Implementing Good Regulatory Practice in Malaysia



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Preface

The goal of Malaysia to become a developed nation by 2020 is fast becoming a reality. Malaysia has one of the most competitive economies in Asia and is becoming globally recognised as having a business-friendly environment. The country is committed to achieving sustainable development and inclusive growth, while also recognising the challenges and opportunities posed by a global competitive economy as well as the establishment of the ASEAN community and regional economic integration.

The government has encouraged private sector-driven and people-centered growth through a variety of initiatives and policies that has been very successful. But maintaining these reforms has led the government to go further, and embark on an agenda for good regulatory practice. Producing regulations through a more robust process of analysis and stakeholder engagement enhances efficiency and accountability, and also promotes greater participation, inclusiveness and ownership of the end solution or government intervention.

In 2013, the launch of the National Policy on the Development and Implementation of Regulations reflected the government's desire to improve the rule-making process. Regulatory impact statements and public consultations were introduced in order to standardise the way that policies, laws and regulations are developed and improve overall regulatory quality. We are grateful to the OECD for its support in introducing and implementing this policy, drawing on the vast experience and expertise of other countries so that Malaysia can learn from best practice and avoid the mistakes of others.

In 2015, Malaysia is proud to be the Chair of ASEAN. Malaysia has made good regulatory practices a priority across the ASEAN community, as it considers them a key ingredient for our regional economic integration and institutional connectivity. Having a coherent and convergent regulatory environment within and across borders will facilitate the movement of people, trade, investment, culture and ideas that contributes to a thriving social, cultural and economic community.

For the reasons above, I am delighted that the OECD has supported Malaysia's efforts in implementing good regulatory practice and produced this publication assessing the progress made. This is important for Malaysia to celebrate its successes and also learn from the recommendations to keep improving. It is also important for our neighbours to see and benefit from Malaysia's experience. Good regulatory practices are not only important now, but should be a permanent area for concerted attention and action.



Tan Sri Dr. Ali Hamsa,

Chief Secretary to the Government of Malaysia

Foreword

In 2013, the Government of Malaysia asked the OECD to review its regulatory management system and provide support for piloting and implementing its regulatory policy. The review was conducted by delegates of the Regulatory Policy Committee and the OECD Secretariat in 2014, using expertise developed over two decades of peer learning under the OECD programme on Regulatory Reform. Peer reviews of good regulatory practices have also been conducted for Viet Nam (2011) and Indonesia (2012). The project drew on a number of OECD publications and instruments, including the 2012 *Recommendation of the OECD Council on Regulatory Policy and Governance*. This report presents the findings of the project.

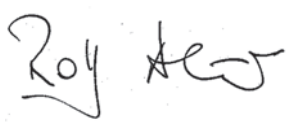
The Government of Malaysia is focusing on the importance of an enabling business environment. This is reflected in Malaysia's status in the 2015 Doing Business rankings on the ease of doing business, where Malaysia ranks 18th out of 189 economies. To create this business-friendly environment, the government has reduced the paperwork required to licence a business by over 50%, saving businesses MYR 729 million (EUR 181 million), and conducted sector-specific reforms in construction, logistics and healthcare.

In order to fully exploit the potential of high-quality design of policies, laws and regulations, Malaysia has established a National Policy on the Development and Implementation of Regulations. This is a promising step towards institutionalising good regulatory practices and sets an example for other similar countries in South East Asia and beyond.

OECD member countries are aware of the benefits of a high-quality regulatory environment for achieving inclusive growth and environmental sustainability, and are constantly improving their regulatory practices. In South East Asia, regional connectivity, integration and the establishment of the ASEAN community provide further impetus for having similar institutional frameworks that contribute to a seamless, inclusive and people-centred economy. Moreover, having a similar approach to the rules of the game for society, the environment and the modern economy is critical for positioning the ASEAN community as a destination of choice for investment, trade and job creation.

OECD experience shows that successfully implementing regulatory policies requires investment and sustaining initiatives over the long term. In this respect, Malaysia would benefit from strategically targeting efforts in high-impact areas while supporting compliance with the National Policy. Reporting on ministerial performance *vis-à-vis* the National Policy will also help drive improvement over time.

Good regulatory practice is not a destination, but a journey within a dynamic environment. Malaysia's recent efforts and progress are to be commended, and are well in line with OECD Recommendations on Regulatory Policy and Governance. These are sound foundations that should be built upon with the same support and industry that initiated these reforms, to achieve the ultimate goal: better policies for better lives.



Rolf Alter,

Director of Public Governance and Territorial Development, OECD

Acknowledgements

This report was prepared by the Public Governance and Territorial Development Directorate's Regulatory Policy Division. The Directorate aims to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on government's commitments to citizens.

The analysis and recommendations underpinning this report are the result of a 15-month collaboration between the Malaysia Productivity Corporation (MPC) and OECD to support implementation of the *National Policy on the Development and Implementation of Regulations* (NPDIR), *Best Practice Regulation Handbook* and *Guideline on Public Consultation Procedures*. This collaboration was supported by the Office of Best Practice Regulation, Department of Prime Minister and Cabinet, Australia and the Ministry of Business, Innovation and Employment, New Zealand.

The OECD would like to extend special gratitude to Tan Sri Dr. Ali Hamsa, Chief Secretary to the Government and Datuk Dr. Rebecca Sta. Maria, Secretary General of the Ministry of International Trade and Industry, Malaysia for their support and vision in implementing good regulatory practice in Malaysia.

This report reflects the significant contribution from members of Malaysia's Special Task Force to Facilitate Business (PEMUDAH), the Secretary Generals of Government, a broad range of regulatory agencies as well as representatives of business and industry operating in Malaysia. As input into this report, MPC organised dozens of workshops during the OECD's seven missions to Malaysia. Valuable contributions were also received from the delegates of the OECD Regulatory Policy Committee.

The OECD expresses specific thanks to MPC in particular to Dato' Mohd. Razali Hussain (Director-General), Dato' Abdul Latif Hj. Abu Seman (Deputy Director General), Megat Akbaruddin Megat Ismail (Director), and Roziana Othman (Senior Manager). The OECD also recognises the MPC Good Regulatory Practice Steering Committee

established for the project and including: Chan Kum Siew (Director), Zahid Ismail (Director), Kabir Ahmad Jamil (Director), Haji Suhaimy Abdul Talib, Datin Zadiah Zainuddin; Mohd. Yazid Abdul Majid, Dr. Mazrina Ibramshah, Norhaniza Hamir, Nor Aishah Hassan, Shahrizah Bahari, Megat Amirul and Nur Faizah. The OECD are also very grateful to Khoo Boo Seng, Senior Director and Wan Syafinaz Wan Abdul Rahman, Principal Assistant Director Ministry of International Trade and Industry.

This report is the result of work led by Faisal Naru, Senior Economic Advisor, under the supervision of Nick Malyshev, Head of the Regulatory Policy Division and Rolf Alter, Director of Public Governance and Territorial Development. The OECD team was comprised of James Sheppard and Minsup Song, OECD Policy Analysts; Sherif Fawzi Abdel Gawad and Maggie Kamel, Arab African Advisers (consultants); Rob Reilly, Office of Best Practice Regulation, Department of Prime Minister and Cabinet, Australia; Peter Mumford and Julie Nind, Ministry of Business, Innovation and Employment, New Zealand. Valuable comments were provided by Christiane Arndt, Antonia Custance-Baker, Filippo Cavassini, Malory Greene and Cushla Thompson in the drafting of the report. The report was submitted for comments to the OECD Regulatory Policy Committee and discussed at the 11th meeting of the OECD Regulatory Policy Committee on 3rd November 2014. Deborah Barry-Roe and Jennifer Stein provided administrative and editorial assistance.

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Acronyms

AGC	Attorney-General's Chambers
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
DOSH	Department of Occupational Safety and Health
ECA	European Court of Auditors
EPU	Economic Planning Unit, Prime Minister's Office
GDP	Gross domestic product
GRP	Good regulatory practice
ICU	Implementation Co-ordination Unit, Prime Minister's Office
INTAN	National Institute of Public Administration
JPA	Public Service Department
JSM	Standards Malaysia
KKLW	Ministry of Rural and Regional Development
KKMM	Ministry of Communications and Multimedia
KPDNKK	Ministry of Home Affairs, Co-operative and Consumerism
KPKT	Ministry of Housing and Local Government
KSN	Chief Secretary to the Government
KSU	Secretary-General (of Malaysian ministry)
KWP/KWPKB	Ministry of Federal Territories
MAMPU	Malaysian Administrative Modernisation and Management Planning Unit, Prime Minister's Office
MITI	Ministry of International Trade and Industry

MoA	Ministry of Agriculture
MoF	Ministry of Finance
MoH	Ministry of Health
MoHR	Ministry of Human Resources
MoSTI	Ministry of Science, Technology and Innovation
MPC	Malaysia Productivity Corporation
MYR	Malaysian Ringgit
NDPC	National Development Planning Committee
NKEA	National Key Economic Areas
NPDIR	National Policy on the Development and Implementation of Regulations
OBPR	Office of Best Practice Regulation, Australia (Commonwealth)
OECD	Organisation for Economic Co-operation and Development
PEMANDU	Performance Management and Delivery Unit
PEMUDAH	Special Task Force to Facilitate Business
QRMS	Quality Regulatory Management System
RC	Regulatory Co-ordinator
RIA	Regulatory impact analysis
RIS	Regulatory impact statement
SKM	Malaysia Co-operative Societies Commission
SMART	Specific, measurable, attainable, relevant and timely
SME	Small and medium enterprises

Executive summary

Malaysia's achievements in the 15 months of implementation of the National Policy on the Development and Implementation of Regulations (NPDIR) provide a strong foundation for advancing regulatory policy and governance in coming years. The NPDIR is closely linked with Malaysia's policy and machinery of government reforms contained in the New Economic Model, as well as its Economic Transformation and Government Transformation Programmes. These reforms aim to position the government to support a streamlined, proportionate, market-focused and supportive regulatory framework, while retaining a role to manage market failures.

The NPDIR also supports Malaysia's commitments to regional connectivity through increased convergence and co-operation of regulatory systems (sometimes referred to as "institutional connectivity") under the Association of South East Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC).

Malaysia has put in place the institutional infrastructure for implementing GRP. The Malaysia Productivity Corporation (MPC) is the key co-ordinating agency for the NPDIR and has developed a network of regulatory co-ordinators across government agencies to implement the Policy. The MPC is also the secretariat for the Special Task Force to Facilitate Business (PEMUDAH) which is the bridge for the NPDIR implementation and stakeholders external to government. Preliminary reporting structures and commitments to the National Development Planning Committee (NDPC), and the Chief Secretary to the Government exist. Elementary training capacity has also been developed in the National Institute of Public Administration (INTAN). Other key actors in the regulatory cycle have been made aware and have shown initial support for the NPDIR. These are all significant achievements in the start-up phase of a regulatory impact assessment (RIA) system and must be capitalised upon with greater efforts to take advantage of the current momentum.

The RIA system has been predominantly operationalised through advocacy and a number of demonstration projects. The large number of advocacy and awareness raising activities by MPC, coupled with support of pilot RIAs with ministerial teams has assisted to develop, test and refine the institutional set up and procedures for implementing the NPDIR. This has been a mutual and vital learning process for ministries and agencies as well as MPC which will bode well for the next phase of GRP.

MPC has developed internal capacity for the roles and functions ascribed to it in the NPDIR which should be reassessed and improved. There has been a dominant focus on advocacy during the stages of developing and piloting the NPDIR. There is a greater need in the next stages of implementation for the capacity to provide technical assistance and guidance which will require a different capability from the one that has been developed. The gatekeeper function, which is a critical role in most OECD member countries, has not yet been established and an assessment of the appropriate location of this function *vis-à-vis* the advocacy and capacity building functions should be made.

Malaysia should act to build on the progress made and institutionalise GRP into government planning, performance indicators, and the decision-making process. The next phase of implementation will be important and will require continued support and understanding of the long term investment in GRP. The understanding of GRP and the NPDIR requires better communication with a wide range of stakeholders both inside and outside of government. This presents a number of challenges and risks mainly with managing expectations that should be addressed sooner rather than later.

OECD Member country experience has shown that achieving regulatory quality takes a sustained commitment to implement GRP. Malaysia has had a good start and has the potential to be an example in the ASEAN community and internationally. There should be the necessary support and resources available to leverage this promising position. Moving forward Malaysia needs to ensure that RIA is embedded into the policy-making process, prioritising greater attention on issues with significant impact on the economy and of importance to society as a whole.

Key recommendations

Institutionalise GRP

- Develop indicators on the implementation of GRP across government – including key performance indicators for top management – and use them in periodic reporting to meetings of Secretary Generals of Government.
- Proactively engage the key actors such as AGC, EPU, Malaysia Competition Council in NPDIR implementation and the development of a medium-term strategy.
- Strengthen regulatory oversight, including a challenge function of RIA, to complement advocacy and capacity building activities.

Phase implementation

- Phase NPDIR implementation, encouraging compliance for all regulatory proposals while improving regulatory quality on carefully selected strategic proposals.
- Implement an effective communication strategy for government stakeholders to manage expectations and support implementation of the NPDIR.

Build capability and regulatory literacy

- Deliver more detailed and higher quality training programmes to cater for the evolving needs of government officials and other key stakeholders.

Connect to long term national and regional vision

- Embed good regulatory practice into the Malaysia 11th Plan.
- Prioritise good regulatory practice regionally in 2015 and in the post-2015 agenda.

Chapter 1

The launch of a whole-of-government regulatory policy in Malaysia

The Recommendation of the OECD Council on Regulatory Policy and Governance *recognises that a fundamental basis for a country's regulatory management system is to have in place a whole-of-government policy underpinning how it develops, implements and evaluations regulation. Malaysia has evolved from a "deregulation" regulatory policy towards one advocating for good regulatory practice (GRP) across the entire regulatory system. This chapter provides an overview of Malaysia's National Policy on the Development and Implementation of Regulations (NPDIR) and its link to the country's domestic policy goals and regional commitments.*

Introduction

Malaysia has long recognised the role of regulatory reform to support its aspirations to be a high-income and progressive nation whose economy is competitive through private-sector driven and people-centred growth. Malaysia's Vision 2020, articulated in 1991, explicitly called for "productive de-regulation" to maximise the benefit and minimise the cost of regulation on society and the economy. Since the mid-noughties, Malaysia has made concerted efforts to improve the Ease of Doing Business, moving up to 18th in 2015 from 23rd in 2009 (out of 189 economies) in World Bank Doing Business rankings.

The launch of the *National Policy on the Development and Implementation of Regulations* (NPDIR) on 15 July 2013 marks a change in the government's approach to regulatory reform: from deregulation to a whole-of-government approach on good regulatory practice. This has been accompanied by practical "how to do" *Best Practice Regulation Handbook, Quick Reference Best Practice Regulation Handbook*, *Guideline on Public Consultation Procedures* and *Guide to Reducing Unnecessary Regulatory Burdens.*

The NPDIR and its supporting materials aim to promote a regulatory process that is effective, efficient and accountable and that supports greater policy coherence. It also supports Malaysia's broader public governance reforms that encourage stronger evidence-based decision making, more inclusive and user-centred delivery as well as greater co-ordination inside of government.

This chapter provides an overview of the NPDIR and its link to Malaysia's domestic policy goals and regional commitments. In providing an overview of the NPDIR, the chapter examines:

- the objectives and principles of the Policy using the framework provided by the *Recommendation of the OECD Council on Regulatory Policy and Governance* (OECD, 2012a), comparing the Policy to international practice and mapping the principles to the different stages of the regulatory governance cycle;
- the relationship between the Policy and other recent business regulations reforms, specifically under the 9th and 10th Malaysia Plans (i.e. medium-term government plans), that focus on reducing unnecessary regulatory burdens on business, and the gap that the NPDIR fills in the country's regulatory reform agenda; and

- the link between the Policy and the objectives of Malaysia's New Economic Model, Economic and Government Transformation Programmes, as well as commitments to good regulatory practice under the Association of South East Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC).

The Policy's objectives, scope and principles

The NPDIR was launched by the Chief Secretary to the Government and Secretary-General of the Ministry of International Trade and Industry in an event attended by more than 500 individuals, including senior government officials, captains of industry and the OECD (MPC, 2013a). The NPDIR was further communicated to all government entities by General Circular 1/2013 issued by the Chief Secretary to the Government.[1] The Malaysia Productivity Corporation (MPC) has subsequently issued a number of documents to support the Policy's implementation. These include a *Best Practice Regulation Handbook*, *Quick Reference Best Practice Regulation Handbook*, *Guideline on Public Consultation Procedures* and *Guide to Reducing Unnecessary Regulatory Burdens* (MPC, 2013b; 2013c; 2014a; 2014b).

The NPDIR establishes objectives, principles, responsibilities and Regulatory Process Management Requirements for the amendment of existing regulations and the formulation of new regulations. The Policy's objective 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 NPDIR principles and process aims to promote a regulatory framework that is effective, efficient and accountable and that supports greater policy coherence. The principles and process apply to the amendment of existing regulations and development of new regulations by all federal government ministries, departments, statutory bodies and regulatory commissions. The principles and process may be voluntarily applied by state governments and local authorities (Box 1.1). There is no explicit reference within the NPDIR as to whether the principles apply to the legislative branch of government. However, in Malaysia regulatory proposals typically originate from the executive branch.

Box 1.1. **Principles of Malaysia's National Policy on the Development and Implementation of Regulations**

The National Policy on the Development and Implementation of Regulations establishes that all federal regulators (i.e. ministries, departments, statutory bodies and regulatory commissions) 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. 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 minimised 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;

Box 1.1. **Principles of Malaysia's National Policy on the Development and Implementation of Regulations** (*cont.*)

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. All regulations are reviewed once every five years.

Source: MPC (2013a), *National Policy on the Development and Implementation of Regulations*, Perbadanan Produktiviti Malaysia, Petaling Jaya.

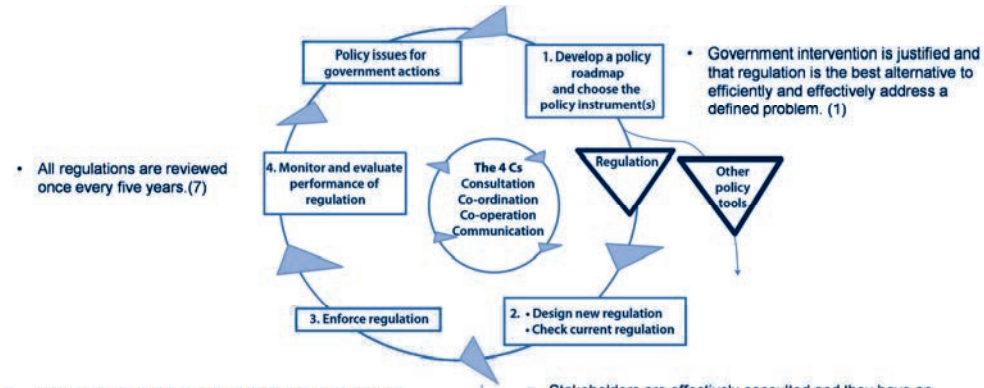
The NPDIR principles are to be adhered by regulators in the course of regulating, from identifying policy objectives to regulatory design to evaluation. Figure 1.1 maps the principles articulated in the NPDIR to the regulatory governance cycle, as defined by the OECD. Many of the principles closely correspond to the elements of regulatory impact analysis (RIA). For example, Principle 1 closely corresponds with the first three elements of RIA (i.e. clearly defining the problem statement, the government's objectives and different policy options), with impact analysis corresponding with Principles 3 and 4 of the NPDIR, and developing a strategy for implementation corresponding to Principle 5.

Responsibilities and obligations under the Policy

While regulators are required to observe the NPDIR principles in the rulemaking process, the Policy also establishes an additional level of scrutiny of regulatory proposals that have more than a minor – in other words, a significant – impact on business, investment and trade. This process is discussed in further depth in Chapter 3 of this report.

Figure 1.1. **Mapping Malaysia's *National Policy on the Development and Implementation of Regulations Principles* to the regulatory governance cycle**

Policy principle number in parenthesis



- Adequate preparation is made for implementation of regulation and that early circulation/announcement is made to create awareness and facilitate implementation (5.vi and viii)
- Implementation of regulation is undertaken in transparent manner and regulations promote implementation based on fairness and integrity (5.iii and 5.iv)
- Resources have been approved and are adequate to effectively discharge enforcement responsibilities (5.v)

- Stakeholders are effectively consulted and they have an opportunity to participate in the regulatory development process. (2)
- An impact analysis is conducted to demonstrate that the benefits of a regulation outweighs the costs to citizens, government and businesses. (3)
- The adverse impact of regulation on the capacity of the economy to generate wealth and employment is minimised and that no unnecessary burden is imposed on any party. (4)
- All regulations implemented as supported by appropriate legislative provisions. (4i)
- Information and administrative requirements imposed by regulation are limited to what is absolutely necessary and impose the least possible cost. (4ii)
- Regulation are not based on narrow interests of particular interest groups but address overall national concerns in a balanced manner. (4iii)
- The special circumstances of SMEs are addressed in regulation and that equivalent means to conform to regulatory requirements are given consideration. (4.iv)
- Regulation is consistent with Malaysia's commitments in international and inter-governmental agreements. (6)
- "Regulatory Process Management Requirements" are followed (e.g. use of RIA, documentation of regulatory procedures, regulatory transparency). (5.i)

Note: Different jurisdictions may use different vocabulary to express the functions depicted in the figure, which are not always easily translatable. They are so closely associated with the country context that some terms take on a country specific meaning. For example, in Europe, enforcement may also be referred to as supervision, inspection or execution.

Source: Adapted from OECD (2011), *Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264116573-en; and Government of Malaysia (2013a), *National Policy on the Development and Implementation of Regulation*, Regulatory Review Department, Malaysia Productivity Corporation, Petaling Jaya.

The NPDIR establishes the National Development Planning Committee (NDPC) as responsible for overseeing the Policy's implementation and examining the adequacy of regulatory impact statements (RIS) – i.e. the document presenting the conclusion of the RIA – with a significant impact on business, investment and trade. The Committee's recommendations – such as those concerning the adequacy of RIS and NPDIR implementation – are directed to the Cabinet of Ministers.[2] The NDPC is the highest body comprised of government officials, in the formulation and co-ordination of policy. The Committee's members include the highest civil servants in core economic units, and it is chaired by the Chief Secretary to the Government.

The NDPC is assisted by MPC and the National Institute of Public Administration (INTAN) to ensure effective implementation of the Policy. The MPC is responsible for developing guidelines and programmes for the Policy's implementation; ensuring that capacity building programmes are available for regulators; assisting NDPC in assessing the adequacy of RIS; providing regulators with guidance and assistance in conducting RIA and preparing RIS; conducting periodic reviews of Policy implementation and submitting reports to the NDPC; and promoting transparency of RIS. INTAN is responsible for providing training on RIA.

In addition, the NPDIR acknowledges the role of the Attorney-General's Chambers (AGC) in offering legal advice to the Cabinet or any minister on the development of laws and regulations. The AGC may provide legal opinions on regulatory solutions, drafting of regulations, harmonisation of regulatory requirements as well as Malaysia's compliance with obligations of international treaties and relevant agreements. The Attorney-General is also a member of the NDPC.

The Policy's alignment with international good practice

Malaysia's adoption of an explicit regulatory policy and the contents of the policy are broadly in line with the *Recommendation of the OECD Council on Regulatory Policy and Governance* (OECD, 2012a) and international good practice. The OECD Recommendation encourages governments to commit at the highest political level to an explicit whole-of-government policy to assure regulatory quality (Box 1.2). A growing number of OECD member countries have adopted an explicit regulatory policy over the past 15 years. Figure 1.2 shows quantitatively the broad lines of regulatory policy development across OECD countries since 1998, including whether the policy includes reform objectives, sets out principles of good regulation and establishes responsibilities at a ministerial level.[3]

Although the NPDIR does not make reference to the 2012 OECD Recommendation it does make reference to the OECD (2005) "Guiding Principles for Regulatory Quality and Performance". These Guiding Principles are included as an annex to the NPDIR. However, the 2012 OECD Recommendation builds upon and goes beyond the 2005 Guiding Principles reflecting the experience and learning of OECD member countries.

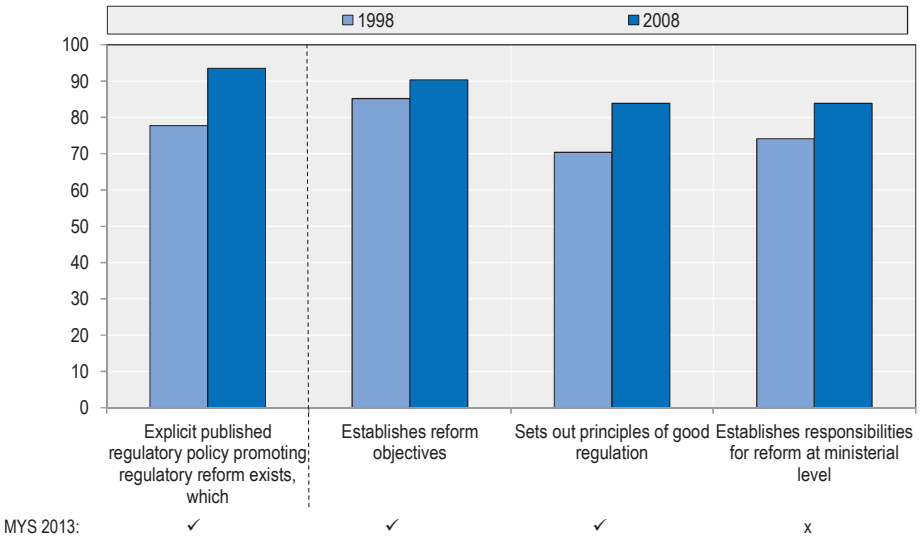
In this regard, future reviews of NPDIR implementation could give attention to using the *Recommendation of the OECD Council on Regulatory Policy and Governance* as a benchmark, but ensuring balanced attention to government capacity to implement a broader range of GRP. The NPDIR commits the NDPC – with MPC support, and with active engagement of stakeholders – to periodically review the Policy at least once every five years, or earlier if needed, in order to take into account the successes achieved, constraints encountered in implementation, the changes in national priorities and the impact of other relevant national policies that have a direct relationship with the NPDIR.

