement of the decision. MPC will consult the regulator on the publication.

3.3 Records and Documentation

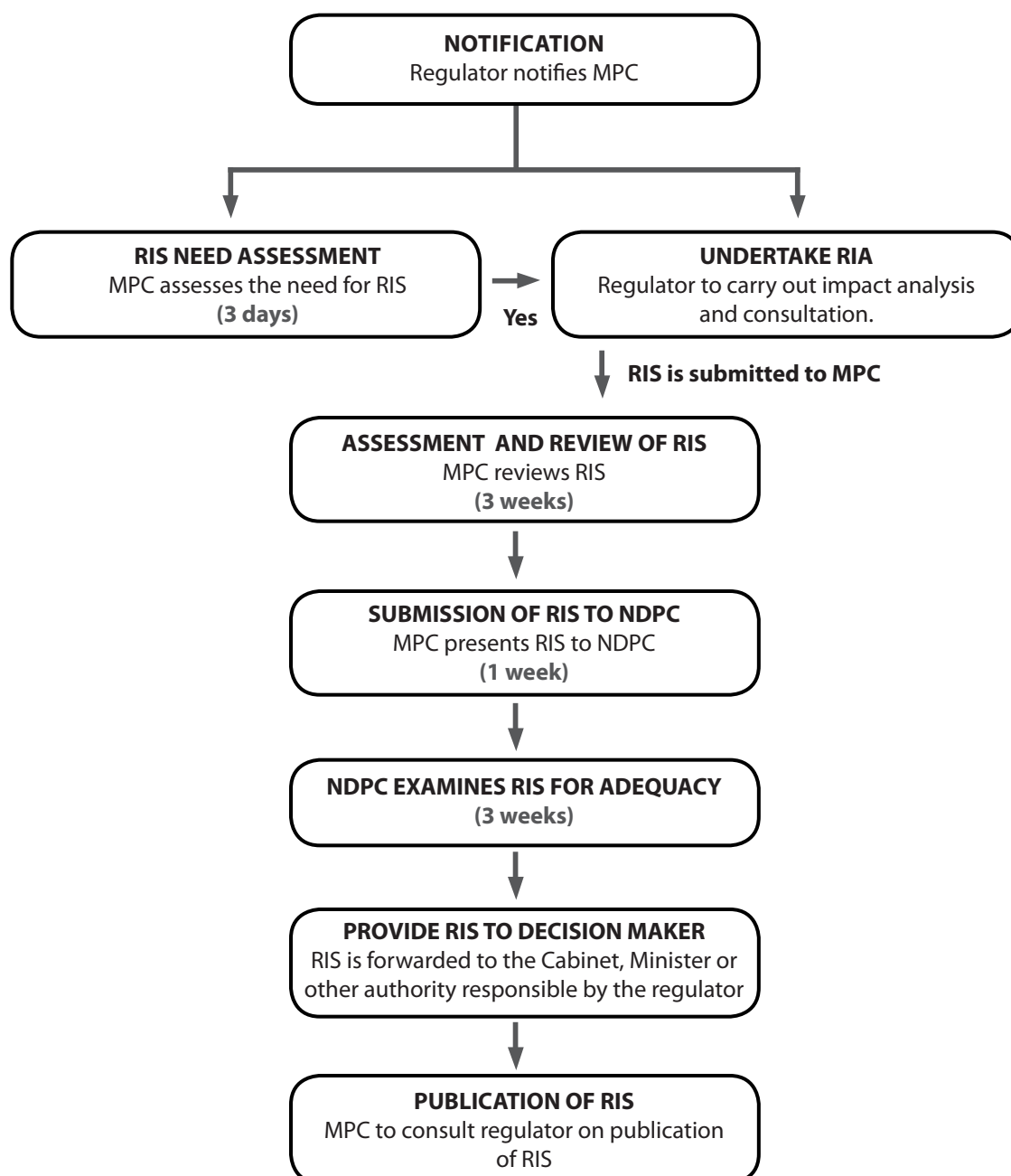
Regulators must document their regulatory policy and processes. The documentation should include, but not be limited to, a description of the problem, alternative solutions, the risks involved, the reasons for regulating, the consultation methods, outcome of the consultations, the cost benefit analysis and the conclusion and recommended option. A comprehensive set of these documents must be retained. These documents should be the reference in the 5-year review process.

