

# **Regulatory Impact Assessment (RIA)**

in Thailand : Current practice



**Paper presented at APEC Workshop on  
Developing RIA Guidelines as an Anti-Corruption Tool**



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## Table of Contents

<b>1. Overview .....</b>	<b>4</b>
<b>2. Regulatory Impact Analysis (RIA) and Its Benefits .....</b>	<b>5</b>
2.1 Definition of RIA .....	5
2.2 RIA's principle.....	6
2.3 RIA benefits for Thailand.....	7
<b>3. Growing number of adoption of RIA in the world .....</b>	<b>8</b>
<b>4. The application of RIA in Thailand.....</b>	<b>11</b>
4.1 Evolution of Thailand's RIA .....	12
4.2 Law and Regulation Proposing Agencies' RIA understanding and uses: A Survey of Current Practice .....	19
<b>5. Conclusion .....</b>	<b>24</b>
Annex .....	27
Reference.....	30
List of Contributors.....	31



## 1. Overview

This paper draws on the application of RIA in Thailand. The aim is to make a survey of government officers and workshop for all stakeholders to identify level of RIA knowledge and their expectations. In addition, the author will review literature on RIA using of developed and developing countries as a tool for policy reform that has the potential to improve government regulatory practice and outcomes. The result reported in this article suggests that RIA is a methodology not only for designing better regulation environment but also for improving the government approach to the formulation of policy. However, up to now, in Thailand, RIA has been only applied to assessments of the economic regulatory process, focusing on assessing before enacting the regulations. The methods adopted also are partial in its application, resulting in uncompleted substance of the RIA process.

Moreover, from the year 2012 until now, Thailand has faced the problems of inefficient government procedures, which will create bad business environment and inequality, leading to conflict among Thai people. National Council for Peace and Order (NCPO) accordingly appointed a law and regulation reform committee to review and evaluate existing laws and regulations and the remove unnecessary law and regulation burdens. Thailand needs a tool to filter those laws and regulations. RIA is one of the most important tools existing for evaluation of new and/or existing laws and regulation. Unfortunately, large part of government officers has not had enough knowledge and skill in RIA yet. From the study of Analysis of Regulatory Impact Analysis (Thailand Research Development Institution: TDRI, 2014) indicated that in order to strengthen RIA knowledge and skill among government offices, Thailand had to prepare (1) RIA guideline, (2) standard impact assessment templates, and (3) effective public consultation.

In 2015, Thai government, including Office of the National Economic and Social Development Board (NESDB) and Ministry of Justice (MOJ), with support from APEC, will run the project of ANSSR developing RIA guideline as anti-corruption by hiring expert to conduct the process to implement RIA both parts of the *ex ante* and *ex post*- before and after-assessment of regulatory process in Thailand. The study result findings will help experts and project overseers to adjust an appropriate work plan of this project. Therefore, this paper will be separated into four parts including (1) What RIA is and its benefits, especially for developing countries like Thailand,(2) Growing number of adoption of RIA in the world mainly concerning how important RIA is and its experience of implementing RIA, (3) The application of RIA in Thailand, and (4) conclusion focusing on modifying RIA system so as to be more effective in Thailand environment and the challenges of implementing RIA in such environments.

## 2. Regulatory Impact Analysis (RIA) and Its Benefits

### 2.1 Definition of RIA

The international organization and some countries where RIA has been implemented to contribute their strategic policy goals should define their RIA use clearly. For example,

*RIA's most important contribution to the quality of decisions is not the precision of the calculations used, but the action of analyzing-questioning, understanding real-world impacts and exploring assumptions.* (OECD: Organization for Economic Cooperation and Development, 2002 and 2008)

*RIA is a process to be undertaken before a new regulation is introduced. RIA includes an assessment and, to the extent feasible, a quantification of costs and benefits anticipated to result from the proposed regulation and its possible alternatives – including an absence of regulation. RIA may examine impacts on competition, welfare, environment, and administrative burdens, or any other impact that is of relevance to the regulation or its alternatives. Its assessment objects include both the “flow” of regulation (new regulation and amendments to regulation) and the “stock” of regulation (existing regulation).* (APEC, 2014)

*RIA is a term used to describe the process of systematically analyzing and communicating impacts of new or existing regulation. Both the analysis and communication aspects of RIA are important. But the essential characteristic of RIA is the process through which regulatory interventions are systematically and coherently assessed in order to improve regulatory outputs and decision-making, starting as early in the policy-process as possible. RIA can be used to assess impact of new regulation (flow) as well as existing regulations (stock).* (Ladegarrrd, 2005)

Literature review on RIA indicates that definition of RIA uses of one organization/country is not different from others. However, Thailand does not have its own definition because RIA is rarely used. The study of TDRI (2014) confirms that RIA was used in some area, particularly before enacting the regulations but the substance of RIA process has not completed yet. Accordingly, the questionnaire answers which conducted between February–March 2015 show that there is less understanding of RIA and its principles among regulators/officers in a number of government agencies. Consequently, this paper will define RIA use as follows:

***RIA is a term used to describe the process of systematically assessing the benefits and costs of a new regulation or an existing regulation, with the aim of improving the quality of regulatory policy.***

If Thai government regulation is to promote economic and social welfare, it needs to be both effective and efficient. Effective regulation is regulation that achieves the policy objective that lead to it being made. Efficient regulation achieves these objectives at the lowest total cost – to all members of society. RIA, under this definition, will be a tool used to ensure that regulations are as efficient and effective as possible. This paper will help experts to consider the scope for RIA guideline in Thailand. The next section of the paper discusses the principal of RIA.

## 2.2 RIA's principle

It is important to note that RIA is not a substitute for decision making, rather it should be seen as integral part of the policy making, which aims to raise the quality of debate and finally the quality of the decision-making process. Both the assessment and the communication aspects of RIA are important. A properly conducted RIA systematically examines the impacts likely to arise from government regulation and communicates this information to decision makers. (National Audit Office, 2003 p.15) RIA encourages public consultation to identify and measure benefits and costs and thereby has the potential to improve the transparency of governmental decision making. It can promote government accountability by reporting on the information used in decision making and by demonstrating how the regulation will impact on society. The result should be an improved and more consistent regulatory environment for all stakeholders.

***This implied that the contribution of RIA to better Thai regulatory policy decision making depends on the systematic assessment of the impacts of a regulatory measure, and the adherence to the principles of necessity, proportionality, accountability, transparency and consistency.***

RIA means different things to different stakeholders and strategic policy goals because the objective, design and role of administrative processes differ among countries and among regulatory policy areas. (Rodrigo, 2005, p.5) The applied technical methods to assess regulatory impacts and the communication of impacts also vary although several countries follow a broadly similar approach such as RIA guidelines of OECD. Therefore, there is no single generic model of RIA used internationally but RIAs tend to include a clear identification of objective, structured consultation with stakeholders, detailed examination of impacts and consideration of the use of alternatives to regulation.

Furthermore, the success of RIA is assessed based on practice of each country, rather than in terms of some kind of international benchmarking due to the fact that benchmarking implies a one-size fit all approach to policy, which RIA rejects. The principles for RIA should be viewed as guidelines rather than as best practice standards. However, benchmarking best practices can generate legitimacy rather than regulatory efficiency. Thailand, thus, can learn from them as a lesson learns only. The pattern and pace of RIA adoption and implementation of Thailand is expected to differ from other countries. Kirkpatrick and Parker (2003) found that several factors will influence on national RIA guideline and these need to be avoided as follows. (1) RIA can be manipulated to produce outcome that has been pre-determined by political criteria. (2) RIA may include only an evaluation of measurable financial costs and benefits because qualitative effects will involve much judgmental evaluation which depends on advanced RIA skills. Thailand will need the development of RIA skills within government machinery, including skills in enumeration and valuation of costs and benefits. (3) Political ground should not play an important role on public consultation procedures because appropriate information cannot be collected and analyzed in reaching a view on the regulatory impact. (4) Bureaucratic and political inertia will be obstacles to RIA. It will need to be championed across government. Therefore, RIA unit needs to be established. For example, in the UK a Cabinet Office Regulatory Impact Unit has been established to monitor progress and encourage the implementation of RIA across government. (5) The content of regulation should be captured by special interest groups who have time, resources and incentives to invest in influencing the regulatory process. Thus, regulatory process should be more transparent and accountable.