The functions of the NDPC, together with those of the MPC and INTAN, are similar to that of regulatory oversight bodies in many OECD member countries. These functions include contributing to the systematic improvement of the application of regulatory policy, reviewing and challenging the quality of regulatory proposals and providing training and guidance on impact assessment and strategies to improve regulatory performance. The engagement of MPC and INTAN in supporting the NDPC reflects the knowledge and expertise of these respective bodies.

The alignment of the NPDIR with international good practice has been positively influenced by concerted efforts within the government of Malaysia to learn the lessons from a number of OECD member countries. Beginning in 2011 the government of Malaysia engaged in discussion with regulatory oversight bodies from Australia, the Netherlands, New Zealand and the United Kingdom. These bodies included the Office of Best Practice Regulation, Department of Finance and Deregulation;[4] Australian Government Productivity Commission; Regulatory Reform Group, the Netherlands; the Dutch Advisory Board on Administrative Burden; Regulatory Impact Assessment Team, New Zealand Treasury; Better Regulation Executive Department for Business Innovation and Skills, United Kingdom. Discussions were also held with the European Commission and the OECD (with the OECD Secretariat and delegates of the Regulatory Policy Committee).

Figure 1.2. **Adoption of an explicit regulatory policy: Malaysia and OECD member countries**

Percentage of total OECD central governments and European Union (n=31)



Note: Data for 1998 are not available for the European Union, Luxembourg, Poland and the Slovak Republic. This means that this figure is based on data for 27 countries in 1998 and for 30 countries and the European Union in 2008.

Source: Question 1 a), ai), aii), aiii), 2008 OECD Indicators Questionnaire, Indicators of Regulatory Management Systems, 2009 Report, OECD, Paris, www.oecd.org/regreform/indicators.

International good practice has been adjusted to the Malaysia context through discussions and consultations both within government as well as with representatives of business. The process for the development of the NPDIR began in June 2011 led by INTAN, the Malaysian Administrative Modernisation and Management Planning Unit, Standards Malaysia, AGC, Ministry of International Trade and Industry and the Public Service Department (MPC, 2012). Over the course of two years a series of dialogues and consultations were conducted with different parts of the government (Annex 1.A1). These consultations saw the inclusion of a RIA gatekeeper function in the NDPC, as well as capacity building and training mechanisms. In total, over a dozen drafts of NPDIR and *Best Practice Regulation Handbook* were developed over the course of 2012.

Box 1.2. **Principle 1 of the Recommendation of the OECD Council on Regulatory Policy and Governance**

Principle 1 of the *Recommendation of the OECD Council on Regulatory Policy and Governance* encourages countries to commit at the highest political level to an explicit "whole-of-government" policy to assure regulatory quality. Regulatory policy defines the process by which government, when identifying a policy objective, decides whether to use regulation as a policy instrument, and proceeds to draft and adopt a regulation through evidence-based decision-making. A policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, distributional effects are considered and the net benefits are maximised.

An explicit policy should ensure that regulations and regulatory frameworks serve the public interest, the policy should commit governments to:

- adopt a continuous policy cycle for regulatory decision making, from identifying policy objectives to regulatory design to evaluation;
- use regulation when appropriate to achieve policy objectives;
- maintain a regulatory management system, including both *ex ante* impact assessment and *ex post* evaluation as key parts of evidence-based decision making;
- articulate regulatory policy goals, strategies and benefits clearly;
- systematically review the stock of regulations periodically to identify and eliminate or replace those which are obsolete, insufficient or inefficient; and
- develop, implement and evaluate a communications strategy to secure ongoing support for the goals of regulatory quality.

To achieve results, governments should:

- consider policies, institutions and tools as a whole, at all levels of government and across sectors, including the role of the legislature in ensuring the quality of laws;
- recognise that specific components such as impact assessment and administrative simplification are important but do not substitute for a comprehensive programme;
- consider the impacts of regulation on competitiveness and economic growth;
- commit to apply regulatory policy principles when preparing regulations that implement sectoral policies, and strive to ensure that regulations serve the public interest in promoting and benefitting from trade, competition and innovation while reducing system risk to the extent practicable;

Box 1.2. **Principle 1 of the Recommendation of the OECD Council on Regulatory Policy and Governance** (*cont.*)

- monitor the impact of regulations and regulatory processes; and
- develop programmes to reduce the administrative and compliance costs of regulation without compromising legitimate regulatory objectives.

The regulatory policy should include a preference for performance-based regulation, and should facilitate the efficient functioning of the market.

Moreover, governments should develop and maintain a strategic capacity to ensure that regulatory policy remains relevant and effective and can adjust and respond to emerging challenges. It is a core function of government to ensure that existing regulations are delivering the necessary level of public protection including having the strategic capacity to consider and identify if regulatory intervention is necessary and will be effective. Governments should issue guidelines for the use of regulatory policy tools and procedures. The design of institutional frameworks and resources necessary to implement regulatory policy including the enforcement of regulation should be assessed to ensure that they are adequate and address regulatory gaps.

The regulatory policy should clearly identify the responsibilities of ministers for putting regulatory policy into effect within their respective portfolios. In addition, governments should consider assigning a specific minister with political responsibility for maintaining and improving the operation of the whole-of-government policy on regulatory quality and to provide leadership and oversight of the regulatory governance process. The role of such minister could include:

- monitoring and reporting on the co-ordination of regulatory reform activities across portfolios;
- reporting on the performance of the regulatory management system against the intended outcomes; and
- identifying opportunities for system-wide improvements to regulatory policy settings and regulatory management practices.

Source: OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD, Paris, www.oecd.org/gov/regulatory-policy/2012-recommendation.htm.

Link with Malaysia's broader regulatory reform agenda

Malaysia has long acknowledged the importance of the private sector to achieve its national strategic priorities and embarked on improving the regulatory environment for businesses. This commitment was articulated in the Malaysia Incorporated Policy and reinforced by Vision 2020, articulated in 1984 and 1991 respectively by then Prime Minister Mahathir Mohamad.

The Malaysia Incorporated Policy encouraged co-operation between the public and private sectors whereby both sectors act and operate within a "Malaysian Company". Vision 2020 developed this commitment further, recognised the specific role of regulatory reform in Malaysia's economic development, together with fiscal and monetary policies, to secure the establishment of a dynamic, robust and resilient economy:

> There can be no doubt that regulations are an essential part of the governance of society, of which the economy is a part. A state without laws and regulations is a state flirting with anarchy. Without order, there can be little business and no development. 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; and it lies in making the right judgments with regard to the trade-offs. Thus governments will be neither foolish nor irresponsible, and will cater to the needs of the wider society as well as the requirements of rapid growth and a competitive, robust and resilient economy. It will be guided by the knowledge that the freeing of enterprise too – not only laws and regulations, and state intervention – can contribute to the achievement of the wider social objectives. In this light and given the fact that there are clear areas of unproductive regulation which need to be phased out, you can expect the process of productive de-regulation to continue (Mohamad, 1991).

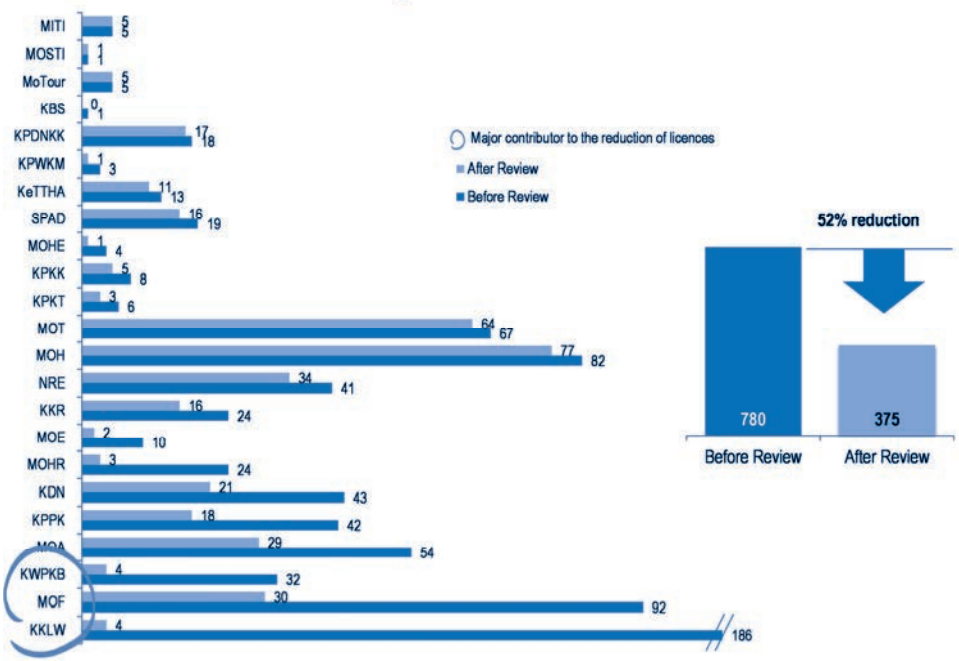
Malaysia subsequently launched a major privatisation programme in the early 1990s, including telecommunications, power generation and supply, ports, airports, highways, posts, telecommunications, railways and sewerage works. A Privatisation Master Plan was drawn up in 1991 to guide the implementation of this programme (APEC, 2000). In November 2003 the government of Malaysia established a task force to reduce bureaucracy, including examining and identifying laws and regulations that impact on public service and establishing service charters.[5]

More recently, attention has focused on removing unnecessary regulatory burdens through reviews of regulations that impede business innovation as a priority on the national agenda (OECD, 2012b). These efforts have received increased attention under the 9th and 10th Malaysia Plans and supported by the establishment of a Special Task Force to Facilitate Business (PEMUDAH) and a Regulatory Review Department within the MPC in 2007 and 2010, respectively. Prior to the launch of the NPDIR, Standards Malaysia had championed the adoption of GRP through Malaysia's commitment to regional bodies such as ASEAN and APEC as well as the World Trade Organisation.

Modernising business licensing under the 9th Malaysia Plan

The 9th Malaysia Plan committed the government to continue efforts to reduce bureaucratic red tape, re-engineer and simplify work processes and procedures, including through enhanced inter-agency co-operation. To support this goal, the Prime Minister established PEMUDAH in 2007 to address bureaucracy in business government dealings and improve the way government regulates business. PEMUDAH's core values include a commitment to proactive public-private sector collaboration; a public sector that facilitates and not hampers the private sector; and no more government regulation than necessary. PEMUDAH is comprised of 23 highly-respected individuals from both the private and public sectors. Its work is delivered by a number of working groups and task forces comprised of public officials and representatives from the private sector. PEMUDAH shares many similarities with Indonesia's National Economic Council and the Philippines National Competitiveness Council.

Figure 1.3. **Malaysia's reduction of licences during Modernising Business Licence, Phase 1**



Source: Malaysia Productivity Corporation (MPC).

PEMUDAH has supported improvements in the Ease of Doing Business in Malaysia and many of its working groups directly correspond to World Bank indicators. For example, a 2011 review of 761 licences identified 395

that could be eliminated or simplified with an estimated annual reduction in compliance costs of MYR 729 million (Figure 1.3). This ultimately resulted in 2014 in the simplification of 717 business licences into 448 and the abolition of nine licences. These and other reforms have supported Malaysia to improve its Ease of Doing Business ranking, moving up to 18th in 2015 from 23rd in 2009 (out of 189 economies). In addition, efforts under the banner of PEMUDAH supported the development of a Circular on Online Public Consultation by Ministries and Agencies for All New Proposals or Amendments to Draft Laws to all ministries and agencies in April 2012 – though this circular ended in April 2014 owing to a two-year sunset clause.[6]

Addressing the stock of regulation under the 10th Malaysia Plan

The 10th Malaysia Plan broadened attention to regulatory review beyond business licensing, delegating responsibility to the MPC. Under this Malaysia Plan, MPC was tasked with:

- reviewing existing regulations with a view to removing unnecessary rules and compliance costs;
- undertake a cost benefit analysis of new policies and regulations to assess the impact on the economy;
- providing detailed productivity statistics, at sector level, and benchmark against other relevant countries;
- undertaking relevant productivity research (e.g. the impact of regulations on growth of small and medium enterprises);
- making recommendations to Cabinet on policy and regulatory changes that will enhance productivity; and
- overseeing the implementation of recommendations.

MPC together with PEMUDAH reviewed the regulatory framework for 18 services sub-sectors to identify regulatory burdens and facilitate ease of doing business. The private sector is actively involved in this work to understand the regulatory processes from the start until the business is ready for operation. Through this process, MPC documents a business' interactions with government agencies and compliance costs as a basis to formulate recommendations to reduce unnecessary regulatory burdens. MPC estimates that compliance cost in all the 18 sub-sectors is as high as MYR 35 million (EUR 8 million) per year (OECD, 2012b).

Building on its mandate under the 10th Malaysia Plan and the initial experience to review the compliance costs in 18 service sub-sectors, MPC has refined its approach to review unnecessary regulatory burdens.

MPC (2014a) defines nine main types of unnecessary regulatory burdens (Box 1.3). In 2014, MPC published reports on unnecessary regulatory burdens in the healthcare services sector with a focus on the private hospital sector, and the construction industry (MPC, 2014c; 2014e). In 2014-15, MPC is conducting a review of unnecessary regulatory burdens on business in the downstream oil and gas sectors.

Box 1.3. **Malaysia Productivity Corporation's Typology of Unnecessary Regulatory Burden**

- Excessive coverage by a regulation – that is, the regulation affects more activity than was intended or required to achieve its objective (includes "regulatory creep");
- Subject-specific regulation that covers much the same issues as other generic regulation;
- Prescriptive regulations that unduly limits flexibility such as preventing businesses from using the best technology, making product changes to better meet consumer demand and meeting the underlying objectives of regulation in different ways;
- Overly complex regulation;
- Unwieldy licence application and approval processes, excessive time delays in obtaining responses and decisions from regulators
- Rules or enforcement approaches that inadvertently result in businesses operating in less efficient ways;
- Unnecessary invasive regulatory behaviour, such as overly frequent inspections or duplicative information requests;
- An overlap or conflict in the activities of different regulators; and
- Inconsistent application or interpretation of regulation by regulators.

Source: MPC (2014a), *Guide to Reducing Unnecessary Regulatory Burdens*, Perbadanan Produktiviti Malaysia, Petaling Jaya.

The MPC has proposed to broaden the review of unnecessary regulatory burdens across different sectors of the Malaysian economy. In March 2014, MPC conducted research on the total stock of Malaysia laws – of which 759 were promulgated between 1968 and 2013. MPC used the proxy measures of page count and number of times the word "shall" was referenced. It found

that the 759 laws totalled 26 500 pages and with 115 000 use of the word "shall", or an average of 39 pages and 170 "shall" for each law. Furthermore, MPC asserted that assuming that it takes approximately 4 minutes to read one page, an individual would require 220 eight-hour working days to finish reading their obligations, equivalent to 1 year of working days (MPC, 2014d).

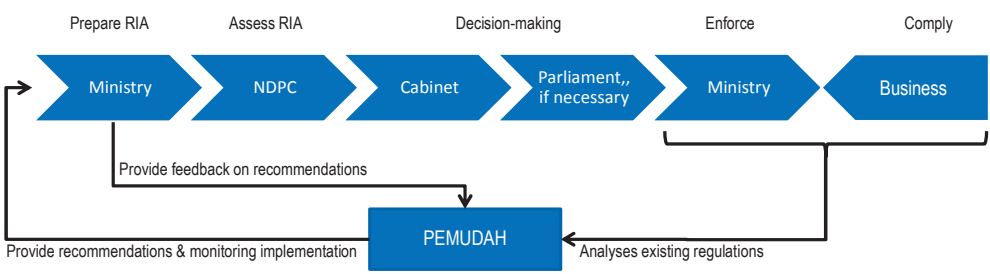
Towards regulatory policy and governance and the contribution of the NPDIR

The 10th Malaysia Plan went further than previous five-year plans and included commitments to strengthen the government's role as a policy maker and independent regulator. The Plan focussed on establishing transparent objectives for the sector and on defining clear roles and boundaries for respective players. It included:

- creating structures to separate policy making from regulation and specifies clear lines of accountability;
- creating structures to address areas of overlapping jurisdiction;
- improving the formulation of regulations;
- enhancing the capabilities of policy makers and regulators; and
- encouraging disclosure-based practices rather than strict enforcement of rules and regulations (Government of Malaysia, 2010).

The 11th Malaysia Plan provides the opportunity to continue to embed and mainstream good regulatory practice. Having good regulatory practice as a cross-cutting theme that assists the attainment of national priorities would help to institutionalise good regulatory practice in Malaysia.

Figure 1.4. **Malaysia's Quality Regulatory Management System**



Source: Malaysia Productivity Corporation (MPC).

The launch of the NPDIR together with existing reforms to review administrative burdens is part of efforts to establish a broader "Quality Regulatory Management System" (Figure 1.4). This System gives attention to both *ex ante* impact assessment and *ex post* evaluation of regulations as part of an evidence-based approach to decision making, and in line with the *Recommendation of the OECD Council on Regulatory Policy and Governance* (see Box 1.1).

The NPDIR acknowledges that it responds to the recognition by the government of Malaysia that it does not have official whole-of-government policy on regulatory policy; rather rule making processes are based largely on practices that have evolved over time. The absence of an official policy has, on occasion, created gaps in the rule making process resulting in ineffective regulations and unnecessary regulatory burdens on industry and businesses. However, the challenges caused by the absence of a whole-of-government regulatory policy in Malaysia have not been very well documented.

Focusing on primary legislation, Muhamad (2012) finds that government regulation is frequently drafted in parallel with policy formulation. Moreover, many regulators do not know what they should provide legal drafters and present a draft bill to AGC rather than drafting instructions. The AGC is responsible for drafting regulation and ensuring that all subsidiary legislation does not ultra vires any primary legislation and is in accordance with legislative drafting norms. However, presenting a draft bill rather than drafting instructions is also considered a means to fast track rulemaking. Within this context, the NPDIR and the introduction of RIA provides a framework for regulators to structure policy formulation and communicate information necessary for high quality regulatory drafting.

Hashim (2011) cites a number of examples where discussions of bills tabled in Parliament were postponed on the grounds that the public consultation was deemed inadequate. One such example is the National Wages Consultative Council Bill 2011 was strongly criticised for not engaging major stakeholders from employers and employee associations. In surveying AGC officials Hashim (2011) found that 62% of respondents experienced cases where stakeholders were not consulted at all – though 67% of respondents thought that stakeholders are sufficiently consulted in rulemaking. Within this context, the NPDIR and the introduction of RIA provides a tool to support public consultation not only on draft regulatory texts but also the policy-making process, including the discussion of policy issues, whether government intervention is justified and regulation the best alternative, to minimise regulatory compliance costs and design effective implementation strategies.

Link with broader domestic policies and regional commitments

The NPDIR supports domestic reforms to regulatory settings at a whole of-government and sector specific level, as well as those related to public governance, and Malaysia's commitments to regional co-operation and convergence. Table 1.1 demonstrates the link between regulatory reform and the government's New Economic Model, Economic Transformation Programme (ETP) and Government Transformation Programme (GTP), as well as ASEAN and APEC.

Table 1.1. **Link between Malaysia's domestic policies, regional commitments and good regulatory practice**

	ASEAN / APEC	New Economic Model	Economic Transformation Programme	Government Transformation Programme
Regulatory co-operation & convergence	++			
Whole-of-government regulatory settings		++		
Sectoral regulatory settings		+	++	
Regulatory governance	++	+	+	+

Notes: ++ = strong emphasis; + = general emphasis; ASEAN = Association of South East Asian Nations; APEC = Asia-Pacific Economic Cooperation.

Link with Malaysia's national economic policies

Reforms to the regulatory settings at the whole-of-government level are at the fore in the New Economic Model that was launched by the National Economic Advisory Council in 2010. The New Economic Model advances a new approach to support Malaysia's economic goals to become market led, well governed, regionally integrated, entrepreneurial and innovative (Table 1.2). Under this new model, government is to become an efficient facilitator of markets through a streamlined, proportionate, market-focused and supportive regulatory framework, while retaining a role to manage disruptions from inevitable market failures. This approach is to be achieved through a number of strategic reform initiatives that address economy-wide regulations (Figure 1.5). This includes, removing barriers and the costs of doing business, encouraging healthy competition and promoting small and medium-enterprise growth in order to re-energise the private sector; reducing labour market distortions in order to develop a quality workforce; and removing market distortions in order to promote product competition.

Reforms to the regulatory settings at the sectoral level are at the fore in the Economic Transformation Programme through supporting 12 National Key Economic Areas that are anticipated to make substantial contributions

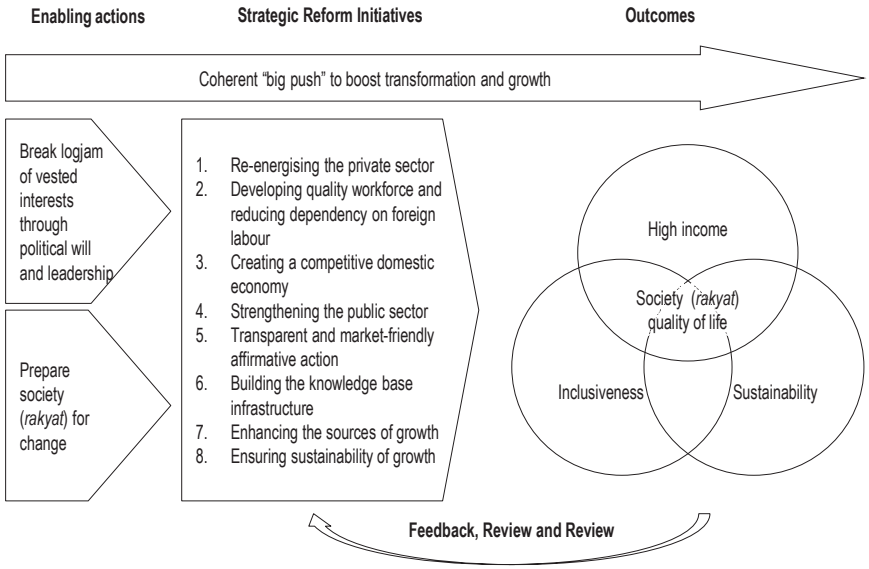
to Malaysia's economic performance.[7] Support for National Key Economic Areas may require amendments to existing or altogether new regulations as well as other reforms in the areas of competition, standards and liberalisation. In this regard, the Economic Transformation Programme is explicit about the role of regulators in amending existing and passing new regulation with a view to removing unnecessary rules and compliance costs and improving the speed and ease of delivery. In addition, the Economic Transformation Programme notes the role of PEMUDAH and the MPC in providing support to review and make recommendations to amend existing regulations and policy (PEMANDU, 2010).

Table 1.2. **Malaysia's new economic model: old versus new approaches**

Old approach	New approach
Growth primarily through capital accumulation. Focus on investment in production and physical infrastructure in combination with low skilled labour for low value added exports	Growth through productivity. Focus on innovative processes and cutting-edge technology, supported by healthy level of private investment and talent, for high value added goods and services
Dominant state participation in the economy. Large direct public investment (including through government-linked companies) in selected economic sectors	Private sector-led growth. Promote competition across and within sectors to revive private investment and market dynamism
Centralised strategic planning. Guidance and approval from the federal authorities for economic decisions	Localised autonomy in decision-making. Empower state and local authorities to develop and support growth initiatives, and encourage competition between localities
Balanced regional growth. Disperse economic activities across states to spread benefits from development	Cluster- and corridor-based economic activities. Concentration of economic activities for economies of scale and better provision of supporting services
Favour specific industries and firms. Grant preferential treatment in the form of incentives and financing to selected entities	Favour technologically capable industries and firms. Grant incentives to support innovation and risk-taking to enable entrepreneurs to develop higher value added products and services
Export dependence on G-3 (i.e. United States, European Union and Japan) markets. Part of production chain to supply consumer goods and components to traditional markets	Asian and Middle East orientation. Develop and integrate actively into regional production and financial networks to leverage on flows of investment, trade and ideas
Restrictions on foreign skilled workers. Fear that foreign talent would displace local workers	Retain and attract skilled professionals. Embrace talent, both local and foreign, needed to spur an innovative, high value added economy

Source: National Economic Advisory Council (2009), *New Economic Model for Malaysia*, Part 1.

Figure 1.5. **Malaysia's new economic model: enablers and strategic reform initiatives**



Source: National Economic Advisory Council (2009), *New Economic Model for Malaysia*, Part 1.

Reforms to strengthen regulatory governance are central to the Government Transformation Programme, but also addressed within the New Economic Model and Economic Transformation Programme. The Government Transformation Programme establishes 16 "delivery principles" that aim to fundamentally transform the government into an efficient and rakyat- (citizen-)centred institution. These principles aim to support broad cultural change within government and the move towards a new model of smaller government and increased role of the private sector in public service provision by 2020. These delivery principles include evidence-based decision making and citizen engagement to put citizens first and manage outcomes; applying innovative approaches and challenging legacy policies and procedures to maximise government resources; and co-ordination inside of government (Box 1.4).

