



Business Regulatory Review Agency

Standards And Guidelines On Regulatory Impact Assessment For Regulatory Agencies And Public Bodies In Zambia



"Promoting a Conducive Business Regulatory Environment"

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WORKING DEFINITIONS

Agency:	Refers to the Business Regulatory Review Agency
Business:	Includes any enterprise, corporate or non-corporate, trade, profession or occupation registered under the Companies Act or Registration of Business Names Act, of 2011.
Board:	Refers to the Board of the Agency constituted under Section 15 of the Business Regulatory (Amendment) Act No. 14 of 2018
Full RIA:	A full RIA builds on the information and analysis from the partial RIA and identifies potential impacts and risks of the proposed policy/ regulation. It provides a more detailed analysis of the impacts of the preferred options, including a detailed summary of the consultation process. The full RIA includes a quantitative analysis or a matrix (qualitative and quantitative) to the greatest possible extent.
Initial RIA:	An impact assessment conducted to determine whether there exists a problem requiring policy/ regulatory intervention.
Partial RIA:	A partial RIA is informed by and builds upon the initial RIA. It is augmented by more data and analysis and is produced prior to the consultation exercise. The partial RIA accompanies the consultation document.
Policy Process:	Refers to the collective procedures or mechanisms for effective policy formulation, adoption, implementation, monitoring and evaluation and the consultation that takes place at all stages.
Policy:	A statement of goals, objectives and courses of action outlined by the Government or any other public body to provide guidance for its intended actions.
Public Body:	The Government, any Ministry or Department of the Government, a local authority, parastatal, board, council, authority, commission or other body appointed by the Government, or established by or under any written law, excluding a professional association or body.
Regulation:	A rule or order having the force of law, prescribed by a superior or competent authority, relating to actions of those under the authority's jurisdiction.
Regulatory Intervention:	Action taken by a public body or regulatory agency to mitigate a clearly defined risk to public health, public safety or national security, environmental protection, conservation and preservation, consumer protection and upholding of standards for goods, food, drugs and services that impact the business environment.
Regulatory Agency:	Any person or body, except a professional body which by law, is empowered to regulate business activity in any sector and includes a Minister.
Regulatory Framework:	A legal system for regulating business activity. Regulatory frameworks include policies and legislative interventions (laws, regulations, Statutory Instruments, licenses, permits, certificates and authorisations) that have the effect of regulating business activity.
Regulatory Impact Assessment:	Regulatory Impact Assessment (RIA) is a process of systematically identifying and assessing the expected effects of regulatory proposals using a consistent analytical method such as benefit cost analysis (SADC RIA Framework and Guidelines, 2015).

- Regulatory Reform:** A process of changing regulatory frameworks in order to ensure public benefits from policies and regulations exceed their costs.
- Regulatory Review:** A systematic process of assessing existing or proposed regulatory frameworks and making recommendations aimed at improving the regulatory environment.
- RIA Handbook:** Refers to the handbook on RIA published by the Agency.
- The Act:** Refers to the Business Regulatory Act No. 3 of 2014.

LIST OF ABBREVIATIONS

BRRA	-	Business Regulatory Review Agency
CBA	-	Cost Benefit Analysis
CEA	-	Cost Effectiveness Analysis
CLC	-	Cabinet Liaison Committee
MCA	-	Multi Criteria Analysis
PAC	-	Policy Analysis and Coordination Division
RIA	-	Regulatory Impact Assessment
SCM	-	Standard Cost Model

FOREWORD

It is an indisputable fact that regulation is a core function of government. Through various public bodies, government puts in place regulations in order to intervene in economic and social activities on behalf and for the benefit of citizens. Regulation is one way by which government ensures protection of national aspirations in relation to natural resource management, public health and safety, as well as provide a predictable and stable business environment.

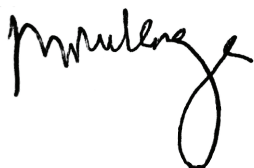
To provide for an efficient, accessible and effective regulatory system in Zambia, the Government of the Republic of Zambia enacted the Business Regulatory Act, No. 3 of 2014. The Act, among other things, provides that regulatory agencies and public bodies should undertake a Regulatory Impact Assessment (RIA) whenever they propose or review policies or laws that are likely to have an impact on business.

The law further requires the Business Regulatory Review Agency (BRRRA) to provide guidance to regulatory agencies and public bodies on the RIA process by issuing Standards and Guidelines. Section 14 (2)(c) of the Business Regulatory Amendment Act, No. 14 of 2018 requires BRRRA to issue guidelines and standards for regulatory impact assessments and public consultations to be undertaken by regulatory agencies. The purpose of these Standards and Guidelines is to provide procedures and guiding principles to follow during the RIA process. The RIA involves identification and measurement of social, environmental and economic impacts.

RIA Standards and Guidelines are key to the process of mainstreaming RIA in the formulation of regulatory frameworks. They provide pointers that will ensure that public bodies adhere to the requirements of the Business Regulatory Act with regards to development of regulatory frameworks for various sectors. Further, adherence to the Standards and Guidelines will result in quality RIAs as well as provide uniformity to public bodies in relation to elements to be incorporated in RIA reports (RIARs) that are submitted to BRRRA for review.

In order to ensure quality regulation, the RIA Standards and Guidelines seek to improve the formulation process and structure of regulatory frameworks. Additionally, the Standards and Guidelines provide information on how and when the formulation of policies and laws that impact business should be undertaken.