For data above, it shows that if Thailand needs to use RIA to control rent seeking activity within government, transparent and accountable public consultation is promoted. In addition, explicit identification and evaluation of costs and benefits are required. The next section will show the RIA benefits.

## **2.3 RIA benefits for Thailand**

The benefits of RIA are well known and have been documented by several international organizations and nation governments. This paper will be summarized briefly as follows:

### **2.3.1 Improving the quality and efficiency of government interventions,**

RIA is a means of improving the quality of governance for citizens and a business environment through the transparency and accountability of the regulatory process, leading to conducive to enterprise-led growth and poverty reduction for the reasons given below. (<http://www.bannock.co.uk/PDF/ee.pdf>)

1) RIA can help ensuring that economic growth is pro-poor and distributed equally due to the fact that it can encourage policy maker to focus on the needs of majority people. For example, RIA, by encouraging policy maker to focus on the needs of the small firms/micro enterprises. And these firms/enterprises, owned and operated mostly by the poor, and small enterprises that provide jobs to the poor, constitute the majority of business in many countries. Therefore, that growth which comes from a business-friendly regulatory environment could be associated with a reduction in poverty. They account for substantial share of total employment and gross domestic product and they contribute significantly to poverty reduction. Unfortunately, small firms are more vulnerable to regulatory burdens than larger firms, as they are not able to take advantage of economies of scale in reducing the relative impact of regulatory burdens. In addition, regulatory systems of developing countries, including Thailand, are not well developed to support a flourishing market economy. From literature review, for example World Bank, indicates that the costs and barriers imposed by regulation in developing countries are not only higher than there were in developed world when it embarked on industrialization, but are higher in some cases than in the advanced countries today. Consequently, policy makers will need to specify whether their regulation proposal will entail additional costs to small businesses.

2) RIA can provide a framework for ensuring that vulnerable groups whose needs are especially relevant to the fight against poverty are taken into account. National unity is not always served well when one group is seen unjustifiably to benefit at the cost of other groups. RIA will require policy-makers to consider the needs of the very poor, and gender issues. Therefore, in the guideline of RIA that experts will pilot in Thailand, we need government to look at distributional impact on the different regions of the country.

### **2.3.2 Enhancing Competitiveness,**

RIA can help government eliminate unnecessary regulatory burdens which reduce the competitiveness of individual businesses directly, and indirectly reduce national competitiveness in the global economy. Regional integration is relevant to Thailand, as ASEAN will take place in the end of 2015. Regional integration allows goods and service to flow freely between the member states of trading blocs. This means that production will shift to those countries with a comparative advantage in the production of certain goods and

services. This comparative advantage includes a conducive regulatory environment. Similarly, business will move to those states that have the most favourable overall environment for wealth creation. Whilst much attention is traditionally placed on tax competition between States in attracting investment, the regulation environment is a key factor in the decisions business making about where to locate. World Development Report 2005 (<http://econ.worldbank.org/files/35627-chapter 5.pdf>) stated that the way in which State regulated and taxed the private sector has a strong influence on the investment climate, and therefore the decisions of investors and businessmen and businesswomen. This is not to say that minimal regulation makes for the best business environment. Business flourishes where there are the regulations necessary to provide protections and assurances to businesses and citizens to give them stability, predictability and confidence to invest without being unnecessarily burdensome.

### **2.3.3 Reducing Opportunities for Corruption,**

Administrative simplification facilitated by the RIA process can bring greater gains to countries struggling with corruption. Corruption is more pervasive in many developing countries than in developed countries. Thailand, for example, is placed 102 out of 177 countries in Transparency International's 2014 Corruption Perceptions Index. The more complex and open to interpretation a regulatory obligation is, the greater are the opportunities for corruption. Enforcers can use their discretion to extract bribes, and the regulated businesses are incentive to pay bribes as a way of circumventing more costly bureaucratic requirements. Clear and simple laws accordingly create certainty for businesses and reduce the capacity of officials to seek bribes.

This section demonstrates what RIA is and its benefit and then tries to define RIA and its principal for Thailand. The next section will find out why using RIA in the world goes rapidly.

## **3. Growing number of adoption of RIA in the world**

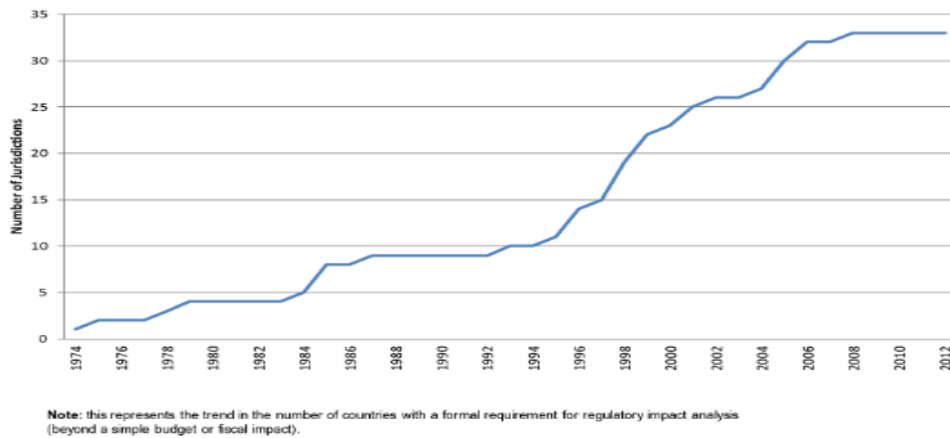
History of Regulatory Impact Analysis began in 1971 when President Gerald Ford issued President's Executive Order 11821 requiring that all major regulations proposed must be accompanied with inflationary evaluation which in other words is called Economic Impact Statement, and was later changed in 1976 to "Regulatory Analysis". The aim was that an agency must consider direct and indirect effects of proposing regulation, and select the least onerous policy option. RIA has been accordingly developed from government to government. More principles and economic tools were augmented to attain economic impact assessment and ensure that other potential alternatives are not sequestered. (Luken and Fraas, 1993, p. 96-111) It is widely now recognized as an important mechanism which can contribute to improvement of business environment, and to promotion of regulatory efficiency and effectiveness. Apparently, in advanced countries RIA is a mean of cost effectiveness of policy/regulatory decision and diminishes the quantity of unnecessary policy and regulations. Moreover, RIA enhances transparency and reduces opportunity for corruption. (Jacobs, 2004, pp. 283-290) However, RIA can be carried out by different approaches ranging from financial cost estimation to a comprehensive economic and social cost benefit analysis depending on the issue and type policy/regulatory with effective public consultation and participation of affected groups. (Kirkpatrick and Parker, 2003 p.4 and p.10)