Link with Malaysia's regional economic commitments

Reforms promote regulatory co-operation and convergence which is in line with ASEAN and APEC objectives to support regional integration and institutional connectivity. Regulatory harmonisation of standards, technical regulations and conformity assessment procedures and regulatory frameworks of select priority sectors was identified as key to the realisation

of a single market and production base under the ASEAN Economic Community by 2015. Regulatory reform is also key to supporting the achievement of the 2009 ASEAN Leaders' Statement on Connectivity and 2010 Master Plan on ASEAN Connectivity – especially related to institutional connectivity. Key elements of institutional connectivity include trade liberalisation and facilitation, investment and services liberalisation and facilitation, mutual recognition arrangements and cross-border procedures.

Attention to regulatory reform within ASEAN is likely to continue to grow in the future. ASEAN/World Bank (2014) found that trade and investment liberalisation remain areas for improvement, and the overall integration agenda should also now include regulatory measures that remain largely unaddressed. Non-tariff measures and barriers, red tape and transaction costs and foreign direct investment policies all have a common important regulatory agenda that affects international trade and needs to be addressed.

Box 1.4. **Malaysia's Government Transformation Programme's Delivery Principles**

Delivery Principles

Putting rakyat (citizens) first:

- Focus on the few highest priority outcomes that the *rakyat* want now and need for the long term, and stop or scale-back other efforts;
- Make and maintain bold credible policy decisions – even where this will require overcoming political constraints;
- Encourage the *rakyat's* participation by getting their input before making decisions, involving them in delivery and regularly measuring their perceptions; and
- Manage expectations and communicate credible intent, then only communicate outcomes delivered.

Using resources prudently:

- Maximise productivity from existing resources, before asking for more, by eliminating leakage, optimising service standards and applying innovative approaches;
- Shift the most important, but scarcest, resources – leadership, talent, funding – to our highest priorities;

Box 1.4. **Malaysia's Government Transformation Programme's Delivery Principles** (*cont.*)

- Invest first in the software of front-line and leadership talent, then only invest in infrastructure and other hardware; and
- Be flexible, challenging legacy policies and procedures, while adhering to good governance.

Collaborating with the best in and out of government:

- Enhance leadership and partnership between ministers and secretary generals to lead delivery jointly;
- Break through boundaries and deliver as one Malaysian government by selectively introducing new structures for delivery and simplifying existing structures;
- Build hybrid capabilities for delivery by attracting Malaysia's top talent and organisations from the public, corporate and social sectors; and
- Engage with the civil service as intensely as with the *rakyat*, communicating a clear and meaningful direction and regularly seeking input.

Managing outcomes to the highest standards:

- Set concrete, high aspirations, ideally to international standards;
- Rigorously plan delivery and make decisions informed by facts from independent and credible sources;
- Establish clear, single-point accountability, supported by the consistent use of differentiated, meaningful rewards and consequences; and
- Monitor and manage the delivery of outcomes that make a real difference, not just inputs and outputs.

Source: Government of Malaysia (2009), "Government Transformation Programme".

Conclusions and recommendations

As the current chapter highlights, the NPDIR marks a change in the government's approach to regulatory reform: from deregulation to regulatory policy and governance. The NPDIR introduces RIA and formalises public consultation to strengthen the quality of policy debate by making the potential consequences of decisions more transparent and

bringing more clarity to the relevant factors influencing the decisions. This is with the goal of having better policies and better outcomes for all in Malaysia.

The NPDIR has leveraged from the positive reforms in Malaysia in specific sectors and in particular in business licence reforms which have added to Malaysia's improvement in business climate. The focus on embedding GRP across the whole of government will assist the delivery of important national goals as described in the Malaysia Plans, Economic Transformation Programme and towards Vision 2020.

Malaysia should continue to utilise national and regional activities to make good regulatory practice a key component of future priorities, such as;

- Embedding good regulatory practice in the 11th Malaysia Plan in an integrated manner and as a means to achieving key priorities; and
- Maintain good regulatory practice as a key component of the regional economic integration process.

The subsequent chapters of this report assess Malaysia's achievements during the first 15 months of NPDIR implementation and identify issues of critical significance moving forward:

- Chapter 2 examines the government's implementation plan for RIA, identifies key challenges and outlines issues for the government to consider in strengthening implementation of the NPDIR and the broader GRP;
- Chapter 3 examines the institutional arrangements to further integrate RIA into Malaysia's rulemaking process both at a whole-of-government level – including with Malaysia's system of development planning – and within individual regulators; and
- Chapter 4 examines the systems to assess the adequacy of RIA – with particular emphasis on regulatory proposals that have a significant impact on business, investment and trade – and to support regulators' compliance with the NPDIR.

Notes

1. See General Circular No. 1/2013 regarding the National Policy on the Development and Implementation of Regulations, Reference JPM.100-2/1/2.
2. See General Circular No. 1/2011 regarding the Terms of Reference for the National Development Planning Committee, Reference UPE(S)10/102/24 JLD 6.
3. Although qualitative assessments confirm that most OECD countries had adopted a regulatory policy by 2008, but also reveal that their regulatory policy often consists not of one but of a series of often disjointed regulatory policies. For example, policies to tackle administrative burdens in existing regulations may not be fully joined up with policies for the *ex ante* impact assessment of new regulations.
4. On 18 September 2013 the Office of Best Practice Regulation was moved from the Department of Finance and Deregulation to the Department of Prime Minister and Cabinet through an Administrative Arrangement Order. The change was part of the Abbott administration's policy to provide whole-of-government focus on deregulation.
5. See government circular letter, "Penubuhan Pasukan Petugas Bagi Mengurangkan Karenah Birokrasi", PMS(S)18114, 17 December 2013.
6. See Government Circular No. 2/2012 on Online Public Engagement for New or Amendments to Existing Regulations, Reference PM(T) 10766/7.
7. The 12 National Key Economic Areas are: oil, gas and energy; palm oil; financial services; tourism; business services; electronics and electrical; wholesale and retail; education; healthcare; communications content and infrastructure; agriculture; and Greater Kuala Lumpur/Klang Valley.

Annex 1.A1

Timeline for the development of Malaysia's National Policy on the Development and Implementation of Regulations

Date	Activities and key milestones
Jun–Aug 2011	Initial policy proposal to develop framework for Quality Regulatory Management System (QRMS) prepared by the National Institute of Public Administration (INTAN), Malaysian Administrative Modernisation and Management Planning Unit (MAMPU), Standards Malaysia, Legal Affairs Division of the Prime Minister's Department, Attorney-General's Chambers (AGC), Ministry of International Trade and Industry (MITI), Public Services Department of Malaysia (JPA), ASEAN High Level Task Force on Economic Integration and Asia-Pacific Economic Cooperation
22 Aug 2011	General consultation session on QRMS.
26 Aug 2011	Discussion with Special Task Force to Facilitate Business (PEMUDAH) Meeting 8/2011 on framework for Good Regulatory Practice (GRP) and recommendation that National Development Planning Committee (NDPC) act as a regulatory gateway.
9 Sept 2011	Discussion on QRMS with meeting of Secretary-Generals of government, with proposed QRMS accepted.
12 Oct 2011	Discussion with NDPC and Economic Planning Unit (EPU) on NDPC role as a regulatory gateway.
21 Dec 2011	Discussion with INTAN and its role as a lead agency for providing training on GRP and regulatory impact statements (RIS).
19 Jan 2012	Consultation Session with "Lead Negotiator for Horizontal Issues Under the Trans-Pacific Partnership (TPP) Agreement" on best practice regulation attended by participants from Standards Malaysia (JSM), Ministry of Finance (MoF), AGC, MITI, Customs and Malaysia's Central Bank.
27 Jan 2012	Discussion of proposal for a "System of Public Consultation before Adoption of New Policies/Legislation" by PEMUDAH meeting 1/2012. Proposal received from Malaysia's World Trade Organisation (WTO) Office, Geneva. Recommended proposal be included in proposed *Best Practice Regulation Handbook.*

Date	Activities and key milestones
10 Feb 2012	Consultation session on the draft *Best Practice Regulation Handbook* with EPU, ICU, MAMPU, Malaysia Anti-Corruption Commission, Ministry of Energy, Green Technology and Water, Ministry of Home Affairs, Ministry of Human Resources, MITI, Ministry of Natural Resources and Environment, Ministry of Plantation Industries and Commodities, Ministry of Public Works, Ministry of Transport, Ministry of Youth and Sports, National Institute of Public Administration, JSM.
14 Feb 2012	Consultation session on GRP with MITI to create awareness and gather feedback for incorporation into the draft policy and guidelines.
24 Feb 2012	Consultation session on to create awareness and gather feedback for incorporation into the draft policy and guidelines, Session attended by representatives from, AGC, Department of Customs, EPU, Land Public Transport Commission, Legal Affairs Unit in the Prime Minister's Department, Malaysia's Central Bank, Ministry of Agriculture, Ministry of Communication and Multimedia, Ministry of Defence, Ministry of Education, Ministry of Federal Territories, MoF, Ministry of Foreign Affairs, Ministry of Health, Ministry of Higher Education, Ministry of Home Affairs, Co-operative and Consumerism, Ministry of Public Works, Ministry of Rural and Regional Development, Ministry of Science, Technology and Innovation, Ministry of Tourism and Culture, Ministry of Urban Wellbeing, Housing and Local Government, National Institute of Public Administration and Universiti Teknologi MARA.
24 Feb 2012	Discussion with PEMUDAH on development of the draft *Best Practice Regulation Handbook*. Agreed that the handbook be tabled at NDPC prior to Meeting of Secretary General of Ministries.
Jan–Apr 2012	Public consultation on draft National Policy on the Development and Implementation of Regulations and draft *Best Practice Regulation Handbook*. Drafts were uploaded on the MPC website.
5 Mar 2012	Written comments received from the AGC and incorporated in the *Best Practice Regulation Handbook*.
27 Mar 2012	The draft national policy on the development and implementation of regulations; *Best Practice Regulation Handbook*; and the general circular to facilitate the implementation of best practice regulation tabled and endorsed by NDPC.
4 Apr 2012	Dissemination session with Secretary-General of government on the draft National Policy on the Development and Implementation of Regulations; *Best Practice Regulation Handbook*; and draft General Circular to facilitate the implementation of best practice regulation.

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Chapter 2

Developing a strategy to assure high-quality regulatory impact analysis in Malaysia

Selecting the appropriate strategy to implement regulatory impact analysis (RIA) and other good regulatory practice (GRP) is a dynamic and careful process. This chapter discusses the government of Malaysia's evolving strategy to effectuate the National Policy on the Development and Implementation of Regulations (NPDIR). It analyses the action plans adopted to deliver high-quality RIA during the first 15 months of the Policy's implementation and discusses the necessary considerations for the next phase to consolidate the government's quality regulatory management system (QRMS).

Introduction

This chapter examines the government of Malaysia's evolving strategy to effectuate the National Policy on the Development and Implementation of Regulations (NPDIR). This Policy introduces the requirement for all federal regulators to adopt regulatory impact analysis (RIA) and complements other good regulatory practice (GRP) initiatives that are currently being rolled out in Malaysia. These other initiatives include reviews of the stock of existing regulations and public consultation. Collectively, these practices contribute to the development of what has been termed the federal government's Quality Regulatory Management System (QRMS). Responsibility and accountability for NPDIR implementation lies with the National Development Planning Committee (NDPC) – comprised of the most senior civil servants from core economic ministries and agencies. The Malaysia Productivity Corporation (MPC) supports the NDPC in the co-ordination of the Policy's implementation.

The strategy to implement the NPDIR has been guided by a number of action plans developed and revised by the MPC during the lead up to the Policy's launch and its first 15 months following its promulgation (i.e. July 2013 through October 2014). These actions plans have guided significant progress in putting in place the institutional infrastructure for assuring high-quality RIA. However, these action plans have typically been short term in focus, limited to a six to nine month period. Moreover, the action plans have been developed by the MPC without engaging and mobilising the support of the NDPC. Experience in OECD member countries has been that assuring high-quality RIA is a long-term agenda and that requires support from top senior officials – but also to integrate RIA into policy-making processes and to build regulator's GRP literacy and capacity.

In examining the government of Malaysia's evolving strategy to implement RIA, this chapter,

- discusses the government's action plans developed by the MPC to assure high-quality RIA during the first 15 months of NPDIR implementation, and the lessons learned from each plan;
- documents the achievements of NPDIR implementation to date; and

- identifies key elements and issues for consideration in developing a medium-term strategy to assure high-quality RIA and to consolidate QRMS in the federal government.

The initial action plans: learning by doing

Progress in implementing RIA during the first 15 months of the NPDIR has been supported by three action plans that have been developed and led by the MPC. The three action plans were developed:

- In 2012, in parallel with the development of the NPDIR;
- In 2013, immediately before the launch of the NPDIR; and
- In 2014, six months after the launch of the NPDIR.

First action plan

The initial MPC action plan – or programme "schedule" as it was formally referred – focused on gaining buy-in, raising awareness, basic understanding of RIA among regulators as well as working in co-operation with selected regulators to launch RIA pilots/demonstration projects. The action plan was developed during the third quarter of 2012 following consultations inside of government on the draft NPDIR and its supporting *Best Practice Regulation Handbook*. (Chapter 1 provides information on the timetable for the development of the NPDIR.) The development of the action plan followed a series of programmes supported by MPC to modernise business licensing and efforts to develop a methodology for the review of unnecessary regulatory burdens under the portfolio of the Special Task Force to Facilitate Business (PEMUDAH).

As part of this initial action plan, a series of workshops were conducted between July and November 2012 targeting ministries to raise awareness and basic understanding of RIA. These workshops were supported by public officials from the Netherlands. Moreover, three pilot projects were launched with the intention of demonstrating the added value of RIA not only to policy and legal officials working in regulators but also to senior civil servants (e.g. secretary-generals and director generals). Table 2.1 presents a summary of the RIA pilots.[1] The MPC also launched a RIS Portal (http://ris.mpc.gov.my/) as a platform to publish regulatory impact statements (RIS) – i.e. the document presenting the conclusion of the RIA – and to support consultation with affected parties.

Table 2.1. **Snapshot of Malaysia's pilot regulatory impact statements**

Ministry	Title	Defined problem
Ministry of International Trade and Industry (MITI)	Strategy Trade Act 2010	Increased number of complaints from business regarding burdensome licensing requirements and difficulty of enforcement of the Act
Federal Agricultural and Marketing Authority (FAMA)	Anti-competitive behaviour in wholesale markets	Anti-competitive behaviour in wholesale market (represented in oligopoly, and price fixing) resulting in unfair outcomes for farmers (they get low price for their produce) and consumers (pay high price)
National Water Services Commission (SPAN)	Sewerage Works Approval Transformation (SWAT) Initiative	Inefficiency of sewerage works approval procedures which are not necessarily achieving the objective of protecting public health

Source: Adapted from Malaysia Productivity Corporation (MPC) documents.

Second action plan

The second action plan was developed immediately before the launch of the NPDIR. This plan committed to the formulation of an implementation strategy, the design of RIA training programmes for regulators and establishment of MPC systems to evaluate RIA – as well as the delivery of the RIA pilots identified during the first action plan. The design of the second action plan reflected the role of MPC as articulated in the NPDIR. Under the Policy, the MPC is responsible for assisting the NDPC by *i)* developing guidelines and programmes for the Policy's implementation; *ii)* ensuring that capacity building programmes for regulators are available; *iii)* assisting in assessment of RIS adequacy; *iv)* providing guidance and assistance to regulators in RIA and preparation of RIS; and *v)* conducting periodic reviews of progress made and submitting reports to NDPC.[2] Moreover, under the NPDIR, the MPC is responsible for initiating a review of the Policy within five years of its launch, actively engaging stakeholders in the process.

During the second half of 2013, the MPC began to develop its internal procedures for assessing notifications of regulatory proposals to determine whether a RIS needs to be assessed. This included refining its scoring criteria to evaluate RIA and to ensure that the MPC complies with the deadlines for reviewing RIS established in the NPDIR. In addition, the MPC sought to engage the National Institute for Public Administration (INTAN) to ensure the availability of appropriate and timely RIA training programmes. (The criteria and internal processes for assessing RIA, as well as RIA training programmes are discussed in more detail in Chapter 4 of this report.)

In September 2013, the MPC Regulatory Review Department convened a two-day management retreat to inform the development of a NPDIR implementation strategy. The retreat recognised that it was necessary not just to develop a strategy for RIA but Malaysia's broader agenda to instil GRP and consolidate its QRMS system. In addition to RIA, the MPC Regulatory Review Department is responsible for review of the stock of existing regulation under the 10th Malaysia Plan and Economic Transformation Programme. Under the 10th Malaysia Plan, the MPC is tasked to review existing regulations with a view to removing unnecessary rules and compliance costs; under the Economic Transformation Programme, the MPC is tasked to review and recommend changes to existing regulations and policy in National Key Economic Areas (Government of Malaysia, 2009; 2010).

The retreat also sought to articulate a mission and vision as a basis for defining the MPC Regulatory Review's strategic goals and developing a roadmap to achieve these goals. The retreat took stock of the MPC Regulatory Review's achievements to date and conducted a SWOT (i.e. strengths, weaknesses, opportunities and threats) analysis of its ability to fulfil its new roles under the NPDIR. The management drew upon two earlier diagnostic studies: from 2010 that aimed to inform the establishment of the MPC Regulatory Review Department (BCG, 2010); and from 2012 that aimed to consolidate the MPC programmes to modernise business licensing and identify unnecessary regulatory burdens (Latifah, 2012).

Through the retreat the MPC Regulatory Review Department articulated its mission to serve as the government's "Quality Regulation Hub" working closely with regulators to instil the principles outlined in the NPDIR. Although the retreat did not define specific goals or roadmap, it emphasised the need to take a medium-term perspective on the implementation of RIA and other GRPs. There was broad realisation that RIA and other GRPs is a long-term policy goal and that evidence of early impact will take three to four years to materialise. Specific emphasis was placed on balancing carefully MPC's role to assess RIA and assist regulators in preparing high-quality RIS; and investing in MPC competencies and capacity to deliver its obligations under the NPDIR, both in terms of effectiveness and efficiency (MPC, 2013).

Moreover, the retreat drew specific attention to a need to reallocate resources to support RIA implementation. It was proposed that 60% of the Regulatory Review Department resources be allocated to RIA (both assessing the adequacy of RIA and assisting regulators to prepare high-quality RIA); with 20% focusing on modernising business licensing and assessing unnecessary regulatory burdens and the remaining 20% to MPC role as the secretariat of PEMUDAH. It was considered that

approximately 90% of the Department's work at that time was focused on modernising business licensing and assessing unnecessary regulatory burdens (MPC, 2013). It was believed that the reduction of resources could be offset by more efficient and targeted utilisation of resources. Indeed, diagnostic work available at the time had identified overlap in the activities of different Regulatory Review Department divisions (Latifah, 2012). The conclusions of the retreat were delivered to the management of MPC for consideration and necessary action.

Third action plan

However, in mid-February 2014 – eight months after the NPDIR launch – MPC began to re-strategise. The MPC had formally complied with its roles under the NPDIR: RIA guidelines had been published and widely disseminated; a training programme was available for regulators through INTAN; criteria for assessing RIS adequacy had been established; and a number of workshops had been conducted to assist three pilots and other regulators to prepare RIS. However, only 15 notifications of regulatory proposals had been received at the time by the MPC. Moreover, there was not a clear sense within the MPC of how to evaluate and report on NPDIR implementation.

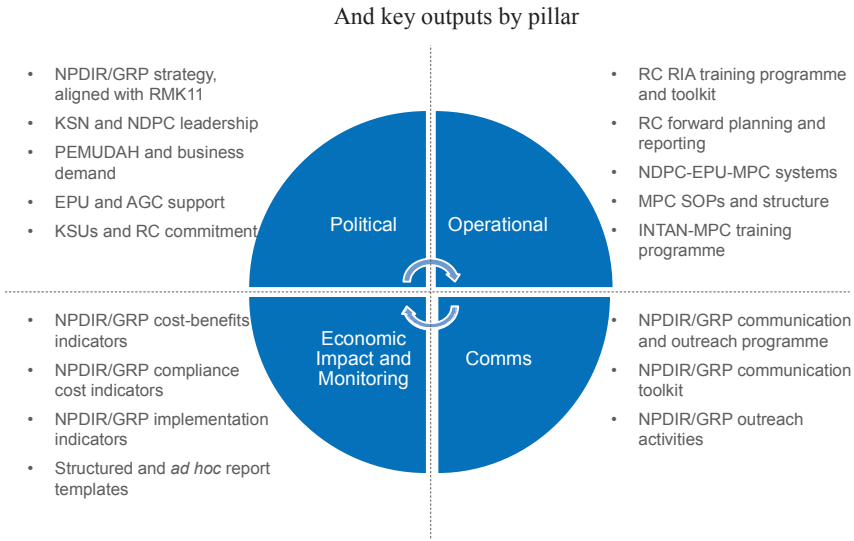
The situation drew attention to a number of risks facing the MPC and the government more broadly including,

- policy risk that that the NPDIR is not meaningfully adopted, that RIA becomes a check box exercise and, ironically, contribute to "red tape" inside of government;
- regulatory risk that amendments to existing and the design of new regulations are ineffective in addressing their desired policy goals and place unnecessary regulatory burdens on industry and businesses, requiring further cleaning and simplification of existing stock of regulations;
- reputational risk for MPC and its role as a knowledge centre on regulatory policy, a function that it had been developing since 2010 with the creation of the Regulatory Review Department; and
- reputational risk for the government of Malaysia stemming from its failure to promote institutional connectivity and regulatory coherence in line with its ASEAN and APEC commitments.

Acknowledging these risks, MPC developed and endorsed a new action plan in February 2014 (Figure 2.1). The action plan centred on supporting improvements in a number of measurable outputs, including the number of

RIS received, reviewed and considered to meet a pre-defined standard (Table 2.2). The action plan was supported by a number of intermediate outputs and activities overseen by a steering committee comprised of the MPC Director-General, one of the institution's two Deputy Director-Generals and the four Directors of the Regulatory Review Department. Moreover, the steering committee committed to meet once a week to monitor implementation of the action plan and mobilise additional resources as necessary.

Figure 2.1. **High-level summary of Malaysia's February 2014 action plan**



Notes: AGC = Attorney-General's Chambers; EPU = Economic Planning Unit; GRP = Good regulatory practice; INTAN = National Institute of Public Administration; KSN = Chief Secretary General to the Government; MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee; NPDIR = National Policy on the Development and Implementation of Regulations; RC = Regulatory co-ordinator; RMK11 = 11th Malaysia Plan; SOP = standard operating procedures.

The action plan was considered a bridging effort while a medium-term implementation strategy could be developed. The action plan centred upon four pillars integrated with one another as a cycle and supported by a number of concrete and measurable outputs. The four pillars focused on:

1. increasing understanding among the highest level civil servants and selected ministers of the objective of the NPDIR, the benefits of RIA for improving the quality of policy making and delivery of the government's policies (including 10th Malaysia Plan and Economic Transformation Programme);

2. strengthening the capabilities of regulators to effectively comply with the NPDIR and RIA requirements, and capabilities of MPC to assist regulators to comply and assess the adequacy of RIA – though with emphasis on assistance in the early years more so than assessment;

3. developing frameworks for the NDPC to effectively monitor and evaluate NPDIR implementation and impact, benchmark regulator's compliance with RIA requirements and refine the Policy's implementation strategies; and

4. formulating and delivering a communication strategy to raise understanding of the benefits of RIA (i.e. content of pillar 1), assistance available from MPC (pillar 2) and good the impact of RIA implementation (pillar 3) among highest level civil servants and subsequently business and media.

Taking stock: achievements during the first 15 months

Significant progress has been made during the first 15 months of NPDIR implementation and provides a foundation for the sustainable adoption of RIA. Although no RIS have been presented to the NDPC to date, 5 have been assessed by MPC and further 28 RIS projects are currently underway across 14 regulators and a potential 167 RIS projects have been identified across 49 regulators for 2015. However, there are still a number of data gaps in relation to regulator's compliance with RIA and quality of RIA that MPC has acknowledged and will address over time (Table 2.2). Indeed, a core component of the MPC action plans has been the development of monitoring and evaluation capabilities to demonstrate and communicate the impact of RIA to the NDPC, other senior civil servants and ministers, business and citizens.

Moreover, the institutional infrastructure has been put in place both within regulators and the MPC. Regulatory co-ordinators have been appointed in 125 regulators responsible to take the lead of RIA and other GRP. Over time attention can focus on empowering regulatory co-ordinators in their respective entity's policy formulation processes through capacity building activities and, in some cases, the appointment of more senior officials to this responsibility. The MPC has invested to build its capabilities on RIA since the establishment of its Regulatory Review Department in 2010. Over time attention can focus on strengthening its capabilities to provide hands on assistance to regulators, and to ensuring alignment of RIA functions with those supporting other GRPs.