A new section in this revised version is a guide on the use of the Notice and Comment portal, a public consultation platform supporting public bodies and regulatory agencies in the policy and law-making process. Notice-and-Comment is aimed at increasing participation in the government's regulatory activities by offering a central point for submitting comments on policies and law.



Mushuma Mulenga
Permanent Secretary

MINISTRY OF COMMERCE, TRADE AND INDUSTRY

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The Business Regulatory Review Agency wishes to thank stakeholders that provided valuable input in the review of the Regulatory Impact Assessment (RIA) Standards and Guidelines. The review of the RIA Standards and Guidelines would not have been possible without funding from the World Bank supported Zambia Agribusiness and Trade Project under the Ministry of Commerce, Trade and Industry.

Special thanks go to the following institutions that availed their officers to participate in the review of the RIA Standards and Guidelines: the Ministry of Commerce, Trade and Industry, the Ministry of Justice and the Ministry of National Development Planning. Others are Ministry of Agriculture, Ministry of Livestock and Fisheries, Zambia Bureau of Standards, Zambia Environmental Management Agency, Energy Regulation Board, and the Zambia National Broadcasting Corporation.

Lastly but not the least, we want to thank all stakeholders that provided input in drafting of the section on guidelines for the Notice and Comment portal. Your input has resulted in the incorporation of the Notice and Comment guidelines in the RIA Standards and Guidelines. The Notice and Comment portal was developed with support from the World Bank Group to promote online consultations in policy and law formulation processes.



Sharon C.K Sichilongo
Director & Chief Executive Officer

BUSINESS REGULATORY REVIEW AGENCY

1.0 INTRODUCTION

The Business Regulatory Review Agency (BRRA) was established under the Business Regulatory Act, No. 3 of 2014. The objectives of the Act include among other things, to provide a set of principles and interventions to guide public bodies and regulatory agencies when regulating and licensing business activities in accordance with their respective laws. The Agency is an outcome of the Private Sector Development Reforms covering the period 2004 to 2014. The reforms were aimed at reducing the cost of doing business and creating a conducive business environment that promotes private sector growth.

The Act introduces a set of principles, procedures and minimum requirements for the introduction of new regulations in order to improve the quality of regulations and lessen regulatory burden on businesses. The current institutional framework governing business regulation in Zambia is composed of a three-tier institutional structure at national and sub-national levels as follows: Central Government, Local Government, and Statutory Bodies. The main challenge in regulatory making process includes lack of in-depth analysis of likely impacts on businesses, consumers and government and limited consultation.

In order to achieve a conducive business regulatory environment, the requirement for undertaking Regulatory Impact Assessment (RIA) was introduced. The RIA system in Zambia is provided for under the Act. The RIA Standards and Guidelines have been developed to assist regulatory agencies and public bodies in Zambia, fulfil RIA requirements in the policy and legislative making processes.

The premise of the RIA process is to improve the regulatory environment and quality of policies/regulations in order to lessen the regulatory burden for sustainable business development and private sector led growth. RIA will assist Government to avoid the pitfalls of adopting policies, laws or regulations that have negative impact on the business environment. The main objective of adopting RIA is to reduce policy and regulatory failure through improved understanding of the impact of regulatory action, improved transparency, consultation and government accountability. In this regard, all public bodies and regulatory agencies must conduct a RIA when considering any new regulatory proposals or amendments to existing policies and laws. It is envisaged that RIA will help achieve high quality policy and laws in the business environment by ensuring that proposals are subjected to detailed analysis.

2.0 PURPOSE OF THE STANDARDS AND GUIDELINES

The purpose of the Standards and Guidelines is to help public bodies and regulatory agencies understand the RIA requirements of the Business Regulatory Act, No. 3 of 2014 and to improve the quality of RIA Reports prepared in support of their regulatory proposals. These Standards and Guidelines stipulate expectations of the Business Regulatory Review Agency (BRRA) as to the content and quality expected in RIA Reports.

The Standards and Guidelines provide a blueprint on preparing RIA Reports. Further, additional assistance is available from the Agency regarding the following:

- I. The Business Regulatory Act, No. 3 of 2014 and the regulatory process; and
- II. The initial assessment of regulatory proposals (see the "RIA Handbook" on RIA phases) to determine the level of analysis required for the regulatory proposal and the RIA Report.

These Standards and Guidelines are based on the Act's core principles for RIA, which are designed to ensure that regulatory proposals maximise net benefits to society. However, the Standards and Guidelines do not include assistance on how to identify and analyse regulatory impacts. Instead, it sets out key considerations in presenting and explaining RIAs. The decision by Government to introduce a rigorous approach to the policy and legislation making process should encourage public bodies and regulatory agencies not to view regulation as the default solution but rather as the last resort. The Standards and Guidelines apply to policies and laws that have a regulatory effect on business activity. In addition to these Standards and Guidelines, the RIA Handbook provides further guidance in the preparation of a RIA Report.

