



Establishing Regulatory Impact Assessment in Mauritius



With funding from the European Union



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Foreword

The quality of the regulatory environment is strongly dependent on the quality of processes for designing regulations. If used systematically and across the whole of government, regulatory impact assessment (RIA) can ensure better-quality government intervention. In addition, documenting and publishing the evidence and analysis used to design regulations can enhance accountability and transparency in the policy-making and decision-making processes.

The Government of Mauritius has made introducing a RIA system a priority, with a view to improving the business environment and promoting the country as an attractive base for trade and investment. The implementation of the new RIA framework is taking place in the context of a series of policy, economic and institutional reforms aimed at moving Mauritius towards the status of a high-income economy. The OECD has been working with the government of Mauritius to assist in these efforts by providing tailored recommendations based on best practice good regulatory practices from OECD member countries.

This report presents the OECD recommendations on how establish a RIA framework in Mauritius. These recommendations are based on an analysis of the strengths and challenges, as well as on extensive engagement with stakeholders, within and external to the Mauritian administration. They also draw on lessons learned from RIA implementation in a range of countries, an initial benchmarking of RIA-related best practices, and guidance material from relevant jurisdictions. The recommendations aim to ensure that an evidence-based approach to decision making is implemented within the Mauritian rule-making processes, through systematic and institutionalised *ex ante* scrutiny of new regulatory proposals.

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This report was prepared by a team of analysts from the OECD Public Governance Directorate (GOV) under the leadership of Elsa Pilichowski, Director. The work was led by Céline Kauffmann and Daniel Trnka of GOV's Regulatory Policy Division, under the Direction of Nick Malyshev, Head of the Regulatory Policy Division. The report's main authors were Richard Alcorn and Guillermo Hernández, and it was prepared for publication by Jennifer Stein.

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Abbreviations and acronyms

BRUs	Better Regulation Units
CBA	Cost-Benefit Analysis
CCNN	National Advisory Committees for Standardisation (<i>Comités Consultivos Nacionales de Normalización</i>)
CFR	Canada's Community of Federal Regulators
CONAMER	National Commission for Regulatory Improvement (<i>Comisión Nacional de Mejora Regulatoria</i>)
EDB	Economic Development Board
EDF	European Development Fund
EU	European Union
FTE	Full-time equivalent
G-REG	New Zealand Government Regulatory Practice Initiative
MCA	Multi-criteria analysis
MP	Member of Parliament
NOMs	Mexican Official Standards (<i>Normas Oficiales Mexicanas</i>)
OECD	Organisation for Economic Co-operation and Development
PCA	Parliamentary Control of the Administration
RIA	Regulatory impact assessment
RRC	Reducing Regulation Sub-Committee
SPS	WTO Agreement on the Application of Sanitary and Phytosanitary Measures
TBT	WTO Agreement on Technical Barriers to Trade
WTO	World Trade Organization

Executive summary

The Mauritian Government has identified a robust regulatory impact assessment (RIA) framework as a priority in order to enhance the country's business environment, increase scrutiny of regulatory proposals, and to ensure a more evidence-based approach to rulemaking. Related expected benefits also include the improvement of the quality of regulation, as well as the development and institutionalisation of a "RIA culture" in the public administration, through enhanced awareness and capacity.

RIA is both "a tool and a decision process for informing political decision makers on whether and how to regulate to achieve public policy goals", as laid out in the OECD 2012 Recommendation of the Council on Regulatory Policy and Governance. By critically examining the impacts and consequences of alternative policy options, including alternatives to regulation, it helps maximise societal well-being. A small, open economy, such as Mauritius, needs a well-performing regulatory system that provides the necessary degree of protection while enabling the development of trade and investment and avoiding unnecessary burdens.

This report presents OECD recommendations on how establish a RIA framework in Mauritius that is firmly embedded within the government's rule-making process.

Key findings

- Mauritius's system of governance has a number of assets including a solid institutional framework as well as a culture of consensus, consultation and collaboration across ministries and agencies.
- There is a high level of interest amongst stakeholders, within and external to government, as well as political momentum for developing RIA in Mauritius.
- There is currently no systematic *ex ante* scrutiny of legislative proposals or regulatory oversight system in place, and shortcomings exist in current approaches to stakeholder consultation (e.g. regarding representativeness and transparency), some of which entail risks of regulatory capture.
- There is a lack of relevant skills and capacity for carrying out RIA within Mauritius' administration. This was witnessed by the OECD Team through the varying levels of knowledge and awareness of RIA-related concepts, methods and practices amongst officials of the administration.
- The country's rule-making system suffers from a lack of planning and anticipation, and relies excessively on legislative amendments introduced by the Executive (notably via the Finance Act). There is insufficient visibility of the legislative planning process, and external stakeholders do not always know sufficiently in advance which pieces of legislation are to be introduced into the National Assembly.
- A major challenge facing RIA implementation is an absence of the systematic identification of the problems that proposed legislation is meant to address in the policy process. Rulemaking in Mauritius seemingly relies on deliberation and consensus around the appropriate solutions instead. This situation may lead to unjustified regulations and difficulties in monitoring and assessing the performance of a regulation.

- Evidence underlying decision making is not always clearly identifiable. All plausible alternatives, including non-regulatory policy options, do not seem to be considered in a systematic fashion. This is an important issue because the use of an inferior policy option may have significant implications for competition, economic performance and may be less effective in meeting wider social objectives.
- Implementation and enforcement of regulations remains far from optimal in many cases, which suggests that regulatory delivery is not systematically taken into account in decision-making processes.
- The experience of the 2015 pilot RIA in Mauritius showed that if a new RIA framework is to succeed, it needs to be perceived and understood as a whole-of-government undertaking that requires ongoing commitment from across the administration.

Key recommendations

- Creating an Inter-Ministerial RIA committee would foster political commitment across the government. Such a committee could be chaired by the Prime Minister and include, at a minimum, Ministers or Permanent Secretaries from the key regulatory ministries.
- A formal government-wide policy to promote regulatory quality is needed and should clearly mandate ministries to carry out RIA on prospective primary and secondary legislation. The policy should stipulate the need to use RIA in a consistent manner with other regulatory management tools such as stakeholder engagement and *ex post* evaluation.
- The requirement for ministries to carry out RIA should be established through a legal mandate, e.g. a “RIA Act”. A RIA Act should also define the institutional arrangements needed for effective RIA implementation, and could also spell out the basic steps of the RIA process.
- For regulatory oversight purposes, a dedicated RIA office could be established through the RIA Act that would have key oversight functions including quality control, co-ordination of the RIA process and provision of guidance and training. Ideally, the RIA office would report to the Prime Minister’s Office.
- Given capacity constraints, in the short term, it may be best to follow an incremental approach and limit the RIA requirement to key regulatory ministries. In the medium to long term, all government ministries would be required to conduct RIA.
- Appropriate capacity for RIA should be developed as a strategic priority for the implementation of RIA. Relevant capacity includes technical and methodological skills as well as awareness and understanding of the importance of RIA as a policy tool and mind-set, of related roles and responsibilities, and of procedural aspects - including stakeholder engagement and information gathering.
- The government should ensure that there are designated RIA officers within each ministry, who will undergo mandatory RIA training and act as focal points for RIA-related matters.
- The RIA methodology should be as simple and flexible as possible while ensuring certain key features are covered. In the short term, this could consist of a simple RIA approach such as qualitative multi-criteria analysis and then gradually incorporate quantitative analysis techniques, such as cost-benefit analysis. This methodology should take into account economic, social and environmental impacts, including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.
- A principle of proportionality should be established within the new RIA policy, stressing that policymakers should focus RIA efforts on regulatory proposals with the greatest expected socioeconomic impacts. A triage process should be used by ministries, and overseen by the new RIA Office, to determine which legislative proposals require full detailed RIAs.

- Implementation and enforcement of proposed regulations must be considered an integral part of RIA. Delivery of laws and regulations is complex and involves a variety of actors who need to be part of the RIA process if it is to be effective in enhancing regulatory quality.
- Consultation practices on laws and regulations should be further clarified and systematised. The new RIA Act could contain a requirement that regulatory proposals must undergo stakeholder consultation at both an early stage (at the inception of the policy making process) and at a later stage once draft legislative proposals are available. A consultation website could be developed to facilitate public engagement.
- A framework enabling the appropriate monitoring and evaluation of the RIA system could be defined and implemented by identifying appropriate metrics, including performance indicators, and clearly allocating responsibilities for monitoring and evaluation, e.g. reporting requirements and involvement in data gathering, processing and analysis.

Introduction

The OECD has been entrusted by the EU with the task of supporting the Government of Mauritius in the development of a RIA framework, with a view to improving the business environment and promoting Mauritius as an attractive base for trade and investment. This project was undertaken as part of the action “Establishing RIA in Mauritius”, which is financed under the European Development Fund (EDF).

Rationale: the importance of RIA

As stated in the OECD’s Best Practice Principles for RIA (see Annex B), while evidence-based policy-making is a well-understood and accepted tenet of good governance, governments do not always fully consider the likely effects of public policy interventions when developing them. This often results in a range of unintended consequences and negative impacts for citizens, businesses and society as a whole that jeopardise inclusive growth, sustainable development, trust in public institutions and the rule of law. The increasing complexity of the policy-making environment (driven by digitalisation, economic globalisation, emergence of new categories of economic actors, constraints on public resources, etc.) makes strong RIA more necessary than ever.

If used systematically and as a government-wide approach, RIA helps ensure greater quality of government interventions. In addition, the documentation and publication of the evidence and analysis to design interventions helps enhance accountability and transparency in the policy-making and decision-making processes. RIA provides crucial information to decision makers on whether and how to regulate to achieve public policy goals and, by critically examining the impacts and consequences of alternative options, it helps maximise societal well-being.

The Government has identified as a priority a robust RIA framework in order to enhance the country’s business environment and attractiveness as a trade and investment partner. Related expected benefits also include the improvement of the decision-making process and the quality of regulation, as well as the development and institutionalisation of a “RIA culture” in the public administration through enhanced awareness and capacity.

RIA appears particularly relevant in Mauritius as a means to addressing certain shortcomings identified in its rule-making framework; e.g. calls amongst stakeholders for greater scrutiny of regulatory proposals and a more evidence-based approach to rulemaking. In addition, RIA is important for a small, open economy like Mauritius that needs a well-performing regulatory system affording the necessary degree of protection while enabling the development of trade and investment and avoiding unnecessary burdens.

The COVID-19 crisis, which has posed an unprecedented challenge to global health, is highly relevant for the work that the OECD has undertaken in support of establishing a RIA system in Mauritius on several accounts. Resolving the health crisis involves regulatory issues at nearly every stage. Regulation affects the availability of tools to identify and fight the disease (tests, products and devices) and frames the ability of public utilities to maintain critical services, of food to be produced and delivered, and of essential services to continue functioning.

Beyond the immediate crisis response, regulatory issues also matter for enabling economic and social recovery as well as better preparedness for future crises. In this context, regulatory management tools such as RIA are more relevant than ever to ensure that policy decisions are based on evidence and contribute to long-lasting prosperity and well-being. The resolve of Mauritius to establish such a system should be reinforced by current challenges and the need to prioritise regulatory quality.¹

Policy context

The Government of Mauritius has set as a priority to introduce a RIA system, and announced it originally within the 2019/20 National Budget, with a view to improving the business environment and promoting Mauritius as an attractive base for trade and investment. The implementation of the new RIA framework is to take place in the context of a series of policy, economic and institutional reforms aimed at moving Mauritius towards the status of a high-income economy.

In August 2015, the Government presented an Economic Mission Statement, entitled Vision 2030, which charted a path of reform for Mauritius to move towards the league of high-income countries by the year 2030. Four key focus themes were listed including addressing unemployment, alleviating poverty, promoting an open economy and society (via new air access policies) as well as sustainable development and innovation (Government Information Service, 2015^[1]).