Thus, RIA become a popular tool now used in most developed countries, especially OECD countries, to improve the understanding of economic and social welfare impacts of regulation. OECD has accordingly employed RIA to screen laws and regulations since 1995. The OECD Reference Checklist for Regulatory Decision Making has been a reference for regulatory impact analysis for several countries. It consists of ten questions<sup>1</sup> asking the proposing agencies to answer necessity and rationale of the law proposed. Its use in OECD countries has increased dramatically in recent years. Experience can provide guidance and identify important principles. By examining the experiences of other countries, regulators can identify areas where problems or impediments to reform are likely to arise, and can suggest strategies to overcome them and continue the reform process. Some non-member countries have already benefited from this experience. Nevertheless, OECD members have different levels of RIA enforcement. (TDRI, 2014)

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<sup>1</sup>The OECD Reference Checklist consists of 10 questions as follows: **1. Is the problem correctly defined?** The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities). **2. Is government action justified?** Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem. **3. Is regulation the best form of government action?** Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements. **4. Is there a legal basis for regulation?** Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements. **5. What is the appropriate level (or levels) of government for this action?** Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government. **6. Do the benefits of regulation justify the costs?** Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken. **7. Is the distribution of effects across society transparent?** To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups. **8. Is the regulation clear, consistent, comprehensible and accessible to users?** Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible. **9. Have all interested parties had the opportunity to present their views?** Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government. **10. How will compliance be achieved?** Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.

## Trend in RIA adoption across OECD jurisdictions



For APEC, its Leaders has committed themselves to strengthen the implementation of GRPs across APEC economies by (1) ensuring internal coordination of rulemaking, (2) assessing the impact of regulations, and (3) conducting public consultations. APEC Economies have made good progress in various GRP measures. In particular, RIA seems to have become a norm of regulatory policy in many APEC economies. Countries in the Asia-Pacific region have worked with the OECD to produce the *APEC-OECD Checklist on Regulatory Reform* in 2005. This publication identifies key issues that should be considered when constructing and introducing new regulatory policies, while recognizing that traditional values and the diversity of economic, social and political environments in the region requiring flexibility in reform methods.

However, designing and applying a comprehensive RIA program is not easy. OECD member countries have had very mixed experiences in this area. For example, in UK, RIA is advanced. Problem, alternatives and preferred policy options or even *status quo* must be clearly stated along with policy proposal. RIA emphasizes on the implementation assessment. It has been increased and extensively developed in term of content and guideline for regulator to consider of environment and social impacts. Consultation, monitor and evaluation are the key process to ensure RIA as qualified policy instrument. The UK Impact Assessment (IAs) is principally applied to primary legislation evaluation. The primary purposes were reduction of the 'red tape' degree, economic and social gains assessment, and cost estimation of regulation for both the private and public sectors (Blake, 2002) Until recently the Impact Analysis is generally an economic analysis tool. (Fritsch et al, 2013).

By contrast, the studies of Parker and Kirkpatrick (2003) and of Ladegaard (2005) indicate that there is little recorded evidence of RIA use in developing countries and transition countries although some studies suggest that the diffusion of RIA in those countries, in particular during 2000-2014 has taken up significant speed. Moreover Ladegaard (2005) also find out that RIA use in developing countries is not systematically applied although legal requirements have been adopted. In addition, several studies, such as Kirkpatrick and Parker (2003); Zhang (2014); Ladegaard (2005) conclude that understanding of RIA in developing countries was not deep and widespread. There are so many reasons of little use of RIA in developing countries, such as too complicated RIA system to be of use to policy-makers in Ministries and soon fall into disuse, lack of awareness and acceptance of RIA with in government and civil society, problems of data availability and so on.



Consequently, in the case of developing countries including Thailand, designing and applying effective RIA requires special consideration of a number of issues.

First, in many cases the use of regulatory tools requires a high level of expertise and access to extensive resources and information. Moreover, RIA should be a tool to improve rather than predetermine the decision-making process.

Second, any RIA system must build on existing institutional and administrative traditions, and related to this, RIA system tend to empower existing policy-concerns, at least initially, rather than bring forward new policy objective.

Third, the implementation of RIA system is time consuming, controversial and needs strong political support throughout the process. In other word, establishing a RIA system is not a quick fix.

Fourth, Effective implementation of RIS requires single unit within the government administration which is responsibility to advise, support and review line ministries' regulatory proposal.

Finally, monitoring and evaluating system should be set up to ensure that RIA add value to the regulatory process and lead to better regulation outcome. This system will finally provide more tangible evidence for the justification of RIA system.

Experience on the use of RIA in several countries, especially OECD and APEC economies can be lesson learn for Thailand. However, there is on one-pattern/model-fits all. Therefore, RIA system for Thailand, Thai teams and experts need to carefully ensure that the system we design takes account of local circumstance. The next part is concerned with the application of RIA in Thailand

#### **4. The application of RIA in Thailand**

Thailand needs to prepare the guidelines for RIA and encourages government agencies to carry out RIA in order to set systematic and sanctioned process for reviewing the existing law and regulations stock in order to increase efficient government procedures, which will ultimately result in creation of good business environment for investors and innovators. It will support pillar 1 of ANSSR which is to promote more open, well-functioning, transparent and competitive markets. Moreover, in ASEAN context, ASEAN including Thailand needs to enhance the implementation of technical regulation in accordance with ASEAN GRP by adopting RIA to generate gains in term of trade facilitation. MOJ and NESDB in cooperation with APEC will conduct the process to implement RIA.

Therefore, the purpose of this section is to find out the deep information of current use of RIA in Thailand. It can be divided into two parts namely, (1) Reporting on the result of desk-research that will review the RIA government document and research in Thailand. (2) Reporting on the result of a questionnaire survey of the government official of awareness and use of RIA in Ministries.



## 4.1 Evolution of Thailand's RIA

Since 1974 Regulatory Impact Analysis (RIA) has been adopted in OECD countries as a means of improving their regulatory environment while Thailand, as a member of APEC, has recognized the importance of Good Regulatory Practices (GRP) by requiring government agencies to conduct social and economic impact assessment on all regulatory proposals. The evidence from documents shows that, in fact, there exists a law comparable to RIA enforcing Thai government agencies to identify rationale and necessity of proposing a law since 1988. Therefore, in this section will study the evolution of Thailand's RIA use which can be divided into three periods as follows:

### 4.1.1 First Effort of Thailand's RIA (1988-1990): Considering the 1988 Rule as a RIA

In 1988, Office the Prime Minister's "Regulation on Rules and Procedure before Submission of Any Matter to the Council of Ministers for Consideration" was approved by the cabinet.<sup>2</sup> This regulation stated that if any government agencies submitted any regulation – especially the Bill – to the cabinet for policy approval, the aforesaid rule required such agencies to propose – altogether with the submitted regulation – an analytical statement on "social, economic and international relations impacts that caused or might be caused by the proposed regulation". At that time, the principle of the said statement was considered as a form of RIA. The objective of the 1988 Rule (Nilrapunt, 2014) was limited (1) to reduce the submission process of not only regulations that caused red-tape but also duplication in public governance which was part of the notion of deregulation, (2) to reduce burdens of private sector while doing businesses, (3) to increase self-regulation of operators in each business sector and to enhance competitiveness of individual entrepreneur, and (4) to increase the Thai government's effectiveness and efficiency of regulatory consideration

The law requires proposing agency to conduct "Analytical statement,"<sup>3</sup> including data collection, problem analysis and necessity. And then they submitted the following statements or questions altogether with the proposing draft law.