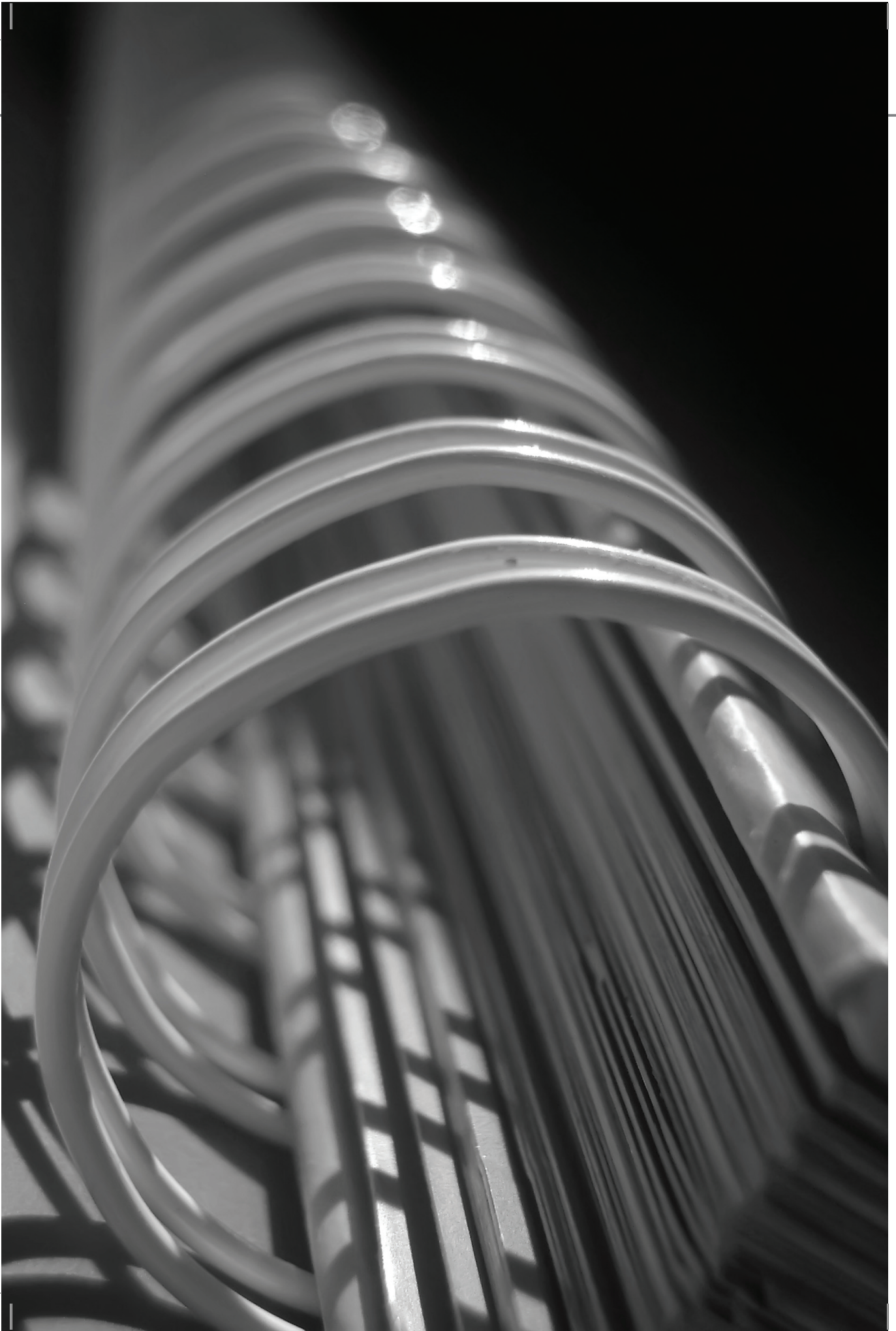
3.4 Communication

Regulators creating new regulations must inform stakeholders about the proposal in simple, clear, complete and concise language that the general public can easily understand. New regulations and changes, as well as material incorporated by reference, must be well publicised and easily accessible to affected parties. The RIS should include a communication plan.

3.5 Competency

Regulators must ensure their personnel are competent to carry out the Regulatory Process Management Requirements.

Chart 1 : RIS Process



Annex 1**OECD Guiding Principles for Regulatory Quality and Performance**

Malaysia Government's best practice regulation requirements provide a systematic approach to ensure high quality regulation and are consistent with the OECD Guiding Principles for Regulatory Quality and Performance.

The Organisation for Economic Co-operation and Development (OECD) contends that a coherent, whole-of-government approach is needed to create a regulatory environment favourable to the creation and growth of businesses, productivity gains, competition, investment and international trade (OECD 2005). The following OECD Guiding Principles for Regulatory Quality and Performance captures the dynamic, whole-of-government approach to implement regulatory policy;

1. Adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.
2. Assess impacts and review regulations systematically to ensure that they meet their intended objectives efficiently and effectively in a changing and complex economic and social environment.
3. Ensure that regulations, regulatory institutions charged with implementation, and regulatory processes are transparent and non-discriminatory.
4. Review and strengthen where necessary the scope, effectiveness and enforcement of competition policy.
5. Design economic regulations in all sectors to stimulate competition and efficiency, and eliminate them except where clear evidence demonstrates that they are the best way to serve broad public interests.
6. Eliminate unnecessary regulatory barriers to trade and investment through continued liberalisation and enhance the consideration and better integration of market openness throughout the regulatory process, thus strengthening economic efficiency and competitiveness.
7. Identify important linkages with other policy objectives and development policies to achieve those objectives in ways that support reform.

Notes



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