Vision 2030 has been underpinned with a series of goals and objectives and the strategies to drive these forward, as set out in the Government's Three Year Strategic Plans. This programme of work has been grouped around three main objectives with associated metrics (of which a selection is presented below):

1. High Income Country: Per capita income of USD 13 550 by 2023 and rising to 19 000 by 2030.
2. Inclusive: Become a very high Human Development Index country by 2021 and achieve a score of 0.88 by 2030.
3. High Quality of Life and Sustainability: Improve life expectancy at birth from 74.5 years in 2018 to at least 75 years by 2020 and 77 years by 2030. (Government of Mauritius, 2019^[2])

As part of this programme of work, the Mauritian Government has been taking forward a series of reforms, co-financed by the European Union, to enhance the business environment and private sector development as part of the initiative *Improving the Business and Investment Climate in Mauritius* (Economic Development Board, 2018^[3]). These reforms include:

- The implementation of the National Electronic Licensing System (NELS) to provide a single point of entry for all business licences
- A Business Process Re-engineering (BPR) Exercise examining all licenses and permits prior to them being automated
- Implementation of a RIA Framework
- A Regulatory Review exercise of four sectors: International trade, financial services, planning/development/construction and tourism
- Change Management and Communication

In the same vein, two Business Facilitation Acts have been passed, in 2017 and 2019, which brought forward regulatory amendments to provide for the simplification and harmonisation of the process for the application of permits and licences. (The Mauritius Chamber of Commerce and Industry, 2019^[4]). Overall, these reforms have significantly improved the perception of the business environment of Mauritius – according to the World Bank's Ease of Doing Business Survey, Mauritius has made steady improvements in this area and ranks first in Africa and 13th worldwide for ease of doing business. (World Bank, 2019^[5])

In addition, a number of institutional reforms have been carried out to support the reform agenda and ensure coherence in policy making across the Mauritian administration. An Inter-Ministerial Committee chaired by the Prime Minister was set up to provide strategic guidance and political support to the above-mentioned programme of work. Furthermore, in 2018 the Economic Development Board (EDB) was initially established under the aegis of the Prime Minister's Office to provide strong institutional support for strategic economic planning and to ensure greater coherence and effectiveness in economic policy formulation for Mauritius. Following the 2019 General Election, the EDB was moved under the Ministry of Finance, Economic Planning and Development.

Methodological approach

The analytical work carried out in support of this report combined desk research and field research. *Desk research* consisted of a review of relevant literature from both the academic and practitioners' standpoint. Examining documentation provided by the Mauritian authorities, such as internal guidelines, implementation reports, Acts of Parliament, and strategic policy documents, has also been a key part of the desk research efforts carried out under this project.

Field research, in turn, consisted of in-depth interviews with relevant stakeholders in selected ministries with extensive regulatory activity, key institutions involved in regulatory policy (Ministry of Finance, Economic Planning and Development and EDB), EU officials and representatives from the businesses community as well as civil society organisations.

The main reference framework for the analysis consists of the OECD's 2020 Best Practice Principles for RIA (see Annex B) as well as Principle No. 4 of the 2012 OECD Recommendation on Regulatory and Policy Governance (see Annex A). Further normative references are indicated as appropriate throughout the report.

Background on work undertaken

In support of this project, the OECD team has conducted two field missions to Mauritius to date, in September 2019 and February 2020. These missions involved meetings with key sponsoring institutions (the Delegation of the European Union and the EDB) and a series of additional fact-finding meetings with a wide range of public bodies involved in rulemaking, as well as representatives of the civil society.

In December 2019, the OECD team submitted the first deliverable of the project, the "Module 1 Report", to the Government of Mauritius. This report provided an overview of Mauritius' rule-making processes and institutions; assessed the key strengths, challenges and related needs, including in terms of skills, of Mauritius' rule-making system from the perspective of establishing RIA; and identified potential modalities for RIA set-up and implementation, including regulatory oversight. To do so, it drew upon lessons learned from RIA implementation in a range of countries and referred to a selection of RIA-related design and implementation practices as well as guidance material from various relevant jurisdictions.

During the second field mission, in early February 2020, the OECD team conducted a workshop with key stakeholders from within and external to the Mauritian administration to discuss emerging findings and recommendations in the Module 1 report. Stakeholder inputs gathered in this context were built upon to develop a comprehensive set of recommendations, accompanied by an action plan for implementation, both of which are outlined in this report. In addition, the OECD team organised a one-day RIA Capacity Building Workshop during the second field mission aimed at technical-level officials.

A virtual policy workshop was held in August 2020 with a broad range of stakeholders to discuss the recommendations and action plan. The final results of the project, including the development of methodological guidance and carrying out a pilot RIA in the area of fire safety will be presented at a

high-level conference at the end of the project, in 2021. This will also provide the opportunity for further capacity building of the Mauritian public administration.

The COVID-19 pandemic, which spread rapidly internationally throughout the planet in 2020, led to adapting and rescheduling certain activities planned under the OECD project. These activities included rescheduling the virtual policy workshop that was initially foreseen for early May and the timeline for developing of a RIA pilot.

The OECD team were able to benefit from the assistance of a Core Team, made up of high-level experts from Mauritius' government ministries, regulatory organisations and other public bodies as well as business and academia. Their role included strategic steering and advice, as well as providing comments on key outputs throughout the project. The Core Team shall also have a critical future role of championing the new RIA framework across ministries, regulatory bodies and other key organisations.

Report structure

Section 1 of this report provides an overview of Mauritius' rule-making processes and institutions, including its main regulatory instruments. It also presents briefly the previous pilot RIA project that was carried out in the country in 2015. Section 2 assesses the key strengths, challenges and related needs (including in terms of skills) of Mauritius' rule-making system from the perspective of establishing RIA. Based on that assessment, Section 3 identifies potential modalities for RIA set-up and implementation, including oversight. To do so, it draws on lessons learned from RIA implementation in a range of countries and refers to a selection of RIA-related design and implementation practices from various relevant jurisdictions.

Section 4 then sets out the OECD's recommendations for RIA set-up and implementation. These recommendations respond to the challenges and opportunities identified and draws upon lessons learned from RIA implementation internationally. They also build on preliminary discussions held with stakeholders in Mauritius in February 2020 as well as on conclusions from the virtual policy workshop held in August 2020 and feedback from the Core Team. These recommendations are accompanied by an action plan, which provides a timeline and key milestones for rolling out this programme of work.

Note

¹ The OECD has issued a variety of policy advice documents for dealing with the various regulatory issues raised by Covid-19 pandemic www.oecd.org/gov/regulatory-policy/reg-covid-19-activities.htm.

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1 Mauritius' rule-making processes and institutions: an overview

This chapter presents an overview of the main instruments, key actors and institutions, and processes involved in Mauritius' rule-making system. A RIA pilot exercise carried out in 2015 is briefly summarised at the end of the chapter.

Key messages

- The main categories of regulatory instruments are primary legislation and secondary legislation (regulations). In addition, the Government may develop guidelines and directives, which are voluntary tools stemming from either primary or secondary legislation, thus conferring them a strong standing.
- The National Assembly exercises its law-making power by means of Bills. Proposed Bills must be passed by the National Assembly to become Acts. Inherent in the power to make laws is the power to amend or repeal them, suspend their operation (including retroactively) and to delegate the law-making powers to the executive.
- The Government sets out its legislative priorities in the Five-year Government Programme at the beginning of a legislature. Their implementation is monitored in the Three-year Strategic Plans.
- The Budget Speech, given annually by the Minister of Finance, is used extensively as a means of developing regulations and amending primary legislation with a financial component. The Finance (Miscellaneous Provisions) Act serves to implement the measures announced in the budget speech.
- The Cabinet is the supreme authority for taking policy decisions for Government. It is led by the Prime Minister and also encompasses ministers and the Attorney General.
- The Attorney General's Office (AGO) provides legal advisory and legislative drafting services to Government. It is involved in legislative drafting and its clearance is required before draft bills can be submitted to Cabinet, before draft bills are introduced in the National Assembly and before regulations are made.
- The Ministry of Finance, Economic Planning and Development acts as a de facto gatekeeper in the law-making process; ministries are obliged to consult with it on legislative proposals entailing financial obligations.
- Although internal government guidelines acknowledge the need for considering the potential impacts and effectiveness of proposed legislation, evidence points to a lack of systematic scrutiny in Mauritius.
- At present, Mauritius has no RIA framework in place. There are however several elements in the country's rule-making system that could be usefully built upon to develop an effective one.

The regulatory process

This sub-section briefly summarises the framework and procedures governing law making in Mauritius, including its main regulatory instruments.

Constitution of Mauritius

Mauritius has a written constitution, drafted in 1968, which stipulates that it is the supreme law of Mauritius, and that if any other law is inconsistent with the Constitution, that other law shall be declared void (Section 2).

Section 45 (1) states that Parliament may make laws for the peace, order and good governance of Mauritius. The power of Parliament to make laws shall be exercisable by bills passed by the Authority and assented to by the President (Government of Mauritius, 1968_[1]).

Main regulatory instruments

Mauritius has a hybrid legal system based on the Civil and Common Law systems. The Civil Law component of Mauritius' legal system is derived from the French *Code Napoléon*. This code led to the *Code Civil Mauricien*, which provides for the rights of individuals, matrimonial regimes, contract law, and property law amongst others. French civil tradition also inspired Mauritius' *Code de Commerce* (which has undergone subsequent revisions). The Common Law component is founded on procedural law and precedent. Mauritian Criminal Law is derived from the French *Code Pénal* and the procedures derived from the British Criminal Procedure and the British law of evidence (Mauritius Counsel, 2018^[2]).

Within the Mauritian rule-making system, **the main categories of regulatory instruments** are primary legislation (Acts of Parliament) and secondary legislation (regulations). In addition, the Government may develop guidelines and directives, which are voluntary tools stemming from either primary or secondary legislation, thus conferring them a strong standing.

Primary legislation is the general term used to describe the main acts passed by the National Assembly of Mauritius, as specified under Section 45 (1) of the Constitution. Acts of Parliament can delegate the making of secondary legislation to others.

Secondary Legislation includes regulations issued by the Minister and rules issued by local councils or public authorities (including parastatal bodies) to whom law-making power has been delegated. Secondary legislation may derive its validity from either Acts of Parliament (e.g. the Local Government Act, the Environment Protection Act and the Business Facilitation Act have served as enabling acts for a number of regulations) or certain sections of the Constitution itself. Parliament has little involvement in the development of secondary legislation, although Section 122 of the Constitution gives Parliament control over certain areas pertaining mostly to basic individual constitutional rights such as freedom of movement and the protection of liberty.¹

In addition, voluntary standards are used by industry to demonstrate performance e.g. in relation to manufacturing a product, managing a process, delivering a service or supplying materials. The process of developing standards is carried out by the Mauritian Standards Bureau through a process of consensus involving stakeholders that are grouped under various technical committees. The standards that are developed are voluntary in nature, however, some Mauritian standards have also been the basis of or cited by technical regulations (Mauritius Standards Bureau, 2019^[3]).

Preparation and drafting of legislation

The Government sets out its legislative priorities in the Five-year Government Programme at the beginning of a Parliament. These legislative priorities are subject to close monitoring of their implementation in the Three Year Strategic Plans (which also sets out the core components of Vision 2030, the country's long-term strategic document).

The budget speech, given annually by the Minister of Finance, is used as a means of developing regulations and amending primary legislation with a financial component. The Finance (Miscellaneous Provisions) Act serves to implement the measures announced in the budget speech (Government of Mauritius, 2019^[4]).

After a Government is elected, as well as prior to each parliamentary session (there are three per year), ministries must inform the Cabinet of which pieces of legislation they intend to present to the National Assembly. Information contained in this list of priority bills, which is provided to the Secretary to Cabinet, includes each bill's stage of development (e.g. vetting process, etc.). However, this list of priority legislation is not made available to the general public.