1) Necessity and rationale to enact the law, *(Is regulation unavoidably required to solve that problem?)*

2) Rationale to issue the law on the occasion,

*(What are the adverse effects to State administration and public service if there is no such proposed regulation?)*

3) Relation to other law including conflict or redundancy and consultation with other agencies responsible for those related law, *(Is the proposed regulation creating additional step of work?)*

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<sup>2</sup> In Thai: ระเบียบสำนักนายกรัฐมนตรีว่าด้วยการเสนอเรื่องต่อคณะรัฐมนตรี พ.ศ. ๒๕๓๑, available at <http://www.cabinet.thaigov.go.th/ropmcs3.htm> or [http://www.lawreform.go.th/lawreform/index.php?option=com\\_lawreform&task=reg\\_16&Itemid=9#](http://www.lawreform.go.th/lawreform/index.php?option=com_lawreform&task=reg_16&Itemid=9#)

<sup>3</sup> rooted from the 'Blue Checklists' of the Federal Republic of Germany.

4) Benefits of the law in government procedure reduction or time saving for both agency and individual enforced by the law and general public, *(Is that step of work necessary?)*

5) Rights and responsibility of individual enforced by the law, *(Is duration of that step of work specified?)*

6) Controlling measures of opinion of officials, *(Is the proposed regulation use permission or licensing system?)*

7) Economic, financial and fiscal impact analysis, *(Is it possible to use other system in lieu of permission or licensing?)*

8) Progress and substance of preparation of relevant Minister's announcement, general announcement, regulations *(If permission or licensing system is unavoidable, rules and period thereof has been clearly specified?)*

Unfortunately, the 1988 Rules does not work as intended, resulting from: (1) RIA was the new idea without strong political back up for Thailand at that time. There were thus only a few officials who realized the RIA's objective and its significance. (2) The Cabinet failed to entrust specific agency to create public's awareness of RIA roles. (3) The 1988 Rule provided no explanation on how to fulfill the requirement of the submitted regulation, especially in measuring the cost-benefit relationships, economic perspective. Only limited officers knew how to complete those 8 questions properly and academically. (Nilprapunt, 2014)

Therefore, the 1988 Rule was forgotten shortly. However, the Cabinet's Secretariat has still had an important role to deliberately review the statement and to provide possible and appropriate solutions to the Cabinet for making decision whether such legislation should be enacted.

#### 4.1.2 The Second Effort Thailand's RIA (1991-2002): An origin of Thailand's RIA.

In order to increase Thailand's competitiveness, it was necessary to reduce and limit redundant procedures that could be barrier to business environment and social equity. The government accordingly enhanced the effectiveness and efficiency of the RIA process. Therefore, in 1991, the Cabinet issued the Cabinet Resolution called, "Regulation and Guideline of Consideration before Submission of Draft Law"<sup>4</sup> to make the RIA statement. The 1991 RIA statement was added from the 1988 Rule, and required the submitted regulation to provide details of specific impacts to be considered by the agencies. Those impacts mostly are on government policy, political responsibilities of the Cabinet, national macro and micro economic, finance and budget, interested parties, technology and environment, rights and liberties of individual and on duplication with the existing regulations. The improved law incorporates four criteria.

- Necessity to issue the law. Without the law how administrative obstruction and public?

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<sup>4</sup> Official Letter of the Secretariat of the Cabinet, NorRor 0203/Wor 65, Date: 26 April 1991 (in Thai: หนังสือสำนักเลขาธิการคณะรัฐมนตรี ที่ นร 0203/ว 65 ลงวันที่ 26 เมษายน พ.ศ. 2534 เรื่อง หลักเกณฑ์และแนวทางการพิจารณา ก่อนการเสนอร่างกฎหมาย)

- Does the draft law generate or possibility to create new procedures? How the new procedure is necessary? Is the new procedure clearly stated with time of each procedure and is it able to be further reduced?
- Does the draft law give permission for business to operate a service? How it is necessary? Does the law be changed from granting permission to regulation in term future?
- If the permission required, criterion and time must be clearly indicated.

Several experts on RIA indicated that the 1991 Rule is an origin of Thailand's RIA due to the fact that the Office of the Council of State (OCS)<sup>5</sup> formulated the 1991 Rule by applying OECD checklist of question. The requirement of submitting RIA with proposing law much was more focused in term of impacts to business and people and the market mechanism philosophy. All proposing agencies were obliged to submit the regulations annexed with the RIA statement without exemption. Unfortunately, RIA implementation did not yield the original purpose of RIA as in advanced countries. The principle, analysis method and benefit of RIA were still restricted to small number of government officials. Therefore, the RIA statement report conducted under the by the 1991 Rule was rather done on routine basis. (Nilprapunt, 2014)

In 1992, the Rules and Procedure before Submission of Any Matter to the Council of Ministers for Consideration 1988 was amended by the Rules and Procedure before Submission of Any Matter to the Council of Ministers for Consideration (2) 1992. Its aims are is to comply the policy of the government to reduce complex and burdensome function of the government, in the light to more convenient and efficient and faster governmental process.

Also in 1992, the government established the Law Reform Commission (LRC) in 1992 so as to reform Thai regulation and established the Law Reform Revolving Fund. (Nilprapunt, 2014) The reason is that lessons learnt from the failure of the 1988 initiative plus the frog-leap development of information technology, the gradual increase in international trade and more trade regime urged the need for regulatory reform in term of economic. Statutory mandates of LRC consist of:

- Considering and proposing to repeal of obsolete or unnecessary regulations;
- Bringing the regulation in the line with current conditions and ensuring that it meets current needs;
- Removing defect in the regulation;
- Simplifying the regulation.

Furthermore, in 1997, Constitution of the Kingdom of Thailand was introduced. It is widely accepted as a People's Constitution<sup>6</sup> as it clearly states the rights of

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<sup>5</sup>the institution which is a legal advisor to the Royal Thai Government

<sup>6</sup>The Constitution of the Kingdom of Thailand 1997 stated in, Section 170, Part 5 Provisions Applicable to both Houses, Chapter VI The National Assembly, "The persons having the right to vote of not less than fifty

Thai citizen in administrative process which generates changes in regulatory impact analysis. In the past, only the Cabinet and the House of Representatives have the right to introduce the law. By the provisions of the Council of State Act of 1979, the OCS has been entrusted as secretariat unit of LRC. With strong government back up and financial support, LRC initiated many regulatory reform projects. The first priority was to bring the regulation in the line with current conditions and ensuring that it meets current needs.

Unluckily, long political turbulence in Thailand which began in the mid of 1992 in conjunction with Tom Yum Kung crisis in 1997 had frozen LRC initiative. (Nilrapunt, 2014) Moreover, the government of that day paid little attention in providing the government officials with appropriate understanding in conducting RIA process. So, the RIA statements after 1991 measure were still made on the answer of yes/no basis.

#### 4.1.3 **The Third Effort Thailand's RIA (2003-now): Setting Thailand's 10 RIA questions or "Checklist for Necessity to law issuance"**

After the implementation of Constitution of the Kingdom of Thailand 1997 and the recovery from the Great Asian Financial Crisis in 2002, the Thai government realized that deregulation policy, especially in financial sector, would escalate the crisis. (Nilrapunt, 2014) The regulatory reform became dominant policy of the Thai government once again until 2006 such as the public sector reform policy. The Constitution of the Kingdom of Thailand 2007<sup>7</sup> also supported Thai citizens to introduce the law, and did other significant duties.

