



Implementing Regulatory Reform

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THE PRACTICAL CHALLENGES TO ESTABLISHING REGULATORY IMPACT ASSESSMENT (RIA) SYSTEMS IN DEVELOPING COUNTRIES – AN OVERVIEW

What is regulatory impact assessment?

Regulatory Impact Assessment (RIA) is a methodology for designing precise, targeted regulations that achieve legitimate policy aims with the minimum burden on those affected. It is a tool that provides a framework for a high quality, participative policy development process, guiding users through a series of steps designed to address the main stages of policy development. These stages include an analysis of the full range of options for addressing a policy problem, and an estimation of the costs and benefits of proposed measures to ensure that they are fully justified. As such, RIA can be a valuable tool in creating a positive investment climate.

There is diversity between different countries' RIA frameworks and the role that RIAs play in the policy process, but it is possible to discern a high degree of commonality. RIA has taken root among donor countries as a means of improving regulatory environments. As these countries have seen the benefits, they are increasingly making RIA a feature of development assistance.

RIA should not be considered a purely Western model of best practice that pre-supposes certain policy outcomes. Rather, it is a more neutral approach which helps countries to align better their policies and regulations with local priorities and needs. Changing the regulatory culture takes time and perseverance, be it in the developed or developing world, and the introduction of RIA systems provides no quick fix.

The objectives and benefits of RIA for developing countries

The objective of introducing RIA is to make regulation as efficient as possible, achieving legitimate policy aims with the minimum burden on the economy and society. Where regulation is inefficient, businesses incur unnecessary costs. RIA provides politicians with better information on which to base their decisions and, therefore, contributes to better governance for citizens and to a business environment that is conducive to enterprise-led growth and poverty reduction. It can also provide civil society groups and other stakeholders with a role in the policy process.

Table 1: Typical steps/questions in an RIA

1. **Title of proposal.**
2. Describe the **purpose and intended effect of the proposal.**
3. Give an analysis of **the policy problem** and explain why Government action is justified. Distinguish between symptoms and the core of the problem. What would happen if Government did nothing?
4. Set out the **options** that were considered, including alternatives to regulation.
5. Describe the anticipated **impacts**, quantitatively where possible.
6. What will be the **distribution of impacts**? Who gains and who loses? Will SMEs be disproportionately affected?
7. What **consultation** has been undertaken and what were the results?
8. **Enforcement and sanctions.** How will the measure be enforced?
9. What plans are in place for **monitoring and evaluation**?

The benefits that RIA brings to governments are largely the same for developed and developing countries. The problems that RIAs seek to address, however, are more acute among developing countries and therefore the advantages are correspondingly greater. Many developing countries are hampered by the legacy of a heavily regulated economy and a command approach to administration and enforcement. RIA can encourage policy makers to focus on the needs of small firms and of other disadvantaged groups, helping to ensure that economic growth is pro-poor.

In so far as RIA leads to efficient and effective regulation, it has a number of direct and indirect benefits:

- **Enhancing competitiveness** – High regulatory burdens reduce the competitiveness of individual business sectors directly, and indirectly reduce national competitiveness. An increase in regulatory burdens increases the average costs for businesses, resulting in reduced supply. As regulatory costs are often fixed costs, they have a disproportionate effect on small businesses which are unable to spread the costs across a large output. Unnecessary regulatory burdens reduce the resources that businesses have available for investment in equipment and human capital. At the national level, a heavy regulatory burden worsens a nation's competitive position, something that becomes increasingly important in a global economy and in the context of attracting FDI.
- **Increasing competition** – RIA can be used to examine how new and existing rules contribute to a competitive environment, including by preventing or enabling anti-competitive practices. Increased levels of competition lead to a more efficient allocation of resources, thereby fostering economic development, improving the equity of distribution and lowering prices.
- **Increasing transparency and accountability** – RIA contributes to transparency in government by encouraging policy-makers to explain the reasons for a given policy proposal, how the proposal addresses an identified problem and the expected benefits. This requirement for openness builds pressure in the system for high quality regulatory proposals. If

RIAs are made available to the Legislature, they can also improve the quality of legislative debate and help Parliaments hold the Executive to account.

- **Reducing opportunities for corruption** – The more complex and open to interpretation a regulatory obligation is, the greater the opportunity for corruption. Enforcers can use their influence to extract bribes, and the regulated businesses are incentivized to pay them as a way of circumventing costly bureaucratic requirements. By encouraging minimum burdens on business and clear regulations, RIAs can contribute towards an environment that is hostile to corruption.
- **Providing a tool for monitoring and evaluation** – After a regulation has been passed, RIA can serve as a benchmark for ex-post monitoring and evaluation. This helps governments review the effectiveness of their interventions; businesses advocate for improvements to burdensome regulations; and citizens hold their governments to account for delivery of the benefits promised.

Modifying RIA methodologies for developing country contexts

The basic elements of the RIA framework set out above do not need significant amendment in order to be applicable to the developing world context. The generic RIA framework itself is flexible and allows policy-makers to assign weights to their own values and concerns so that each jurisdiction using the framework can reach the policy decision that is right for its own environment. One of the main differences in countries' RIA frameworks is the groups that are selected for special consideration as to the distribution of impacts (step 6 in Table 1). If South Asian countries wish to introduce RIA systems, it is for their politicians to consider whether there are groups that have interests of sufficient national importance that the impact of new proposals on those groups should be explicitly assessed as part of an RIA. For some South Asian countries, the impact of proposals on women might warrant inclusion as a question in its own right. Another difference is in the local economic development objectives that are introduced into RIA. Some South Asian countries might use RIA systems to examine how regulatory proposals could impact on specific sectors contributing to growth, such as agriculture, tourism, textiles and fishing.