Laws are adopted in Mauritius through Acts of Parliament (primary legislation) and regulations (secondary legislation). Before an Act of Parliament comes into force, a Bill must be passed by the National Assembly and assented to by the President of Mauritius. The Procedure Manual for Legislation, produced by the Cabinet Office, states that:

Policy decisions are taken by either the Cabinet or the Minister. Taking into consideration the objectives that a Minister wishes to achieve within the responsibility that has been assigned to him, he may decide to bring in a new legislation, amend an existing one or make Regulations which would give him sufficient powers/authority to implement his wish. In instances where the Minister proposes to amend an existing Act or bring a new Bill, he should first obtain the agreement of Government. As far as subsidiary legislation [...] is concerned, the Minister should inform Government.²

As a first step, a Cabinet Memorandum is drafted by the leading line ministry. According to the Procedure Manual, this Memorandum should “highlight the principles and objectives of the proposal” in order to “seek the agreement of Cabinet on policy implications”. The Manual also states that “all necessary consultations, inter-departmental, financial and other clearances, shall be sought and obtained” at this stage.

If the Memorandum is approved by Cabinet, the line ministry then provides the AGO with drafting instructions. These instructions may include a preliminary version of the draft bill and/or an indication of the key issues to be addressed. This notably depends on each ministry’s internal capacity, as not all of them have an in-house legal service. Accordingly, some line ministries may choose to appoint an external legal expert to assist them with drafting. The AGO will then draft the legislation, consulting with the relevant Ministry as appropriate. The AGO has responsibility for the technical aspects and wording of the bill, in order to facilitate parliamentary scrutiny of its provisions.

Once a draft bill has been cleared by the AGO, it will be submitted to Cabinet accompanied by a second Memorandum. The Procedure Manual notes that this is a critical step, as “no Bill can be introduced into the National Assembly without having obtained the prior approval of Cabinet and a draft Bill presented to the National Assembly involves the collective responsibility of the Government” (Cabinet Office, 2010^[5]).

In addition, the Government has developed internal guidance on the preparation of Cabinet papers, stating that each discussion should be on the basis of a carefully prepared memorandum. The guidance contains a section that states the importance of assessing the potential impacts of proposed legislation (see Box 1.1).

Box 1.1. Consideration of potential impacts of legislation in *The Cabinet. A Guide for Ministers*

The internal guidelines on the preparation of Cabinet papers states that “a well-drafted memorandum should explain at the outset what the problem is, set out briefly the relevant considerations and end up in a precise statement of the decision sought”. Furthermore, it indicates that all memoranda should notably include the following:

- “public expenditure costs or savings of the Ministry or other Departments, other economic implications and how the proposals made represent value for money” (a)
- legal implications (if any) (b)
- “regional and any other international obligation, the views expressed by the Ministry of Foreign Affairs, Regional Integration and International Trade” (d)
- “any possible effects on the Local Government administration system and the views expressed by the Ministry of Local Government and Outer Islands” (e)

- “the impact on the environment highlighting the views expressed by the Ministry of Environment and Sustainable Development” (f)

It also states that particular care should be taken “to ensure that any other Ministry which clearly is, or may be, concerned with the subject matter of the memorandum, has been consulted at the official level”.

Source: (Cabinet Office, 2018^[6]).

If approved by Cabinet, the Bill is then sent to the Clerk of the National Assembly for introduction in Parliament and a copy is provided to all Members of the National Assembly once the bill is set down on the order paper of the National Assembly.

Legislative process for primary legislation

When a Bill is introduced in Parliament, it typically undergoes the following stages:

- *First Reading*: this stage is purely formal and serves to introduce the Bill. There is no parliamentary debate at this stage and only the Short Title of the Bill is read.
- *Second Reading*: this is the most important stage which involves general debate on the provisions of the Bill. Members of the assembly give their views and suggestions on the Bill.
- *Committee Stage*: at this stage, the Bill is voted upon clause-by-clause. The minister introducing the Bill can also bring amendments to certain clauses of the Bill (which are then forwarded to the Attorney General's Office for incorporation).
- *Third Reading*: once again, only the Short Title of the Bill is read.

After the third reading, presidential assent is required for a Bill to become an Act of Parliament (in some cases, the President can withhold his assent, e.g. on technical grounds). There are four possibilities in the choice of a commencement day for an Act after it has received the Presidential Assent:

- a) No specific provision is made (i.e. no “Commencement” Clause) in which case the Act will come into operation on the day of its publication in the Government Gazette (this is the official publication for the purpose of notifying the actions and decisions of the government. Acts, regulations and other subordinate legislation are notified in the Government Gazette).
- b) The “Commencement” Clause specifies a date for the coming into operation.
- c) The “Commencement” Clause empowers some person or authority to fix a day for commencement.
- d) The “Commencement” Clause provides for the Act to come into operation on the occurrence of an event. (Attorney General's Office, 2011^[7])

Legislative process for secondary legislation

As previously mentioned, certain pieces of primary legislation allow ministries as well as subsidiary organisations such as parastatal bodies to make regulations. These are known as Enabling Acts or Parent Acts. There is, therefore, an express as well as implicit delegation of power to various subsidiary organisations within the Mauritian system.

Parastatal bodies who are responsible for the administration of specific parent Acts will generally prepare a draft of the regulation(s) and forward it to their parent ministries for vetting. The Ministry will then submit the draft to the AGO for legislative vetting. The responsible Minister will then inform the Government through a Cabinet Memorandum, along with the draft regulations, prior to promulgation and gazetting.³

Key actors involved in regulatory development and review

This sub-section presents the main institutions participating in rulemaking in Mauritius. The Cabinet, with the Prime Minister at the helm, plays a pivotal role in the system insofar as its clearance is required for initiatives to go forward. The same applies to the Ministry of Finance, Economic Planning and Development which acts as a de facto gatekeeper in the law-making process for legislative proposals containing financial obligations. The AGO, in turn, is responsible for ensuring appropriate legislative drafting and its clearance is required before Bills can be submitted to Cabinet, for introduction in the National Assembly or before regulations are made.

Line ministries

As previously discussed, line ministries are responsible for proposing and developing legislation in their particular area of policy competence. In most cases, the Permanent Secretary is the highest-ranking civil servant in each ministry (in certain cases the civil servant head is entitled Senior Chief Executive). The OECD was informed during the fact-finding mission that the ministries of health, commerce, environment and local government were responsible for producing the largest volumes of legislation with implications for the business environment. The Ministry of Finance, Economic Planning and Development, which has the power to amend legislation through the annual budget speech process, is also a key actor in this respect (see the dedicated sub-section below for more details).

Cabinet

The Cabinet is the supreme authority for making policy decisions for the Government. It is led by the Prime Minister and also encompasses Ministers and the Attorney General. There are about 20 Ministers who make up the Cabinet, and the Constitution of Mauritius stipulates that at no given time may there be more than 24 Ministers. The Cabinet also operates as the official advisory body to the President of the Republic for major decisions. According to the Cabinet Office government guidelines, it is “essential that all available facts and information are placed before it [i.e. Cabinet] when a decision is to be taken” (Cabinet Office, 2018^[6]).

Secretary to Cabinet and Cabinet Office

The Secretary to Cabinet (who also operates as Head of the Civil Service) scrutinises all papers to be considered by Cabinet. Its role is to ensure that all steps in the Cabinet Office guidance (see Box 1.1) are respected. The Secretary to Cabinet also conveys important decisions (via a Press Communiqué after each Cabinet Meeting) and transmits legislation to be introduced into the National Assembly.

The Cabinet Office operates under the Prime Minister’s Office. It assists Cabinet by acting as its secretariat. It is staffed by the Secretary to the Cabinet, the Permanent Secretary, and a secretariat and supporting staff. It serves as link between the Office of the President and the Executive. It is responsible for conveying to Cabinet those matters that the President wishes to have considered by Government.

Ministry of Finance, Economic Planning and Development

The Ministry of Finance, Economic Planning and Development is responsible for formulating the Government's economic reform strategy and co-ordinating its implementation as well as preparing the annual Budget Estimates in collaboration with ministries.

The Ministry acts as a de facto gatekeeper in the law-making process, as ministries are obliged to consult with it if legislative proposals contain financial obligations (there is, however, no consultation obligation if a proposal does not entail financial obligations).

The Ministry is responsible for developing any necessary secondary legislation under policy areas relating to business facilitation and the financial sector. It has a Sector Ministry Support Team (SMST), which liaises with the different ministries over proposed legislation to discuss policy intent, explore options, and to ensure appropriate consultation. It also has a co-ordination team overseeing implementation of laws and policies.

Ministry officials also carry out "budget consultations" that allow other line ministries to make suggestions and formulate proposals. All ministries submit a strategic plan and there are a series of policy dialogues, including with trade unions and business associations. The Ministry carries out an *ad hoc* assessment of proposals to prepare the annual budget speech. Informal consultations and exchanges (e.g. with private sector representatives) may also take place.

Attorney General

The AGO provides legal advisory and legislative drafting services to the Government. It translates Government policy into legal language and ensures that Bills and regulations meet the test of legality and constitutionality. As previously discussed, the AGO is involved in legislative drafting and its clearance is required before draft bills can be submitted to Cabinet and for introduction in the National Assembly. It also provides assistance to the Courts in its capacity as *Ministère Public*. It is the only institution that formally interacts with the three constitutional powers namely the Legislature (National Assembly), the Judiciary (Courts) and the Executive (Government/Ministries) (Attorney General's Office, n.d.^[8]).

Economic Development Board

The Economic Development Board Act was passed in 2017 and came into force in January 2018. It instituted the EDB as a statutory body, following the merger of the Board of Investment, Enterprise Mauritius and the Financial Services Promotion Agency. The EDB currently operates under the Ministry of Finance, Economic Planning and Development and is mandated to provide strong institutional support for strategic economic planning and to ensure greater coherence and effectiveness in economic policy formulation for Mauritius. The organisation's main functions include the promotion of investment and the exportations of goods and services; strategic thinking on economic development and registration; and ensuring that Mauritius has a conducive business environment (Economic Development Board, 2019^[9]).

Law Reform Commission (LRC)

The LRC of Mauritius is an independent statutory body set-up by parliament in 2005, to review in a systematic way the laws of Mauritius, to make proposals for its reform and development, and to ensure the law is understandable and accessible. The LRC is mandated to recommend changes to the laws, often in the form of a proposal for a draft legislation, with a focus on primary legislation.

The LRC prepares and submits to the Attorney General, at the beginning of each calendar year, a program for the review of specific aspects of the laws of Mauritius with a view to their reform or development. They publish an annual report, which is tabled in the National Assembly, and monitor which recommendations are adopted.

The key task of the body consists of identifying shortcomings in the existing law as well as potential options for improvement. To do so, they look at best practices and benchmark against them, carry out consultations and research. The choice of which legislation to review is made either upon referral by the Attorney General or on the LRC's own initiative. Sometimes demands from the public are also taken into consideration. Work is conditioned by available resources; it is generally not possible for the LRC to work on many projects simultaneously (Law Reform Commission, n.d.^[10]).

National Audit Office (NAO)

The NAO is an independent public office set up under the Constitution of Mauritius to carry out public sector audit and provide assurance to the National Assembly on the proper accounting and use of public funds. It carries out two main types of audits including Regularity Audits (the bulk of its workload) which examine and evaluate financial records and expressions of opinion on financial statements; and Performance Audits which examine whether Government undertakings, systems, operations, programmes, activities or organisations are operating in accordance with the principles of economy, efficiency and effectiveness.

The NAO's staff totals around 200 persons, the majority of whom are accountants by training. The organisation's budget is derived from the Annual Estimates of Government, which is approved by the National Assembly.

The NAO's reports are compiled over a period of 9-12 months. Areas covered are chosen on the basis of the Office hierarchy's knowledge and observation of current affairs. Auditees must respond to NAO's reports before publication (these exchanges are generally not made public). These reports are submitted to the Accounting Officer of the concerned ministry or public body. In the case of boards, they are submitted to the Chief Executive.