The process of laws screening was significantly shifted from top down to bottom up in order to reduce and improve laws that might conflict with the constitution. ***Law Improvement for Country Development Committee (LICDC)*** was appointed by the cabinet in 2001 to investigate and abolish inconsistent laws. More than 40 obsolete or unnecessary Acts of Parliament had been repealed while more than 100 Acts of Parliament and numbers of subordinate legislations were amended to support the constitution and in the line with global economic and social conditions. (Nilrapunt, 2014)

RIA was perceived by the government as a tool to "better regulations", leading to the deregulation and ease of doing business for better national competitiveness. The LICDC had reincarnated RIA by using OECD Reference Checklist for Regulatory Decision Making. (Nilrapunt, 2014) The government established the ad hoc committee called the Legal Reform Committee for the Development of the Country (LRCDC) to conduct legal reform to the new standard of good regulations. LRCDC learned from the past, including:

- Better regulation policy could be achieved only when the government officials realize the significant implication in conducting RIA which is *ex ante* and *ex post* assessments or both

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thousand in number shall have a right to submit a petition to the President of the National Assembly to consider such law as prescribed in Chapter 3 and Chapter 5 of this Constitution...."

<sup>7</sup>Section 81, Part 5 Law and Justice Policies, Chapter V Directive Principles of Fundamental State Policies, stated "*The State shall act in compliance with the law and justice policies as follows: (3) preparing the law establishing the autonomous law reform organization for the purpose of reforming and developing laws of the nation and revising the existing laws for the compliance with the Constitution, with due regard to opinions given by persons affected by such laws;...*"

of the quality of all submitted regulations, especially on cost-benefit relationships which is the most difficult part in making of RIA;

- There was no responsible agency to provide technical knowledge and know-how in conducting RIA to other government agencies; and
- The RIA analytical statement shall be mandatory procedure for any regulation submissions to the Cabinet for policy approval; otherwise the proposed regulations should not be further under Cabinet's consideration.

Upon the aforesaid findings, LRCDC proposed the Cabinet in 2003 that (1) the RIA process should be mandatory requirement and one agency should be entrusted as central technical advisor to other government agencies in conducting RIA; (2) the set of Thailand's 10 RIA questions or **“Checklist for Necessity to law issuance,”**<sup>8</sup> an *ex ante*, assessment which is the same principle as the OECD's RIA Checklist. The checklist includes 10 criteria as follows.

- What are the objectives and goals of the mission?
- Who should be responsible for the mission?
- Is legislation required for the achievement of the mission?
- Is the proposed legislation duplicated with others?
- What are burdens of individual caused by the proposed legislation?  
Is that legislation value for money?
- Are responsible agencies ready for the enforcement of the proposed legislation?
- Which agency should be responsible for the proposed legislation?
- What are working process and audit method?
- Is there guideline for the enactment of subordinate legislation?
- Is there public consultation on the proposed legislation and what are the results and responses?

The cabinet also entrusted the OCS to be central unit that responsible for the duty to equip the government officials with knowledge and skill in conducting RIA and in preparing the RIA statement for Cabinet's consideration. In addition, another commission of within OCS was appointed to prepare draft and disseminate the explanatory note and manual on drafting the law, considered as a part of the RIA process.

In 2004, the Cabinet approved the **“Manual on Verification the Necessity in Issuance the Regulation,”** proposed the Office of the Council of State.<sup>9</sup> Verification criteria are summarized as follows.

1) **Object and goal of the law mission.** Agency must clearly identify objective and goal of the targeted mission and thoroughly investigate the problem condition in order to stipulate measure or solve method appropriately. RIA also aims to assist the

<sup>8</sup> In Thai: หลักเกณฑ์การตรวจสอบความจำเป็นในการตรากฎหมาย, ศ.2546, The Cabinet issued the Cabinet Resolution on 4 February 2003.

<sup>9</sup> In Thai: คู่มือตรวจสอบความจำเป็นในการตรากฎหมาย, in the Official Letter of the Secretariat of the Cabinet, NorRor 0503/Wor 253, Date: 8 December 2004 (In Thai: หนังสือสำนักเลขาธิการคณะรัฐมนตรี ที่ นร 0503/ว 253 ลงวันที่ 8 ธันวาคม 2547. The Cabinet issued the Cabinet Resolution on 23 November 2004.

proposing agency in outlining framework, solving method and achieving the desirable objective. Key consideration aspects are as follows.

- Objective and goal of the mission
- Is the mission aimed at addressing problem or shortcoming or to comply with international treatment?
- Necessity to do the mission. If not, what affect will it cause?
- Is the mission related to international treatment?
- Are there other alternatives? If yes, what is the advantage will it cause?
- What is the outcome of the mission?
- To what extent how the outcome will effectively address the problem or shortcoming?

2) **Responsible organization.** Once the framework is accomplished, there must be a clear identification of responsible agency either public or private agency. Key consideration aspects are as the followings.

- Constitution
- Potential of government and private sector

In addition, the proposing agency must take people protection, efficiency, costs and flexibility into consideration when selecting responsible agency. If private agency is chosen, public agency must be regulator. If public agency is chosen, it must be further considered that cabinet or local administration should be responsible agency with the awareness of staffs and organization's competency.

3) **Necessity to issue law.** When the mission and responsible agency is decided, the agency must consider the necessity and the level of the law and enforcement model to be used. Key consideration aspects are as the followings.

- By choosing the legal alternative, how will it fix the problem of public administration?
- Why the proposing law must be an Act of parliament? Does it apply countrywide or to only some area with readiness?
- Sanction should be criminal liability, enforcement under the Administrative act or in both forms.
- Timing of revision of the proposing law.

4) **Overlapping with other laws.** Key consideration aspects are as the followings.

- If there is an existing similar law, should the old law be amended or the new law is a more appropriate option.
- If the proposed law is opted for, how the existing law be treated i.e. nullification or amendment to make both laws be consistent?

5) **Limitations of rights and liberty of people and worthiness.** The proposing law must have slightest affect to rights and liberty of people, and must generate

benefit to society when comparing with the limitation the law will cause. Key consideration aspects are as the followings.

- To whom does the law increase responsibility?
- What rights and liberty that is limited?
- To whom and society will receive the benefits from the law?
- Is the budget worth for the limitation caused?

6) **The readiness of public agency in law enforcement.** The readiness of law enforcement is in two aspects.

- First, the readiness of the enforcement agency itself concerns human resource both quality and quantity and financial resource.
- Second, the readiness of people is enforced by the proposing. Proposing agency is liable for creating awareness and understanding the principle and measures of the law among people and particular mitigation plan to address conflict that may arise among officers in the agency.

7) **Redundancy of works among agencies.** The proposing law should not create the redundancy in operation among government agencies.

8) **Work improvement and review.** By the 2007 constitution, it is held that government organization must review and improve their work operation and whole system by stimulating them, especially the proposing organization, to formulate their work or strategic plan in which good governance, transparency and responsiveness should be taken into account.

9) **Appropriateness of criteria for issuing less superior laws.** It is held that the proposing agency must identify framework or measure to prevent the formation of less superior laws that amplify authority of officers or increase burden to people. Key consideration aspects include necessity and rationale of proposing the new law/ regulation, content and timeframe for revision.

10) **Public consultation (with concerned agencies or affected groups).** Public Consultation is a mechanism to collect reliable information for minister or relevant agencies to systematically analyse; and to assess the impact on affected groups compared with the positive benefits generated.

In 2005, the “Royal Decree of Submission of Agenda and the Cabinet Meeting 2005”<sup>10</sup> and the “Regulation on Rules and Procedure for Submission of agenda to the Cabinet for Consideration 2005”<sup>11</sup> were enacted. The regulation which was introduced in 2003 requires that all government agency proposing draft law to submit a clarification statement following the “Checklist for Necessity to law issuance”. Since then, all government agencies have to comply with the manual on drafting the law, which later is generally known among Thai people as “Checklists.” Moreover, the OCS was assigned to provide training on the preparation of RIA report to government officials and to be *Quality*

<sup>10</sup> In Thai: พระราชกฤษฎีกาว่าด้วยการเสนอเรื่องและการประชุมคณะรัฐมนตรี พ.ศ.2548.