Table 2.2. **Regulatory impact analysis after 15 months of implementation**

Outputs	Indicators	Achievements
RIS received and examined by NDPC	Number of RIS received and examined by NDPC	0 RIS received and examined by NDPC
Regulatory proposals received by NDPC without RIS	Number of regulatory proposals received by NDPC without RIS evaluated by MPC (or without MPC assessment that RIS does not need to be assessed by MPC)	*Information unavailable about regulatory proposals received by NDPC*
RIS received and assessed against MPC adequacy criteria	Number of RIS received and assessed against MPC adequacy criteria Number of RIS that meet adequacy criteria on first RIS submission Number of RIS assessed within 3-week deadline established by NPDIR	5 RIS received and assessed against MPC adequacy criteria *Information unavailable about the number of RIS that meet quality standard* *Information unavailable about notifications assessed within 3 weeks*
Notifications of regulatory proposals received and reviewed by MPC	Number of notifications of regulatory proposals received by MPC Number of notifications considered adequate on first receipt Number of notifications of regulatory proposals assessed within 3 days Number of regulatory proposals requiring RIS to be assessed by MPC	31 notifications of regulatory proposals from 14 regulators *Information unavailable on adequacy of notifications on first receipt.* *Information unavailable about notifications assessed within 3 days* 28 regulatory proposals requiring RIS to be assessed by MPC
Pipeline of possible regulatory proposed	Number of regulatory proposals identified in forward planning activities	167 regulatory proposals identified by 49 regulators for 2015.

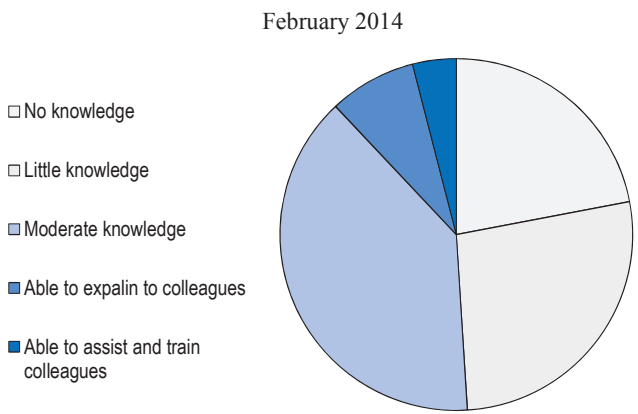
Notes: MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee; RIA = Regulatory impact analysis; RIS = Regulatory impact statement.

Source: Adapted from Malaysia Productivity Corporation (MPC) data.

The establishment of an MPC steering committee has given focus on RIA and supported the implementation of a broad range of activities that provide a foundation for sustainable RIA implementation and the consolidation of QRMS in Malaysia's federal government. Over of the course of 2014, significant progress has been made in the political, operational and monitoring and evaluation pillars of the third action plan. Annex 2.A1 presents the summary of achievements under the third action plan, including an OECD assessment of the progress against the original targets set by the MPC steering committee.

A number of briefings on RIA have been made to the highest-level civil servants, including two to the NDPC, one to a meeting of all Secretary Generals of government and seven to Secretary Generals of specific ministries. Regulatory co-ordinators have been appointed in 125 federal entities, with regulatory co-ordinators in 3 of these entities signing a pledge of commitment to their respective Secretary-General to implement RIA and other GRPs. An MPC survey of 220 regulatory co-ordinators from 110 regulators conducted in April 2014 found that 90% knew about the NPDIR. However, the level of knowledge among regulatory co-ordinators still is a major issue. The same survey of regulatory co-ordinators found that only 12% considered that they have good knowledge of RIA and other GRPs, of which one-third considered that they could actually assist their colleagues (Figure 2.2).

Figure 2.2. **Regulatory co-ordinators' knowledge about regulatory impact analysis after 15 months of implementation**



Source: Adapted from Malaysia Productivity Corporation (MPC) data.

MPC has appointed officials to work with each ministry to implement RIA and other GRPs (RIA start-up team). These officials are responsible for increasing awareness and providing assistance on RIA and other GRPs. As of end September 2014, the MPC has responded to 41 inquiries about RIA in 32 federal regulators, delivered RIA training to 16 federal regulators and provided assistance on the development of 16 notifications of regulatory proposals. To support the role out of RIA the MPC has identified 10 ministries (out of 23 federal ministries) as key partners which it will invest additional resources to build RIA capabilities. These ministries were selected because of their previous commitment to RIA and their close working relationship with the MPC.[3] For example, the Ministry of Science,

Technology and Industry has long exposure to RIA as it represents Malaysia in discussion on technical barriers to trade in ASEAN and the World Trade Organisation.

The MPC has also established a framework to monitor and evaluate the implementation of RIA and other GRPs as well as the development of various structured and ad hoc reports (Table 2.3). This framework has sought to bring together not only RIA but also other GRP work such as modernising business licensing and reducing unnecessary regulatory burdens. In relation to RIA implementation it is important that monitoring and evaluation activities focus on capturing the quality of (priority) RIA as a basis for institutionalising RIA during this "start-up phase". There has been an emphasis on measuring compliance cost savings associated with new regulatory proposals. While a laudable goal this is perhaps overly ambitious at such an early phase of RIA implementation where attention should be focused on assuring adequacy of qualitative information disclosed by regulators in RIA. Reporting on compliance cost savings would also necessitate MPC capabilities to audit the reliability of compliance cost savings presented by regulators.

Table 2.3. **Reporting on regulatory impact analysis implementation**

Audience	Frequency
Parliament	As required
Cabinet of Ministers	As required
NDPC (and EPU)	4 times per year
MPC Board of Directors	4 times per year
Secretary-generals and/or director-generals of regulators	As required
General public	Once per year (Annual Regulatory Report)

Source: Malaysia Productivity Corporation (MPC).

Progress in achieving the targets of the MPC third action plan has been less advanced compared with others given the comprehensiveness, greater scope and ambition of the action plan. In addition the third action plan built upon learnt lessons from the implementation of the previous two action plans and in some cases had to address some mistakes in previous attempts of implementation, such as methodologies applied to the initial RIS pilots.

Although the MPC has developed a communication strategy it does not focus on RIA but rather on getting feedback from business about what sectors to conduct business licensing reform and assess unnecessary regulatory burdens. While this is a commendable initiative, it has not addressed the primary goal of the action plan and has some overlap with the functions of PEMUDAH. Moreover, it risks focusing on specific licences

and/or regulations rather than National Key Economic Areas. Care is also necessary when soliciting input from businesses as irritation from experiences with regulation and frontline service can account for a significant degree of business and citizens' dissatisfaction with regulation rather than the actual cost (OECD, 2012).

Box 2.1. Possible format for a Malaysian regulatory impact analysis communication strategy

Introduction and overview

- Introduction, outlining why a communication strategy is needed, what is the strategy's objective and who is responsible for the communication strategy.
- Background, briefly stating the objectives of RIA, providing sufficient detail for someone who has no knowledge of the regulatory reform.

Objectives and audiences

- Objectives: providing an overarching context necessary for understanding how the strategy will support the desired outcomes. Communication objectives will inform the development of an appropriate communication strategy and serve as the basis for evaluating that strategy. Communication objectives are distinct from communication tasks that are undertaken to achieve the objective; they may include raising awareness, changing behaviours.
- Target audiences: The more thoroughly target audiences are defined and understood, the greater is the likelihood of a strategy succeeding. The definition of target audiences should include information about their knowledge of RIA, past compliance with RIS requirements and engagement in other regulatory and governance reforms (e.g. involvement in reforms of regulatory settings in National Key Economic Areas and commitment to evidence-based decision making and public consultation under the Government Transformation Programme). Broad groupings such as "regulators", "industry" and "citizens" are less likely to result in a strategy that is effective. Target audiences can subsequently be grouped into primary (those directly affected or that need to take action); secondary (those benefiting from RIA and/or perhaps influencing the primary audience); and other audiences (those with a general interest).

Messages and evaluation

- Key messages should serve as a clear "call to action" outlining what target audiences should do as a result of receiving the messages. The key messages should encapsulate the communication objective in as few words as possible. Attention should also be given to whether separate objectives and key messages exist for different target audiences.

Box 2.1. **Possible format for a Malaysian regulatory impact analysis communication strategy** (*cont.*)

- Communications mix, outlining all of the proposed instruments for the communication strategy. The mix should include a brief description of the instruments and the use of the instruments by different target audiences. The specific mix should be guided by communications research on the target audiences.
- Evaluation, which plays a crucial role in ensuring that communication activities are well directed and that lessons can be learned. Evaluation also helps gather information necessary to meet accountability requirements.

Management and resourcing

- Communication management, defining the roles and responsibilities of the members of the communications team. This could include defining the roles of different divisions within the organisation, especially if these different units are responsible for different stakeholders.
- Timeline, with start-to-finish coverage and any specific dates that need to be accommodated, such as announcements and launches. Consideration should also be given to other significant events beyond the scope of influence of the institution responsible for the communication strategy.
- Budget, stating the amount of money and staff time available for implementing the communication strategy, with specific amounts for each component of the strategy and what activities each includes. A share of resources should be set aside for evaluation.

Next steps: moving towards a medium-term strategy

Although significant achievements have been made to date, Malaysia would benefit from the development of a medium-term implementation strategy for the NPDIR and RIA. The previous three action plans have typically taken a short term focus and limited to a six to nine month period. For many countries, the implementation of RIA remains an ongoing endeavour. In this respect the integration of RIA should be seen as a long-term policy goal. All countries, even those with many years of experience with undertaking RIA and with very advanced RIA systems in place still experience problems with the quality and timeliness of RIA documentation. There is an ongoing need to provide support for public officials responsible for RIA and to improve the way that RIA is prepared (OECD, 2009).

A medium-term NPDIR implementation strategy would also assist in establishing a framework to guide the evaluation of the Policy's implementation. OECD member countries share a common need for better information about where future investments in efforts to improve regulatory management systems should be focused to pay growth and welfare dividends. This is necessary to communicate progress and generate the political support needed for implementing regulatory policy reforms (OECD, 2014). As noted earlier in the chapter, the NPDIR establishes that the Policy should be evaluated at least every five years by the MPC, taking into account the successes achieved, constraints encountered, changes in national priorities and the impact of other national policies.[4] In addition, the MPC is to conduct periodic reviews of progress made in implementing the NPDIR and reporting to the NDPC, with the NDPC responsible for making recommendations to improve the Policy's effectiveness.[5]

In preparation for the development of a medium-term NPDIR implementation strategy, specific attention may focus on:

- Who should endorse the implementation strategy?
- Who may participate in the development of the strategy?
- What should the content of the strategy include? and
- What specific issues may be addressed in the strategy?

Who should endorse the strategy?

As noted at the beginning of this chapter, the NDPC has ultimate accountability for NPDIR implementation. The NDPC is responsible for overseeing NPDIR implementation, assessing its effectiveness and recommending improvements.[6] The NDPC is the highest body comprised of government officials, in the formulation and co-ordination of policy. The Committee's members include the highest civil servants in core economic units, and it is chaired by the Chief Secretary to the Government. Under the NDPC terms of reference, the recommendations of the Committee are directed to the Cabinet of Ministers – and specifically the Economic Committee, a sub grouping of the Cabinet responsible for economic matters, including business, investment and trade.[7] As such, the NDPC should have responsibility for signing off on the medium-term implementations strategy for the NPDIR and RIA. Moreover, its involvement in the design of a strategy will help it to become engaged in the regulatory reform process – which constitutes a new function for it.

The NDPC members include the Directors-General of the Public Service Department, Economic Planning Unit and Implementation and Co-ordination Unit, all under the Prime Minister's Department, as well as the Secretary-General of the Ministry of Finance and the Attorney General. Therefore involving the NDPC will assist with buy in and possible initiatives that may be driven by the NDPC members themselves. For example, the Public Service Department could support the RIA by the inclusion of competencies elevating the status of regulatory co-ordinators in the human resource performance management system. The Department can improve and ensure delivery of specific RIA training and mainstreaming of GRP into other public policy courses; as INTAN is an agency of the Public Service Department. The Ministry of Finance and EPU could ensure the mobilisation of resources for the implementation of RIA and other GRPs under Malaysia's five year plan and annual budget, and provide linkages to the cabinet process (see Chapter 3).

Who may participate in the development of the strategy?

To build broader support for the strategy, the NDPC and MPC could consider engaging federal government entities with responsibilities linked to RIA and other GRPs. This could include PEMUDAH, the Malaysian Competition Commission (MyCC) and the Ministry of International Trade and Industry (MITI). PEMUDAH was established in 2007 to address bureaucracy in business government dealings and improve the way government regulates business. As a joint public-private task force established by government, the engagement of PEMUDAH would provide an opportunity to solicit input from the private sector – a key feature of Malaysia's approach to regulatory reform (see Chapter 1). Although MITI and MyCC are not formally acknowledged in the NPDIR, the *Best Practice Regulation Handbook* states that RIA should address the impact of options with respect to market competition and trade.[8]

Moreover, the NDPC and MPC could also consider engaging federal regulators that sponsor and/or author a large number of regulations that impact on business, investment and trade – though this may necessitate generating data on this very point. At present the AGC maintains a database of the stock and flow of primary and subsidiary legislation, a summary of which is published in its biennial reports (AGC, 2010; 2013) – though it currently does not record which regulation impacts on business, investment and trade. Other important actors should also be mobilised as part of the development of the strategy.

What should be the objective and scope of the strategy?

The strategy should seek to provide a vision of what Malaysia's RIA and QRMS should look like in 2020 in order to successfully target scarce resources and measure progress on implementation. An emphasis should be placed on delivering high quality RIA in selected strategic areas in order to demonstrate its relevance and added value in policy making to ministers and high-level officials. The fundamental success of RIA is dependent on the value added of RIS. However, the strategy could go beyond RIA and encompass various GRP programmes currently being implemented by the MPC. As noted in Chapter 1, the objectives and principles outlined in the NPDIR relate to the entire regulatory governance cycle, as defined by the OECD (2011): from regulatory design through implementation and evaluation. This would enable the strategy to exploit synergies between the programmes and also to inform the allocation of resources between them.

Cognisant of the methodological and practical difficulties associated with measuring regulatory performance, OECD member countries have agreed on a framework based on an "input-output-outcome" logic (OECD, 2014). Table 2.4 provides examples of the types of indicators that could be used. These sets of indicators *i)* cover the development and implementation of regulation across sectors rather than disciplining individual domains; *ii)* address governmental capacity to provide high quality regulation; and *iii)* are neutral in relation to the total level of regulatory activity (Radaelli and Fritsch, 2012). The indicators are also SMART: they relate to the behaviours that are being targeted (i.e. specific); are quantifiable (measurable) and are supported by information that can collected at reasonable cost (attainable); support decision making of those accountable for the NPDIR implementation (relevant); and are able to be collected and reported on a frequency that can support decision making (timely).

There is value in both collecting facts (e.g. the percentage of draft laws for which RIAs in line with national guidelines were conducted) and information on perceptions (e.g. the percentage of those involved in the regulatory process that view RIA as having improved the quality of regulation). Each set of indicators has its respective advantages and limitations. For example, fact-based indicators are replicable, comparable over time and "actionable", i.e. it is usually easy for policy makers to know what to do to improve on the indicator. The advantage of perceptions-based indicators is that they provide more information on actual quality, use and impact of regulatory policies. At the same time, policy makers need to take into account the many factors that influence perceptions in the design and use of survey data, as the recent OECD work on perception surveys has demonstrated (OECD, 2012; 2014).

Table 2.4. **Examples of performance indicators to evaluate good regulatory practice**

Indicator	Description
	A. Input indicators
Budget	Budget for regulatory policy and oversight at departments and agencies
Staff	Staff for regulatory policy and oversight at departments and agencies
Training	Number of public officials in departments and agencies participating in training on regulatory policy and oversight
	B. Output indicators
Forward planning	Proportion of departments and agencies publishing a forward plan for the introduction and review of primary laws and subordinate regulations to be prepared, modified, reformed or repealed
RIA scope	Percentage of policy proposals for primary laws and subordinate regulations that are subject to RIA
RIA extent	Composite indicator measuring the degree to which RIA documents, for both primary laws and subordinate regulations, include key items required by RIA guidelines
RIA quality	Composite indicator measuring the degree to which RIA documents, for both primary laws and subordinate regulations, provide satisfactory analysis of key items required by RIA guidelines
RIA perception survey	Composite indicator exploring the belief in the evidence-based nature of RIA, the tool's ability to predict, participatory quality, pluralistic nature of the assessment process, ritualistic nature, biased nature
Consultation scope	Percentage of policy proposals for primary laws and subordinate regulations subject to consultation
Consultation extent	Composite indicator measuring the degree to which consultations, for both primary laws and subordinate regulations, comply with consultation guidelines
Consultation perception survey	Composite indicator based on survey questions exploring consultee and regulators' satisfaction with consultation and their belief in the learning quality of consultation, i.e. participation patterns, value of consultation for regulatees, impact of consultation on policy options considered
PIR scope	Percentage of primary laws and subordinate regulations for which a post-implementation review was carried out and can be related to the initial RIA
PIR extent	Percentage of post-implementation reviews for primary laws and subordinate regulations that pass a quality standard and therefore are not perfunctory, standards reflect standards of analysis developed for RIAs

Table 2.4. **Examples of performance indicators to evaluate good regulatory practice** (*cont.*)

Indicator	Description
	C. Intermediate outcomes
Number of regulations	Percentage of primary laws and subordinate regulations introduced in the current year that used RIA
Perception survey citizens/firms	Composite indicator based on a number of survey questions exploring the degree of unnecessary information obligations, costs related to compliance with regulations, constantly changing legislation and rules, awareness of burden reduction initiatives, and the user-friendliness of procedures
Perception survey regulators	Composite indicator based on a number of survey questions exploring the level of litigation, responsiveness of regulators, and access to justice to regulatees
	D. Final outcomes
Total number of lives saved	Total number of lives saved as a result of new primary laws or subordinate regulations introduced in the current year
Total cost reduction	Total net cost reduction in the current year resulting from various types of simplification activities divided by the value of the previous year

Notes: RIA = Regulatory impact analysis; PIR = Post-implementation review.

Source: Adapted from OECD (2014), *OECD Framework for Regulatory Policy Evaluation*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264214453-en.

What specific issues may be addressed in the strategy?

Subsequent to defining the goals and how to measure and evaluate, the NDPC and MPC may discuss programmes to advance NPDIR implementation. The type of questions that may need to be asked (and answered) include, what interventions or combinations of interventions could support the desired results and what are the likely cost implications of different possible interventions, and what can be realistically afforded. To assess alternative interventions, it is useful to identify and agree on a number of assessment criteria against which alternative interventions can be ranked or scored.

Specific attention should be given to overcoming a number of challenges associated with RIA implementation, namely:

- How to integrate RIA into policy-making process beginning as early as possible. If RIA is to contribute to effective policy making it has to be undertaken at the inception of policy proposals, when there is a genuine interest in identifying the optimal approach and there is an opportunity to consider alternatives to regulation (OECD, 2009).

- The scope of RIS to be assessed by the MPC. In principle RIA should be applied to regulatory instruments that impose significant costs above some threshold where the costs of the RIA exercise are proportionate and justifiable. The design and rigour of the analytical approach that is applied will determine the quality of the analysis and can affect the utility of the RIA in influencing good regulatory decisions (OECD, 2009).

- Strategically phasing the implementation and enforcement of the RIA requirements by MPC. This will assist MPC to manage the flow of RIAs in a sustainable manner (such as having a "grace period for minor regulations") while at the same time enable regulators to understand and comply with the NPDIR in a proportionate fashion. This will include focusing on improving the quality of RIS in line with any thresholds but also selecting to work on policies which are not highly political or very difficult in the first instance. There is often the temptation to treat RIS as "silver bullet" for problem policies, yet this can be self-defeating and place unrealistic expectations on RIS at such an early stage. At the same time a strategy for ensuring overall compliance will also be required to ensure that even for minor impact regulations the NPDIR is being complied with.

- The obligations of regulators to adopt the principles contained in the NPDIR for regulations not subject to assessment by the MPC. The NPDIR requires regulators to document their regulatory processes for the development of regulatory proposals, retaining the documents for at least five years.[9] RIS not subject to *ex ante* MPC assessment could, in principle (but not explicitly in the NPDIR), be subject to an *ex post* evaluation.

- Recourse should regulators not comply with the NPDIR. The *Best Practice Regulation Handbook* establishes that all regulations require a RIS except those implemented for reasons of national security and sovereignty and administrative circulars that are intended for public service administration.[10] Where a proposal proceeds without a RIS in exceptional circumstances the regulator will be required to undertake a post-implementation review.[11]

Conclusions and recommendations

As the current chapter highlights, significant progress has been achieved in the first 15 months of NPDIR implementation and provides the strong institutional infrastructure put in place to support the Policy's sustainability. However, in order to capitalise on the progress to date there are some

immediate issues in implementation that should be addressed. In addition to maintain sustainability of the QRMS system and NPDIR, there are some recommendations listed below:

- Develop a medium-term strategy to support effective implementation of RIA and best practice regulation principles outlined in the NPDIR, noting that assuring high-quality regulation is a long-term reform agenda.
- The strategy should be endorsed by the NDPC to build ownership at the highest levels of the civil service and commit to mobilise necessary financial and human resources to support the effective implementation of the strategy.
- To build broader support for the strategy – and in line with the recommendations in Chapter 4 of this report – NDPC and MPC could engage Malaysian entities with responsibilities linked to RIA and other GRP, PEMUDAH, Economic Policy Unit, Attorney-General Chambers and Malaysia Competition Commission– as well as any regulators identified as significant regulators.
- In developing a medium-term roadmap the NDPC with the support of the MPC could:
  - encompass the various GRP initiatives – including modernising business licensing, reducing unnecessary regulatory burdens and public consultation – in order to explore synergies and to inform the allocation of resources between them;
  - in terms of RIA, place emphasis on the delivery of high quality RIS to demonstrate its relevance and added value in policy making to ministers and high-level officials (e.g. secretary generals in ministries and director generals in agencies);
  - establish a framework for GRP monitoring and evaluation based on an outcome-output-activity framework in order to inform NDPC oversight, engage high-level officials and to incentivise compliance of the NPDIR by regulators;
  - define SMART indicators to support monitoring and evaluating of GRP implementation, guide prioritisation and sequencing of actions – with specific attention that indicators are not specific to certain sectors and neutral to the total level of regulatory activity;

  - give consideration as to how to integrate RIS into existing government policy-making processes, including the procedures within the NDPC and within individual regulators – a subject discussed in more detail in Chapter 3; and
  - give consideration as to how to build the necessary capabilities within the MPC to assist regulators to comply with RIA and other GRPs, as well as to support the NDPC to assess RIS – a subject discussed in more detail in Chapter 4.

- Sequence implementation of the NPDIR to begin by encouraging compliance with the requirements for all regulatory proposals. This may include having a "grace period" for ministries to learn, practice and submit their initial RIS, especially for those with minor impacts. At the same time this phasing will assist MPC in establishing and testing its own processes and procedures for evaluating and processing RIS in greater volume.
- At the same time, target efforts on obtaining high quality RIS in strategic areas. While compliance is being encouraged for the majority of proposals, there should also be a dedicated effort to developing some high quality RIS for some strategic proposals. These proposals should not only be the ones with the biggest potential impacts, as they equally tend to be those with greater difficulties and political sensitivities. The areas should be where there is buy-in from the Ministries to use RIA and other GRP in decision-making process (low hanging fruit).

Notes

1. An additional two RIS pilots were initiated with the Fisheries Development Authority of Malaysia (LKIM), under the Ministry of Agriculture and Agro-Based Industry, and the Malaysia Competition Commission (MyCC). Both pilots were discontinued.
2. *National Policy on the Development and Implementation of Regulations*, paragraph 2.4.2.
3. The 10 key partners are: Ministry of International Trade and Industry (MITI); Ministry of Federal Territories (KWP); Ministry of Science, Technology and Innovation (MoSTI); Ministry of Communications and Multimedia (KKMM); Ministry of Human Resources (MoHR); Ministry of Health (MoH); Ministry of Home Affairs, Co-operative and Consumerism (KPDNKK); Ministry of Agriculture (MoA); Ministry of Housing and Local Government (KPKT); and Ministry of Finance (MoF).
4. *National Policy on the Development and Implementation of Regulations*, paragraph 2.3.
5. *National Policy on the Development and Implementation of Regulations*, paragraph 2.4.1.
6. *National Policy on the Development and Implementation of Regulations*, paragraph 2.4.1.
7. General Circular No. 1/2011, Terms of Reference for the National Development Planning Committee, UPE(S)10/102/24 JLD 6.
8. *Best Practice Regulation Handbook*, paragraphs 4.4.6 and 3.7.3, respectively.
9. *National Policy on the Development and Implementation of Regulations*, paragraph 3.3.
10. *Best Practice Regulation Handbook*, paragraph 3.8.
11. *Best Practice Regulation Handbook*, paragraph 3.8.