The NAO assists the Public Accounts Committee (PAC) in the National Assembly in the discharge of its duties, to examine the audited accounts of the Republic of Mauritius for each financial year. The PAC holds several sessions a year to examine the Reports of the Director of Audit on government ministries and Departments. These sessions are typically attended by the Director of Audit and/or their representatives (National Audit Office, 2018^[11]).

National Assembly

The National Assembly is the unicameral legislature of Mauritius. The Constitution of Mauritius provides for the Parliament of Mauritius to consist of the President and the National Assembly. The Parliament of Mauritius is modelled after the Westminster system of parliamentary democracy, where Members of Parliament are voted in at regular general elections, on the basis of a first-past-the-post system. The Government is primarily responsible to the National Assembly and the Prime Minister stays in office only as long as he or she retains the support of a majority of its members.

The National Assembly exercises its law-making power by means of Bills. Proposed Bills must be passed by the National Assembly to become Acts of Parliament. Inherent in the power to make laws is the power to amend or repeal them, suspend their operation (including retroactively) and to delegate the law-making powers to the executive.

Also among its functions is controlling the finances of the State: no revenue can be raised by way of a tax or the imposition of license fees, customs dues and other charges without the authorisation of Parliament. Expenditure must equally be authorised by Parliament. Appropriation laws are accordingly passed to enable withdrawals from the Consolidated Fund (constituted by all revenues or other money raised or received for the purposes of the Government of Mauritius).

The Annual Budget Speech usually takes place in early June before the beginning of the financial year (on 1 July). The Minister of Finance presents his Budget Speech, reviewing the country's economic performance in the previous year and announcing economic policy proposals for the coming year. There is a debate and eventually a vote is taken on the Appropriation Bill. Members of Parliament can also raise questions with the Ministers regarding their actions (National Assembly, n.d.^[12]).

Mauritius Standards Bureau (MSB)

The MSB is a corporate body which has been set up under the Mauritius Standards Bureau Act 1993. The Bureau is responsible for standardization, quality assurance, testing and metrology, and is also the custodian of the national measurement standards. It operates a certification marking scheme for products as well as a national management system certification scheme. It is the National Enquiry point for matters concerning the World Trade Organisation (WTO)/Technical Barriers to Trade (TBT) (Mauritius Standards Bureau, 2019^[3]).

Previous Initiatives to introduce evidence-based rule making in Mauritius

In 2015, a pilot RIA project was carried out in Mauritius. It consisted of a joint initiative by the Ministry of Foreign Affairs, Regional Integration and International Trade and the Mauritius Chamber of Commerce and Industry (MCCI), using funding from the ACP-EU TBT Programme. The project's final report⁴ noted that "the concept of RIA is generally unknown" in the country, and that "legislation is rarely drafted by the government based on the elaboration of a set of policies and the investigation of their impacts".

Box 1.2. The 2015 RIA Pilot Project at a glance

This RIA pilot consisted of a joint initiative by the Ministry of Foreign Affairs, Regional Integration and International Trade and the Mauritius Chamber of Commerce and Industry (MCCI), using funding from the ACP-EU TBT Programme. Two international consultancy firms (Economisti Associati and BKP Development) were contracted to carry out the project.

The project was designed over three strands, to constitute the basis for a possible introduction of RIA in Mauritius:

- Drafting a RIA Manual for Mauritius, to provide government officials with a guide on how to draft future RIAs;
- Carrying out two pilot RIA exercises, on options to reduce the use of plastic bags and options to reduce to use of plastic bottles in Mauritius.
- Building capacity both within the government and among private professionals on the RIA system and methodology through training sessions.

There appears to have been no further follow-up on this project thus far.

Source: (Economisti Associati & BKP Development, 2015^[13]).

Evidence gathered by the OECD project team during the September 2019 fact-finding mission was largely consistent with previous findings, although in some cases it offered a more nuanced view on the matter. For example, the Mauritius Revenue Authority (MRA) encompasses a small policy and research unit (Research, policy and planning department) that is involved in pre-budget (revenue) impact analysis (simulations) of proposed initiatives on behalf of other parts of the administration during the budget preparation process. It also conducts “post-budget” analyses comparing observed and expected results of a given initiative.

In the same vein, as discussed earlier in this section, the need for considering the potential impacts of proposed legislation is acknowledged in internal government guidelines. Overall, however, evidence points to a lack of systematic scrutiny and consideration of the potential effects and effectiveness of legislation in Mauritius, and calls for the establishment of a RIA system in the country. The next section provides a preliminary assessment of the main strengths and challenges from that standpoint.

Notes

¹ Information on secondary legislation was provided by the Government of Mauritius via email in November 2019.

² Policy options other than regulatory are not explicitly mentioned.

³ Information on secondary legislation was provided by the Government of Mauritius via email in November 2019.

⁴ <http://95.110.167.47/tbt/doc/151106%20tria%20mauritius%20final%20report.pdf>.

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2 Developing a RIA system in Mauritius: preliminary assessment of strengths and challenges

Design, methodologies and implementation modalities for RIA need to reflect underlying policy objectives and suit the administrative and cultural context and related capacity. With this premise in mind, this section discusses the key strengths and potential challenges of Mauritius' rule and policy-making system that should be considered in order to develop a well-targeted, proportionate and effective RIA system in Mauritius that is also as quick and easy to implement as possible. It focuses on four main areas: political commitment and stakeholder buy-in; governance of RIA (including oversight); capacity and accountability in the public administration, and methodological aspects.

Key messages

- RIA is important for a small, open economy like Mauritius that needs a well-performing regulatory system affording the necessary degree of protection while enabling the development of trade and investment and avoiding unnecessary burdens.
- There is great interest and political momentum for developing RIA in Mauritius. Successfully doing so will require embedding RIA into a comprehensive long-term strategy to enhance regulatory quality, while securing stakeholder support.
- Key challenges include ensuring that current high-level political backing withstands the test of time (e.g. seemingly competing priorities may emerge, the political landscape may evolve...) as well as fostering public control and engagement in rulemaking in Mauritius through increased transparency and publicity.
- Lessons from the 2015 pilot RIA in Mauritius ought to be borne in mind: if RIA is to succeed, it needs to be perceived and understood as a whole-of-government undertaking that requires ongoing commitment from across the administration.
- Mauritius' assets include a solid institutional framework as well as a culture of consensus, consultation and collaboration across ministries and agencies; there is however no systematic *ex ante* scrutiny of legislative proposals or regulatory oversight system in place, and shortcomings exist in current approaches to stakeholder consultation (e.g. regarding representativeness and transparency), some of which entail risks of regulatory capture.
- Overall, there seems to be a lack of relevant RIA-related skills within Mauritius' administration.
- The country's rule-making system suffers from a lack of planning and anticipation, thus relying excessively on amendments introduced by the Executive (notably via the Finance Act).
- There does not seem to be systematic identification of problems and needs, rulemaking in Mauritius seemingly relying on deliberation and consensus around the appropriate solutions instead. This situation may lead to unjustified regulations and difficulties in monitoring and assessing regulations' performance.
- Evidence underlying decision making is not always clearly identifiable. All plausible alternatives, including non-regulatory policy options, do not seem to be considered in a systematic fashion.
- Implementation and enforcement of regulations are still far from optimal in many cases, which suggests regulatory delivery is not systematically taken into account for problem definition or in decision-making processes.

This section discusses the key strengths and potential challenges of Mauritius' rule and policy-making system that should be considered in order to develop a well-targeted, proportionate and effective RIA system in Mauritius that is also as quick and easy to implement as possible. It builds on selected elements from the 2012 OECD Recommendation on Regulatory Policy and Governance (see Annex A) and is structured around some of the main areas outlined in the OECD's Best Practice Principles for RIA (see Annex B): political commitment and stakeholder buy-in; governance of RIA (including oversight); capacity and accountability in the public administration, and methodological aspects.¹

Political commitment and buy-in for RIA

It is important to develop RIA as part of a comprehensive long-term strategy to enhance regulatory quality. Moreover, sufficient guarantees need to be provided that RIA will be effectively implemented in a sustainable manner, and efforts must be deployed to secure stakeholder support for the initiative.

RIA is gaining political momentum...but further efforts will be required

The meetings conducted during the OECD fact-finding mission served to confirm that there is great interest and political momentum for developing a RIA framework in Mauritius as well as an appetite to understand in detail how it can work in practice. In particular, the Prime Minister announced the establishment of such a framework in his budget speech of June 2019. In the same vein, high-level officials at the EDB and key public sector authorities consistently showed their awareness of the project's relevance and their willingness to cooperate and provide operational support.

A key challenge in this respect will consist of ensuring that this high-level political backing withstands the test of time (e.g. seemingly competing priorities may emerge, the political landscape may evolve...). Setting credible internal as well as external constraints guaranteeing effective RIA implementation appears as an important step to address this challenge (see Section 3 for more details). Ensuring stakeholder buy-in of RIA, for example by mobilising stakeholders from civil society, the private sector, academia, Parliament and the media, could also be valuable in this respect. Doing so will entail overcoming existing obstacles in order to enable further public control and engagement. An example of such obstacles is the fact that, at present, little publicity is given to either legislative planning or analysis and deliberation underlying rulemaking in Mauritius.

Stakeholder engagement is also critical insofar as it increases the quantity and quality of information available to governments on which to base policy decisions. It also helps to increase ownership, acceptance and compliance, thus reducing enforcement costs down the line. The use of regulatory policy tools, particularly RIA, has made stakeholder consultation increasingly necessary for collecting and checking empirical information for analytical purposes, measuring expectations and identifying non-evident policy alternatives, including non-regulatory options, when making a policy decision.

It has become apparent that a culture of consensus, consultation and collaboration across ministries and agencies, often taking place early in the regulatory process, exists in Mauritius. This should be considered an asset to be built upon. However, the fact that policy making in the country relies heavily on informal consultation means there are risks of regulatory capture as certain stakeholder groups seem to be involved more extensively than others. Certain impacts as well as their distribution may be overlooked as a result. In addition, it is unclear how inputs gathered through stakeholder consultations feed into the decision making process as there is limited transparency and accountability in this respect. In a nutshell, stakeholder consultation during the regulatory process seems to be aimed at securing “political” backing rather than at genuinely understanding the potential implications of laws and regulations for those ultimately affected by them.

Representatives from the business community have questioned the relevance of existing practices, particularly concerning the role of private sector. They notably point out that consultation tends to happen on an *ad hoc* basis, depending on “sensitivity, inclination and habit”. Feedback on, and consideration of inputs provided are also variable and, according to stakeholders, they are often left without feedback on their contributions. Moreover, they indicated that the business community is not among the constituencies consulted on a systematic basis by the Law Reform Commission as part of its work.

It will also be important to bear in mind the lessons learned from the 2015 pilot RIA. Certain key ministries (e.g. those for health and labour) were not involved in this process. The project's goal was to raise awareness about RIA and its merits. However, while it received public funding, there was not sufficient

ownership and results were never made public. It seems that RIA was not perceived (by responsible ministries in particular) as a useful means of improving the regulatory and decision making processes concerning their respective policy areas. One key challenge in this respect will therefore consist of ensuring that RIA is perceived and understood as a whole-of-government undertaking that requires ongoing extensive involvement from across the administration. A related challenge has to do with implementing RIA as part of a “regulatory policy ecosystem” enabling the appropriate linkages between legislative planning, *ex ante* assessment and *ex post* evaluation.

Governance and institutional culture

Mauritius possesses key assets, including political stability, strong institutions and a transparent and well-defined investment code and legal system. Moreover, it has enacted anti-corruption legislation over the years that could help create a conducive environment for the development of RIA; e.g. 2002 Prevention of Corruption Act, which led to the setting up of an Independent Commission Against Corruption (ICAC) (Africa Legal Network, 2015^[1]).