3.0 PROPOSAL TO INTRODUCE A POLICY OR LAW REGULATING BUSINESS ACTIVITY

A public body or regulatory agency that intends to introduce or review a policy or law regulating business activity shall conduct an Initial RIA identifying the problem and inquiring into the necessity for a regulatory intervention. The initial RIA shall inquire into and estimate the possible risks, benefits and costs, and assist in identifying areas where more information is needed. On completion of the Initial RIA, a public body or regulatory agency shall prepare a report containing the following: -

- (a) articulation of the problem being addressed.
- (b) the objectives of the proposed policy or law.
- (c) options being considered and why the preferred option may be the best approach.
- (d) why the policy or law is required.
- (e) details of who is affected by the problem and who is likely to be affected by the solution.
- (f) an analysis of the likely costs and benefits to businesses and consumers.
- (g) introduction of new licenses should seek to reduce the number of existing licences.

Upon completion of the initial RIA Report and it is established that a regulatory intervention is required, a public body or regulatory agency shall notify the Agency, in writing, of the intention to introduce or review a policy or law regulating business activity, at least two months (2) before submitting it to Cabinet. The notification shall be copied to Policy Analysis and Coordination Division at Cabinet Office and the Ministry responsible for justice.

Once the notification and initial RIA report has been received, the Agency may make a determination to:

- (a) approve or not to approve the proposal;
- (b) require a partial RIA to be undertaken; or
- (c) require a full RIA to be undertaken.

The Agency shall within ten working days of receiving the notification, advise in writing on the next steps to be undertaken, to the relevant public body or regulatory agency. The Agency may approve a proposed policy or law upon examination of the notice and report on the initial RIA where the proposal-

- (a) merely involves revisions or consolidations that substantially re-enact the policy or framework in order to improve clarity;
- (b) repeals redundant legislative provisions;
- (c) is a security or emergency legislation relating to natural calamities such as, epidemic, floods or earthquakes; or
- (d) is deemed by the Agency not to require a RIA.

The Agency will publicise the intention to introduce or review a policy or law and make such comments on the proposed policy or law as it deems appropriate. Stakeholders may comment on the intention to introduce a new policy or law and such comments may be taken into account when reviewing a RIA Report.

Note that a regulatory cost calculator may be used to determine the level and type of RIA (Initial, partial or full) to be performed. A regulatory cost calculator is a tool for determining regulatory costs and based on national thresholds can inform the significance of impacts.

4.0 REGULATORY IMPACT ASSESSMENT REPORT

The enactment of the Business Regulatory Act No. 3 of 2014, brings new requirements for public bodies and regulatory agencies on preparing new regulatory proposals. These include elements such as performance measurement and evaluation, service standards, and more robust cost-benefit analysis (CBA). Except where approval has been granted under 3.0, a policy or law regulating business activity shall, subject to guidance by the Agency, be subjected to a full RIA by the public body or regulatory agency proposing it. A RIA Report is the end document of a RIA process.

The RIA Report provides a summary of the expected impact of a regulatory initiative that addresses each of the requirements of the Business Regulatory Act, 2014. The use of regulatory impact analysis has long been recognized as international best practice.

A properly prepared Report provides a clear, non-technical synthesis of information that allows the various RIA Report audiences to understand the issue being regulated, government's objectives, and the costs and benefits of the regulation. It also addresses who will be affected, who was consulted in developing the regulation, and how the regulation will be evaluated and measured against its stated objectives. The Report is, in effect, a public accounting of the need for a particular regulation.

Within Government, the RIA Report provides information for decision makers both inside and outside the public body. The Report guides decision makers for the following purposes:

- i. synthesising of information;
- ii. improving understanding of policy or regulatory impacts; and
- iii. better communication of the impacts of policy or regulation to stakeholders.

Outside the Government, the RIA Report gives the public and affected parties information that can be used for the following purposes:

- i. evaluation of proposed policy or regulations;
- ii. better understanding of the policy or regulation and obligations it imposes; and
- iii. generation of questions and comments about the policy or regulation.

It is helpful to think of the RIA Report as a presentation rather than pieces of information put together. The RIA Report should build arguments towards logical conclusions based on the entire range of evidence available.

When writing a RIA Report, the writer should focus on target readers: parliamentarians, ministers, BRRRA officials, members of the legal community, affected parties, and interested members of the public. The writer should start by assessing what will be important to these groups. Clues may be found in the results of the consultation. Ask yourself what interest people have about this regulation. Deal with these issues, and try to put them in descending order of importance.

In terms of the content of arguments, focus on what conclusions readers should come to, based on the evidence. Put the most compelling argument first. This helps identify and classify points in terms of their overall relevance to the issue. Less relevant information should come at the end, where it will be easier to cut, if necessary.

The Agency may provide technical assistance, observe the process of undertaking a RIA or recommend an expert to provide technical assistance.

5.0 CONSIDERATIONS WHEN UNDERTAKING A RIA

The RIA shall be undertaken by the public body or regulatory agency proposing the policy or law and inquire into:

- (i) the problem being addressed by the proposed policy or law, including -
 - (a) the causes of the problem;
 - (b) the extent of the problem;
 - (c) whether the problem is lack of policy or law;
 - (d) why the problem cannot be addressed by existing policies or laws; and
 - (e) what the situation would be in the absence of the proposed policy or law.
- (f) the relevant regulatory and policy environment and why it cannot address the problem;
- (ii) the purpose and objectives of the proposed policy or regulation and the context, including an analysis of how it aligns with the problem, its causes and Government programmes and strategies;
- (iii) options to deal with the problem, including -
 - (a) 'the do nothing' which implies maintaining the status quo;
 - (b) indirect action including market measures, self-regulation and sensitisation;
 - (c) direct Government intervention including policies, licenses, levies and by laws;
 - (d) a combination of different options; or
 - (f) any other options deemed necessary.