<sup>11</sup> In Thai: ระเบียบว่าด้วยหลักเกณฑ์และวิธีการเสนอเรื่องต่อคณะรัฐมนตรี พ.ศ.2548.

**Control Unit of RIA report.** Up to present, the OCS has disseminated Checklist Manual to government agencies for almost 10,000 copies and also included RIA as a key subject in the Government Lawyers Training Course organized by OCS in both junior and senior levels. Additionally, the manual has also been publicly distributed on the OCS website for free access as well.

## **4.2 Law and Regulation Proposing Agencies' RIA understanding and uses: A Survey of Current Practice**

The evidence of RIA application in Thailand above shows that RIA was introduced to Thailand in 1988 and originated in 1991. Since 1988, the Cabinet's Secretariat has played an important role in the RIA process. Unfortunately, there has been little progress in adopting RIA in Thailand although it now has its own 10 RIA Checklist. There two main reasons to mention here namely, lack of strong political back up resulting from long political turbulence in Thailand and only a few official who know and realize the RIA's objective and its significance because of no responsible agency to provide technical knowledge and know-how in conducting RIA to other government agencies. In this section attempts to evaluate RIA knowledge level and current uses of law and regulation proposing agencies in order to find out that those agencies are ready to implement RIA guideline. We report on the results of a questionnaire survey of RIA awareness and use in 31 government agencies with regulatory responsibilities in Thailand.

### **4.2.1 The questionnaire Study**

The questionnaire on the use of RIA was sent to 31 government department and agencies of 199 informants.<sup>12</sup> In most cases the questionnaire was sent to more than one informant in each agency, as a potential cross-check on the accuracy of the information received. The samples were not random but based on contact details already held at MOJ and NESDB for regulators in Thailand. The questionnaire was distributed by mail/email in December, 2013. The questionnaires completed and returned came from 31 agencies or 99 respondents (50% of total of respondents. Table 1 provides a list of the 31 agencies under from which questionnaire were returned. The regulatory activities covered included economic, social and environmental regulation. The majority of the response were replied from (1) social sector (including Ministry of Defense, Ministry of Justice, Ministry of Labor, The Government Lotto Office, and Ministry of Public Health); (2) Economic sectors (Ministry of Industry, Ministry of Finance, Ministry of Foreign Affair, Ministry of Tourist and Sport, Ministry of Transport, Ministry of ICT, and Ministry of Science and Technology); (3) Environment sector (Ministry of Natural Resource and Environment). Among the 99 respondents, 63 respondents held the position of lawyers who advisors or consultants to officers in regulatory bodies. 94 respondents with Master and Bachelor's degree have never had training on RIAs. However, 15% of total respondents have high experience on law and regulation formulation and enforcements (more than 10 years). (See Table 1))

The questionnaire had 6 questions which were concerned with understanding the meaning of RIA, form RIA take when use, Public consultation and participation of RIA exercises, using benefit/cost analysis to evaluate RIA, and capacity of staffs to train RIA (including RIA understanding, budget to support, and executive support). In the first page of the questionnaire, in order to ensure consistent understanding of regulation and RIA by respondents, two important words are Regulation and RIA. Regulation refers to

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<sup>12</sup> See the copy of questionnaire in Annex.



the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation includes laws, orders and rules issued by all levels of government and by non- government bodies to whom governments have delegated regulatory powers. RIA is a systematic process for assessing the significant impacts (positive and negative) of a regulatory measure. The assessment may relate to likely impacts of a regulatory proposal (*ex ante*) or the actual impacts of an existing regulatory measure (*ex post*).

Table 1 a list of the Agencies from which questionnaire were returned

Agencies	Total
<b>Ministry of Defense</b>	<b>3</b>
• The Judge Advocate General's Department	3
<b>Ministry of Information and Communication Technology</b>	<b>4</b>
• Office of the Permanent Secretary	4
<b>Ministry of Labor</b>	<b>1</b>
• Office of the Permanent Secretary	1
<b>Ministry of Foreign affair</b>	<b>6</b>
• Department of Treaties and Legal Affairs	6
<b>Ministry of Finance</b>	<b>9</b>
• Custom Department	3
• Revenue Department	1
• Excise Department	5
<b>Ministry of Justice</b>	<b>5</b>
• Office of the Permanent Secretary	5
<b>The Government Lotto Office</b>	<b>6</b>
<b>Ministry of Industry</b>	<b>10</b>
• Office of the Permanent Secretary	2
• Thai Industrial Standard Institute	1
• Department of Industrial Work	4
• Industrial Estate Authority of Thailand	3
<b>Ministry of Tourist and Sports</b>	<b>5</b>
• Sport Association of Thailand	5
<b>Ministry of Public Health</b>	<b>11</b>
• Office of the Permanent Secretary	5
• Department of Health	4
• Food and Drug Administration	2
<b>Ministry of Natural Resource and Environment</b>	<b>3</b>
• Office of the Permanent secretary	2
• Department of Environmental Quality Promotion	1
<b>Ministry of Transport</b>	<b>21</b>
• Office of the Permanent secretary	5
• Department of Land Transport	6
• Mass Rapid Transit Authority of Thailand	5
• Thailand Transport Portal	5
<b>Ministry of Science and Technology</b>	<b>5</b>
• Office of the Permanent secretary	5
<b>Ministry of Interior</b>	<b>10</b>
• Office of the Permanent secretary	5
• Electricity Generating Authority of Thailand	5
<b>Total (55 respondents are women)</b>	<b>99</b>

#### 4.2.2 The results

The survey found that respondents in a large number of government agencies, 94 out of the 99, claimed that they have never had RIA training, resulting from lack of training agencies. This finding confirmed the study of Kirkpatrick et al (2004) that understanding and familiarity of RIA among officials are perplexed and restricted to those directly involved in legislative process. The questionnaire answers confirmed that there is less understanding of RIA and its principles among regulators in a number of Thai government agencies. At the same time, this understanding does not seem deep or widespread, with variations in knowledge between different departments within the same Ministry. Actually, the form of RIA in Thailand is developed in term of requiring principles, and enforced under the five different levels of laws ranging from the Constitution to the Law validation manual including as follows. (1) The Constitution of the Kingdom of Thailand 2007, (2) Royal decree of agenda submission and cabinet meeting 2005, (3) The Regulation on Rules and Procedure for Submission of agenda to the Cabinet for Consideration 2005, (4) Checklist for Necessity to law issuance 2003, and (5) Manual on Verification the Necessity in Issuance the Regulation 2004.<sup>13</sup>

The process of RIA within government is charged by The Regulation on Rules and Procedure for Submission of agenda to the Cabinet for Consideration 2005 which requires only ACT of parliament proposed by government agency that needs to gain approval from the cabinet prior to propose to parliament must be accompanied by RIA report, in addition to normal agenda proposing process. The subordinate laws which usually create high economic and social impact are excluded. The process includes the followings. (1) Proposing agency must submit the summary of substance of the draft ACT with or without the entire draft ACT. (2) If it is an amendment of existing ACT, proposing agency must compare the previous and the amended version. (3) Proposing must identify the necessity to enact the draft law as stated in the “Checklist for Necessity to law issuance”

While RIA in Thailand is not applied to subordinate laws i.e. Official announcements of government agencies despite the fact that these regulations generate vast economic and social impacts which is a significant different application of in other countries RIA. In addition, RIA is not applied to ACT proposed by citizen as permitted in the constitution that gives rights to Thai citizen not more than 10,000 to propose a law.<sup>14</sup> However, there is none draft law proposed by Thailand citizen has been approved by the parliament.