In the area of financial products and services, Global Legal Insights (GLI) refers to recent changes in the Mauritian legislation which “correspond with the approachability of regulators in Mauritius and their willingness and accordingly respond to industry needs in a commercial manner, while at the same time protecting the Mauritius brand”. GLI mention that these changes “also seek to address uncertainties investors may be having, to realign the present regulatory framework with OECD/BEPS requirements” (Global Legal Insights, n.d.^[2]). This solid institutional framework, which attaches great importance to the rule of law and integrity, as well as examples of high responsiveness in adapting to a changing environment appear to be a good basis for the development of a RIA framework.

Certain idiosyncratic factors will however need to be addressed if RIA is to be implemented successfully. One of these factors has to do with the need to develop an evidence-based approach to decision making in a context where examples of *ex ante* impact assessment of laws and regulations are limited. Some of the stakeholders consulted described Mauritius’ current rule-making system as being characterised by *ad hoc* checks rather than systematic and institutionalised *ex ante* scrutiny. In addition, some stakeholders spoke of a tendency towards “legislation inflation” due, among other reasons, to competition across ministries to have their proposed legislation passed as a priority.

There was also a general acknowledgement that the rule-making system suffers from a lack of planning and anticipation, thus relying excessively on amendments introduced by the Executive (notably via the Finance Act). Stakeholders consulted also agreed that RIA would help address these shortcomings and avoid delays and uncertainty. Another important issue has to do with the insufficient visibility of legislative planning (already alluded to in the previous sub-section), without which the successful implementation of RIA will be compromised. Indeed, some of the stakeholders consulted pointed out that it is not always possible to know sufficiently in advance which pieces of legislation are to be introduced into the National Assembly.

In addition, no regulatory oversight body exists in Mauritius at present.² As will be discussed in Section 3, oversight is critical for the effective implementation of RIA, and Mauritius possesses a number of institutions that could usefully undertake oversight functions. A key related challenge will consist of putting in place the appropriate coordination mechanisms.

Capacity within the public administration: RIA-related skills and competences in ministries and regulatory bodies

Ensuring that the appropriate skills and competences are available in the Mauritian administration is critical for embedding RIA into existing policy-making and decision-making processes. This involves raising awareness about the purpose of RIA as a medium- to long-term investment in enhancing the quality of regulation and, ultimately, socioeconomic well-being (as opposed to a “silver bullet”). It also entails building capacity at the technical and methodological level.

Lack of relevant RIA-related skills across the Mauritian administration emerged as one of the preliminary findings of the first field mission. As part of this project, OECD officials will be delivering two capacity building workshops; OECD country member experts will be involved in one of them. A set of RIA guidelines will also be produced. Given the varying levels of knowledge and awareness of RIA-related concepts, methods and practices among officials of the Mauritian public administration, it will be important to target the recipients of the project’s training activities and materials carefully and design their content appropriately.

In addition, some of the stakeholders consulted have warned about capacity shortcomings, particularly in line ministries, which owe to high turnaround (thus creating a need for management staff to be involved on an ongoing basis to oversee the process) as well as to a lack of relevant skills. The same stakeholders considered having a “RIA team” in each ministry as unfeasible due to resource constraints.

In the same vein, some stakeholders have indicated that the existing system, which relies on informal consultation and checks, does not always place sufficient responsibility on the proponents of legislation (generally line ministries). In other words, clearance obtained from a legislative drafting or political standpoint should not be interpreted as a waiver on *ex ante* regulatory impact assessment but rather as an opportunity to ascertain the potential implications and suitability of a given proposal in detail. This suggests a strong need for setting up accountability and performance-oriented arrangements throughout the administration, as advocated in a number of OECD guidance documents.

Targeted and appropriate methodology for RIA

Problem definition and consideration of all plausible options

The OECD’s Best Practice Principles state that no RIA can be successful unless the policy context, problem to be addressed and related objectives are clearly defined and all plausible options are considered (as opposed to merely presenting the preferred option upfront). These are all pre-requisites for a robust, evidence-based analysis.

The recurrent use of legislative amendments in Mauritius suggests that one of the challenges that the country will be facing as far as RIA implementation is concerned relates to an absence of systematic identification of the problems (and related needs) that proposed legislation is meant to address. In the same vein, according to some of the stakeholders consulted, the rule-making process in Mauritius seems to rely on consensus around the appropriate solutions instead. This situation may also lead to unjustified regulations and difficulties in monitoring and assessing the effectiveness and efficiency of regulations. In addition, several stakeholders indicated that implementation and enforcement of regulations are still far from optimal in many cases. This suggests that regulatory delivery is not systematically taken into account as part of the problem definition or decision making processes.

A related challenge has to do with the fact that all plausible alternatives, including non-regulatory policy options, do not seem to be considered in a systematic fashion. The OECD were informed by Government officials during the fact finding mission that non-regulatory solutions to policy problems can be considered

during the decision making-process. In practice, however, laws and regulations seem to be the preferred and almost “default” instrument when it comes to implementing the policies formulated in strategic reference documents. This may be owing, in part, to the eminently legal focus of the decision-making processes and related internal guidelines. It is also not entirely clear the extent to which the choice of a given policy option is underpinned by evidence as opposed to internal agreement or consensus.

Availability of data and information

Governments need information that is as relevant and comprehensive as possible to identify the best course of action. Data availability is essential for a meaningful problem definition, a careful analysis of the alternative solutions available, and an estimation of the compliance and enforcement costs associated with each of the options under consideration. All potential sources of unbiased data (academia, statistical institutes, etc.) need to be mobilised to this end.³

There are reliable statistical data sources in the country, namely official statistics from Statistics Mauritius as well as those collected by the Revenue Authority (which only covers tax-paying entities). In addition, there are some examples of collaboration between government and academia on *ex ante* analysis that could be built upon; e.g. Ministry of Business officials declared that they carried out surveys and received assistance from the University of Mauritius when preparing their contribution to the technical committee on the minimum wage (although neither their input nor the findings of committee were published).

Given the limited RIA experience and tradition, data that can inform either *ex ante* impact assessment or monitoring and evaluation are not collected systematically. This represents a noteworthy challenge from a RIA implementation perspective. There are, however, examples of growing awareness and incipient attempts at collecting relevant data; e.g. monitoring of implementation and effectiveness of legislation to prevent illegal real estate development. These could be built upon to develop a systemic approach to identifying data requirements at an early stage of regulatory design as well as a strategy for the collection, processing, sharing and exploitation of relevant data (see section 3 for more details). This will also need to take into account the potential risks of “survey fatigue” that some of the stakeholders consulted have warned about. Ongoing efforts to promote digitalisation of the government’s functioning and operations may also be capitalised upon to this end.

Although this aspect will not be discussed at length in this report, it is important to note that identifying data requirements early in the process is also likely to prove beneficial in terms of improvements to the RIA development process and better and clearer measurement of progress towards regulatory policy goals.

Notes

¹ The Best Practice Principles refer to an additional area, “continuous monitoring, evaluation and improvement of RIA”. Given the baseline situation in Mauritius, which currently has no RIA system in place, this aspect is not discussed separately here but referred to, as appropriate, throughout the report. The full draft Best Practice Principles can be found in Annex B.

² As discussed in section 1 of this report, the Attorney General’s Office is involved in translating Government policy into legal text, verifying the quality of the legislative drafting in proposed legislation and ensuring its constitutionality.

³ See also Korea’s e-RIA in Section 3 for an example of institutional linkages to enhance data availability and access to data.

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3

Preliminary options for establishing a RIA framework in Mauritius

This section presents a range of options for embedding RIA within the rule-making process in Mauritius, based upon the strengths and challenges identified in the previous section. To do so, it also draws on lessons learned from RIA implementation in a range of countries and an initial benchmarking of RIA-related best practices and guidance material from various relevant jurisdictions.

Key messages

- There is a case for the Government of Mauritius to build upon current momentum and consider how it can ensure widespread political and stakeholder commitment for implementing a RIA framework.
- Ongoing engagement with external stakeholders is a crucial factor, including publicity of the RIA process and adequate consultation on RIA drafts, which has been shown to enhance the quality of both the debate and the final RIA document.
- RIA should not be considered in isolation. It needs to be fully integrated with other regulatory management tools throughout the policy cycle, and a functioning legislation planning system is needed.
- Evidence shows that institutionalising regulatory oversight is crucial for effective RIA, as is a proportionate and well-timed approach. While there is no one-size-fits-all solution, locating oversight functions close to the centre of government can contribute to their effectiveness. Although regulatory oversight functions do not need to be carried out by a single body, effective co-ordination between these functions is crucial for success.
- Existing constraints, notably in terms of capacity and expertise, suggest that a gradual approach to RIA implementation would be better adapted to the current situation in Mauritius.
- Providing adequate training to officials on RIA processes and methodologies is crucial; this report describes options for rolling out training and promoting widespread RIA awareness. It also presents international examples of how administrations promote accountability for RIA.
- It is crucial to select a robust RIA methodology that can be implemented effectively within the administrative context and incentivises officials to integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals. This methodology should remain simple and flexible, particularly at the start, and incorporate broad-based public consultation.
- There is scope for Mauritius to use RIA to explore the use of alternatives to regulation (which tends to appear as the only possible course of action) in various policy areas.
- It is essential that officials in charge of RIA identify all groups of stakeholders who would be impacted and how. They should consider all possible direct and indirect impacts to enable a meaningful comparison of alternative options that could in principle address the problem identified.

This section focuses on presenting the different options for embedding RIA within the rule-making process in Mauritius, based upon the strengths and challenges identified in the previous section. To do so, it also draws on lessons learned from RIA implementation in a range of countries and an initial benchmarking of RIA-related best practices and guidance material from various relevant jurisdictions.

As in the previous section, the reference framework for this section consists of the OECD's RIA Best Practice Principles (see Annex B), as well as Principle No. 4 of the 2012 OECD Recommendation on Regulatory Policy and Governance (see Annex A). This section follows the same basic structure of the RIA Best Practice Principles.

Political commitment and buy-in for RIA – how to ensure support?

In Section 2, it was noted that there is great interest and political momentum for developing a RIA framework in Mauritius. There is a case for the Government to build upon this momentum and consider how it can ensure widespread political commitment for implementing a new RIA framework within the administration and from key external stakeholders.

Ongoing engagement with external stakeholders is a crucial factor, including publicity of the RIA process and adequate consultation of RIA drafts, which has been shown to increase the quality of the debate and the final RIA document. In addition buy-in from external stakeholders creates *demand* for good RIA and provides mechanisms making policy makers and civil servants more accountable for their decisions to these stakeholders.

Developing a whole-of-government policy

Political commitment has always been an important factor for RIA to be successfully integrated into regulatory policy. International examples of countries implementing RIA have highlighted that a number of factors can militate against its use, including bureaucratic inertia, political need for speed, an appetite to adopt certain politically sensitive proposals without much scrutiny, etc. OECD best practice points to a number of key methods that governments can use to show their commitment towards RIA in the long run, although these are dependent on the nature of a country's system of governance.

The vast majority of OECD countries have adopted an explicit regulatory policy promoting government-wide regulatory reform or regulatory quality and established dedicated bodies to support the implementation of regulatory policy. Almost all OECD countries have formal requirements for the production of RIA for the development of both primary laws and subordinate regulations. They also generally have a specific minister or high-level official who is accountable for promoting government-wide progress on regulatory reform.

There are a variety of examples of countries that have implemented RIA based on a law (Korea, Mexico); a Prime Ministerial decree or guidelines of the Prime Minister (Australia, Austria, Czech Republic, France, Italy, Netherlands); or a cabinet directive or cabinet decision (Canada, Denmark, Finland, Ireland, New Zealand, Norway, United Kingdom, Portugal) (OECD, 2004^[1]). According to the World Bank, evidence from case studies in developing countries suggest that “there may be merit in capitalizing on the strong political commitment often enjoyed at the early stages of RIA reform by seeking a formal/legal integration of RIA in the policy-making process...they would send a credible signal and navigation point for relevant stakeholders”. (Ladegaard, Lundkvist and Kamkhaji, 2018^[2]). However, the implementation of such an approach also depends on the historical background administrative culture and commitment of high-level officials of a given country.