- (iv) for each of the options considered, an assessment of-
 - (a) the merits and demerits;
 - (b) direct and indirect impacts;
 - (c) cost of compliance;
 - (d) direct and indirect consequences;
 - (e) the likely economic, social and environmental impact of each option including quantitative and monetary impacts if possible;
 - (f) expected administrative burden;
 - (g) whether the expected benefits outweigh the costs;
 - (h) social groups, economic sector and particular regions affected;
 - (i) implementation risks, uncertainties and obstacles to compliance and enforcement; and
 - (j) The coherence of each option with the overarching objectives of government policies (coherence).
- (v) potential challenges to achievement of the objectives of the proposed policy or law;
- (vi) The extent to which different options would achieve the objectives (effectiveness);
- (vii) The benefits versus the costs (efficiency);
- (viii) assumptions underpinning the proposed policy or law and success indicators;
- (ix) how the outcome of the policy or law is likely to be affected should the assumptions or any variable or factor, change;
- (x) direct or indirect costs and benefits, of the proposed policy or regulatory measure, including start up and recurring costs;
- (xi) potential unintended consequences of the proposed policy or law;
- (xii) distributional impacts, including;
 - (a) impacts on national competitiveness;
 - (b) impacts on the socially excluded or vulnerable groups;
 - (c) impacts on the environment;
 - (d) whether the proposals involve a significant policy change in the economy including an examination of the impacts on consumers and competition;
 - (e) impacts on the rights of citizens; and
 - (f) whether the proposal involves a significant compliance burden.
- (xiii) measures necessary to mitigate unintended consequences, costs and impacts on businesses particularly micro, small and medium business enterprises;
- (xiv) the effectiveness of the proposed policy or law in addressing the problem;
- (xv) the means of monitoring, enforcing and securing compliance of the proposed policy or law;
- (xvi) measures to be taken in respect of existing policies or laws in order to accommodate the new policy or law and minimize the overall burden on businesses;
- (xvii) how the desired option can be implemented through single licensing systems, regulatory service centres, regulatory clearance systems, with the aid of information technology and in the most cost effective manner;
- (xviii) how the enforcement regime of the policy or law upholds the following principles:
 - a) Transparency - policy and regulatory proposals being transparent in that they are open, simple and user friendly;
 - b) Proportionality - the proposal corresponding to the magnitude of the risk or problem being addressed;
 - c) Targeting - the proposal being targeted and focused on the problem being solved and ensuring minimal side effects;
 - d) Consistency - the proposal being predictable so that the affected parties know where they stand;

- e) Accountability - the policy or law being accountable to the general public;
- f) Precaution - identifying potential unacceptable risks; and
- g) Subsidiarity - proposals ought to be handled by the smallest, lowest or least centralised competent authority.

6.0 STAKEHOLDER CONSULTATIONS DURING IMPACT ASSESSMENT

6.1 Public Consultation as a Legal Requirement

The Act provides that public bodies that intend to introduce policies or laws for regulating business activity, shall hold public consultations for a period of at least 30 days with:

- a) Persons or proprietors of business enterprises who shall be affected by the proposed regulatory framework;
- b) Persons or proprietors of business enterprises who shall benefit from the proposed regulatory framework;
- c) Regulatory agencies and other public officers who will implement the proposed regulatory framework, and
- d) All other relevant stakeholders not included under the groups above.

6.2 Why Public Consultation Matters?

Public consultation in the legislative process is a key contributor to improving the quality of regulations by allowing interested or affected stakeholder to share their views on new or revised regulation before the proposed policies or laws come into force. Public consultation also contributes to regulatory predictability and a better regulatory environment by reducing the likelihood of regulatory "surprises" or "failures" that happen when no proper announcement of government decisions is made. Public consultation usually averts reversal of regulatory decisions and in some cases prevents unnecessary costs on citizens and the private sector.

6.3 Undertaking Consultations

The public body or regulatory agency proposing a policy or law shall prepare a consultation document. The consultation document should:

- (i) Outline a plan for conducting consultation;
- (ii) Explain who should be consulted;
- (iii) Explain, where applicable, who does not need to be consulted;
- (iv) Outline a strategy for the most efficient and meaningful consultation; and
- (v) Summary of the major topics to be covered and what issues might be raised.

The following should be used during consultations:

- (a) Partial RIA as it informs the regulator and stakeholders of the problem to be addressed, possible options and;
- (b) Set of specific questions for the stakeholders to consider;
- (c) A draft of proposed policy or law where applicable; and
- (d) Schedule of proposed fees or charges, where applicable.

It is important to use the right consultation tools. Transparency can encourage genuine dialogue and build trust in the policy process. For consultation to be credible and effective, there is need to engage

with stakeholders in a way that is relevant and convenient for them. There is also need to give stakeholders time to consider the information provided to them and the time to respond. Use of ICTs can be a good platform for consultation process, but it is not the only way and may not be appropriate for certain groups. It is recommended that consultation be tailored to the needs and characteristics of the targeted audience and ensure the resources devoted to it are commensurate with the significance of the issues.