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Annex 2.A1

Progress on regulatory impact analysis implementation plan after 15 months

Intermediate outcome	Output	Output indicators and target	Progress	Notes
Strengthened leadership for RIA and other GRP among highest-level civil servants and ministers	Medium-term NPDIR implementation strategy approved by NDPC	Timing of NDPC approval (27 June 2014)	○	
	Reporting on 1st year NPDIR implementation by MPC, following input from NDPC	Timing of preparation of draft report (4 July 2014)	◔	Report scheduled to be tabled on 20 October 2014, following feedback on draft report by EPU
	Periodic assessment of NPDIR implementation by NDPC	Inclusion of NPDIR in NDPC agenda with MPC invited to participate (1 meeting per month beginning March 2014)	◑	MPC presented to NDPC in April and June 2014 on NPDIR implementation
	KSU discussion on implementation of NPDIR, proposing input to MPC	Inclusion of NPDIR in KSU agenda with MPC invited to participate (1 meeting per month, beginning April 2014)	◑	MPC presented to NDPC in June 2014 on NPDIR implementation. Next presentation scheduled for November 2014.
	KSUs receive pledges to implement NPDIR, RIA and GRP from their respective regulatory co-ordinators	Number of regulatory co-ordinator pledges (100 pledges by June 2014)	◑	The regulators have signed pledges – MITI (2); MOE (2); and KPKT (22)
	PEMUDAH dissemination of information on RIS being prepared and timing of public consultation to business	Number of letters sent by PEMUDAH to representatives of business (1 letter per RIS)	◑	Link created between PEMUDAH website and RIS Portal PEMUDAH e-bulletin to feature content on RIA and schedule of RIS consultation

Intermediate outcome	Output	Output indicators and target	Progress	Notes
	PEMUDAH events to raise awareness of NPDIR, RIA and other GRP and its implications for business, including SMEs	Number of PEMUDAH-supported events on NPDIR, RIA and other GRP (1 before July 2014)		(focus on business licensing reforms by PEMUDAH supported by MPC doing business and not RIA).
Capacity of regulators to comply with NPDIR, and capacity of MPC to assist regulators	RIA training programme for regulatory co-ordinators	• Percentage of regulatory co-ordinators that have completed various NPDIR, RIA and other GRP training modules		258 registered RCs from 125 Regulators; 36% RCs completed RIA training
	Regulatory co-ordinator's induction kit	• Timing of production of induction kit		• Induction kit prepared with information on *i)* MPC "services", including enquiries, advisory services, workshops; *ii)* information on RIA, including FAQ; *iii)* templates for regulatory notification and RIS; *iv)* NPDIR and Handbook; *v)* RC TOR
	Regulatory co-ordinator reporting on activities and pipeline regulatory proposals	• Number of periodic written reports received from regulatory co-ordinators by MPC		• Annual Regulatory Plan Template Form distributed to RCs • Regulatory plans of X regulators collated and published on RIS portal
	Active online discussion between regulatory co-ordinators on NPDIR and RIA	• Creation of online group; • Number of participants; • Number of discussion topics		• (MPC established a distribution list to communicate with RCs but not facilitating direct dialogue between RCs)
	MPC clinics provided to regulators preparing RIS	• Number of RIS clinics; • Number of regulators covered by RIS clinics		• General training provided to MITI, KKMM, KWP, KPDNKK, KPKT, MOE and MOH

Intermediate outcome	Output	Output indicators and target	Progress	Notes
	MPC methodologies, guidelines and SOPs for NPDIR and RIA implementation	• Timeliness of approval of methodologies and SOPs		• Draft methodologies and SOPs developed but not endorsed.
	MPC structure to support implementation of NPDIR, RIA and other GRP	• Approval of MPC structure		• Mobilisation of RIA start up terms, with 1 MPC official appointed per ministry.
	MPC staff trained to support GRP implementation	• Number of trained MPC staff on NPDIR, RIA and other GRP		• MPC established mentoring schemes and training for RRD officials
	Agreement between MPC and INTAN on training arrangements	Timing of agreement signing		• Courtesy call between MPC and INTAN in April 2014 to discuss co-ordination of training activities, resulting in draft MOU
	Agreement on working procedures between MPC and EPU	• Timing of agreement signing		• Discussion with NDPC secretariat through phone on 23 Apr 2014 to discuss about how to co-ordinate on NPDIR and RIA • Discussion held between MPC and EPU on 18 August 2014 regarding the format of RIS submission in line with NDPC requirements
Monitoring and evaluation	Structured and ad hoc reports and needed by NDPC, MPC management and other key stakeholders	• Number and timing of reports produced and disseminated		
	MPC communication and outreach programme developed for RIA	• Timing of MPC approval of programme (before end May 2014)		

Intermediate outcome	Output	Output indicators and target	Progress	Notes
Communications	MPC media toolkit (e.g. standardised talking points, standardised powerpoint materials, flyers, brochures)	• Approval of toolkit (before end March 2014)	○	

○ No progress
◔ Activities begun
◑ Partial progress
◕ Advanced progress
● Output completed

Notes: EPU = Economic Planning Unit; KSU = Secretary Generals of government; GRP = Good regulatory practice; MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee; NPDIR = National Policy on the Development and Implementation of Regulations; PEMUDAH = Special Task Force to Facilitate Business; RIA = Regulatory impact analysis; RIS = Regulatory impact statement.

Source: Adapted from Malaysia Productivity Corporation (MPC) data.

Chapter 3

Integrating regulatory impact analysis in the Malaysian policy-making process

The OECD Recommendation on Regulatory Policy and Governance states that regulatory impact analysis (RIA) should be integrated into the early stage of policy making. This chapter examines the role of RIA in Malaysia's policy-making process within the framework of the National Policy on the Development and Implementation of Regulations (NPDIR). The chapter discusses: i) the Regulatory Management Process Requirements and responsibilities of regulators, the National Development Planning Committee (NDPC) and the Malaysia Productivity Corporation (MPC); ii) the relationship between RIA and cabinet decision-making processes as well as development planning; and iii) co-ordination between MPC and other central government bodies with roles linked to assuring high-quality regulation, including the Economic Planning Unit (EPU) and Attorney Generals Chambers (AGC).

Introduction

This chapter examines the institutional arrangements to assure regulatory impact analysis (RIA) is effectively integrated into Malaysia's policy-making processes. RIA is a key requirement under Malaysia's Policy on the Development and Implementation of Regulations (NPDIR) that aims to support the improved effectiveness and coherence of policy making. The NPDIR establishes principles and process for regulators to follow in rule making, including whether a RIA is required. Moreover, the Policy establishes responsibility of the National Development Planning Committee (NDPC) to examine the adequacy of RIA, with the support of the support of the Malaysia Productivity Corporation (MPC), prior to a regulatory proposal being discussed by the Cabinet.

Experience from OECD member countries demonstrates that RIA can play a valuable role in strengthening the quality of regulation and policy debate by making the potential consequences of decisions more transparent and bringing greater clarity to the factors influencing decision making. However, in order to have a positive influence on improving policy outcomes and promoting policy coherence, RIA must be well integrated with decision-making processes. Moreover, experience from OECD member countries highlights that the impact of RIA may be substantially diluted if it is not commenced at an early stage of policy development. Otherwise RIA risks becoming simply an *ex post* rationalisation of policy choices, a "check the box" process that does not seriously influence policy development (OECD, 2009).

In examining the institutional arrangements to assure RIA is effectively integrated into Malaysia's policy-making processes, this chapter discusses:

- the Regulatory Process Management Requirements and responsibilities of regulators, NDPC and MPC, as outlined in the NPDIR and the *Best Practice Regulation Handbook*;
- the relationship between the NPDIR Regulatory Process Management Requirements, Malaysia's cabinet decision-making processes, development plans and flagship programmes; and
- the role of other central government entities – specifically the Economic Planning Unit (EPU) and Attorney-General's Chambers (AGC) – in integrating RIA in the policy making.

The Policy process requirements and institutional responsibilities

The NPDIR establishes principles and Regulatory Process Management Requirements for all new federal regulations or amendments to existing federal regulations that relate to or impact upon business, investment and trade.[1] All federal regulators responsible for developing, maintaining and enforcing regulatory programmes are required to observe NPDIR, including ministries, departments, statutory bodies and regulatory commissions.[2] The Policy's Regulatory Process Management Requirements establish that regulators are to notify MPC of proposals to develop new or amend existing regulations. Through the process, MPC assesses whether the regulator is to conduct RIA, and prepare a RIS.[3] The NPDIR states that if MPC considers that a RIS is required, the regulator must subsequently submit a RIS to the NDPC for review prior to the development of a regulation.[4]

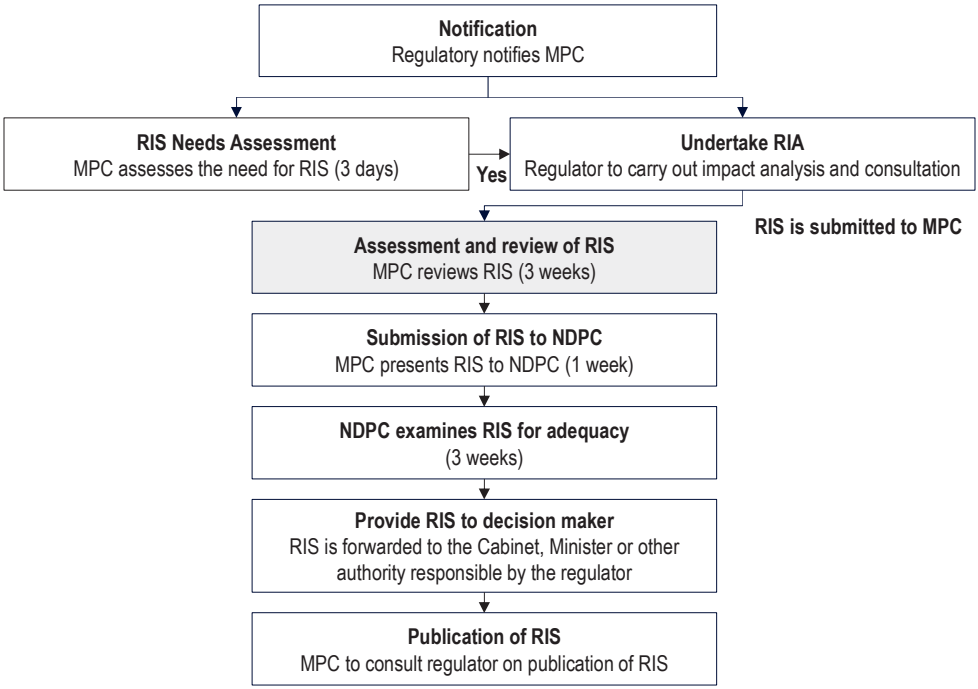
The *Best Practice Regulation Handbook* states that preparing a RIS ensures the documentation of relevant information to the decision making and compliance with the NPDIR principles.[5] These principles include, among others, that, *i)* government intervention is justified and regulation is the best alternative addressing the defined problems with clearly established objectives; *ii)* information and administrative requirements on businesses and citizens are limited to what is absolutely necessary and that they impose the least possible cost; and *iii)* regulations are consistent with Malaysia's commitments in international and intergovernmental agreements.[6] (The full list of NPDIR principles contained is outlined in Chapter 1.)

The NPDIR subsequently establishes specific deadlines for assessment of the regulatory notification and RIS (where applicable) by the MPC and NDPC:

- three (working) days for MPC to analyse the preliminary notification and determine whether the regulator need to prepare a RIS (i.e. to conduct a needs assessment); and
- three weeks for MPC to assess the adequacy of a RIS that is considered prior to transmitting the RIS to the NDPC, followed by a further three weeks for the NDPC to examine the RIS (Figure 3.1).

The *Best Practice Regulation Handbook* further commits MPC to announce on its website a regulator's intention to develop a new regulation, upon receiving a notification, thereby informing the public of the objectives of the regulatory proposal.[7]

Figure 3.1. **Malaysia's regulatory impact analysis review process**



Notes: Regulator = Government agencies such as a ministry, department, statutory body or regulatory commission that is responsible for developing, maintaining and enforcing regulatory programmes; MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee; RIS = Regulatory impact statement; RIA = Regulatory impact analysis.

Shading of the step "Assessment and review of RIS, MPC reviews RIS (3 weeks)" provided by OECD to highlight the fact that this step is not explicit in the wording of the NPDIR, but implied by the figure contained in the Policy.

Source: Government of Malaysia (2013a), *National Policy on the Development and Implementation of Regulations*.

The NPDIR establishes that regulators are to ensure that they comply with the Regulatory Process Management Requirements. In doing so, regulators are to develop and maintain the necessary internal system to clearly document how they are met in each proposal to create or amend regulations.[8] The required information to be documented corresponds with the elements to be contained in the RIS, namely: a description of the problem identified; the objective of the proposal; evidence that regulation is the best alternative to a problem; evidence of the methods for and outcome of public consultation; and the conclusions and recommended options.[9] Regulators are also required to ensure that their personnel are competent to carry out the process requirements.[10]

In order to support effective adoption of the NPDIR, regulators are to appoint a Regulatory Co-ordinator and inform the MPC of the appointment.[11] The MPC has developed a terms of reference for Regulatory Co-ordinators and disseminated it among all federal regulators. Furthermore, in order to institutionalise the role of Regulatory Co-ordinators, the MPC is working with senior management in each regulator to have the Regulatory Co-ordinator sign a pledge of commitment to good regulatory practice. Box 3.1 provides the template of the pledge of commitment. As of the end of September 2014, 258 Regulatory Co-ordinators had been appointed in 125 federal regulators, with 26 Regulatory Co-ordinators within 3 federal regulators having signed a pledge of commitment.

Box 3.1. **Pledge of Commitment signed by Regulatory Co-ordinators towards implementing Good Regulatory Practice in Malaysia**

We, the undersigned, recognising our role as the Regulatory Co-ordinators of _____ under the Ministry of _____ hereby pledge our commitment towards enhancing Good Regulatory Practice (GRP) in Malaysia and the implementation of the National Policy on the Development and Implementation of Regulations (NPDIR). We pledge to perform in a diligent manner, the duties and responsibilities as Regulatory Co-ordinators to facilitate the implementation of regulatory policy in our department through the following:

- Serving as champion to raise awareness of the importance of quality regulatory management systems and the objective and principles of the NPDIR;
- Sharing and promoting best practices on regulatory impact analysis (RIA) with officials in our own department;
- Ensuring better co-ordination across department and regulators in the development of new and revision of existing regulations;
- Identifying training and advisory services for official in our own department, providing feedback on regulatory changes and recommending follow-up action; and
- Disseminate guidance and information on GRP and the Regulatory Management Process Requirement of the NPDIR.

Source: Malaysia Productivity Corporation (MPC).

Refining Malaysia' Regulatory Process Management Requirements

A number of issues affect how the Regulatory Process Management Requirements are to be institutionalised in Malaysia. These issues relate to,

- the definition of regulation in the NPDIR *vis-à-vis* Malaysia's administrative law;
- the scope of regulatory proposals that are subject to the Regulatory Management Process Requirements;
- the responsibility of regulators – and Regulatory Co-ordinators – for assuring the quality of regulatory proposals;
- the responsibility of between producing RIS and MPC assessing RIS adequacy; and
- oversight of regulator's quality assurance responsibilities, especially for RIA not subject to MPC and NDPC review.

Definition of regulation in the Policy

The terminology of regulation in the NPDIR and *Best Practice Regulation Handbook* is different to that typically used in Malaysia, namely primary legislation and subsidiary (or delegated) legislation. According to section 3 of the Interpretation Act 1948 and 1967, subsidiary legislation includes any proclamation, rule, regulation, order, notification, by-law or other instrument made under any Act, Ordinance or other lawful authority and having legislative effect.

Future iterations of the NPDIR and Handbook could ensure alignment with the terminology for regulations in Malaysia. Aligning the terminology would ensure that there is a clear understanding about the application of the NPDIR to different forms of regulation within the Malaysian context. In particular, it would help to make explicit whether the NPDIR applies to primary legislation.

Although not explicit about whether the process applies to primary legislation, a number of RIS are currently being prepared for primarily legislation.[12]

Scope of regulatory proposals subject to RIA

As noted previously in this chapter, the NPDIR establishes the Regulatory Process Management Requirement for all new proposals for new federal regulations or amendments to existing federal regulations that relate to or impact upon business, investment and trade. However, a number of

inconsistencies exist between the NPDIR and the *Best Practice Regulation Handbook* with the potential to create confusion among regulators and the NDPC/MPC. For example, the Handbook:

- Paragraph 3.1 states that a RIA is applicable for all decisions made by regulators that are likely to have an impact on business, unless that impact is minor in nature and does not substantially alter existing arrangements (e.g. very small initial one-off costs with no ongoing costs); and
- Paragraph 3.8 states that RIA is required for all regulatory proposals except those that are to be implemented for reasons of national security and sovereignty and administrative circulars that are intended for public service administration.

Quality assurance responsibilities of regulators

The NPDIR and Handbook are not explicit about the responsibilities of Regulatory Co-ordinators to assure the quality of RIA by their respective entities. Neither does the terms of reference for Regulatory Co-ordinators prepared by the MPC and Pledge of Commitment to be signed by Regulatory Co-ordinators make this obligation explicit. This creates the risk that RIA is seen as a check the box exercise to meet the requirements imposed by the NDPC/MPC rather than a management obligation of regulators.

Oversight of RIA not subject to NDPC/MPC review

It is possible that not all RIA is subject to *ex ante* review and scrutiny by the NDPC/MPC. However, the MPC could conduct or commission work to examine the compliance with NPDIR requirements for other regulations not subject to its initial review. Such is done by New Zealand (Box 3.2). This could be extended more broadly in the future to assess regulator's compliance with the NPDIR and specifically regulator's actions to develop and maintain internal systems to support RIA and ensure that personnel are effectively competent to do so.

Within this context, the NDPC could also approach the Malaysia's supreme audit institution – the Office of the Auditor-General – to conduct compliance and/or performance audits of regulator's RIA capabilities. The Auditor-General is a member of the NDPC. Indeed, supreme audit institutions in a number of OECD member countries conduct performance audits of regulatory policies (OECD, 2014). Box 3.3 provides an example of a European Court of Auditors (ECA) audit of RIA conducted by the European Commission.

Box 3.2. **Independent evaluation of regulatory impact statements (RIS): experience of New Zealand**

The New Zealand Treasury has instituted a number of independent reviews of the quality of regulatory impact statements (RIS) – conducted in 2008, 2009, 2011, 2013 and 2013.

The main objectives of the review are to:

- Evaluate whether government agencies are meeting the expectations set for preparing high quality RISs;
- Comment on the regulatory impact analysis carried out by government agencies to help improve their ability to prepare high quality RISs;
- Compare differences in the agencies' view of RIS quality and our independent assessment of RIS quality; and
- Help the Treasury provide effective guidance to government agencies when preparing RISs.

The analysis is based on a sample of RIS that were submitted to cabinet over a specific period. The approach to conducting the evaluation is based on the material and the quality assurance criteria contained in the Treasury's Regulatory Impact Analysis Handbook that is available to RIS authors and quality assurance providers on the Treasury's website.

The Handbook sets out quality assurance criteria that focus on four attributes of a high quality RIS, namely:

- The information presented in the RIS is complete;
- The RIS presents sufficient evidence and analysis to be convincing;
- The material presented in the RIS is organised and communicated in a clear and concise manner; and
- Interested stakeholders have been consulted.

The four components of the RIS used in this evaluation are:

- Status quo and problem definition. This component should provide all relevant background information needed for the reader to understand the current situation. It should identify a clear problem, and describe the nature and scale of the problem.
- Objectives. This component should describe what the Government wants to achieve by considering this issue (the desired outcomes from the review).

Box 3.2. **Independent evaluation of regulatory impact statements (RIS): experience of New Zealand** (*cont.*)

- Options analysis. This component should identify and describe feasible ways to solve the problem, and should analyse the strengths/benefits and weaknesses/costs of each option against the objectives.
- Implementation, monitoring, evaluation, and review. This component should describe the steps that will follow Cabinet decisions, such as how any changes will be implemented, whether there are any risks to implementation, and how affected parties will be informed of changes.

Separately analysing each component of a RIS allows for the provision of targeted suggestions on how the 4Cs – i.e. completeness, convincing, clarity and consultation – could be better applied at different points in the RIS. For example, this approach allows the identification of the problem definition is complete and convincing, but the options presented for resolving the clearly identified problem are incomplete.

After evaluating the individual RIS components, an overall quality score is established, i.e. whether it meets, partially meets, or does not meet the quality assurance criteria as a whole. If a RIS performed poorly across any of the four key components of the RIS (status quo/problem, objectives, options analysis, or implementation/ monitoring), then it would be unlikely to meet the quality assurance criteria overall. Similarly, if a RIS performed poorly across one of the key attributes of a good RIS (complete, convincing, clear, consulted), it would be unlikely to meet the QA criteria overall.

Source: Castalia Strategic Advisors (2013), "Regulatory Impact Analysis Evaluation," June 2013, www.treasury.govt.nz/publications/guidance/regulatory/riareview/ria-review-jun13.pdf.

Box 3.3. **European Court of Auditor's audits of the European Commission's regulatory impact analysis**

In 2010 the European Court of Auditor's (ECA) conducted an audit to assess whether the European Commission's impact assessments (IA) supported decision-making in European Union institutions. In particular, the audit examined the extent to which:

- IA were prepared by the Commission's when formulating its proposals and the European Parliament and the Council consulted them during the legislative process.
- Procedures for IA appropriately supported the Commission's development of its initiatives.

Box 3.3. **European Court of Auditor's audits of the European Commission's regulatory impact analysis** (*cont.*)

- The content of the IA reports was appropriate and the presentation of findings was conducive to being taken into account for decision-making.

The period under examination was 2003-08. The audit included international comparison of IA systems, an analysis of a sample of IAs, interviews and surveys with people involved in performing, reviewing and using the IAs, both within and outside the European Commission. The findings were examined against the relevant inter institutional agreements, the Commission guidelines and a set of good practices observed in policy documents and established by the OECD.

The audit concluded that on balance, particularly in recent years, the audit has shown that IA had been effective in supporting decision making within the European Union institutions. In particular, the European Commission had put in place a comprehensive IA system since 2002. IA has become an integral element of Commission policy development and had been used by the Commission to design its initiatives better. European Commission IA were systematically transmitted to the European Parliament and Council to support legislative decision making and users in both institutions found them helpful when considering Commission proposals. However, Commission IAs were not updated as the legislative procedure progressed and the European Parliament and Council rarely performed IAs on their own amendments.

The audit identified areas for improvement related to the IA-procedures and the content and presentation of IA-reports:

- The Commission did not publish a comprehensive overview of the legislative initiatives outside the Commission legislative and work programme selected to undergo an IA or explain why certain initiatives rather than others were selected. Consultation with stakeholders was used widely for initial input but not carried out on draft IA reports. Recent improvements were noted regarding the European Commission internal quality control of IA work, but the timeliness of the IA Board intervention could be improved.

- The Commission IA-reports generally provided a sound description of the problem at stake and specified the objectives pursued. These and other mandatory sections of IA-reports were found to comply with the Commission guidelines. However, the main results and messages of IA reports are not always easy to gather and comparing the impacts of the various policy options presented in an IA report is sometimes difficult. Problems with quantifying and monetising impacts can be traced back to the availability of data. Finally, implementation and enforcement costs and the potential administrative burden of proposed legislation were not always sufficiently analysed or quantified.

Box 3.3. **European Court of Auditor's audits of the European Commission's regulatory impact analysis** (*cont.*)

The ECA recommended that the European Commission should give due consideration to the principles of clarity of objectives, simplification, realism, transparency and accountability when designing new interventions and revising existing ones. It suggested that the European Parliament, the Council and the Commission might wish to consider the findings and recommendations set out in the report when revising their inter-institutional agreements on 'better law-making' and a 'common approach to IAs.

Source: European Court of Auditors (2010), Impact Assessments in the European Union Institutions: Do They Support Decision-making? Special Report No. 3, www.eca.europa.eu/Lists/ECADocuments/SR10_03/SR10_03_EN.PDF.

Linking with broader policy and decision-making processes

Beyond issues to ensure the effective functioning of the NPDIR, a number of additional issues affect how the Policy's principles and Regulatory Process Management Requirements are to be integrated into the broader policy and decision-making process. While the NPDIR establishes the Regulatory Process Management Requirements and the responsibilities of regulators, NDPC and MPC, these requirements are not framed in the context of Malaysia's broader policy and decision-making process, including both the cabinet process and development planning system. Neither the NPDIR nor the Handbook reference the cabinet guidance which guides the general NDPC working procedures. Where the NPDIR does make reference to development planning – through reference to the Malaysia Plan and Economic Transformation Programme – it does so in terms of the plans' acknowledgement of the critical importance of good regulatory practice (GRP).

Linking Regulatory Management Process Requirements and the cabinet process requirements

The process and format for NDPC and cabinet papers is outlined in the Guide for Preparing Cabinet Papers and Implementation of Cabinet Decisions. As a first step, discussion regarding the regulatory process management requirements could be framed as a means of providing the best possible analysis for decision makings. This could be done through training materials and advisory services provided by the MPC but also through the revision of the Policy and Handbook. In addition, the cabinet guide could be

revised to explicitly recognise the regulatory process management requirements and RIS in the development of recommendations for the Cabinet of Ministers, the Economic Committee or other committees under the Cabinet. This should be conducted with a view to streamlining the existing process and requirements for submissions to cabinet.

A step further would be to require an explicit statement to be included in the actual cabinet papers stating whether a RIS was prepared in accordance with the necessary requirements or the reasons why it has not, such as an exemption. Where the RIS has been assessed by the NDPC/MPC, the paper could also provide a statement regarding the quality of the RIS and whether it meets, partially meets or does not meet the quality assurance criteria. The paper could also include comment on any issues that have been identified in relation to any of the dimensions of quality set out in the quality assurance guidance. Finally, the RIS together with the one-page summary outlined in the Handbook could also be attached to the cabinet document.

Moreover, the role of gatekeeper in the system has yet to be implemented. MPC advocate for GRP, building capacity and develops the systems for NPDIR implementing. However, it is not clear whether it is to serve as a gatekeeper in the system. This role itself should be reassessed in line with the existing responsibilities in the decision-making processes and development planning. This reassessment should critically view the position and location of MPC in the institutional landscape of the government of Malaysia and decide whether the gatekeeper role is better situated elsewhere.

Box 3.4. **Reference to regulatory impact analysis in cabinet papers, the example of New Zealand**

For RIA to have a positive influence on improving policy outcomes and promoting policy coherence it must be well integrated with other decision-making processes. The government of New Zealand has explicitly embedded RIA into its Guide to Cabinet and Cabinet Committee Procedures.