The introduction of RIA also provides Governments with the opportunity to consider different types of outreach activities to clearly communicate the goals of RIA, both internally (ministries and agencies) and externally (stakeholders like Parliament, universities, think tanks, mass media...) and present it as a pivotal tool for enhancing regulatory quality. Importantly, regulatory policy could also help to link RIA more clearly with the Government's policy overall priorities, thereby reinforcing its relevance to government officials and stakeholders.

Key options for Mauritius to consider for developing a whole-of-government policy include:

- Which institutional setups have worked previously to drive progress in other policy areas; e.g. setting up an inter-ministerial committee, comprising ministers from key ministries to set the strategic guidelines for RIA implementation.
- How Mauritius could establish a mandate on ministries to carry out RIA including using primary legislation or, alternatively, implementing RIA through administrative rules.
- What methods could be applied to clearly communicate the goals of RIA, both internally and to external stakeholders. Enhancing stakeholder engagement to secure support for RIA.

Securing stakeholder support for RIA is essential to create consensus on a given RIA policy and secure support by key constituencies over time. In most of the countries that have successfully introduced RIA, the centre-of-government has been instrumental in convincing government officials of the

need to draft high quality RIAs also by creating expectations among, and a constant dialogue with, external stakeholders. Governments should view stakeholders as beneficiaries of their policies and an integral part of regulatory policy. Stakeholder engagement, and regulatory policy more generally, should be predicated on the capacity of citizens to articulate problems and offer possible solutions.

Accordingly, the draft OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy (see Annex E) recommends close co-operation with stakeholders when defining the problem to be solved by a new policy proposal, setting its objectives, identifying various alternative solutions (including non-regulatory ones) and assessing potential impacts of these alternatives, as well as when designing potential implementation mechanisms.

Countries use a wide spectrum of instruments and tools to engage stakeholders in regulatory policy. There are ample examples of attempts to involve stakeholders both in the development of new laws and regulations and the review of regulatory stock, but there is less evidence of attempts to engage stakeholders in regulatory delivery. Box 3.1 provides some strong examples of stakeholder engagement practices from Canada, Mexico and the European Commission, each of whom has a clear stakeholder engagement policy and engages with stakeholders throughout the regulatory cycle using a variety of methods.

As discussed in Section 2, Mauritius possesses a culture of consensus, consultation and collaboration across ministries and agencies. Ministries tend to conduct consultations on new legislative measures at a relatively early stage of the process, giving stakeholders the opportunity to participate. However, the informal nature of this consultation leads to a risk of *regulatory capture* as the government may habitually consult with similar stakeholder groups during the policy making process. There also seems to be no standardised practice on how to conduct regulatory consultation, including its length, scope, timing, and underlying procedures.

There are a number of options for Mauritius should consider for how it can build upon its long-established experience of stakeholder consultation to drive transparency in the legislative process, including:

- How to ensure that all stakeholders with an interest in rulemaking, in particular those who are usually least represented, can participate in the rule-making process.
- How to effectively integrate stakeholder consultation within a new RIA policy, including mandating at what point(s) of the regulatory cycle new regulatory proposals should be consulted upon.
- How to enhance transparency using stakeholder consultation.
- How to use stakeholder feedback in the RIA process and how it should inform decision making.

Box 3.1. Examples of good practice in consultations on regulatory impact analysis

In **Canada**, a variety of methods are used to involve stakeholders in consultations on RIAs. They include the use of emails, phone calls, third party-facilitated sessions, roundtable meetings and online consultations before the RIA is drafted. Regulatory proposals and their accompanying RIA are then pre-published in the Canada Gazette for public consultation. Stakeholders can highlight concerns regarding methodology or distributional impacts (e.g. undue burden placed on one region or industry) or submit alternative analyses. Departments and agencies must summarise the comments received, explain how stakeholder concerns were addressed, and provide the rationale for the regulatory organisation's response in the final RIA.

In **Mexico**, stakeholders are invited to comment on draft regulatory proposals and the accompanying RIA after they are submitted to the National Commission for Regulatory Improvement (CONAMER) for scrutiny. The general public can comment through the CONAMER consultation portal or send comments via e-mail, fax or letters. Consultations must be open for at least 30 working days; in practice, much longer consultation periods are the norm. CONAMER also uses other means to consult with stakeholders. These include advisory groups, media and social networks to diffuse the regulatory proposals and promote participation. Stakeholder comments are published on CONAMER's website and must be taken into account by CONAMER and the agency sponsoring the regulation.

The **European Commission**, in turn, attaches a great deal of importance to stakeholder consultation in the RIA process. Since 2015, Inception Impact Assessments, which contain an initial assessment of possible impacts and options to be considered, are prepared and consulted on for 4 weeks, before a full RIA is conducted. Following this initial feedback period, the Commission conducts public consultations of 12 weeks during the development of initiatives with an impact assessment. Legislative proposals and the accompanying full RIA are then published online for feedback for 8 weeks following approval of the proposal by the College of Commissioners. Draft subordinate legislation is consulted on publicly for 4 weeks.¹ All impact assessments and the related opinions of the Regulatory Scrutiny Board (RSB) are published online once the Commission has adopted the relevant proposal. Reports of evaluations and fitness checks and the related RSB opinions are also published online.

¹ As reported in the 2018 OECD Regulatory Policy Outlook, other countries such as Iceland have also taken steps to enhance stakeholder engagement. This country launched a new public consultation website in February 2018 that provides citizens and stakeholders with a single portal to view all draft laws and provide comments electronically (p. 196).
Source: (OECD, 2016^[3]); (OECD, 2017^[4]); (European Commission, 2019^[5]).

Governance of RIA: getting system design and set-up right

Governance is another key element in the design of a successful RIA system. Making the right choices with respect to a number of governance-related aspects is essential to trigger virtuous dynamics and sufficient incentives inside government. Three key aspects are discussed in this sub-section:

- The establishment of a regulatory oversight system, which involves allocating roles and responsibilities and defining tasks throughout the regulatory process, especially ensuring that regulatory management tools are used effectively.
- Putting in place the right mechanisms to facilitate the co-ordination of the RIA process across ministries as well as its management.
- Forward-planning of legislative activity – in the absence of which successful RIA implementation will be compromised.

Establishing regulatory oversight is crucial for effective RIA

Robust oversight is a cornerstone of effective regulatory policy, including tools such as RIA. The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance calls for countries to “establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory and thereby foster regulatory quality”. In the same vein, evidence from developing countries shows that the establishment of an oversight body and the formal integration of RIA procedures into the policy-making process are essential for successful implementation of RIA. (Ladegaard, Lundkvist and Kamkhaji, 2018^[2])

Effective regulatory oversight mechanisms incentivise civil servants to use regulatory management tools and follow due process to produce high-quality regulations that achieve their objectives and are aligned with long-term policy goals. Oversight can also help foster a whole-of-government perspective towards regulation, and performs essential co-ordination activities to ensure a homogenous approach to regulatory policy across the public administration. Moreover, it helps governments to establish credible commitments, align the incentives of different actors to attain policy goals, minimise risks of regulatory capture and, more generally, produce an optimal level of regulation (i.e. avoid both over- and under-regulation).

Box 3.2. Regulatory Oversight according to the 2012 OECD Recommendation

Principle 3 of the *2012 OECD Recommendation of the Council on Regulatory Policy and Governance* calls for countries to “establish mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy and thereby foster regulatory quality”. The Recommendation highlights the importance of “a standing body charged with regulatory oversight (...) established close to the centre of government, to ensure that regulation serves whole-of-government policy” and outlines a wide range of institutional oversight functions and tasks to promote high quality evidence-based decision making and enhance the impact of regulatory policy.

In line with the Recommendation, a working definition of "regulatory oversight" has been employed in the 2018 Regulatory Policy Outlook, which adopts a mix between a functional and an institutional approach. "Regulatory oversight" is defined as the variety of functions and tasks carried out by bodies/entities in the executive or at arm's length from the government in order to promote high-quality evidence-based regulatory decision making. These functions can be categorised in five areas, which however do not need to be carried out by a single institution or body. They are presented below.

Areas of regulatory oversight	Key tasks
Quality control (scrutiny of process)	<ul style="list-style-type: none"> • Monitor adequate compliance with guidelines / set processes • Review legal quality • Scrutinise impact assessments • Scrutinise the use of regulatory management tools and challenge if deemed unsatisfactory
Identifying areas of policy where regulation can be made more effective (scrutiny of substance)	<ul style="list-style-type: none"> • Gather opinions from stakeholders on areas in which regulatory costs are excessive and / or regulations fail to achieve its objectives. • Reviews of regulations and regulatory stock. • Advocate for particular areas of reform
Systematic improvement of regulatory policy (scrutiny of the system)	<ul style="list-style-type: none"> • Propose changes to improve the regulatory governance framework • Institutional relations, e.g. co-operation with international for a • Co-ordination with other oversight bodies • Monitoring and reporting, including report progress to parliament / government to help track success of implementation of regulatory policy
Co-ordination (coherence of the approach in the administration)	<ul style="list-style-type: none"> • Promote a whole of government, co-ordinated approach to regulatory quality • Encourage the smooth adoption of the different aspects of regulatory policy at every stage of the policy cycle • Facilitate and ensure internal co-ordination across ministries / departments in the application of regulatory management tools
Guidance, advice and support (capacity building in the administration)	<ul style="list-style-type: none"> • Issue guidelines and guidance • Provide assistance and training to regulators/administrations for managing regulatory policy tools (i.e. impacts assessments and stakeholder engagement)

Source: (OECD, 2018^[6]).

As shown in Box 3.2, the OECD has defined five key functions of regulatory oversight. Of these, three are directly related to RIA: quality control, co-ordination, and guidance, and advice and support.

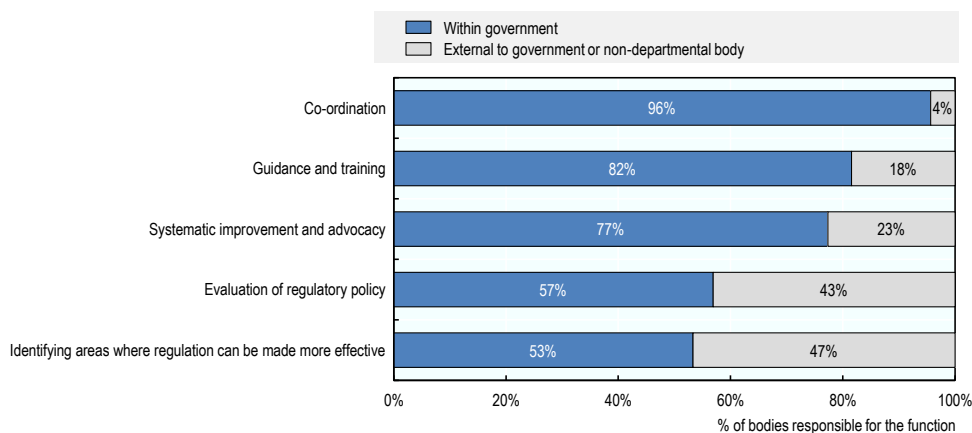
The function of quality control focuses on scrutiny of RIA and placing incentives on civil servants to conduct RIAs consistently and in a meaningful fashion. It concerns the respect of set procedures and methodological standards, consideration of relevant impacts as well as appropriate linkages with the rest of the policy cycle (including other regulatory policy tools, such as stakeholder consultation and *ex post* evaluation). Co-ordination, in turn, is essential to promote a whole of government, co-ordinated approach to regulatory quality as well as to ensure consistency in RIA implementation. The guidance, advice and support notably consists of providing appropriate guidance and helping to build RIA-related capacity.