As a guiding rule, the best consultation processes are:

a) Continuous

This means that consultation is continuous and not a sporadic process. The relationships that have been established with stakeholders and those already in existence should be maintained. Where possible, consultative relationships should be built early and whenever the opportunity presents itself and not only when there is need. Be mindful of when RIA consultative documents are publicly released and proactively advise consultation groups as a courtesy.

b) Broad-based

Consultation should capture relevant stakeholders who will be affected by the proposed interventions. This includes diverse business interests as well as segments of the wider population. Central and local governments are also stakeholders in some cases, as are many government agencies. It is always important to consult with other regulators with a stake in the proposed intervention. This will identify any overlapping regulatory functions and provide an opportunity to streamline or avoid creating a cumulative regulatory burden.

c) Accessible

Channels for consultation should be relevant to the groups being consulted. Consider strategies to assist stakeholders who might be significantly impacted by the policy or law but do not have the resources and/or the ability to prepare a submission or response. Agencies should be able to respond promptly to queries from stakeholders. This could be facilitated by the use of ICTs or face-to-face meetings.

d) Not burdensome

Public bodies should refrain from making onerous demands on people being consulted or assume that they can dedicate unlimited time to the consultation process. This is because targeted groups or people to be consulted have other commitments, especially small business proprietors. Where a stakeholder group is frequently consulted, efforts must be made to conduct joint consultations with other agencies to minimise the burden on stakeholders.

e) Transparent

Agencies should explain the objectives of the consultation process and the context in which consultation is taking place. Stakeholders should be informed about when and how the final decision will be made. Feedback should be welcomed and responded to, even if it is not adopted. Not all dissenting views need to be accommodated during the consultation process, as long as they are dealt with respectfully.

f) Consistent

Agencies should ensure that consultation processes are consistent in terms of approaches and methodologies in order to generate consistent and reliable results.

g) Relevant and Effective

Agencies should evaluate and review consultation methodologies to ensure ongoing relevance and effectiveness.

h) Provide adequate time

Stakeholders should be given adequate time to consider and understand the issues, to enable them to provide proper responses. Timeframes for consultation should be proportionate and realistic to allow stakeholders enough time to provide feedback. This should not be less than thirty (30) days as provided for by the Act.

6.4 Submission of Stakeholder Comments

- (1) A public body or regulatory agency shall institute cost effective and readily accessible means by which stakeholders should submit their comments on the proposed policy or law. Stakeholders may submit their comments through appropriate means.
- (2) Stakeholders shall be allowed to submit their comments for a period of at least thirty (30) days.
- (3) Stakeholder comments shall be consolidated into a report whose contents may be validated at a meeting involving stakeholders.
- (4) A consultation report shall contain:
 - a) comments from stakeholders as submitted and resolutions drawn;
 - b) List of stakeholders that were consulted and
 - c) Signed attendance list where applicable.
- (5) Stakeholders shall be notified of the validation meeting at least fourteen (14) days before the meeting.

7.0 NOTICE AND COMMENT PORTAL

The Notice and Comment portal is an online consultation platform on business regulations. The portal is open for use by public bodies and regulatory agencies to publicize regulatory proposals and conduct consultations in the process of developing policy and laws.

Public Bodies and Regulatory Agencies as well as the Agency have the following responsibilities for using the Notice-and-Comment Portal:

1. Public bodies and regulatory agencies are responsible for uploading regulatory proposals onto the portal in the prescribed format.
2. The Agency may assist in uploading regulatory proposals onto the portal whenever possible.
3. Public bodies and regulatory agencies shall be responsible for providing feedback and clarifications to stakeholders.
4. The Agency will publish notifications and RIA Report on the Notice and Comment portal.

NB: Notice and Comment is a complementally mode of consultation and cannot be used in isolation. Public Bodies and Regulatory Agencies are advised to use this method along side others.

7.1 Guidelines for Online Public Consultation

These "Guidelines for Online Public Consultations" are aimed at helping government officials from public bodies and regulatory agencies with business regulatory powers in the Republic of Zambia, as they embark on conducting public consultation through the Notice-and-Comment portal, the government's unified portal for online public consultation in policy and law making process.

The Guidelines are an effort to support regulators with the implementation of public consultation provisions established by the Business Regulatory Act, 2014.

7.2 Why Online Public Consultation is Important?

Public bodies and regulatory agencies can consult with the public in multiple ways. However, using modern online tools allow regulators to conduct a more inclusive, transparent and cost-efficient consultation process. While public bodies and regulatory agencies have sometimes used their own websites, there are some benefits for the nation to have a unified portal where citizens and the private sector can find consultations on all business regulation proposed or revised by public bodies and regulatory agencies.

The Notice-and-Comment portal is the Government's unified public consultation platform for all proposed business regulation. It is an online tool available for free to all regulatory bodies to conduct online public consultation in the legislative process, as required by the Business Regulatory Act, 2014. The Guidelines and the Notice-and-Comment portal aim to support regulatory agencies by providing consistent and uniform tools and procedures to consult with citizens and the private sector when introducing or revising regulation.