These evidences imply that, in Thailand, the use of RIA is very limited. More than 50 % of total respondents said that they do not use RIA as a tool to evaluate their proposing law and regulation before sending to the Cabinet due to the fact that the RIA is being only applied to assess the impact of all new regulation proposals and is done on routine basis. Therefore, some departments in the same Ministry are little or no aware of the Checklist for Necessity to law issuance concept or Thailand’s 10 RIA questions, an *ex ante*, assessment which is familiar with the OECD’s RIA Checklist. The questionnaire also sought to elicit information on the extent to which law and regulation impact assessment methods are being applied. It is interesting that while returns from only 47 agencies reported using RIA

<sup>13</sup> In Thai: คู่มือตรวจสอบความจำเป็นในการตรากฎหมาย, in the Official Letter of the Secretariat of the Cabinet, NorRor 0503/Wor 253, Date: 8 December 2004, p. 4.1-4.5 (In Thai: หนังสือสำนักเลขาธิการคณะรัฐมนตรี ที่ นร 0503/ว 253 ลงวันที่ 8 ธันวาคม 2547. The Cabinet issued the Cabinet Resolution on 23 November 2004.

<sup>14</sup> In Thai: ระเบียบว่าด้วยหลักเกณฑ์และวิธีการเสนอเรื่องต่อคณะรัฐมนตรี พ.ศ.2548.

to evaluate new regulation, there is marked agency differences in familiarity with RIA process methods due to the fact that of 47 government agencies that reported using RIA, only 27 agencies claimed that cost and benefit analysis are assessed. This finding is perhaps not surprising given the difficulties and misunderstanding associated with the methods' use of economic and social valuation of benefits and costs in the practice of impact assessment. The problems associated with the methods are reflected in the responses received from the agencies where RIA is being applied. When asked them, in their knowledge, to give the step and coverage analysis of costs and benefits that they have been using, no respondents replied affirmative.

Moreover, RIA has many similarities with some other forms of strategic level impact assessment that are applied to government plans and policies. Strategic environmental impact assessment is increasingly being adopted in Thailand to assess the environmental impacts of policy/project proposals. Therefore, the replies on the use of RIA in regulation may reflect the misunderstanding of RIA concepts. The replies to the questionnaire revealed that a variety of practices exist for RIA implication. Some agencies have been using other types of impact assessment, especially environmental regulation and replies from others suggested uncertainty about coverage and types of impact assessment. The questionnaire answers confirmed this finding that there is very low level understanding of RIA and its coverage, 80% of total respondents gave the scale of RIA understanding from little to very little.

Table 2 The tool of economic and social impact assessment, and RIA's uses

Agencies	Having B/C ratio	No Having B/C ratio	RIA use	RIA no use
Ministry of Defense	0	3	0	3
Ministry of Information and Communication Technology	3	1	4	0
Ministry of Labor	1	0	1	0
Ministry of Foreign affair	0	6	0	6
Ministry of Finance	1	8	2	7
Ministry of Justice	0	5	0	5
The Government Lotto Office	0	6	1	5
Ministry of Industry	4	6	7	3
Ministry of Tourist and Sports	2	3	5	0
Ministry of Public Health	4	7	9	2
Ministry of Natural Resource and Environment	1	2	1	2
Ministry of Transport	7	14	10	11
Ministry of Science and Technology	1	4	5	0
Ministry of Interior	3	7	2	8
<b>Total</b>	<b>27</b>	<b>72</b>	<b>47</b>	<b>52</b>

The third part of the questionnaire was concerned with the process aspects of RIA in contributing to the principles of good governance. Public consultation which is the key processes in RIA implementation as it improves the quality of laws and policy and ensures reasonable impact to all affected groups. OECD has published eight major principles in arranging a public consultation including: (1) Public hearing is mandatory and not dependent on any governmental body. (2) It must be held before the law is drafted. (3) It should be held according to the manual prepared by an independent agency. (4) Every person

is allowed to participate. (5) Comments and recommendations received from public consultation must be recorded and made available to the public on website. (6) The responsible agencies must respond to the comments and questions publicly and personally in official writing. (7) Comments, suggestions, and information received from public consultation must be included in the RIA report. And (8) there must be an agency that monitors the quality of public consultation conducted by government agencies.

The responses received indicated that the majority of agencies where public consultation process occur or does not occur with a main emphasis on the use of public notices and invitation to comment on proposal by organizing website, meeting, workshop and, seminar, in their adjustment, the level importance of this process vary from important to most important. Although, in Thailand, there exists “Office of Prime Minister’s Regulation of public consultation 2005”, it was designed particularly for public investment projects not common draft law. Of 99 agencies for which replied were received, 36 were reported to have public consultation but generally affected groups are not clearly distinguished. Consultation involves outside experts, government bodies and the private business sector. But consumer groups and other bodies representing civil society are less included. Therefore, it can be inferred that the Order does not meet the OECD’s principle of public consultation which specifically concentrates on the draft law. (TDRI, 2014,p 4-19)

Table 3 Public Consultation

Agencies' public Consultation	Have	No have	Most important	Very Important	Important	Less important
Ministry of Defense	0	3	0	0	3	0
Ministry of Information and Communication Technology	4	0	4	0	0	0
Ministry of Labor	1	0	1	0	0	0
Ministry of Foreign affair	1	5	1	0	4	1
Ministry of Finance	3	6	3	1	4	1
Ministry of Justice	0	5	3	1	1	0
The Government Lotto Office	0	6	4	2	0	0
Ministry of Industry	7	3	4	5	1	0
Ministry of Tourist and Sports	2	3	3	2	0	0
Ministry of Public Health	4	7	10	1	0	0
Ministry of Natural Resource and Environment	1	2	2	1	0	0
Ministry of Transport	9	12	12	8	1	0
Ministry of Science and Technology	1	4	1	4	0	0
Ministry of Interior	3	7	7	2	1	0
<b>Total</b>	<b>36</b>	<b>63</b>	<b>55</b>	<b>27</b>	<b>15</b>	<b>2</b>

As a result of the immature public consultation, exchanging information and opinions are not conducted in a constructive and logical manner. The consultation process must not either be an event that government agency force stakeholder to accept the drafted law or receive broad comments without unambiguous points and information concerned. These features will lead to an exchange of viewpoints that is based on empirical data not estimation or emotion. Moreover, a large number of RIA reports lacks of a clear detail of significance of problem, policy alternatives, analysis method that leads to the decision to the proposed law, and public consultation in term of clarification of the process of

consultation conducted and no public consultation was done prior to the proposal because the drafts law neither cause effect nor burden to people. Eventually, a number of laws and policy have been criticized and refused to accept when enacted subsequently. This is the right time for Thailand to develop the guidance on how RIA should be undertaken.

Thus, the final section of the questionnaire was designed to gather information of the government agencies readiness to use RIA guideline, which is prepared by NESDB and MOJ, supporting from APEC, for assessing proposed law and regulation. Respondents in a large number of agencies, 94 out of the 99 claimed that the level of their agencies readiness to use RIA guideline, including RIA understanding, budget allocation, and chief executive back up, vary from fair to very poor, except Office of the Permanent Secretary under Ministry of Information and Communication Technology, and Food and Drug Administration under Ministry of Public Health. These two agencies readiness to use RIA guideline were excellent.

Overall, the findings from the questionnaire study suggest that the level of awareness and application of RIA in Thailand is as an expected, based on a large number of respondents. However, one potential bias may happen is that the possibility that the used different definitions when completing the questionnaire cannot be rule out, although respondents were provided with definitions of regulation and RIA at the start of the questionnaire.