To fulfil its role, a regulatory oversight body needs a consistent mandate, which entails a full range of powers to control, supervise and influence the activity of the ministries in charge of policy portfolios. In addition, the oversight body requires sufficient resources and attributions to carry out an active enforcement of activities, while overseeing the complete regulatory policy. Therefore, effective oversight bodies tend to encompass a core team that has a “cross-functional” nature, i.e. involving individuals with different backgrounds and skills, including economics, law, and political science.

The location of the oversight bodies is also an important consideration. The 2012 Recommendation of the Council on Regulatory Policy and Governance highlights the importance of “a standing body charged with regulatory oversight (...) established close to the centre of government, to ensure that regulation serves whole-of-government policy”. It stresses, however, that the specific institutional solution “must be adapted to each system of governance”; e.g. level of administrative centralisation, power distribution between the central government and ministries/agencies, legal and cultural specificities, sociodemographic factors, etc.

While there is no one-size-fits-all approach, institutionalising oversight bodies close to the centre of government can contribute to their effectiveness given the associated resource-intensive processes and the need for extensive co-ordination and information sharing across ministries, departments and agencies. Although the oversight functions do not need to be carried out by a single body, effective co-ordination between these functions is crucial for success. Here again, locating oversight functions close to the centre of government can help ensure appropriate co-ordination and dissemination of the necessary guidance and knowledge. Indeed, as shown in Figure 3.1, the co-ordination and guidance functions, which are crucial during the early stages of RIA development, are held by oversight bodies within government in the vast majority of reporting countries – whereas scrutiny functions are comparatively more often located outside of government or in non-departmental bodies.

Figure 3.1. Location of oversight functions



Source: (OECD, 2018^[6]).

The Mauritian Government has a number of options for developing a strong regulatory oversight body. As mentioned above, a very important consideration will be where to locate the oversight body within the administration. At the beginning, it would be more effective for Mauritius to follow OECD best practice and establish its oversight body as close to the centre of government as possible, in a part of the administration with a strategic overview of government activity and the authority to drive change. It would be useful for the Government to consider what has worked effectively in the past to drive whole-of-government policy reform; e.g. the inter-ministerial committee and technical committees set up to drive forward the “Doing Business” reforms.

Potential locations include the Prime Minister’s Office, which would represent strong political symbol of the government’s commitment to RIA, although it was reported to the OECD team that the office faces capacity constraints and would have limited capability to run and enforce an oversight function. The Ministry of Finance, Economic Planning and Development, in turn, possesses the strongest institutional levers to drive change across the Mauritian Government through its control of the budget process and possesses analytical experience, although this has been more narrowly focused on financial or budgetary impacts.

The Attorney General’s Office has a longstanding background in working across government on legislative drafting and ensuring that new laws are legal and constitutional. It also possesses a strategic view across the Legislature, Judiciary and the Executive. However, it has not had any role in policy development to date, nor does it possess sufficient analytical capacity.

There may also be a role to play for non-governmental public bodies. The Law Reform Commission has a strong record on working to improve regulatory quality through its function of reviewing and recommending changes to legislation. However, it also faces capacity constraints, including a lack of economic analysis expertise amongst its officials. The National Audit Office possesses a strong amount of analytical capacity, although they have had no role in policy development to date, and their work is predominantly *ex post* in nature.

Embedding a robust regulatory oversight system will require a gradual approach to developing the five oversight functions, which is adapted to the specificities of the Mauritian administration. The oversight functions that are more critical for the Government to implement in the short term would include co-ordinating and promoting a whole-of-government, concerted approach to regulatory quality, and providing guidance, advice and support on the RIA process.

It is imperative, particularly in the longer run, that Mauritius seeks to strengthen regulatory oversight and scrutiny and ensures these functions are implemented effectively. It will be particularly important to ensure that the key roles and responsibilities are clearly understood, tasks are well defined and regulatory management tools are used effectively.

Co-ordination and management of RIA

An effective RIA system needs to be co-ordinated and carefully managed across the central ministries of government and other law-making institutions such as parastatal organisations. Different parts of the government need the right incentives to systemically share information and pool expertise and knowledge. It is important to ensure there is sufficient understanding of RIA as a long-term governance reform that has substantial resource implications. For example, according to the World Bank, Greece adopted an extremely ambitious RIA program in 2006 but “low implementation capacity and a lack of co-ordinating body resulted in low quality RIAs, if any”. (Ladegaard, Lundkvist and Kamkhaji, 2018^[21])

If co-ordinating efforts are not instituted, officials involved in RIA will most probably be isolated from each other and not work in a concerted and efficient manner. **It is therefore important to consider which mechanisms are necessary in order to facilitate the co-ordination of the RIA process across ministries.** This sub-section briefly presents international examples that could serve as source of

inspiration in that respect. Box 3.3, for instance, presents how UK and Mexican authorities encourage co-ordination across government in their respective systems.

Box 3.3. Network of officials for regulatory policy, examples from OECD countries

In the **United Kingdom**, government departments with a responsibility for producing regulations in their respective policy areas and certain regulators have a Better Regulation Unit (BRU). A BRU consists of a team of civil servants that oversees the department's processes for better regulation and advises on how to comply with these requirements. It is at the discretion of each department to determine the scope of the BRU's role, its resourcing (i.e. staff numbers, composition of policy officials and analysts, and allocation of time on this agenda versus others) and position within the departmental structure. However, their functions generally include promoting the use and application of better regulation principles in policy making, advising policy teams on how to develop a RIA (or post-implementation review) including queries on methodology and analysis, and advising policy teams on the appropriate schedule to submit a RIA to the oversight body (the Regulatory Policy Committee) for scrutiny.

In **Mexico**, the heads of the entities and decentralised agencies of the federal public administration appoint officials who act as better regulation liaisons before CONAMER, and they are assigned specific tasks within the better regulation process. They are in charge of co-ordinating and enforcing this process within their own entities and agencies, submitting to CONAMER the better regulation programme related to the regulations and procedures they implement, as well as of signing and sending both drafts – regulations and procedures – that should be subject to the process of better regulation. These liaison officials should be deputy ministers or chief administrative officers, that is, hold the next level after the incumbents, which strengthens the process.

Source: (OECD, 2019^[7]).

In addition, a number of OECD countries have implemented ICT solutions to facilitate the RIA process operation and interaction between the ministries and entities that issue regulations and the oversight body. For example, in the Czech Republic, the Legislative Rules of the Government (a government resolution) stipulate the regulation-making process, including how ministries are expected to consult with each other during the policy making process. RIA is part of the dossier sent around to all ministries and central agencies for consultations, including the RIA Unit of the Government Office. The dossier is circulated electronically via an automatised process. As a general rule, anyone can comment on the quality of RIA and this happens systematically in practice. The inter-ministerial consultation process is enforced by the Legal Department of the Government Office. Further examples of how ICT can be used to improve RIA-related co-ordination are presented in Box 3.4.

Box 3.4. Selected examples of IT tools for RIA inter-ministerial co-ordination

Netherlands

Ministries can make use of a digital tool (*toetsloket*) to present a draft legislative proposal, including the accompanying RIA statement, to several scrutiny authorities throughout central government responsible for overseeing the quality of different aspects the RIA framework; e.g. the Ministry of Justice and Security provides scrutiny of legislative quality, whereas the Ministry of Economic Affairs and Climate scrutinises assessments of regulatory burdens on business. The scrutiny authority returns their comments on the draft through the portal, which the lead ministry also uses to responds to the

comments. The discussion is ended with the approval (or otherwise) of the draft (including any modifications) via the portal.

Slovakia

All legislative drafts and their accompanying impact assessments are published on the government portal www.slov-lex.sk at the same time as they enter the inter-ministerial comment procedure. The portal provides a single access point to comment on legislative proposals and non-legislative drafts (e.g. concept notes, green or white papers). It seeks to ensure easier orientation and search in legislative materials to facilitate the inter-ministerial consultation process. Both public authorities and members of the general public can provide comments on the legislative drafts and the accompanying material. Accompanying impact assessments to the legislative proposal are updated on the basis of comments received. Any feedback provided is part of the dossier submitted to the government for discussion.

Korea

Korea has developed a clear and relevant set of criteria to highlight regulation that is likely to require a full and detailed analysis. It pays attention to competition and trade considerations, including departures from international standards. In addition, central ministries are required to outline the intended evaluation plan as part of each RIA. To increase the quality of RIA and lessen the burden of preparing RIA statements in Korea, e-RIA was launched in 2015. It is linked to the national statistical database and provides the public officials who prepare RIAs the possibility to automatically obtain the necessary data for cost-benefit analysis, and a sufficient amount of descriptions and examples for all fields. As all fields are mandatory, e-RIA also prevents users (regulators) from omitting important data and information. RIAs are produced automatically upon completion of all fields.

Source: (Government of the Netherlands, n.d.^[8]); (OECD, 2016^[9]); (OECD, 2017^[4]).

Establishing a forward planning system

The OECD recommend that programming government policy and legislative work is a fundamental building block of regulatory policy to support a continuous policy cycle for regulatory decision-making. Consultation will be more effective and the RIA process easier to manage if there is clear forward planning of legislation.

Successful implementation of RIA will be compromised in the absence of a functioning legislation planning system. This includes a system for providing a forward look for upcoming legislation, such as those detailed in Box 3.5. As discussed in Section 2, there is no equivalent as of this yet in Mauritius. A legislative programme is developed by ministries at the beginning of a parliament, but it does not provide a complete overview of legislative activity. It is not published and thus cannot be used to inform stakeholder consultation processes.

It is important to consider which mechanisms would be suitable for establishing a system of forward planning for legislation. This could involve requiring ministries to submit plans for upcoming primary and secondary legislation as a first step towards a more targeted RIA programme. This would enable the Government to carry out a quick preliminary analysis of the scope of the legislation, stakeholders that would be impacted and the magnitude of potential impacts. Based on this preliminary analysis, a decision could be made on the necessary depth of RIA. It would be even more effective if this list could be collated as a forward plan, published and made available to all stakeholders to alert them about upcoming legislation.

Box 3.5. Forward planning on regulatory measures

A number of OECD countries have established mechanisms for publishing details of the regulation they plan to prepare in the future. Forward planning has proven to be useful to improve transparency, predictability and co-ordination of regulations. It fosters the participation of interested parties as early as possible in the regulatory process and it can reduce transaction costs by giving more extended notice of forthcoming regulations. .

In **Ireland**, primary laws are subject to a public forward agenda. Indeed, the Office of the Chief Whip prepares the government legislative programme for primary legislation for the upcoming parliamentary session. It publishes, along with a press release, the programme on the website of the Department of Taoiseach (government department of the Head of Government) before each parliamentary session. The Government Legislation Committee (GLC), chaired by the Government Chief Whip, oversees the implementation of the programme in close co-operation with the Office of the Parliamentary Counsel to the Government (OPC). It makes recommendations to the government in relation to the level of priority that should be given to the drafting of each bill. The point of this procedure is to anticipate blockages that might occur in the process and recommend actions to avoid any delays in the drafting process.

In **Sweden**, work flows from the government's political agenda, based on the coalition agreement at the start of each political term. The Prime minister's Office submits a list of upcoming bill proposals twice a year to the parliament. The annual Budget Bill also indicates the direction of reforms. It gives significant information about priorities, including new legislation for the coming years. The government also informs the *Riksdag* annually about appointed Committees of Inquiry and their work (*kommittéberättelsen*, the Committee Report). These documents are available on the government's website.

The **Korean** Futuristic Regulatory Map analyses and predicts the current and future trends of industrial convergence and technological development in the fields of emerging industry. Based on such analysis, the Futuristic Regulatory Map provides a forward-looking plan for regulatory reform. It provides a direction for future policy reforms, a plan for improvement of existing regulations. The Futuristic Regulatory Map is a specific project focused on one precise field; nevertheless, it illustrates a good practice of forward-planning based on the expected needs for regulatory improvement.

Source: (OECD, 2017^[10]).