7.3 Principles of Online Public Consultation

For public consultation to be effective and contribute to a predictable regulatory environment, several principles should be applied by public bodies and regulatory agencies along the consultation process. These principles include elements of:

- Openness, by disclosing all relevant information that will help participants understand the details of the regulatory proposal, as well as the process that led to it.
- Inclusiveness, by allowing broader audiences to participate and comment regardless of their geographic location, economic or social position or educational background. A significant effort should be made to identify and reach out to the "most affected stakeholders."
- Access to information, by providing easy and fair access to relevant information including the draft legal text of the regulatory proposal, supporting and related materials.
- Timeliness, by conducting public consultation during the regulatory process when stakeholders can still influence the content of the proposed regulation before it is enacted. Also, by ensuring that consultation does not overlap significantly with holidays, national or regional elections or other dates when the public might not benefit as much from announcement on regulatory proposals and opportunity to participate.
- Reasonable time, provide sufficient time for participants to understand and get familiar with the regulatory proposal and prepare their comments. The Business Regulatory Act requires at least 30 days of public consultation for all regulatory proposals affecting business activity.
- Clarity, by providing relevant information in plain language, easy to understand for the layperson and avoiding acronyms and technical jargon that make it more difficult to understand what the proposal and supportive materials are about.
- Meaningfulness, by being open to receive and address all opinions, either supportive or critical of the government's proposal, and be impartial in their judgement, allowing significant comments to influence the final content of the proposed regulation. If some aspects of the proposal are not subject to change, this should be clearly communicated upfront.
- Respect, by nurturing a respectful dialogue between the government, citizens and the private sector.

- Commitment, by sharing a public response - general or individual that explains and documents how received comments were used to modify or improve the regulatory proposal.
- Transparency, by ensuring that the regulatory proposal, supporting materials, comments received, responses provided and the final version of the regulation are always available to everyone, even after the consultation process is over.
- Continuous, while the Act and the Notice-and-Comment portal focus on public consultation on regulatory proposals, public bodies and regulatory agencies with regulatory powers are encouraged to start consultation as early as possible in the regulatory cycle and continue to do so throughout the consultation process.
- Consistent, while public consultation can be conducted in many ways, following these Guidelines and the Notice-and-Comment platform will bring uniformity and consistency to the information provided.

These consultation principles imply that all comments - supportive or critical of the proposal should be published and made available in the Notice-and-Comment portal for others to view and react with the exception of those that violate the portal's Rules of Commenting that aims to ensure constructive dialogue. This approach will send a message that the consultation process is open and transparent. When applied, the principles above can contribute to building trust and credibility in public institutions and the consultation process itself.

7.4 Key Functions of Online Consultation

When conducting online public consultation through the Notice-and-Comment portal, public bodies and regulatory agencies are expected to perform at least three basic functions:

- i. Give advance notice and access to relevant information about proposed or amended regulation.
- ii. Allow interested or affected stakeholders to participate and comment in a transparent and interactive dialogue.
- iii. Provide a public response (general or individual), explaining and documenting how comments received were used or not to improve the content of the proposed or amended regulation.

The following sections of the Guidelines provide more details on how these three basic functions should be performed by public bodies and regulatory agencies conducting consultations through the Notice-and-Comment portal.

7.5 Give Advance Notice and Access to Relevant Information

When consulting through the Notice-and-Comment portal on a new or revised regulation, public bodies and regulatory agencies must make sure that they:

- (i) Give sufficient number of days for stakeholders to get notice and familiarize with the proposal, in accordance with the requirements of the Business Regulatory Act; and
- (ii) Provide access to all relevant information on the regulatory proposal, including summaries of its content and purpose in plain language.

On note (i) above, the Business Regulatory Act provides that consultations should last at least 30 days. Even when this is the legal minimum time requirement, public bodies and regulatory agencies could extend the consultation period if the significance of the proposal requires so or if stakeholders request additional time to get familiar with the regulation under consultation.

On point (ii), the regulators consulting through the Notice-and-Comment portal should provide stakeholders with adequate information, such as the draft regulatory proposal, compelling reasons, regulatory impact assessment and any other relevant document, which may include laws and regulations related to the proposal or reports, studies or articles that may provide supportive or related evidence. All this information will be shared as attachments in the portal, so that users can access, read and review it.

Considering that sometimes the draft legal text of the regulatory proposal can be very technical and complex to understand for all audiences, regulatory agencies consulting through the Notice-and-Comment portal must make an effort to explain their proposal in plain and simple language. For this purpose, the portal includes some summary and descriptive sections that the regulator should fill out with text when preparing their consultation page on the portal.

7.6 Allow Participation and Comments in an Interactive and Transparent Dialogue

The Notice-and-Comment portal is designed in a way that allows and encourages an interactive and transparent dialogue during the consultation process, using social media- or blog-style type of commenting. Comments will be publicly available as soon as they are submitted, and participants will be able to react to what others have stated, by replying to and/or liking/disliking others' comments. It is important that public bodies and regulatory agencies conducting consultations in the portal also engage in this interactive dialogue. This will require moderation of responses to comments while the consultation is still going on.

Regulators may respond to specific comments either to appreciate participation, ask for elaboration of ideas when comments are vague, provide clarifications when needed or share other materials and references. While this type of moderation or response is not required by the Act, it represents a positive approach that sends a good signal that comments are being read and considered, which can ultimately build trust in the consultation process and the institution consulting with the public.

7.7 Provide a Public Response to Comments Received

Recognizing that consultation is not consensus, it is extremely important that public bodies and regulatory agencies conducting public consultation through the Notice-and-Comment portal respond to comments received and explain how they have been used or not to improve the regulatory proposal under consultation.

A public response sends a positive signal to participants, by letting them know that their opinions are being heard or considered. This positive dynamic will incentivize future participation and build trust in the regulatory and consultation processes and in public institutions. Failure to do so can be counterproductive and provide the opposite outcomes. Public responses can be provided in two forms either individually or generally in a summary that addresses all significant and relevant topics raised during the consultation period.