Cabinet and committee papers containing policy proposals must contain a section entitled "Regulatory Impact Analysis" that contains two parts:

1. Regulatory Impact Analysis Requirements: A statement explaining whether or not the RIA requirements apply (if not, it should explain why, citing the exemption claimed, where appropriate), and whether a RIS has been prepared and is attached to the Cabinet paper (if not, it should explain why).

Box 3.4. **Reference to regulatory impact analysis in cabinet papers, the example of New Zealand** (*cont.*)

2. Quality of Impact Analysis: An agency or New Zealand Treasury Regulatory Impact Analysis Team opinion on the quality of the analysis that states the following:

   – [Name of team or position of person completing opinion] has reviewed the regulatory impact statement prepared by [name of agency] and associated supporting material;

   – [Statement on whether the reviewer considers that the information and analysis summarised in the RIS meets/does not meet/partially meets the quality assurance criteria]; and, if necessary

   – [Comment on any issues that have been identified in relation to any of the dimensions of quality set out in the quality assurance guidance].

The Guide also discusses and provides links to other relevant policy and guidance materials concerning,

- the role and purpose of RIA;
- RIA for Supplementary Order Papers, treaties and discussion documents;
- exemptions from RIA requirements;
- the role of the Treasury Regulatory Impact Analysis Team;
- content requirements for RIS and RIS template;
- responsibilities for quality assurance of RIS; and
- requirements and process for the publication of RIS.

Source: Adapted from Government of New Zealand, Structure of Papers Regarding Items for the Executive Council, http://cabguide.cabinetoffice.govt.nz/procedures/legislation/structure-of-papers-for-EC-items.

Linking the Regulatory Management Process Requirements to development planning

Development planning has been a function of government since the 1950s with preparation of the first five year development plan (the First Malaya Plan, 1956-1960). Malaysia's medium-term (five-year) development plans set out macroeconomic growth targets, provide policy direction at a whole-of-government and sectoral levels, as well as outline the size and allocation of the public sector development programme. In the middle of the

five year planning cycles, a mid-term review takes stock of the plan's implementation, making adjustments as needed. In 2015 Malaysia will publish its 11th Malaysia Plan.

The government of Malaysia has additional planning documents in specific sectors, such as the Economic Transformation Programme, the SME Masterplan 2012-20 and the Industrial Master Plan 2006-20 to name a few.[13] The ETP in particular includes a focus on reforming regulatory settings in National Key Economic Areas that are anticipated to make substantial contributions to Malaysia's economic performance. In this context, the Economic Transformation Programme commits the government to fast track reforms to regulatory settings at a sector-specific level through dialogue with the private sector.

As a first step, proposed reforms to regulatory settings – both at a government wide and sector specific level – could be included as qualitative criteria for the identification of significant regulatory proposals that the RIS is to be assessed by the MPC. As a second, more advanced step, the NPDIR principles could be integrated into the "call circulars" that establish guidelines for the preparation of the Malaysia Plan. The circular also informs government entities of the government's policy directions ("strategic thrusts") and solicits proposals to support the implementation of these policies.[14]

Co-ordinating with other central authorities

To effectively integrate RIA in the policy-making process there is a need to build co-ordination between the MPC and a number of central government bodies with complementary roles linked to assuring high quality regulation. These bodies include, among others, the EPU and AGC. Of these bodies, only the AGC was formally mentioned in the NPDIR but the mechanisms for its involvement in the RIA process was not clearly articulated. Since then, both the EPU and AGC have been identified in the MPC action plan to support implementation of the NPDIR. However, as of end August 2014, limited progress has been made in strengthening co-ordination between MPC and these other bodies. (Chapter 2 of this report discusses the MPC action plan in more detail.)

Effectively co-ordinating with the Economic Planning Unit

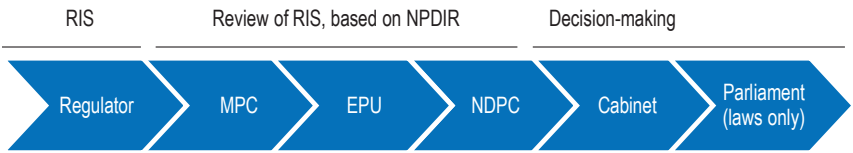
Located within the Prime Minister Department, the EPU can play an important role in supporting NPDIR implementation, even though it is not formally mentioned in the Policy. The EPU is the secretariat for the NDPC and serves as a gatekeeper for materials to be tabled and discussed in the

Committee.[15] The EPU is headed by one of six ministers within the Prime Minister's Department.[16]

Figure 3.2 highlights the position of the EPU *vis-à-vis* the roles of the regulator, MPC, NDPC and Cabinet discussed in the previous section of this report.

Figure 3.2. **Malaysia's Economic Policy Unit's role position in the regulatory impact analysis process**

Process based on text of National Policy and NDPC terms of reference



Notes: MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee.

In particular, the EPU has a specific section – the NDPC and Policy Section and Bumiputera Development Unit – that serves as the secretariat of the NDPC. In addition, the EPU's Sectoral, Macro and Policy Directorates are responsible for:

- analysing trends, as well as conducting and co-ordinating studies to advise the government on economic issues in their respective jurisdictions;
- reviewing and formulating government policies;
- preparing long-, medium-term and annual government plans; and
- reviewing and providing comment on cabinet memorandum, cabinet and ministerial decisions.

Strengthened MPC relations with the EPU could support the effective functioning of a RIS gateway through the establishment of protocols to handle regulatory proposals received by the EPU that are not accompanied by a RIS (or MPC communication that a RIS is not required).

In addition, strengthened MPC relations could support:

- the development of a medium-term roadmap for NPDIR implementation and framework for the Policy's evaluation in order to build high-level leadership for the NPDIR and ensure sustainable implementation (discussed in Chapter 2 of this report);

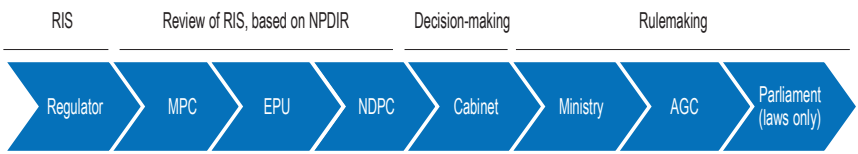
- the formulation of a whole-of-government forward regulatory plan based on commitments to adjust regulatory setting in the Malaysia Plan in order to support oversight of NPDIR implementation and prioritisation of regulatory proposals subject to a full-RIS;
- the timely examination of RIS in accordance with the NPDIR by ensuring that a RIS and MPC assessment gets onto the NDPC agenda, discussed and an opinion taken within the deadline established in NPDIR;
- the participation of MPC in NDPC discussions of a full-RIS in order to respond to questions by Committee members and to learn of concerns raised by NDPC members about RIS adequacy, insofar that the MPC is not a member of the NDPC; and
- the timely communication of information to the NDPC on the government's regulatory agenda, including regulatory proposals that are not subject to a full-RIS (only RIS notification) to support the Committee's oversight of NPDIR implementation.

Effectively co-ordinating with the Attorney-General's Chambers

Under the NPDIR, the AGC is responsible for offering legal advice to the cabinet or any minister. The AGC 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. However, they are absent from the process.

Figure 3.3 presents the position of the AGC *vis-à-vis* the roles of regulators, MPC, NDPC and Cabinet discussed in the previous section of this paper.

Figure 3.3. **Malaysia's Attorney General's Chambers' role position in the regulatory impact analysis process**



Notes: AGC = Attorney General's Chambers; MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee; RIS = Regulatory impact statement.

The AGC has three main roles in the rulemaking process:

- providing assistance to regulators in the development of RIA through legal advice and opinions on Malaysia's federal constitution and written laws (led by the Drafting Division) and obligations as a state party to international instruments (led by the International Affairs Department);
- providing formal opinion to the NDPC on Malaysia's federal constitution and written laws and obligations as a state party to international instruments; and
- providing legislative drafting support for regulatory proposals following the examination and decision of RIA proposal (led by the Drafting Division).

Through its Client's Charter, the Division undertakes to ensure that the drafting of all legislation is completed within an agreed period and that the legislation drafted is of the highest quality, constitutionally and legally sound and error-free in every aspect.

As such there is a need to ensure good working relations with AGC:

- to establish protocols of handling regulatory proposals received by the AGC that are not accompanied by a RIS (or MPC communication that RIS is not required, based on an analysis of the RIS notification form discussed in previous section);
- to ensure regulators give adequate consideration to Malaysia's commitments in international and inter-governmental agreements. The *Best Practice Regulation Handbook* provides guidance on what regulators are to consider, and the AGC could provide opinion on this, namely that regulatory officials have taken into account and ensure coherence with:
  - obligations agreed to by the Government of Malaysia, for example the provisions of the World Trade Organisation Agreement, the ASEAN Free Trade Agreement and other multilateral, regional and bilateral Agreements;
  - general obligations laid out in the WTO Technical Barriers to Trade Agreement and the Sanitary and Phytosanitary Agreement; ASEAN Free Trade Agreement and other multilateral, regional and bilateral Agreements referring to regulations and standards; and

  - notification obligations to international organisations and bilateral partners – and subsequently take into consideration comments received;
  - obligations for Technical Barriers to Trade Agreement, ensuring technical regulations treat products from one jurisdiction no less favourably than like products from another;
  - obligations for Sanitary and Phytosanitary Agreement, ensuring measures do not arbitrarily or unjustifiably discriminate where identical or similar conditions prevail; and
  - general need for technical regulations to be no more restrictive of entry into markets than is necessary; and
  - available international standards, guidelines and recommendations where those standards achieve the regulatory objectives.

- to ensure electronic links between regulations published in the government's e-Federal Gazette and the RIS portal to ensure information underlying the regulation is clear. The AGC Drafting Division is responsible for the e Federal Gazette that was launched by the Prime Minister in 2011 (and has all regulation published after 26 April 2011); and
- to ensure co-ordination in the content of training materials provided by the AGC, MPC and the National Institute of Public Administration (INTAN) on the development of regulations.

Clearly communicating with all actors about their Policy obligations

Having a well-developed strategy (as described in Chapter 2) with an integrated RIA process are important ingredients in implementing the NPDIR. Creating the institutional linkages with the appropriate actors in the rule-making process further strengthens the RIA system. To ensure this institutionalisation is firstly realised by relevant parties and then is maintained requires a clear communication strategy.

Regulating effectively is often about the timely and appropriate exchange of information. In the QRMS this information exchange is critical for ensuring that Regulatory Co-ordinators are aware of the necessary guidance and updates, which institutional actors such as EPU and AGC are aware of the implementation strategy and their roles, and that internal and external stakeholders are aware of the progress and the performance of the NPDIR. This is important for maintaining political support and keeping

momentum for reform. Otherwise there is a danger of the institutional infrastructure becoming dormant or even back-sliding.

The communication strategy is vital for disseminating information about the requirements in the NPDIR, obtaining buy in and maintaining interest in GRP as a whole. It will be even more important in a more sophisticated implementation strategy, as described in Chapter 2, to ensure that clear messages are delivered inside government especially.

MPC's communication activities have been limited at best. The achievements described elsewhere in this report are not well known and the engagement between the NPDIR actors are somewhat *ad hoc*. Many OECD member countries such as New Zealand and the United Kingdom communication to regulatory units similar to Regulatory Co-ordinators occurred on a monthly basis at meetings in addition to more frequent correspondence via email, letters and telephone calls.

Conclusions and recommendations

The NPDIR introduces RIA to strengthen the quality of policy debate by making the potential consequences of decisions more transparent and bringing more clarity to the relevant factors influencing the decision. Although the NPDIR establishes Regulatory Process Management Requirements and institutional responsibilities, these are presented in abstract and not integrated into government policy-making processes, either at a whole-of-government level or within individual regulators. The NPDIR does not clearly articulate the role and timing of a number of central government bodies with complementary roles linked to assuring high-quality regulation, including but not limited to the EPU and AGC. Moreover, an absence of effective communication is hampering efforts to institutionalise RIA.

In order to effectively integrate RIA into Malaysia's policy-making processes the government of Malaysia may:

- Update the NPDIR and *Best Practice Regulation Handbook* to clarify the Regulatory Process Management Requirements and RIA, including:
  - Utilise the same definition for "regulation" as used in Interpretation Act 1948 and 1967, and clarifying whether RIA is applicable for primary legislation;
  - Establish a clear threshold for RIA to be subject to a gateway/challenge function in order that an additional level of quality assurance is provided;

  - Emphasise the responsibility of regulators to provide quality assurance of RIA and not just documentation of evidence in decision making; and
  - Evaluate regulator's compliance with the Regulatory Process Management Requirements and the quality of their RIS, including the possible role of the Auditor-General of Malaysia.

- Align and integrate the NPDIR and its Regulatory Management Process Requirements with the Cabinet process, including by requiring regulator's secretary-generals to sign off on a RIS.
- Align the Regulatory Process Management Requirements and RIS process with Malaysia's development planning, e.g. Malaysia Plan and Economic Transformation Programme.
- Clarifying institutional responsibilities to effectively challenge regulatory proposals that do not comply with NPDIR and/or deemed inadequate.
- Exploring the possible role of the Ministry of International Trade and Industry and Malaysian Competitive Commission in the Regulatory Process Management Requirements to give attention to possible trade and competition impacts of regulatory proposals.
- Maintain and strengthen the existing institutional infrastructure through the communication strategy, support services and monitoring activities.

Notes

1. *National Policy on the Development and Implementation of Regulations*, paragraphs 2.2 and 3.1.
2. *National Policy on the Development and Implementation of Regulations*, paragraphs 2.2 and 2.4.4.
3. *National Policy on the Development and Implementation of Regulations*, paragraph 3.2.2.

4. *National Policy on the Development and Implementation of Regulations*, paragraph 3.2.2.

5. *Best Practice Regulatory Handbook*, paragraph 3.6.

6. *National Policy on the Development and Implementation of Regulations*, paragraph 2.2.1, 2.2.3 and 2.2.7 respectively.

7. *Best Practice Regulation Handbook*, paragraph 3.3. The original paragraph refers to "regulation" rather than "regulatory proposal".

8. *National Policy on the Development and Implementation of Regulations*, paragraph 3.1.

9. *National Policy on the Development and Implementation of Regulations*, paragraph 3.3.

10. *National Policy on the Development and Implementation of Regulations*, paragraph 3.5.

11. *National Policy on the Development and Implementation of Regulations*, paragraph 3.2.1.

12. This includes RIS currently being prepared by the Ministry of International Trade and Industry to review the Strategic Trade Act 2010, the Countervailing and Anti-Dumping Duties Act 1993, the Industrial Co-ordination Act 1975; Small and Medium Enterprise Corporation (SME Corp) to prepare the National Small and Medium Enterprise Bill 2014; Malaysia Co-operative Societies Commission to review the Co-operative Societies Act 1993, by the Ministry of Health to review the Registration Pharmacists Act 1951; and the National Landscape Department to review the Landscape Architecture Act.

13. See SME Corporation, Malaysia (2012), *SME Masterplan 2012-2020, Catalysing Growth and Income*, and MITI (2006), *Third Industrial Master Plan*, *Towards Global Competitiveness*, respectively.

14. See EPU (2004) for a more detailed description of development planning in Malaysia; Yusof and Bhattasali (2008), *Economic Growth and Development in Malaysia: Policy Making and Leadership* for a more detailed overview of institutions involved in policy making in Malaysia.

15. General Circular Letter No. 1/2011 on the Terms of Reference of the National Development Planning Committee.

16. The others ministers within the Prime Minister's Department are responsible for Parliamentary Affairs, National Unity and Performance Management, Islamic Affairs, public service delivery (overseeing PEMANDU), public sector modernisation (i.e. covering MAMPU, INTAN and Public Complaints Bureau), respectively.

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Chapter 4

Building compliance and strengthening oversight of regulatory impact analysis in Malaysia

Regulatory impacts analysis (RIA) is a systemic tool for improving regulatory quality. It requires well-structured processes of managing the obligations effectively to be successful. This chapter assesses the development of Malaysia Productivity Corporation's (MPC) systems to assess the adequacy of regulatory impact statements (RIS) and support regulator's compliance with the National Policy on the Development and Implementation of Regulations (NPDIR). This includes evaluating the quality of RIS, developing guidance, institutionalising compliance and ensuring the provision of capacity building activities, including by the National Institute of Public Administration (INTAN).

Introduction

Regulatory impact analysis (RIA) is a key requirement under the National Policy on the Development and Implementation of Regulations (NPDIR) that aims to support the improved effectiveness and coherence of policy making. Moreover, the NPDIR establishes the responsibility of the Malaysia Productivity Corporation (MPC) to, among other functions, *i)* assist the National Development Planning Committee (NDPC) in assessing RIS; *ii)* develop guidelines and programmes for the policy's implementation; *iii)* ensure that capacity building programmes for regulators are available; *iv)* provide guidance and assistance to regulators in RIA and the preparation of regulatory impact statement (RIS); and *v)* conduct periodic reviews of progress made and submitting reports to the NDPC (MPC, 2013a).

OECD experience highlights that RIA should be supported with clear policies and guidance, training programmes and hands on guidance mechanisms in order to be an effective tool (OECD, 2012). In the case of the latter, this can be provided by a central body and/or by promoting direct exchange of experiences and practices among regulators themselves. Such assistance is critical not only in countries introducing RIA for the first time but also those reforming their RIA practices (OECD, 2009).

While regulatory authorities should be primarily responsible for assuring the quality of RIA, its quality can be increased by providing external oversight and challenge functions. Regulatory oversight should be based on expertise, in the form of trained and professional staff capable of undertaking evaluation of regulatory proposals, as well as their impacts on business and society. Technical knowledge can reveal and make transparent the significant impacts, trade-offs and alternatives of regulatory choices – informing politicians and policy makers as well as the public of both the promise and pitfalls of regulations (OECD, 2012).

It is also important to encourage and maintain compliance with the RIA requirements by creating sufficient institutional incentives and capacity building for the long term. As discussed in Chapter 2, having SMART performance indicators of performance are important, however it is just as important to utilise them in the most effective manner that creates an environment that pursues good regulatory practice as a matter of course.

In examining the development of MPC's functions, the chapter is structured into three parts as follows:

- criteria and internal MPC processes to assess the adequacy of RIS and communicate assessment results to regulators; and
- the ways of institutionalising good regulatory practice, and the types and format of guidance and capacity building to support regulator's compliance; and
- MPC structure and capabilities to effectively deliver on its NPDIR-related functions.

Process and criteria to assess regulatory impact analysis

The NPDIR establishes that the MPC assists the NDPC to assess the adequacy of RIS. The NDPC is the highest body comprised of government officials, in the formulation and co-ordination of policy, as outlined in Chapter 1 of this report. Assessing the adequacy of RIS requires the MPC to *i)* develop processes, tools and capacity to assess the RIS in a timely fashion and within the deadlines established in the NPDIR; *ii)* provide internal control and quality control of the assessment process as a basis for assuring consistency in MPC assessments; and *iii)* monitor and evaluate the assessment process to inform the design of internal capacity building activities and periodic external reporting to the NDPC. While these systems can be consolidated over time, it is important for MPC to build on the foundations in place before it begins to receive too many RIS.

MPC responsibilities to assess RIS under the NPDIR

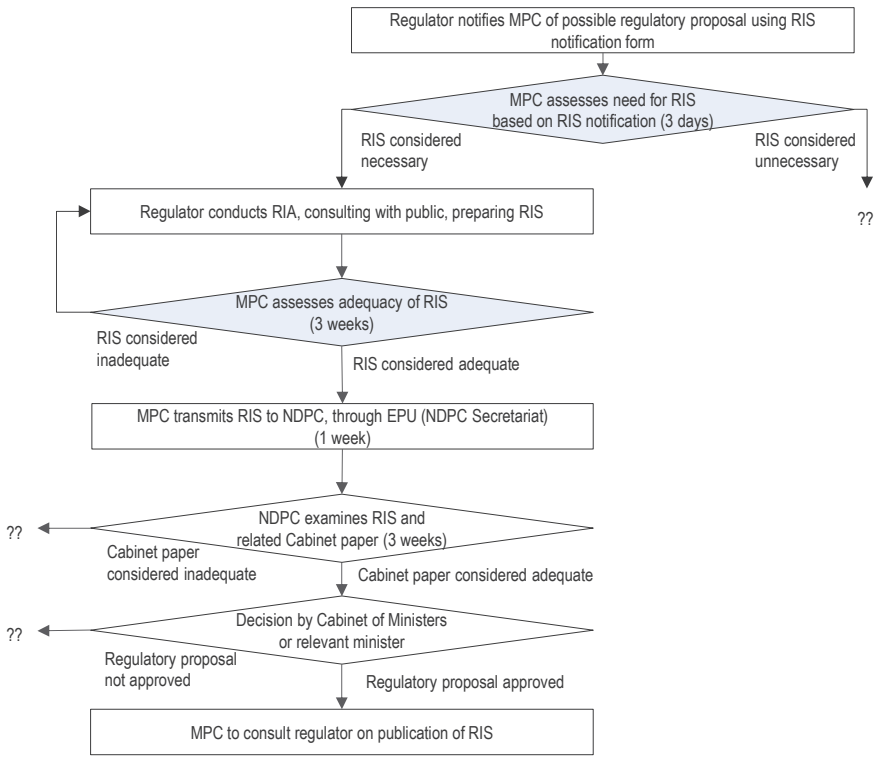
The NPDIR establishes the specific functions and process for the MPC assessment of RIS, with the *Best Practice Regulation Handbook* going further into depth on the process, RIS content requirements and criteria for evaluation (MPC (2013b; 2013c). The MPC has three weeks to assess the adequacy of RIS; the MPC role in the RIS process is presented in Figure 4.1. To be assessed as adequate, a RIS must have a degree of detail and depth of analysis that is commensurate with the magnitude of the problem and the size of the potential impact of the proposal, requiring professional judgment on behalf of MPC officials. If MPC formally assesses RIS as inadequate, it will provide advice to the regulator on the reasons for the decision.[1]

Due to the number of regulations developed and promulgated in Malaysia every year, the NPDIR establishes a filter mechanism through which the MPC will only assess RIS for regulatory proposals that could have a significant impact on business, investment and trade. There are

typically 1 100 to 1 200 regulatory proposals promulgated – both amendments to existing regulation and new regulations – each and every year by Malaysia's federal government (AGC, 2009; 2011). Between 2007 and 2012 an average of 46 bills were passed by the parliament and an average of 1 100 pieces of subsidiary legislation were gazetted through various legislative supplement on an annual basis (Figure 4.2). Requiring 20% of these to be subject to MPC assessment would mean that MPC would assess the adequacy of approximately 220 RIS annually, or one per day.

Figure 4.1. **Malaysia Productivity Corporation's role in the regulatory impact analysis process**

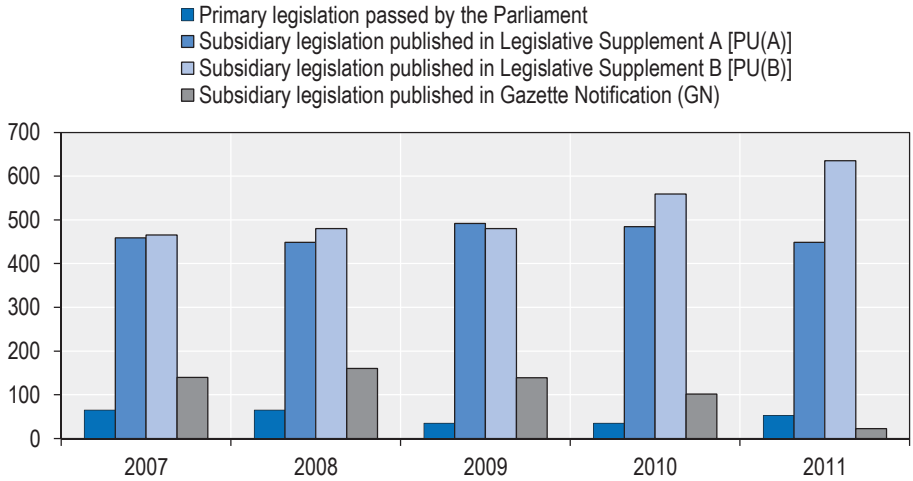
Adapted from the National Policy on the Development and Implementation of Regulations



Notes: Regulator = Government agencies such as a ministry, department, statutory body or regulatory commission that is responsible for developing, maintaining and enforcing regulatory programmes; MPC = Malaysia Productivity Corporation; NDPC = National Development Planning Committee; RIS = Regulatory impact statement; RIA = Regulatory impact analysis.

Source: Adapted from Government of Malaysia (2013), "National Policy on the Development and Implementation of Regulations".

Figure 4.2. **Flow of primary and subsidiary legislation in Malaysia 2007-2011**



Notes: Data on Primary legislation and subsidiary legislation gazette prior to 2007 was not published in the Attorney-General's Chambers annual reports. Legislative Supplement A [PU(A)] … Legislative Supplement A [PU(B)] ... Gazette Notification (GN) …

Source: Adapted from AGC (2010), "Attorney-General's Chambers Tri-annual Report 2007-09"; AGC (2013), "Attorney-General's Chambers Bi-annual Report 2010-11".

Through this process, regulators will submit a preliminary RIS to the MPC to get an opinion as to whether a RIS is required or not. For each RIS notification, MPC examines the nature and magnitude of the proposal (and the problem it is addressing), and the scope of its impact to assess the adequacy of the analysis.[2]

Irrespective of whether MPC is to provide an assessment of the RIS, responsibility for the quality assurance of the RIS lies with the regulator. The MPC assessment of the full RIS that are deemed to have a significant impact on business, investment and trade forms as a second level of quality control, and does not substitute for the *ex ante* quality assurance provided by individual regulators.