## 5. Conclusion

Every expert on RIA concludes that RIA is a policy reform that has the potential to improve government regulatory practices and outcomes. The desk-research finding suggests that RIA is already being applied in a number of developing countries, but it is still at an early stage of development. In most developing countries RIA is not compulsory. Instead there exists legal mechanism to refine the quality of law both in form of ad hoc or established commission including public consultation, business advisory committee, law review project and a sunset clause.

Thailand also had legal mechanism to refine the law. A number of committee was established and developed several criteria and checklist to investigate the necessity of draft law. The checklist that can be regarded as a relation to OECD Reference Checklist for Regulatory Decision Making was endorsed by the cabinet in 2003 called **“Checklist for Necessity to law issuance”**. For Thailand it took more than 26 Years after the OECD countries to have RIA checklist as in advanced countries. The principles of RIA in Thailand are developed on the basis of international standard practice, the quality of RIA report does not meet the original purpose and recommended analysis method. Consequently, the effort of the Thai government to implement the principle of RIA to its policy approval procedure ended up with unsatisfactory outcome. The problematic issues can be summarized as follows.

First, RIA is only applied to the laws that have been drafted by government agencies prior to submission for approval by the cabinet. Moreover, the Verification the Necessity in Issuance the Regulation Form annexed to the proposed regulations do not support, but rather give more burden to the government agencies proposing the law. If it still continues to base on “yes/no” or “tick the box” basis, there will be no real improvement of the Thai legal system. Therefore, RIA report is merely a standard routine to gain approval from the cabinet, not to improve the quality of the law. As a result, RIA is viewed as an

obstacle which delays the law issuance. The results from questionnaire provide a useful information of current status RIA in Thailand by concluding that RIA process are generally underdeveloped although a few agencies appear to be applying RIA consistently to regulation proposal.

Second, the requirement of RIA report is apply to major laws such as ACTS of parliament and ordinances issued by the legislative council, while subordinate laws that generate direct affects to business sector enforced by regulatory bodies such as those relating to telecommunication, energy, and transport are not mandatory. The RIA process in Thailand, until now, is still conducted limited to the procedure of the organic law making. The RIA process has not been conducted in the procedure of the subordinate law making – which actually involves the regulations directly impact to business, entrepreneurs, customers, and the public, i.e. petroleum and mass transportation. Whereas The RIA process done in the procedure of the organic law making more concern on the big picture or the overview of the country – which leads to the struggle in assessing the law and then causes imprecise results.

Thirdly, in Thailand, there is no a “Handbook for Legal Assessment” or manual on conducting RIA which specifying detailed procedure of how to conduct economic and social impact analysis methodologically and report the result in a systematic manner. At present, Thailand has only the OCS manual on drafting the law, which is only one part of the RIA process. In addition, only limited officers knew how to complete the Checklist that required the government agency to conduct RIA properly and academically. Thailand still needs the template showing the assessments in both procedural process and substantial content of both the organic law and subordinate regulations.

Fourth, Thailand still lacks an independent institution that is responsible for driving RIA into action and evaluation of the quality of RIA report. Therefore, Thai RIA reports may lack quality and not meet the world standard. In addition, knowledge and technical skill in analysis are limited which results in slight improvement of RIA implementation. Thus, the understanding of RIA in Thailand is not deep and widespread although there were only a few officials who realize the RIA’s objective and its significance. The finding from the questionnaire study confirmed that the level of awareness and application of RIA is very low. Moreover, RIA is already being applied in a small number of agencies, but it is still at an early stage of development because of lack of RIA guideline. The government needs to be aware of setting up too complicated RIA system, lack of acceptance of RIA with in government and civil society, and problems of data availability. As a result, RIA guideline soon falls into disuse.

Finally, public consultation in Thailand is not obligatory in RIA process even though public consultation is the key processes in RIA implementation. Published documents are not a requirement. This is an innermost problem of RIA process that should be concentrated in RIA execution improvement in Thailand. In addition, our study reports show that the majority of respondents support public consultation to be incorporated as a part of RIA the process because it is very important. Moreover, consultation system in Thailand has limited to government and the business sector while other interest groups are under-represented in the process. The government should inform and involve private sector, all stakeholders of the specific issue, and the public who may be interested in such issue in the process. There are rooms for the improvement for Thai public hearing as follows: (1) Now, only government agencies introduce the law from one perspective. Even though they have put a lot of attempt to view problems from the private or public perspectives, for the private and public sectors those points seems to be ambiguous, speculated, emotional, trivial, insufficient

or outdated – not rigid, useful or empirical enough; and (2) Currently, there is no effective framework or scheme to guide for conducting the fruitful public hearing process; therefore it results in the unproductive and ineffective law and regulations.

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## Annex

### Survey Questionnaire

This questionnaire is a part of the Project “Developing RIA Guidelines as an anti-corruption tool” implemented by the Ministry of Justice and the Office of the National Economic and Social Development Board. The objective is to explore the current practices of government departments in analyzing the impact of laws and regulatory policies (Regulatory Impact Assessment). The results of this survey will support the development of Thailand’s RIA Guidelines and the promotion of good regulatory practices.

#### Part 1 Personal Information

1. Your Institution.....
2. Gender  
☐ Male      ☐ Female
3. Age  
☐ 25-35      ☐ 36-45      ☐ 46-60
4. Position  
☐ Legal Officer      ☐ Plan and Policy Analyst  
☐ If other, please specify.....
5. Experience in performing the tasks associated with the preparation of the legal drafting and / or laying down regulatory measures. .... years
6. Education Qualification  
☐ Bachelor's degree      Field.....  
☐ Master's degree      Field.....  
☐ Doctoral degree      Field.....
7. Have you ever been trained in topics related to Regulatory Impact Assessment?  
☐ Yes, please specify.....  
☐ No



## Part 2 Practice in analyzing the impact of legislation and regulatory measures

Please tick ✓ where appropriate to give your opinion on the scale below

1 = very poor   2 = poor   3 = fair   4 = good   5 = excellent

### 1. Definition of RIA

1.1 Please describe Regulatory Impact Assessment (RIA) in your own view.

.....

.....

.....

1.2 Please tick ✓ the box to specify your level of understanding of RIA

1 ☐      2 ☐      3 ☐      4 ☐      5 ☐

### 2. RIA Process

How does your organization analyze the effect of legislation and / or regulatory measures with regards to protect public interests? Please explain.

.....

.....

.....

.....

### 3. Public consultation

3.1 Does your organization organize public consultation to receive comments from relevant sectors as part of the process of legislation and / or laying down regulatory measures with regards to protect public interests?

Yes ☐      No ☐

3.2 How is the process of public consultation done?

.....

.....

.....

.....

3.3 Please specify the level of importance of the public consultation process.

1 ☐      2 ☐      3 ☐      4 ☐      5 ☐

#### 4. Economic and social impact analysis

Does your organization use economic tools to analyze economic and social impacts during the process of legislation or laying down doing business measures regulations with regards to protect public interests?

Yes ☐

No ☐

If yes please give some examples;

.....

.....

.....

#### 5. Cost-benefit Analysis

Does your organization use cost-benefit analysis as part of impacts and public burden analysis, and come up with any protective measure for public?

If yes please explain.

.....

.....

.....

#### 6. Readiness for using RIA Guidelines

Do you think your organization is ready to apply RIA Guidelines to analysis of economic and social impact?

Yes ☐

No ☐

Please tick ✓ in the box to specify the degree of readiness

Skills and understanding of the authorities

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

Existing Budget

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

The commitment of the executives

1 ☐

2 ☐

3 ☐

4 ☐

5 ☐

**Thank you for taking your time to complete the questionnaire.**

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