7.7.1 Individual Responses

When the volume of comments received is reasonable, it is encouraged that public bodies and regulatory agencies respond individually to all participants. Public bodies and regulatory agencies can engage proactively in a two-way dialogue during the consultation period, by appreciating participation, asking for elaboration of ideas when comments are vague, providing clarifications when needed or sharing other materials and references. Regulators can respond publicly in the portal to all comments, once the consultation period is over.

7.7.2 Public Summary of Consultation Report

As standard practice, at the end of every consultation, regulatory agencies should provide a general and public response to comments through a summary of the consultation report. This report should be uploaded and available in the regulation's consultation page, with all other documents shared during the consultation period, including the regulatory proposal.

This summary of the consultation report does not require regulators to respond individually to all comments received. It is expected that regulatory agencies focus mainly on significant comments, considering at all time only their substance and not who provided them. When there are multiple comments touching on similar issues, regulatory agencies can categorize and group them thematically when preparing a response.

7.8 Reaching out to Relevant Stakeholders and Promoting Consultations

Public bodies and regulatory agencies conducting online public consultation through the Notice-and-Comment portal should reach out to relevant stakeholders, especially those directly affected by their regulatory proposal. The consultation information will be available online on a 24/7 basis, while the consultation period lasts. However, public bodies and regulatory agencies should proactively reach out to relevant stakeholders through different channels and methods that may include:

- a) Social media. This includes sharing the consultation page from the Notice-and-Comment portal through social media such as Facebook, Twitter, LinkedIn, WhatsApp and others. It also implies sending reminders with invitations to participate and comment on proposals, or sharing comments submitted and invite other stakeholders to react and contribute to the dialogue.
- b) Announcement in their own websites. Regulatory agencies should also announce their consultations through their own websites. These announcements should include links to the regulation consultation page in the Notice-and-Comment portal.
- c) Emails. Public bodies and regulatory agencies can also share the link of the regulation consultation page and invite stakeholders to participate via email campaigns. These campaigns may leverage existing email distribution lists that include relevant stakeholders, or targeted emails to specific groups.
- d) Announcement in print or online media. Another channel to reach out to stakeholder groups is through announcement in printed or online media, letting the public know about the regulatory proposal and inviting them to visit the portal to participate and share the comments.
- e) Letters of invitation. Agencies can also send letters inviting stakeholders to visit the Notice-and-Comment portal and participate in the consultation process.

7.9 Offline Consultations

Conducting online public consultation through the portal does not substitute but instead it complements other types of consultation. Traditional methods of consultation, including face-to-face interaction with stakeholders, will still be necessary and encouraged. However, a desired objective is to link these "offline" consultations with the online discussions and information in the Notice-and-Comment portal.

This link of offline-online consultation can be done by taking simple actions:

- In each consultation page in the portal, regulatory agencies can share information about offline consultations taking place. Information should include date, time and venue of these consultations.
- After the offline consultations are over, regulators can upload in the Notice-and-Comment portal minutes or summaries of the discussions in these meetings.
- If public bodies and regulatory agencies receive comments through other means, such as email or written letters, they can also share them in the portal's commenting section, referencing that these were comments receive through other channels.

7.10 Necessary Human Resources and Skills

For an effective and well implemented online consultation through the Notice-and-Comment portal, regulatory agencies should ensure that they allocate the necessary human resources to manage, communicate, moderate and respond to comments. These resources include a focal point person from each agency to coordinate regulatory issues, staff in charge of uploading information to the portal and technical specialists responsible for the drafting of the regulatory proposal and responding to comments received.

Besides allocating the necessary human resources, officials from public bodies and regulatory agencies should have or develop the necessary interpersonal skills for a constructive and professional dialogue with stakeholders submitting comments. These skills are necessary to ensure effective listening, moderation and analysis of comments, including those that are conflicting and opposed to the regulatory proposal.

7.11 Online Consultation Checklists

This final section of the Guidelines provides a set of checklists that public bodies and regulatory agencies can use to make sure they have considered and completed key activities when conducting online public consultation in the Notice-and-Comment portal.

7.12 Constituting an online consultation team

When assigning the team responsible for the consultation, the public body or regulatory agency shall follow the activities set out in the table below:

When uploading and preparing the consultation in the Notice-and-Comment portal, the public body or regulatory agency shall follow the activities set out in the table below:

Activity	
●	Upload and share the draft text of the regulatory proposal.
●	Upload any other supporting materials, including RIA, related laws and regulations and relevant reports, studies or articles.
●	Complete the “Purpose of the regulation” section, which includes summaries of: <ul style="list-style-type: none"> - What the regulatory proposal is about (the objective); - The problem being addressed; and - How the regulatory proposal helps in addressing that problem.
●	Complete the “Affected stakeholders” section, which clarifies who are the key stakeholders affected by the regulatory proposal. Affected stakeholders may include specific industries or economic sectors; group of professionals; group of citizens; regions; other government agencies; or a combination of these and others.
●	Complete the “Expected impact” section, which explains: <ul style="list-style-type: none"> - What the expected impact of the regulatory proposal is; - How it will affect the stakeholders mentioned in the previous section; and - Whether other alternatives (regulatory or not) were also considered.
●	Complete the “Questions on which feedback is desired” section, which can be used to be clear on whether there are specific and targeted issues on which feedback is required, as well as honesty about which elements of the proposal are not open for debate.
●	Assign a minimum consultation period of 30 days.
●	Determine an appropriate time to launch the consultation (i.e. trying to avoid long holiday periods).
●	Include information about offline consultations (date, time and venue).