Decoupling RIS and MPC assessment of RIS adequacy

There is a need to decouple the requirement to follow the regulatory process management requirements, i.e. produce RIS, and for the MPC assessment of RIS for significant regulatory proposals. Failure to do so has the potential to give rise to a number of possible risks:

- MPC requires many RIS and decides to assess the adequacy of them all subsequently stretching its resources too thinly to conduct a meaningful assessment;
- MPC requires many RIS and decides to only assess some, perhaps based on a risk-based approach, creating a reputational risk that it does not effectively support the NDPC or meeting expectations; or
- MPC requires only a few regulations to undertake a RIS reducing the application of the NPDIR in general rule making processes.

Some OECD member countries have adopted explicit filtering mechanisms to limit the number of RIS that are subject to independent assessment. However, there is considerable divergence between countries as to the nature of the specific filters applied. While several countries specify quantitative thresholds in terms of regulatory costs for the application of RIA requirements, these have typically been supplemented by qualitative thresholds. For example, in Korea "core regulation" that is subject to review by the Regulatory Reform Committee. Core regulation is defined as that which has over KRW 10 billion (approximately EUR 8.5 million) of annual cost of regulatory impact; affect over one million regulated people; explicitly restrain competition; is excessive or unreasonable in the light of international standards; or are considered in need of review because a regulation is controversial among related ministries or stakeholders, or has significant social and economic ramifications (OECD, 2007).

RIS could be required for all regulations with only those regulations that are significant being assessed by MPC as a means of providing an additional level of quality assurance. Within this context, notification also provides an opportunity for the MPC to assess whether a regulatory proposal is more than minor in nature in terms of its impact on business, investment and trade. Regulatory notification also enables for the identification of capacity building/training needs to support effective compliance with the NPDIR. Figure 4.1 presents an overview of how the RIS process defined in the NPDIR would look subject to this change.

Criteria to assess the adequacy of RIS

The *Best Practice Regulation Handbook* lists the criteria which will be used to assess whether a RIS contains an adequate level of information and analysis (Annex 4.A1). Moreover, annexes 1 and 2 of the Handbook provide guidance on the information about RIS and RIS notification content requirements, including a checklist for use of regulators, and Annex 4 establishes a template for a one-page summary of RIS.

However, the criteria included in the Handbook was developed prior to the MPC actually evaluating a RIS and proved to be difficult to apply in practice to assess RIS pilot projects in 2014. In response to challenges in applying the RIS assessment criteria, MPC has developed a template to guide MPC officials, assist quality assurance and support training activities. The template provides criteria for MPC officials to grade different RIS requirements on a scale of zero to four, where zero being that the RIS does not address the criteria whatsoever through to four being that the RIS competently and adequately responds to the specified criteria (Annex 4.A2). The final score of the assessment is not shared with regulators but rather used to take a professional judgment on the adequacy of the RIS. The MPC does not have a specific trigger for a RIS to be considered adequate or not; the final judgement of a RIS is conducted by the NDPC.

The MPC has yet to establish criteria to determine whether a regulatory proposal contained in a RIS notification is significant and thus subject to an additional level of quality assurance. This is perhaps not a significant issue during the initial phases of the NPDIR implementation. Requiring minor regulations to be subject to a second layer of quality assurance is a means of building familiarity of RIA within regulators. Over time, as MPC receives more and more RIS notifications it will automatically develop an organic sense of what is a regulatory proposal with more than a minor impact on business, investment and trade. However, the MPC should be conscious that at some point in the future it will need to introduce criteria in order to assess the significance of regulatory proposals.

Even after the MPC has developed criteria to assess the significance of regulatory proposals it may wish to continue to provide feedback to regulators about the adequacy of their RIS notification. In doing so, it is prudent that the MPC align this criteria with that for a full RIS – and possibly to revise the RIS notification form itself to promote alignment between the RIS and RIS notification.

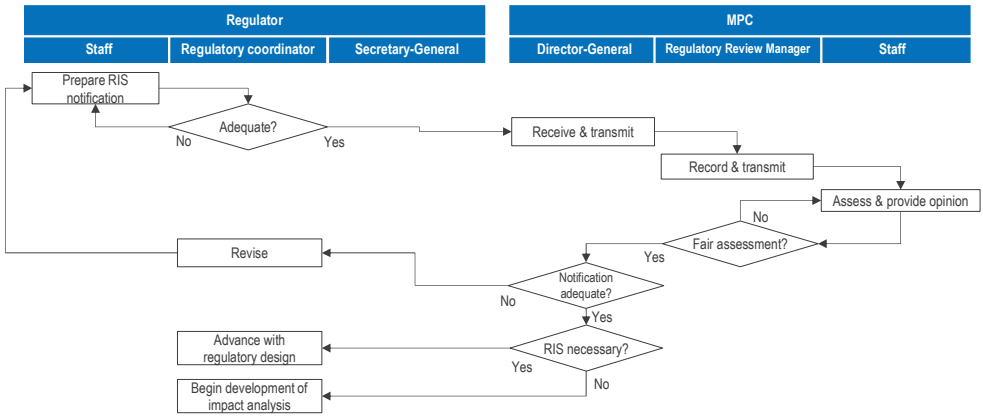
The assessment of RIS notification could focus on the first three dimensions of the RIS (i.e. problem definition, government objective, options) and a partial analysis of the impact analysis. Structuring the assessment of the RIS notification using the same criteria of the full RIS can help to ensure that any issues of problem definition, government objective, options can be identified very early in the process and allowing the assessment of the full RIS to focus on the impact analysis and implementation plan. Even where the final RIS will not be required to be assessed by MPC it would provide the MPC with the opportunity to provide counsel and advice on RIA.

However, adopting the same assessment criteria for RIS notification and RIS would necessitate some changes to the RIS notification form. Annex 4.A3 provides some suggested changes to the wording of the RIS notification template. In addition, the MPC could amend the template to include a brief introduction of the NPDIR, the requirement for regulators to submit RIS notification to the MPC, the role and responsibilities of regulators in preparing the RIS notification, the MPC three-working day deadline for assessing the RIS notification (and how the three days are calculated) and possible consequence of MPC assessment.

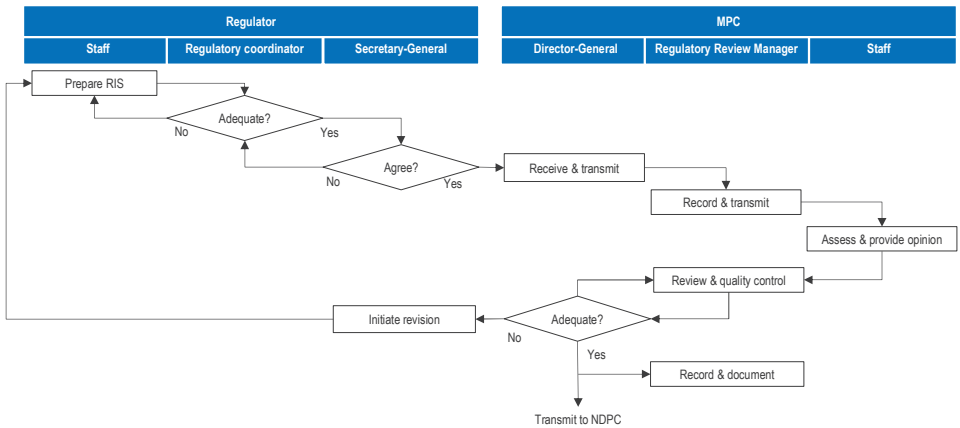
Internal MPC process to assess the adequacy of RIS

Figure 4.3. **Possible process flow for regulatory impact statement assessment and quality control**

A. Preliminary RIS



B. RIS for significant regulatory proposals (i.e. subject to MPC assessment)



The MPC has yet to finalise standard operating procedures in order to support its obligations under the NPDIR. These obligations include the three (working) day deadline to assess and review a RIS notification and three-week deadline to assess and review a RIS. In developing standard operating procedures, explicit attention should be given to develop indicators to monitor and evaluate regulator's compliance with NPDIR requirements, support MPC internal control and quality assurance and to inform MPC reporting to support NDPC forward planning. Figures 4.3 A and B provide illustrative examples of how this could be done for RIS evaluation as well as RIS notification. It is important that the data collected on RIS is integrated to that for a RIS notification to ensure seamless tracking of regulatory proposals.

Supporting communication with regulators and NDPC

MPC has established standard template for reporting to regulators about the adequacy of their RIS notification and whether the adequacy of their complete RIS will be subject to additional level of quality control by MPC. (Annex 4.A3 provides the template.) This letter could be enhanced to further direct officials in regulators to NPDIR and Handbook as reference and to communicate how RIS will be assessed. For example, in Australia the Executive Director of Office of Best Practice Regulation (OBPR) sends a letter to the head of regulatory agencies to inform them they need to prepare a RIS. This letter includes information about the rationale as to why a RIS is required, informs of recent policy changes, highlights the type of RIS that would be appropriate for the proposal, and suggests examples of completed RIS that may provide the drafters with an illustration of the type and depth of analysis that would be best practice for their proposal (Box 4.1). The reference to the most recent guidance is particularly important to ensure that regulators are complying with the most recent guidelines. A standard communication template is also necessary to communicate to the NDPC about the MPC opinion, as well as a template for periodically reporting on RIS notifications received.

Box 4.1. **Australia's Office of Best Practice Regulation advice to regulators on regulatory impact statements**

Dr/Mr/s Addressee cc: Departmental Policy Officer; and

Deputy Secretary Deregulation Unit Officer

Branch/Section

Department/Agency

Dear <Dr/Mr/s Addressee>

Box 4.1. **Australia's Office of Best Practice Regulation advice to regulators on regulatory impact statements** (*cont.*)

I refer to the Preliminary Assessment submitted to the Office of Best Practice Regulation (OBPR) on <*date*> regarding the Australian Government's best practice regulation requirements in relation to the above proposal. <*Mention if there has been any subsequent contact – meetings etc. for example:* Subsequently, the OBPR has held several discussions with your officers regarding this matter to seek a better understanding of the proposal.>

Based on the information provided, the OBPR has assessed that a Regulation Impact Statement (RIS) will be required for this proposal as it is expected to have a more than minor regulatory impact on <businesses, community organisations or individuals>. In particular, the <*proposal*> <*set out in a few dot points the reason for it being assessed at more than minor*>.

The Australian Government Guide to Regulation (the Guide) is the starting point for understanding the information and analysis that will be required in the RIS, and is available from the website:
www.cuttingredtape.gov.au/handbook/australian-government-guide-regulation

The Guide highlights the key principles of best practice regulation and how these should be documented in the RIS itself. In particular, the RIS will need to address the seven RIS questions set out in the Guide (and outlined in the attachment to this letter).

The Guide is supplemented by several Guidance Notes, which provide greater detail on aspects of the regulation impact analysis process. The Guidance Notes are available from the OBPR website:
www.dpmc.gov.au/deregulation/obpr/reporting-publications/publications.cfm

It is also worth emphasising that you are expected to start your RIS at the beginning of the policy process, and allow it to develop and evolve through major decision points and with input from consultation.

You should consider the Guide as the source of information on the RIS requirements. Consistent with the approach taken by the Guide, this letter is *not* intended to set out in detail the minimum requirements for RIS adequacy. Rather, it is intended to provide early guidance on best practice regulation given the significance of the problem being addressed, and the depth of analysis that the OBPR considers appropriate to support a decision in this area.

The OBPR considers that this proposal will <*insert brief description why the type of RIS has been recommended, such as: it will have a measureable, but contained impact on the economy (e.g. from page 12 of Best Practice Guide)*>. On that basis, the OBPR considers a <standard/long>-form RIS would be best practice. You should note that your department decides on which RIS type it will prepare. Further information on the RIS types, and the level of analysis required in each, is contained at pp. 12-13 of the Best Practice Guide.

Box 4.1. **Australia's Office of Best Practice Regulation advice to regulators on regulatory impact statements** (*cont.*)

The OBPR understands that this proposal is likely to result in <an increase/decrease in compliance burden for affected businesses/community organisations/individuals>. The <increased/decreased> compliance costs resulting from the proposal must be quantified – the Best Practice Guide provides an outline (at p. 34) of the costing methodology. <*If compliance costs are increased:* In addition, any net increase in regulatory costs must be offset – this is covered on p. 37 of the Guide.>

Please note that under the current RIS arrangements, agencies are invited to submit their RIS for OBPR assessment at key stages in the policy development process. In general, this will include:

1) Early assessment – At the early assessment stage, the RIS is intended to be capable of informing an in-principle policy decision, as well as supporting external consultation. Accordingly, an early assessment can be undertaken once you have completed the first four RIS questions, quantified regulatory costs and offsets and planned its consultation process. This early assessment requires certification at the Deputy Secretary or Secretary (or equivalent level). <*Insert a sentence describing, in the OBPR's opinion, when the agency should submit the draft RIS for an early assessment, e.g.:* In this case, it would appear that the Department/Agency should submit a draft RIS and costings to the OBPR for early assessment prior to…>
2) Final assessment – The final assessment is the formal, two-stage assessment of the adequacy of the RIS by the OBPR. The RIS addressing all seven RIS questions should include certification by a Deputy Secretary or Secretary (or equivalent level) confirming that, in their view, the RIS meets the Australian Government's RIS requirements. The OBPR will respond within five business days setting out its views on whether the draft RIS reflects best practice regulatory impact analysis; and any improvements that could be made to the RIS. Once these comments have been addressed, the RIS must be resubmitted for the second-pass assessment by the OBPR, after which the OBPR will make a final assessment on adequacy and best practice. This second assessment will also be made within five days. This assessment will need to occur before <*insert what it needs to occur before (e.g. tabling in Parliament)*>.

The OBPR is available to assist on any specific issues that may arise over the course of the policy development process, and in the course of preparing the RIS.

If you have any queries about this advice, please contact <*OBPR main contact name*> on <*telephone number and email address*)>.

Attachments

- Regulation Impact Statement – Adequacy Criteria

Source: Office of Best Practice Regulation, Department of Prime Minister and Cabinet.

Institutionalising good regulatory practice

Chapter 3 discusses the institutional setting for functions of the RIA system. A separate consideration is the actual institutionalisation of good regulatory practice that creates the environment and incentive for compliance with the requirements in the NPDIR.

Firstly, it would be useful to build and maintain the rationale for having a RIA system which in its basic sense is to prevent inefficient or ineffective laws and regulations from being enacted. A systemic way of collecting these cases by MPC will provide an ongoing method of evidence gathering for the need of good regulatory practice.

A key driver for personal and institutional behaviour is the key performance indicator (KPI) in particular for leaders. OECD countries have added better regulation objectives in the performance assessment of individuals to incentivise institutional action. In a similar way, Malaysia could place good regulatory practice key performance indicators for staff and Secretary Generals to root good regulatory practice across government.

In the longer term, good regulatory practice should be part of the enculturation of new entrants into government to teach and engrain regulatory literacy systemically.

Guidance and capacity building for regulators to conduct RIA

In addition to establishing the MPC as responsible for assessing RIS, the NPDIR establishes that MPC is responsible for *i)* developing guidelines and programmes for the policy's implementation; *ii)* ensuring that capacity building programmes for regulators are available; *iii)* assisting the NDPC in assessing regulatory RIS; *iv)* providing guidance and assistance to regulators in RIA and the preparation of RIS. In addition, the NPDIR establishes that INTAN is responsible for providing training on RIA. A number of achievements were made during the first 15 months of NPDIR implementation. A broad number of "hands on" workshops have been provided by MPC: 17 hands on RIA workshops were conducted and 47 inquiries were attended by MPC.

Over time, MPC needs to ensure that shifts its attention from high-resource intensive but general guidance and capacity building to provide more specific guidance (Table 4.1). This could be done by utilising information and communication technologies and greater co-ordination with INTAN for training activities, as well as the development of additional guidance such as practice notes on specific elements of RIA (e.g. public consultation, small business, trade impact assessment, competition impact assessment, post implementation reviews).

Table 4.1. **Guidance and capacity building matrix**

A. Present situation

		Resource intensity	
		Low	High
Level of focus	General	• *Best Practice Regulation Handbook*	• Ministry specific awareness raising • Basic RIA training • "Hands on Workshops"
	Targeted	• MPC RIA helpdesk	• Advisory services

B. Illustration of future situation

		Resource intensity	
		Low	High
Level of focus	General	• *Best Practice Regulation Handbook* • Practice notes on specific elements of RIA (e.g. public consultation, small business, trade impact assessment, competition impact assessment, post-implementation reviews • Guidance on appropriate RIA methodologies • (Online) general training	• In-person training on RIA methods (e.g. benefit-cost analysis, multi-criteria analysis, etc.), sensitivity analysis, partial analysis, risk assessment
	Specific	• MPC RIA helpdesk	• Advice on presentation of RIS content and MPC feedback on RIS notifications and RIS.

Provision of hands on assistance and capacity building

Despite having responsibility for delivering training, the frequency of INTAN RIA training is insufficient to meet regulator's needs. INTAN launched a three-day RIA workshop in 2012 intended for regulatory co-ordinators, though officials from policy, regulatory and legal departments may also participate. The workshop syllabus was initially developed by INTAN, together with former MPC officials and officials from the Netherlands' Ministry of Economic Affairs. The workshop compliments INTAN courses on principles in policy process, evidence-based policy formulation and policy evaluation (INTAN, 2012). In October 2013 this syllabus was largely refined and reconstituted following capacity building activities by MPC and the OECD. As of December 2013, INTAN has trained a total of 110 officials in 4 RIA workshops. In 2014, INTAN offered two RIA workshops (in April and September).[3]

During the 15 months of NPDIR implementation MPC has delivered a number of hands on RIA workshops for regulators. These workshops provide an introduction to RIA and the NPDIR in a similar respect to the INTAN workshop – though the INTAN training now places emphasis on the use of case studies rather than simply theory. The willingness of MPC to respond to such capacity building requests is not just a result of needing to fill a gap: MPC has traditionally been a provider of training for public officials. In 2009, 50% of MPC revenue came from training, a further 30% came from assisting ministries and agencies to develop their management systems (BCG, 2010). However, given responsibility of INTAN under the NPDIR these MPC activities create an opportunity cost to assisting regulators on improving the quality of their specific RIS.

Recognising the need for greater co-ordination, MPC established a formal agreement with INTAN on training arrangements in its February 2014 Action Plan. However, since April 2014 there has been little progress to establishing a co-ordinated approach to training with MPC ensuring that (adequate) capacity building programmes for regulators are available. MPC has been conducting RIA training workshops with regulatory co-ordinators specifically for Ministries. Beyond simply ensuring that capacity building programmes are available, MPC could provide input into the design of INTAN programmes to reflect amendments to the RIA guidelines and key issues identified through MPC monitoring and evaluation of the NPDIR. This is especially the case as MPC develops more detailed guidance materials and reviews the content of the *Best Practice Regulation Handbook*, etc.

RIA start up teams

The start-up teams are responsible for increasing awareness on RIA and GRP among ministry officials; assist in training ministry officials on RIA requirements and other material including regulatory guidance notes and research; providing advisory services to strengthen the regulatory policy of the ministry and its agencies; support forward regulatory planning and prioritisation of RIA and GRP activities, including public consultation. The start-up teams are currently comprised of one MPC Regulatory Review Department official for each ministry working on a part-time basis in addition to their existing duties. All of these MPC officials have now participated in the INTAN RIA training and an internal MPC mentoring programme has been established. This mentoring programme takes place twice a month, with presentation and discussion of different elements of the NPDIR and *Best Practice Regulation Handbook*.

The initial indication has been that the RIA start-up teams (Box 4.2) have not been activated or utilised as much as was envisaged. This may be due to existing duties that may not permit attention to be focussed on this new additional task.

Box 4.2. **RIA start-up team terms of reference**

Develop close working relationship with ministry and its agencies to assist the regulatory co-ordinators (RCs) in building institutional framework for regulatory impact analysis (RIA) in their organisation;

- Integrate RCs and focal points of the ministry and its agencies and update their information and pictures to be inserted in RCs database;
- Follow up and monitor the progress of all good regulatory practices (GRP) activities made by ministry and its agencies;
- Update the ministry and its agencies' profiling database on monthly basis;
- Create awareness on GRP and RIA at ministry and agencies and constant communication with them;
- Identify key issues on regulatory, facilitate regulatory changes and provide advisory services to strengthen regulatory policy of the ministry and its agencies;
- Seek regulatory plan for regulatory changes from ministry and its agencies and contribute to the output of the Annual Best Practice Regulation Report;
- Examine RIA progress and advise departments and agencies whether they meet the government's requirement;
- Promote consultation principles and provide clear guidance on best practice consultation with stakeholders to be undertaken as part of the policy development process; and
- Assist in training on Regulatory Impact Analysis (RIA) requirements and other material including regulatory guidance notes and research.
- Each member of the RIA start-up teams is responsible to communicate or attend to any enquiries from ministries and its agencies related to GRP issues.

Source: Malaysia Productivity Corporation (MPC).

Online training

In addition to in-person training provided, attention could also be directed to develop online RIA training. Such training is as a means of easily accessible and low-cost training opportunities for regulatory officials as well as other audiences, such as representatives of business and citizens interested in developing a better understanding of the rulemaking process. Online training can provide basic but useful information about RIA for individuals without any constraints of time and place. It can broaden and deepen the potential users' understanding of RIA with the least cost. Through introducing online RIA training, attention can focus their attention on providing more advanced in-person training programmes for regulator officials. A number of OECD member countries have used online training (Box 4.3).

Successful completion of online training can be made as a prerequisite for taking further RIA training programmes (Table 4.2). Because of the nature of the online training, it is more suitable for the trainees who are newcomers or beginners in RIA. This is because this kind of online training makes it very difficult to interact between the trainer and the trainee. The online training course is usually a kind of a lecture class rather than a discussion section. Thus, it is a very useful tool to deliver simple and basic information to the trainees but it might be not suitable for more advanced training courses. Thus, at least at the very early stage, it would be better if this programme target the unspecified public officials whose jobs or duties may be related to the regulations but do not have any or enough information about RIA.

Table 4.2. **RIA training development options**

Understanding of RIA	Programme	Main training method	Target participants
Advanced	In-person training	Case study and discussion Explanation, question and answer	Regulatory officials and regulatory co-ordinators
↑ Beginner	Online training	Lectures	Regulatory officials and regulatory co-ordinators (pre-requisite to in-person training) Other public officials Businesses and citizens

Several options can be used to provide develop online RIA training programmes (Table 4.3) by the government's regulatory oversight body (i.e. NDPC/MPC) or the government's national training department

(i.e. INTAN) – or jointly capitalising on the relative strengths of both institutions, namely RIA evaluation and visibility of MPC, expertise developing training programmes and infrastructure of INTAN.

Table 4.3. **Potential RIA training institutions**

Option	Strengths	Weaknesses
Regulatory oversight body (i.e. MPC)	• Provide most practical and useful information on RIA • Minimise the gap between theory and practice • Clear visibility of training programme	• Need additional resource to manage the training programme (like separate web-server, system maintenance workforces…)
Government's national training department (i.e. INTAN) for all users	• Use the expertise on training programme • Capitalise on existing online training infrastructure	• Disconnect between theory and practice • Compete against other training programmes

RIA Helpdesk

The purpose of the Helpdesk is to have a single point of contact within the MPC for regulators – both the regulatory co-ordinator and other (i.e. policy and legal department) – officials to inquire about RIA and the government's policy on online public consultation. The role of the Helpdesk is three-fold: *i)* to provide immediate response to the queries, by way of referring regulators to specific sections of existing NPDIR handbook and frequently asked questions (FAQ); *ii)* to act as a post box for more complicated queries through which MPC can formulate an institutional response after consultation with MPC and NDPC officials, as necessary; and *iii)* to identify and categorise recurring queries that could be dealt with in future NPDIR guidance materials and FAQs. Officials may contact the Helpdesk through a generic email account (regulatoryreview@mpc.gov.my).

This could be monitored by developing a number of key performance indicators for the Helpdesk, such as number of queries received, number of queries answered within one working day and average handling time. With adequate training, most queries will take a few minutes to respond to either by referring the users to the web link to the FAQ or by providing an instant answer. Other queries may require a couple of hours after consultation with an MPC Regulatory Review Department Director. However, in a few cases, the helpdesk may need to obtain expert opinion which may delay the query response beyond one day. In order to ensure standardised and timely response to queries received, the MPC could

establish standard operating procedures. There is also a potential risk that if larger numbers of queries and RIS begin to flow then the management of these will be very important for meeting the requirements of the NPDIR.

Box 4.3. **Korea's online regulatory reform training programme**

In 2012 the government of Korea introduced online training on regulatory reform, including regulatory impact analysis (RIA). Previously training had been provided through in-person courses conducted by Central Officials Training Institute (COTI), the government's primary training institution for central government officials. However, only a small number of officials could be trained through the programme. To fill this gap, individual ministries and the Regulatory Reform Office, under the Prime Minister's Office, also provided various in-person training programmes on regulatory reform.

The COTI online regulatory reform programme targets the participation of central public officials. Anyone from the central government can access the training programme through the COTI website using their identification number and password. In addition, COTI makes its online training management systems and programme content available to other public institutes to provide training on regulatory reform.

The content of the COTI regulatory reform programme is provided by officials from the Regulatory Reform Office. It is designed to provide practical information about Regulatory Reform for the government officials. The programme consists of 13 sections, each lasting for approximately 30 minutes. Sections address issues such as what is the purpose of regulation, what is the purpose of regulatory reform, what is the focus of the government's regulatory reforms, what is RIA and what are the different steps, etc.