Expectations as to the resources available for RIA in developing countries need to be realistic. While a lack of resources and capacity should not deter governments from pursuing RIA, best practice suggests that these constraints need to be taken into account in the design of the system. Any formal RIA system that is too complicated will either be circumvented by policy-makers or could be used as an excuse for delays in policy development. There is a balance to be struck between making the analysis as robust as possible so that it stretches officials to improve their performance and developing a process that does not overload the system.

The challenges of implementing RIA

There are a number of issues with institutionalizing RIA in developing and transitional countries. They fall largely into the following categories:

- **Lack of awareness and acceptance of RIA within government and civil society** – The concept of a more evidence-based approach to policy-making is new to many developing countries and threatens the established ways of doing things. In order to reduce misunderstandings and resistance to change, it is important to first build awareness among stakeholders of what RIA/RBP are and how they can contribute to national development goals.
- **Securing and maintaining political leadership** – Political support for RIA needs to be gained and maintained. This can be difficult, especially when RIA begins to affect the initiatives that political leaders wish to pursue. One way of securing political commitment is for the Head of Government to issue a formal requirement for all new proposals to be submitted to RIA. An other way of encouraging governments to continue to apply RIA include building pressure for the change from outside, e.g. through private sector advocacy.
- **Putting structures and processes in place to support the system** – There needs to be a set of expectations in place about how RIAs will be produced and used in the policy-making process. Best practice suggests that a relatively impartial arm of government should coordinate the process, guarantee its quality and offer advice to Ministries. This coordinating function is often located at the centre of government in an organization that can arbitrate between Ministries and which operates at arm's length from interest groups.
- **Institutional capacity within developing country governments** – The amount of effort put into an RIA should be commensurate with the importance of the policy proposal and its likely impact. An RIA does not have to be a long, technical document to have value. At almost any level of complexity, the structured approach to policy analysis that is encompassed in an RIA will improve the policy-making process by requiring the policy official to answer a number of questions that will steer the policy decisions towards an efficient solution. The introduction of RIA should be supported with formal training for officials in order to build capacity to use the system. Civil society organizations and business associations also need training as they often have weak policy analysis capacity and are unable to contribute to government consultation exercises. Training is sometimes also offered to Parliamentary staff.
- **Problems of data availability** – Lack of reliable data to inform RIAs is often a problem when implementing a new RIA system in a developing country. Policy-makers must be creative in the way they ascribe values to the impacts of regulations therefore. The importance of consultation as a way of gaining information needs to be emphasized, as does the fact that it is not always necessary to assign an economic value to costs and benefits. RIA Units should compile a resource library of reference materials that Ministries can draw upon in their analyses. It may also be possible to judiciously borrow from analysis that has been undertaken in similar environments in order to draw out lessons and maximize the use of available comparable data.
- **Managing changing responsibilities** – The introduction of a formal RIA system in any country usually involves a shift in the balances of power along three dimensions, i.e., between:
 1. *Institutions at the centre of Government* – Since RIA has horizontal implications, its use is often coordinated by a central Ministry of Government. RIA systems can strengthen the hand of the institution given the task of “policing” the system. This can cause tensions between central Ministries.
 2. *The centre of Government and line Ministries* – Similarly, RIA can act as a brake on

the regulatory activities of line Ministries which face an additional hurdle in the policy process. This can breed resentment and encourage Ministries not to take the RIA system seriously. To reduce this risk, line Ministries should be involved in the development of the RIA system, and there should be sensitization and training.

3. *Ministers and officials* – RIA can get in the way of the normal approach to doing business, which may involve maintaining vested interests, or of Ministers making policy with a few advisers. It is important to emphasize that RIA is a tool that assists with decision-making by politicians and does not seek to mechanize the policy process in a way that reduces their discretion.

- **The quality of the wider policy process** – RIA presupposes the existence of a coherent and participative policy process. Where this does not exist, the move to an RIA system will require an even bigger change that needs to be managed. Putting an RIA system in place contributes to improving the quality of the policy-making process and to supporting a regulatory best practice approach to governance. RIA can only contribute so far though. It is important to also consider the wider policy process into which RIA fits. The policy process can be divided into the following stages:

Stage 1: Policy initiation/strategic planning

Stage 2: Prioritization and funding provision

Stage 3: Policy development

Stage 4: Policy coordination/quality assurance

Stage 5: Policy approval

Stage 6: Ensuring policy implementation

Stage 7: Policy monitoring and evaluation

RIA directly improves three of these stages:

- Stage 3 (Policy development) – by facilitating consultative, rational, evidence-based policy development;
- Stage 4 (Policy coordination/quality assurance) – by providing a framework against which the policy development process can be judged; and
- Stage 7 (Policy monitoring and evaluation) – by providing a benchmark against which policies can be monitored and evaluated.

This leaves a large part of the policy process untouched. For example, there is little point encourag-

ing business associations and NGOs to carry out RIA if they are unaware of the Government's legislative agenda and unable to prepare analyses in time to influence the policy debate. Nor will even the best designed policy have any impact unless the necessary resources are allocated for its implementation and enforcement. RIA is therefore ideally conceived as part of a wider program of policy reform and capacity building.

Conclusion

In conclusion, RIA can help South Asian countries improve their business environments and hence the investment climate. It is a flexible system that can be adapted to take account of local development choices and other priorities. There are challenges to introducing RIA in developing countries, but a growing body of best practice indicates possible ways to proceed. Capacity to use RIA should be built into Government through a staged approach, including awareness-raising and skills-building before the system is made a formal requirement. Training is also required amongst Government's main interlocutors so that they are able to respond to consultation exercises and to argue for policy reform on the basis of evidence. As with any significant change program, there are institutional factors that need careful management.