Yes?	Activity
●	Assign focal point person for coordination with oversight body and other agencies.
●	Assign team members responsible for uploading all information in the portal.
●	Assign team member(s) responsible for monitoring/moderating dialogue during the consultation period. The moderator can be an independent expert invited for a specific consultation.
●	Assign team member(s) responsible for preparing the public response, either individual or general, after the commenting period is over.

When conducting inter-governmental coordination before launching the online public consultation, the public body or regulatory agency shall follow the activities set out in the table below:

Yes?	Activity
●	Circulate the regulatory proposal with ministries, departments and agencies for comments, to ensure coherence and avoid duplicative or contradictory mandates.
●	Respond to comments submitted during the inter-governmental consultation.
●	Update the regulatory proposal based on comments and issues raised by other agencies.

When conducting online consultation in the portal the public body or regulatory agency shall follow the activities set out in the table below:

Yes?	Activity
●	Advertise the consultation and reach out to relevant stakeholders through means that include, but not limited to: <ul style="list-style-type: none"> - Social media: Facebook, Twitter, LinkedIn, WhatsApp, etc. - Regulator’s own website, with links and references to consultation page in the Notice-and-Comment portal. - Emails, individual or campaigns leveraging existing distribution lists. - Announcement in print or online media and - Letters of invitation.
●	Moderate comments by: appreciating participation, asking for further elaboration when comments are vague or providing clarifications when needed. The moderator can be someone from the regulatory agency or an independent expert invited to moderate a specific consultation.
●	Share information about new offline consultations that were not shared when the online consultation process began.
●	Upload minutes from the different offline consultations taking place.
●	Share comments that were received through offline channels. This may include feedback received via letters, emails and other channels.

When responding to comments received the public body or regulatory agency shall follow the activities set out in the table below:

Yes?	Activity
●	Analyze all comments received and identify major and common issues raised by participants.
●	Prepare a response to comments, either individual or general public response.

●	When the number of comments allow for it, share individual responses to all comments received, through the portal.
●	Prepare summary of consultation report with the following sections (also mentioned in more detail in these guidelines): <ul style="list-style-type: none"> - Introduction. - Summary of main topics discussed. - Responses to comments received. - Conclusions and next steps.
●	Upload the summary of consultation report on the consultation page as an additional attachment.
●	Regardless if responses are individual or general, get all necessary internal approvals on the institutional response to comments received.
●	Distribute the summary of consultation report through other means available.

When the consultation period is over and responses to comments have been provided :

Yes?	Activity
●	Upload the final and published version of the regulation, as an additional attachment in the consultation page.

8.0 FORMAT OF RIA REPORT

The report shall contain -

- a) summary page;
- b) legislative and policy background;
- c) a situational analysis of the regulatory environment indicating the inadequacies to be addressed by the proposed policy and regulatory measure;
- d) in a concise manner, findings on the matters inquired into;
- e) stakeholder comments and an analysis of the comments;
- f) an analysis of how potential adverse effects of the policy or law would be mitigated against;
- g) the public interest to be served by the policy or law and measures taken during their development to assure quality; and
- h) any matter in support of the proposed policy or law.

Where the proposal for a policy or law includes a fee, levy or charge, the report should provide a clear breakdown of the cost.

9.0 SUBMISSION OF RIA REPORT

- (1) A public body or regulatory agency shall, upon completing the RIA, submit to the Agency, three bound hard copies and a soft copy of the RIA Report accompanied by the proposed policy or law. Alternatively, electronic submission in PDF format is also accepted. Before submission of RIA Report, public bodies and regulatory agencies must ensure that the proposed policy or law:
 - (a) is consistent with overall Government policy;
 - (b) has been subjected to adequate consultation with, and has received input from, stakeholders;
 - (c) has benefits outweighing the costs;
 - (d) serves a legitimate regulatory purpose;
 - (e) does not unnecessarily burden business enterprises to which it applies;
 - (f) does not overly add to the administrative cost of the public body or regulatory agency concerned;
 - (g) is not based on inaccurate, misleading or false information; and
 - (h) complies with the principles, procedure and categorisation of licensing systems prescribed under the Act.
- (2) The Agency shall make a determination and communicate its decision to the public body or regulatory agency within fourteen (14) days of receipt of the RIA Report.

10.0 APPROVAL OF PROPOSED POLICIES AND LAWS REGULATING BUSINESS ACTIVITY

As required by section 6 of the Act, a proposed policy or law regulating business activity shall only be submitted to Cabinet for approval if it has prior approval of the Agency or the Board on appeal.

A proposed policy or law shall only be approved if it has been subjected to a RIA in accordance with the regulations and guidelines issued under the Act.

11.0 GENERAL PROVISIONS

- a) Any notification, communication or document required to be submitted or delivered to the Agency from a public body or regulatory agency and vice versa may be communicated or delivered securely by means of a device or facility that records or stores information electronically or by other means and permits the information so recorded or stored to be readily inspected or reproduced in usable form.
- b) Any document required to be signed, issued or kept by the Agency, may be signed, issued or kept in electronic form.
- c) Any meetings or resolutions required under these Standards and Guidelines may be held or passed by electronic means.
- d) Consultations under these guidelines may be held by electronic means.

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