The online regulatory reform training programme is limited to 400 participants each month due to the capacity of the online training system. Although officials may take the programme at their own speed, they must complete the programme with the same calendar month. At the beginning of the each month, all the online training courses make a fresh start. This is to ensure that all officials have the opportunity to participate in the training.

When a trainee completes all the course sections s/he should pass an online multiple choice test to receive a certificate of completion. To receive a certificate of completion, a trainee must complete at least 90% of the course sections and score at least 70% in the online test. The certificate is recorded in the official's performance assessment.

Facilitating dialogue among regulators

Regulatory oversight bodies in countries such as Canada, Mexico, Sweden and the United Kingdom have often engaged in building networks of correspondents across ministries and the government apparatus in

general. The goal of these networks is to improve outreach, co-ordination and ownership of the policy by regulators. The United Kingdom first established a network of structures operating at different levels and established in the main regulatory ministries and agencies as early as 1997. The role of the sectoral better regulation units was to support to ministers and ministries in fulfilling the regulatory quality obligations (e.g., undertaking impact assessments). These ministerial Better Regulation units also support and deliver Better Regulation processes and programmes. Another example comes from Sweden, where internal support units or structures for Better Regulation have been set up in ministries and government agencies. Each of the sectoral unit may deploy its own networking efforts, for example to reach out to the business community. Australia has also established Best Practice Regulation co-ordinators within agencies and departments who assist with identifying training needs to ensure that they are aware of the available guidance material and have the necessary capacity to undertake RIA. These co-ordinators are also responsible for championing good regulatory practices within their agency (Cordova-Novion and Jacobzone, 2011).

Guidelines and tools

Table 4.4. **Forward regulatory planning in Malaysia and selected OECD member countries (2008)**

	Primary laws		Subordinate regulations	
	Existence of list	available via Internet	Existence of list	available via Internet
Australia	Yes	Yes	Yes	Yes
Canada	Yes	Yes	Yes	Yes
Chile	No	n/a	No	n/a
Japan	No	n/a	No	n/a
Korea	Yes	Yes	Yes	Yes
Malaysia, pre 2014	**No**	**n/a**	**No**	**n/a**
Malaysia, post 2014	**Yes**	**Yes**	**Yes**	**Yes**
Mexico	No	n/a	Yes	Yes
Netherlands	No	n/a	No	n/a
New Zealand	No	n/a	No	n/a
United Kingdom	Yes	Yes	Yes	Yes
United States	Yes	Yes	Yes	Yes

Source: Adapted from OECD (2009b), Indicators of Regulatory Management Systems, OECD Publishing, Paris.

In order to support the role of regulatory co-ordinators as well as NDPC and MPC, the *Best Practice Regulation Handbook* states that regulators should develop a schedule of all regulations subject to review in the

forthcoming year to MPC in January of each year. Forward regulatory schedules (sometimes referred to as forward regulatory plans) are used by many OECD member countries to provide information to assist regulators and regulatory oversight bodies to effectively manage the flow of regulatory proposals (Table 4.4). Forward regulatory schedules can also be used to provide business and the community with ready access to information about past and planned changes to regulation, and make it easier for business to take part in the development of regulation that affects them.

Publication of written guidance documents

A *Best Practice Regulation Handbook* and *Quick Reference Guide* were developed and launched in 2012 and relaunched together with the NPDIR in order to provide guidance for compliance to the Policy and "Regulatory Process Management Requirements". The Handbook includes templates for regulators to notify the government of efforts to amend existing and develop new policies that could result in regulatory changes, as well as a RIS template. Table 4.5 presents the MPC RIA Checklist for regulators. The MPC disseminates information on the NPDIR and RIA through workshops, as well as a Regulatory Review Newsletter and social media (e.g. Facebook). During 2014 the MPC had developed guidelines on public consultation in rulemaking processes to complement the *Best Practice Regulation Handbook*.[4]

Moreover, in order to ensure that regulators have all of this information at hand, the MPC has developed RIS induction kit for newly appointed regulatory co-ordinators. This kit contains *i)* terms of reference for regulatory co-ordinators; *ii)* copies of the NPDIR, *Best Practice Regulation Handbook* and Government Circular on NPDIR; *iii)* information on MPC RIA Helpdesk, capacity building and RIS assessment; *iv)* a list of frequently asked questions on RIA; and *v)* templates for RIS Notification, RIS and one page summary RIS. It is proposed that the guidelines on public consultation will be included with this once it is completed.

Table 4.5. **Examples of additional guidance on RIA**

Selection of appropriate methodologies	What methodology or methodologies are required to be used in specific RIA context and should clearly set out the conceptual advantages and disadvantages of each methodology. Information should be provided on both Benefit-cost Analysis (BCA) and Cost Effectiveness Analysis (CEA). Consideration should also be given to including an explicit discussion of the potential benefits of adopting break-even analysis as a supplementary methodology in situations where there is substantial uncertainty regarding major benefits.

Table 4.5. **Examples of additional guidance on RIA** (*cont.*)

Application of different methodologies	Practical guidance should be provided on how to conduct qualitative analysis in as systematic and objective a fashion as possible and on how to integrate qualitative and quantitative analyses. Consideration should be given, in this context, to explicit endorsement of the use of Multi Criteria Analysis in contexts in which major benefits cannot be quantified and/or expressed in monetary terms. Where the use of Multi Criteria Analysis is endorsed, explicit guidance on its use should also be provided, either in the context of RIA guidance documents themselves or through referencing specialised guidance documents in relation to this particular methodology. Discussion of the need to integrate BCA and MCA should also be included.
Valuation methodologies	RIA guidance documents should highlight the range of methodologies available for indirectly estimating the values of benefits and costs in respect of which there is no direct market value. Guidance documents should make clear what is expected in terms of the use of these indirect valuation methodologies in particular contexts. This will assist in ensuring that the resources devoted to RIA are proportionate to the expected sizes of the regulatory impacts being considered
Valuation of statistical life	RIA guidance documents should specify a particular VSL, or a range of VSL, to be used for RIA purposes. Providing a recommended VSL aids in ensuring that health and safety related benefits are monetised wherever feasible. It also ensures consistent treatment of these benefits between different RIA, thus aiding the direction of regulatory efforts towards their most productive uses. For reasons of transparency and acceptability, the conceptual basis for the VSL figure adopted should be made explicit in RIA guidance materials.
Discount rates	RIA guidance documents should recommend the use of a specific discount rate for regulatory purposes and should clearly specify any particular regulatory contexts in which different discount rates can, or should, be used. Specifying a discount rate aids consistency between RIA, in turn helping to ensure regulatory resources are directed to their most productive uses. While the adopted discount rate would not be expected to change frequently, it should be reviewed from time to time to determine whether any changes in the average values of the variables which underpin it require revision of the rate. The conceptual rationale underlying the chosen discount rate should be made explicit in the RIA document
Sensitivity analysis	Guidance on BCA should highlight the need to conduct sensitivity testing in relation to variables with uncertain values which are likely to affect significantly the outcome of the analysis. Conducting sensitivity analysis makes BCA results more informative by illustrating how the results are affected by changes in the values of key variables. This acts as a test of the robustness of "base case" RIA results.
Decision rules	RIA guidance documents should include an explicit discussion of decision rules for BCA (where this methodology is recommended or required to be used) and should provide guidance on what rule or rules should be adopted.

Table 4.5. **Examples of additional guidance on RIA** (*cont.*)

Partial analysis	Specific consideration of impacts on particular groups within society should be required only where these distributional concerns are likely to be germane to regulatory decision-making. Care should be taken to ensure that requirements to conduct partial impact analyses do not risk undermining the coherence of the overall RIA and reduce its usefulness to decision-makers. This suggests that there should not be requirements to complete partial impact analyses relating to particular groups in all cases. Rather, RIA guidance should emphasise the need to identify and adequately assess any significant distributional impact that are likely to constitute significant considerations for decision makers in assessing regulatory proposals. This outcome will be supported if RIA guidance includes an indicative list of possible partial impacts, together with discussion of the issues that are likely to require consideration in each case. Guidance on partial impact analyses should emphasise the need to discuss the results of the partial impact analysis in the broader RIA context in order to ensure that policy coherence is safeguarded.
Risk assessment	RIA guidance should include a discussion of risk issues which clearly sets out the governments' expectation in relation to dealing with risk in the regulatory context. Guidance on risk assessment should include information on optimising the degree of risk reduction, potentially including an introduction to the concept of acceptable risk thresholds. The issue of subjective versus objective risks should be discussed and policy guidance on highlighting any areas of conflict should be provided where feasible. If the "precautionary principle" is to be advocated as part of RIA decision making, the specific meaning to be ascribed to this principle in the RIA context should be set out as clearly as possible. This specific meaning should be made consistent with the principles of good regulation, and of RIA and BCA, as far as possible.

Source: Adapted from OECD (2009a), *Regulatory Impact Analysis, A Tool for Policy Coherence*, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264067110-en.

Structures and capabilities to effectively deliver NPDIR responsibilities

OECD experience is that regulatory oversight bodies need to be endowed with human and financial resources to perform their functions. Adequate resources are not only needed to make an oversight body competent and effective, but lack of these can also compromise the proper fulfilment of the tasks. For instance, the shortage of funds and adequate manpower can make oversight vulnerable or prone to capture or to bias if most of the information available is provided by interest groups or regulatees. If the oversight body cannot afford analytical capacity, errors may occur when challenging regulators, which could be used by interest groups to their advantage. Moreover, resources need to be sustained over time. The implementation of tools such as RIA can require 5-10 years of arduous work, to have durable effects to be felt throughout the whole regulatory and administrative system and the economy as a whole (Cordova-Novion and Jacobzone, 2011).

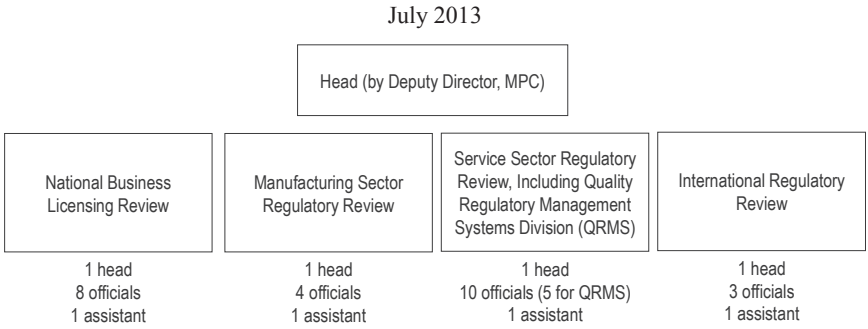
A crucial aspect is the need to attract and retain capable professionals with a mix of skills and competencies required for assuring high-quality regulation. Most oversight bodies are staffed by a mix of lawyers and economists supported by experts in other fields of social science and policy, life science and physical science. It is often important to ensure adequate staffing with economists and specialists in social sciences to balance overly legalistic approaches. Providing attractive salaries and incentives is also challenging in the context of public service remuneration policies. Oversight bodies often face a shortage of talent and strong competition for the type of skills they need (Cordova-Novion and Jacobzone, 2011).

Organisational structure

MPC responsibilities under the NPDIR are the responsibility of the Regulatory Review Department, one of five thematic departments under the Corporation (the others being Business Excellence, Knowledge Management, Global Competitiveness and Enterprise Innovation). The Regulatory Review Department was established in 2010 to support the implementation of MPC obligations under the 10th Malaysia Plan (RMK10), Malaysia's five-year development plan. RMK10 established MPC as responsible for reviewing existing regulations with a view to removing unnecessary rules and compliance costs and undertaking a cost benefit analysis of new policies and regulations to assess the impact on the economy. The Department is modelled on the activities of the Australian Productivity Commission.

Following the launch of the NPDIR, MPC management concluded that it was necessary to reorganise the Regulatory Review Department. When established the Department was primarily responsible for conducting reviews of sectoral regulation and business licensing. Figure 4.4 provides the organisational chart in July 2013 following the launch of the NPDIR. At the timing of the NPDIR launch there were five officials responsible for RIA located in the Quality Regulatory Management Systems Unit under the Service Sector Regulatory Review Division. However, previously these officials were responsible for developing the NPDIR and revising the Handbook, as well as conducting general awareness raising activities of RIA among regulators. The Quality Regulatory Management Systems Unit was not assessing RIS notifications and RIS, nor supporting regulators' compliance with the NPDIR.

Figure 4.4. **Current structure of the Malaysia Productivity Corporation's Regulatory Review Department**

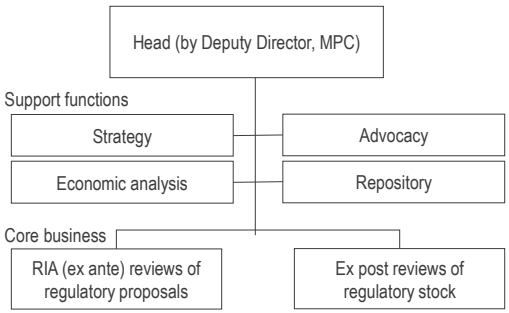


Source: Malaysia Productivity Corporation (MPC).

In October 2013 MPC committed that it would allocate 60% of human resources to focus on RIA and the NPDIR, with the residual focusing on *ex post* reviews of the stock of existing regulations. Moreover, it was proposed the new structure for the Regulatory Review Department also include units responsible for strategy, advocacy and economic analysis, and report directly to the Director of Regulatory Review. The functions of the units roughly corresponded with the quadrants contained in the MPC action plan to implement the NPDIR, discussed in Chapter 2. The intention was that the strategy unit would focus on medium-term agenda for RIA and *ex post* review of the regulatory stock, and support the monitoring and evaluation of NPDIR implementation. The advocacy unit would focus on building understanding and high-level political support within the executive and legislative branches of government – as well as awareness and understanding of NPDIR among business and the public. The economic analysis was to support the development of quantitative methods to evaluate the benefit and costs of regulation, including regulatory compliance costs.

As of September 2014 the structure has not changed but the responsibilities for the NPDIR have been disseminated across the Regulatory Review Department. Directors in the department have taken up certain duties and the RIA start-up teams are the method for spreading tasks across all staff. While this has been effective in progressing the third action plan (see Chapter 2), there is a need for a more sustainable allocation of dedicated resources for the NPDIR. This is irrespective of whether MPC will have the role of gatekeeper, or whether this role will be assigned to another appropriate entity in support of the NDPC and the cabinet decision-making processes.

Figure 4.5. **Proposed structure for the Malaysia Productivity Corporation's Regulatory Review Department**



Training MPC regulatory review officials

In April 2014 MPC launched a series of internal training and capacity building for its Regulatory Review officials. A number of mentoring sessions were held where officials knowledgeable and with experience in RIA sought to disseminate their knowledge. MPC further committed to host mentoring sessions twice per month. In the mentoring sessions, MPC officials were required to study the NPDIR and Handbook and present on their understanding to their peers as a basis for discussion.

Progress reporting and performance indicators

The MPC has developed a dashboard of progress indicators that captures the progress of a number of activities including the number of enquiries, top management briefing, workshops on RIA conducted, regulatory notification forms received, RIA projects in progress, RIS submitted for assessment, regulatory proposals plans collected, advisory services projects initiated and the number of regulatory co-ordinators. This has been useful to project manage the implementation of the third action plan. However a performance indicator dashboard that measures the impact of the NPDIR should be developed.

This could measure the impacts as measured in the RIS and the quality improvement of the RIS based on the final RIS compared to the initial RIS. This may not be possible for all proposals but the system should be built from the start. This is often an omission in many RIA systems when they start and afterwards it is difficult to put in place such measurement processes. This would be the basis for reports to the NDPC and Secretary-Generals of ministries.

Conclusions and recommendations

The MPC has invested substantial resources into advocacy, guidance and training during the first 15 months of NPDIR implementation. It has developed the necessary internal capacity to fulfil the roles and functions ascribed to it in the NPDIR which has helped to meet expectations achieve during the initial start-up stages of developing and piloting the NPDIR. During the next phase of NPDIR implementation, different capability will be required to provide more expert technical assistance and guidance. Moreover, the Gatekeeper function, which is a critical role in most OECD member countries, has not yet been exercised and an assessment of the appropriate location of this function *vis-à-vis* the advocacy and capacity building functions should be reassessed.

In order to enhance and prepare the MPC systems and processes for the next phase of NPDIR implementation it will be important to:

- augment existing generic guidance materials, including through the use of case studies, to equip and empower regulatory officials to develop their RIA expertise and produce high-quality RIS;
- Institutionalise good regulatory practice through personal key performance indicators in leadership and officials' career performance system. Also introduce as part of new entrant induction programmes.
- strengthen co-operation with INTAN to provide capacity building activities for regulators, including online to ensure easily accessible and cost-effective delivery;
- develop systems, processes and tools to support forward regulatory plans and identify significant regulatory proposals subject to RIA with regulatory co-ordinators;
- develop standard procedures for assessing RIS and provide assurance to MPC management of the quality of RIS to be transmitted to NDPC and Cabinet;
- augment the existing template for communications between MPC and regulators on the adequacy of RIS;
- establish a standardised template to report to the NDPC on the adequacy of individual RIS, and monitor NPDIR compliance by individual regulators;

- spread practices to distil lessons learned from RIA, including through establishing networks of practice, to continuously increase RIS quality and strengthen MPC RIS assessment;
- develop systems and processes to conduct post implementation reviews of regulations exempt from or that do not comply with the NPDIR;
- develop job description, competency profiles and training programmes for MPC officials responsible for providing RIA guidance to regulators and those responsible for assessing RIS focusing on regulatory literacy; and
- assess and ensure MPC has the right capability to administer the role assigned to it in implementing the NPDIR effectively and servicing the NDPC with a high quality secretariat while realising the vision of becoming the "Quality Regulation Hub" in Malaysia.

Notes

1. *Best Practice Regulatory Handbook,* paragraph 3.4.
2. *Best Practice Regulatory Handbook,* paragraph 5.0.
3. www.intanbk.intan.my/kalendar/kalendar.pdf.

Annex 4.A1

Initial criteria for assessing regulatory impact statements

According to Malaysia's *Best Practice Regulation Handbook*

Regulatory impact statement (RIS) section	Criteria for evaluation
Problem statement and risk assessment	RIS should clearly identify the problem(s) that need to be addressed. This part of the analysis must • Present evidence on the magnitude (scale and scope) of the problem; • Document relevant existing regulation at all levels of government and demonstrate that it is not adequately addressing the problem; • Identify the relevant risks, if the problem involves risk, and explain why it may be appropriate for the government to act to minimise them; and • Present a clear case for considering that additional government action may be warranted, taking into account existing regulation and any risk issues, and the potential for market developments to overcome the problem.
Purpose and intended effect of measure	RIS should explain the objectives, outcomes, goals or targets of government action
Options	RIS should identify a range of alternative options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options. If only one option (apart from the option of non-intervention) is considered feasible, the RIS should provide sound justification for considering only two options. If the Cabinet directs that a limited set of options be considered, or options are limited because of other specific reasons, this must be clearly stated.
Assessment of impact	RIS should provide an adequate analysis of the costs and benefits of the feasible options, and should • Identify the groups in the community likely to be affected by each option and specify significant economic, social and environmental impacts on them; • Assess the costs and benefits of all the options supported by an acceptable level of evidence, where appropriate through a formal cost-benefit analysis, using the status quo as a baseline; • Assess the net impact of each option on the community as a whole, taking into account all costs and benefits; • Assess the impact on businesses and the not-for-profit sector, including distributional issues such as the impact on small businesses, and quantify the effect of each option on business compliance costs;

Regulatory impact statement (RIS) section	Criteria for evaluation
	• Recognise the effect of the options on individuals and the cumulative burden on businesses; • Quantify other significant costs and benefits to an appropriate extent, taking into account the significance of the proposal and its impact on stakeholders; • Analyse the extent to which each option would reduce the relevant risk if an objective of regulation is to reduce risk, and the costs and benefits involved; • Document any relevant international standards and, if the proposed regulation differs from them, identify the implications and justify the variations; • If the proposed regulation maintains or establishes restrictions on competition, demonstrate that the regulation results in a net benefit and that the government's objective/s can be achieved only by restricting competition; and • Provide evidence in support of key assumptions and clearly identify any gaps in data.
Consultation	RIS should • Outline the plan adopted for consultation; • Include results of the inter-agency consultation; • Describe how consultation was conducted (when consultation was undertaken, the timeframes and the methods used); • Summarise the views of those consulted, including substantial disagreements; • Outline how those views were taken into consideration; and • If full consultation was not undertaken, provide a reasonable explanation as to why it was not.
Recommended option	RIS should clearly state the preferred option, why it is preferred, and indicate the costs and benefits of this option. This statement needs to be supported by the analysis contained in RIS.
Implementation of preferred option	RIS should provide information on how the preferred option would be implemented, monitored and reviewed. Interactions between the preferred option and existing regulation of the sector should be clearly identified.

Source: Adapted from MPC (2013a), *Best Practice Regulation Handbook*, July, Perbadanan Produktiviti Malaysia, Petaling Jaya.

Annex 4.A2

Checklist for assessing regulatory impact statements

For each statement below indicate whether you believe the content of regulatory impact statement (RIS) is accordance with the specific criteria. If yes, please also include a qualitative score as follows:

Does the RIS:	Yes/No/NA	If yes, give qualitative on scale of 1-4	What page of the RIS is the relevant material
1. Problem statement:			
a) Clearly identify the problem(s) that need to be addressed.			
b) Present evidence on the magnitude (i.e. scale and scope) of the problem.			
c) Identify who are the affected parties and stakeholders.			
d) Document relevant existing regulation(s) at all levels of government.			
e) Demonstrate that existing regulation(s) does not adequately address the problem (i.e. fulfil its defined objective).			
f) Identify the relevant risk(s), if the problem involves risk, and explain why it may be appropriate for the government to act to minimise them.			
g) Present a clear case for considering that additional government action may be warranted, taking into account existing regulation, any risk issues, and the potential for market developments to overcome the problem.			
Other comments, if any _____			
2. Policy objectives			
a) Explain the objectives, outcomes, goals or targets of government action.			
b) Include SMART (i.e. specific, measurable, accurate, reliable and timely) objectives.			
Other comments, if any _____			

Does the RIS:	Yes/No/NA	If yes, give qualitative on scale of 1-4	What page of the RIS is the relevant material
3. Options			
a) Identify a range of alternative options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options.			
b) Indicate non-regulatory options.			
c) Link option to the defined objective(s) (i.e. explain how it will achieve the objective).			
d) If only one option (apart from the "do-nothing" option) is considered in the RIS, sound justification should be provided to explain this (if for example the Cabinet directs that a limited set of options be considered, this must be clearly stated in the RIS).			
Other comments, if any _____			
4. **Impact Analysis:**			
a) Identify the groups in the community likely to be affected by each option.			
b) Specify significant economic, social and environmental impacts on them.			
c) Analyse impacts of the do nothing option as a baseline.			
d) Assess the costs and benefits (or increased and reduced cost if cost-effectiveness or compliance cost methods are used) of all the options supported by an acceptable level of evidence, where appropriate, using the status quo as a baseline.			
e) Identify unintended consequences.			
f) Indicate if options have long-term impacts.			
g) Assess the net impact of each option on the community as a whole, taking into account all costs and benefits.			
h) Assess the impact on businesses, including distributional issues such as the impact on small businesses, and quantify the effect of each option on business compliance costs.			
i) Assess the impact on the not-for-profit sector.			
j) Recognise the effect of the options on individuals.			
k) Recognise the cumulative burden on businesses.			

Does the RIS:	Yes/No/NA	If yes, give qualitative on scale of 1-4	What page of the RIS is the relevant material
l) Quantify other significant costs and benefits to an appropriate extent, taking into account the significance of the proposal and its impact on stakeholders.			
m) Analyse the extent to which each option would reduce the relevant risk if an objective of regulation is to reduce risk, and the costs and benefits involved, if relevant.			
n) Indicate whether the option is sufficient to meet the defined objective(s).			
o) Document any relevant international standards.			
p) If the proposed regulation differs from them, identify the implications and justify the variations.			
q) Assess if the regulation maintains or establishes restrictions on competition.			
r) If the proposed regulation maintains or establishes restrictions on competition, demonstrate that the regulation results in a net benefit.			
s) If the proposed regulation maintains or establishes restrictions on competition, demonstrate that the government's objective/s can be achieved only by restricting competition;			
t) Provide evidence in support of key assumptions.			
u) Clearly identify any gaps in data.			
Other comments, if any _____			
5. **Public consultation:**			
a) Outline the plan adopted for consultation.			
b) Include results of the inter-agency consultation.			
c) Describe how consultation was conducted (when consultation was undertaken, the timeframes and the methods used).			
d) Summarise the views of those consulted, including substantial disagreements.			
e) Outline how those views were taken into consideration.			
f) If full consultation was not undertaken, provide a reasonable explanation as to why it was not.			
Other comments, if any _____			

Does the RIS:	Yes/No/NA	If yes, give qualitative on scale of 1-4	What page of the RIS is the relevant material
6. **Conclusion and recommended option**			
a) Clearly state the preferred option.			
b) State why this option is preferred, and indicate the costs and benefits of this option.			
c) This statement needs to be supported by the analysis contained in RIS.			
Other comments, if any _____			
7. **Implementation and Review:**			
a) Provide information on how the preferred option would be implemented, monitored and reviewed. Interactions between the preferred option and existing regulation of the sector should be clearly identified.			
b) Provide information on how the preferred option would be monitored and reviewed.			
c) Interactions between the preferred option and existing regulation of the sector should be clearly identified.			
Other comments, if any _____			

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