Targeted and appropriate RIA process and methodology – *how to carry out RIA*

If Mauritius is to use RIA in a systematic way, the government needs to carefully design the RIA process to be followed across the government that is targeted towards where it can add the greatest value and select an appropriate methodological approach in order to compare the costs and benefits of proposed regulations. This sub-section discusses some of the key aspects deserving consideration in this respect: key RIA steps; methodological choices available; practical application of the proportionality principle; and data collection and the evidence base.

Establishing a RIA process

The OECD RIA Best Practice Principles have set out the key elements that should be integrated into any effective RIA framework. However, **it should be noted that RIA is an iterative process**; therefore some of the steps might be performed repeatedly using inputs from the subsequent ones.

It is crucial that RIA is implemented effectively within the administrative context and incentivises officials to integrate RIA into the early stages of the policy process for the formulation of new regulatory proposals. No RIA can be successful without defining the policy context and objectives, in particular the systematic identification of the problem that provides the basis for action by government. Poor problem identification might lead to unjustified regulations and difficulties in monitoring and assessing the effectiveness and efficiency of these regulations.

As in many developing nations, the typical approach to regulatory interventions in Mauritius can leave little room for the use of non-regulatory alternatives to intervene and solve problems and regulations generally appear as the only possible way to intervene. Therefore there is scope for Mauritius to use RIA to explore the use of alternatives to regulation in various regulatory and policy fields.

The RIA process that Mauritius implements should be as simple and flexible as possible (particularly at the start), while encompassing certain key features. Being able to adapt to the needs of decision-makers (e.g. ministry officials and ministers) is key to maintaining the relevance of RIA. However, at a minimum, the Government should ensure that every process of RIA for Mauritius should *follow the best practice steps* summarised above.

Selecting a RIA Methodology

Various RIA methodologies can be used to compare positive and negative impacts of regulation, including qualitative and quantitative methods, cost-benefit analysis and multi-criteria methods, partial and general equilibrium analysis (see a summary of other methodologies available for RIA in Box 3.6).

Box 3.6. Choosing the right methodology: Towards more sophisticated RIA methods?

One of the key challenges in performing RIA is the choice of the most appropriate methodology to assess the impacts and compare alternative regulatory options. A first important choice to be made is the choice of whether to perform a partial equilibrium analysis or a general equilibrium analysis. The latter typically requires modelling abilities, and as such can and should be chosen only when a number of specific conditions are met: in particular, indirect impacts have to appear significant, and spread across various sectors of the economy; in addition, there must be sufficient skills within the administration, or the possibility to commission a general equilibrium modelling analysis from a high-quality, reliable group of researchers inside or outside the administration.

General equilibrium analysis is preferred by many scholars for its ability to capture very dispersed indirect impacts of regulation. For the time being, however, it is likely that the overwhelming majority of administrations will continue to use partial equilibrium analysis in RIA. However, where a regulation will materially affect one or more closely related markets or will have diverse and far-reaching effects across the economy, a general equilibrium framework is required to assess these impacts. When performing partial equilibrium analysis, typically the methodological choices available to administrations are the following:

- Least-cost analysis looks only at costs, in order to select the alternative option that entails the lowest cost. This method is typically chosen whenever benefits are fixed, and the administrations only needs to choose how to achieve them.
- Cost-effectiveness analysis (CEA) entails that administrations quantify (not monetise) the benefits that would be generated by one USD of costs imposed on society. The typical method used to compare options is thus the so-called benefit-cost ratio, which means dividing the benefits by costs. This method is normally used to all expenditure programs, as it leads to identifying the “value for money” of various expenditure programs. A typical question that can

be answered through cost-effectiveness analysis is “how many jobs will be created for every Dollar invested in this option?”; or, “how many lives are saved by every Euro spent on this option?”.

- Cost-benefit analysis (CBA) entails the monetisation of all (or the most important) costs and benefits related to all viable alternatives at hand. In its most recurrent form, it disregards distributional impacts and only focuses on the selection of the regulatory alternative that exhibits the highest societal net benefit. Accordingly, the most common methodology in cost-benefit analysis is the “net benefits” calculation, which differs from the “benefit/cost ratio” method that is typically used in cost-effectiveness analysis (being benefit minus costs, rather than benefits divided by costs).
- Multi-criteria analysis allows a comparison of alternative policy options along a set of pre-determined criteria. For example, criteria chosen could include the impact on SMEs, the degree of protection of fundamental rights, consumer protection, etc. Multi-Criteria Analysis is particularly useful when Impact Assessment has to be reconciled with specific policy objectives, and as such is used as an instrument of policy coherence. This method is more likely to capture distributional impacts, although this crucially depends on the criteria chosen for evaluating options.

Source: (OECD, 2015^[11]).

RIA methodologies should be tailored to the specific needs of each country. Cost-Benefit Analysis (CBA) is one methodology that has been applied successfully but the complexity of the methodology varies across and even within countries. Rather than always engaging in quantitative CBA, it is essential that the Mauritian officials in charge of RIA identify all groups of stakeholders who would be impacted and how they will be impacted. They should consider all possible direct and indirect impacts to enable a meaningful comparison of alternative regulatory options that could in principle address the problem identified.

There are a number of options for the Mauritian administration in implementing its RIA methodology. It could begin with a simpler RIA approach with single- or multi-criteria qualitative analysis, and then gradually move to more quantitative analysis (CBA or other). It has also been common for countries to start looking at administrative burdens or regulatory costs first before developing a whole-of-government approach that analyses all costs and benefits of proposed regulations. It could be a long-term goal for the Mauritian administration to move toward using full CBA in its RIA framework.

For example, the Government of Portugal has chosen a gradual approach to rolling out its system of RIA. When introduced in 2017, the Portuguese approach to RIA (named Legislative Impact Analysis) required policy makers to qualitatively describe benefits and to quantify the impact of new regulations on businesses. It also included an SME test and a competition impact assessment. The Technical Unit for Legislative Impact Assessment (UTAIL) was established to provide oversight and support for the new RIA. In 2018, ministries were required to assess legislative impacts on citizens and as of 2019 also impacts on public administration.

There are a number of options through which the Mauritian Government could develop a RIA methodology that follows international best practice. This programme of work could be overseen by the section (or sections) of government tasked with the new regulatory oversight function. The Mauritian Government may consider focusing the RIA methodology more narrowly at first, either by choosing a more qualitative approach to describing the impacts of regulation or assessing costs to business or administrative burdens, before broadening it out to analyse the wider societal costs and benefits of regulatory proposals. For proposals that are estimated to be high-impact, ministries should be required to

conduct a more detailed quantitative RIA analysis (using the methodology set out in the new RIA manual). For lower-impact proposals, the RIA manual should state that less detailed analysis can be provided.

The proportionality principle: “don’t use a cannon to kill a fly!”

Many OECD countries have acknowledged that not every regulation or proposal needs the same level of scrutiny. In fact, the RIA process itself should pass a (rough) CBA – the costs and time to develop and analyse a regulatory proposal should be clearly outweighed by the positive effect that this has of improved policy decisions or regulatory quality. Therefore, it is important the resources used to develop a policy scale with the size of the problem and its solution.

Accordingly, many OECD countries and the EU have a tiered approach to RIA that uses proportionality and threshold tests. Some countries require lighter analysis (“light”, preliminary” or “small” RIA) for all regulations and a more thorough analysis for selected draft regulations with more significant impact. Regulations are exempt from a RIA in certain cases, such as national emergencies. In other cases, policymakers are required to undertake a full RIA if the proposal has a certain level of impact or meets certain qualitative criteria.

The OECD’s RIA Best Practice Principles have pointed to a number of options for sorting out which legislative proposals have to go through a certain level of analysis:

- Setting quantitative thresholds (e.g. potential impacts over USD 100 million in the USA).
- Introducing a set of criteria on issues such as the extent of the impact on competition, market openness, employment, productivity, innovation, investment as well the number of people affected by the proposed regulation.
- Applying multi-criteria analysis.¹
- Setting a general principle of proportionate analysis (such as the one used by the European Commission). The choice of how deep the RIA should be can be left to the administration itself, based on the principle of proportionality. At the same time, such choice requires the scrutiny of an oversight body able to intervene and suggest a deeper analysis in case the proportionality principle has not been applied.

Box 3.7 presents a number of other relevant examples from selected jurisdictions illustrating how the proportionality principle is applied in practice.

Box 3.7. Selected examples of proportionate approaches of RIA

United States: A RIA is required for significant and economically significant regulatory actions as defined under Executive Order 12866 and Executive Order 13563. An economically significant regulatory action is one that:

- is likely to impose costs, benefits, or transfers of \$100 million or more in any given year;
- adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The United States defined “major” rules in 1981 as those which are likely to impose annual costs exceeding 100 million or those likely to impose major increases in costs for a specific sector or region, or have significant adverse effects on competition, employment, investment, productivity or innovation.

An RIA is required for economically significant regulations. In defining “economically significant,” OMB (2011a) states, “The 100 million threshold applies to the impact of the proposed or final regulation in any one year, and it includes benefits, costs or transfers.” The word “or” is important: the categories are considered separately, not summed, so 100 million in any of the three categories – annual benefits, or costs, or transfers – is sufficient.

For example, a regulation with USD 5 million in benefits, USD 60 million in costs, and USD 40 million in transfers is not economically significant. An RIA is also required for regulations deemed to be significant for other reasons and is an essential element of good regulatory practice.

United Kingdom: the UK addressed this issue by requiring a formal preliminary assessment to be undertaken, which provides a general understanding of the size of likely regulatory costs and forms the basis for determining what level of assessment will subsequently be required. An alternative approach is to provide only qualitative guidance as to the level of analysis of compliance costs (or other RIA elements) that is required. Where there is a requirement for compliance cost assessments to be assessed and approved by a regulatory reform body, this approach implies that actual practice will be determined to some extent by negotiation between this body and the ministry preparing the assessment.

In UK, impacts on business, charities and voluntary sector are considered in determining whether the RIA threshold has been crossed. Clearly, the welfare economics perspective underlying RIA would suggest that, whatever the threshold used, it should be assessed in terms of impact on any sector in society, rather than being limited to impact on certain sectors.

Mexico: Mexico specifies three levels of required RIA and distinguishes between them by a combination of both quantitative cost thresholds and qualitative judgments as to whether the regulation would have non-eligible impacts on employment or business productivity. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a “calculator for impact differentiation”, where as a result of a 10 questions checklist, the regulation can be subject to a High Impact RIA or a Moderate Impact RIA, where the latter contains less details in the analysis.

South Korea: the Korean test requires quantitative RIA to be undertaken if it affects more than 1 million people and/or 10 million Won, there is a clear restriction on market competition or a clear departure from international standards.

Netherlands: the Netherlands approach to “filtering” regulation for RIA purposes is different again. It has long used a two-step RIA process, where the results of a preliminary RIA are assessed by the regulatory reform authority to determine whether a full RIA must be completed and which RIA tests must be applied to the proposal.

Australia: Preliminary Assessment determines whether a proposal requires a RIA (or a RIS, regulation impact statement as they call it) for both primary and subordinate regulation (as well as quasi-regulatory proposals where there is an expectation of compliance). A Regulation Impact Statement is required for all Cabinet submissions. This includes proposals of a minor or machinery nature and proposals with no regulatory impact on business, community organizations or individuals. A RIA is also mandatory for any non-Cabinet decision made by any Australian Government entity if that decision is likely to have a measurable impact on businesses, community organizations, individuals or any combination of them.

Belgium: applies a hybrid system. For example, of the 21 topics that are covered in the RIA, 17 consist of a quick qualitative test (positive/negative impact or no impact) based on indicators. The other 4 topics (gender, SMEs, administrative burdens, and policy coherence for development) consists of a more thorough and quantitative approach, including the nature and extent of positive and negative impacts.

Canada: applies RIA to all subordinate regulations, but employs a Triage System to decide the extent of the analysis. The Triage System underscores the Cabinet Directive on Regulatory Management's principle of proportionality, in order to focus the analysis where it is most needed. The development of a Triage Statement early in the development of the regulatory proposal determines whether the proposal will require a full or expedited RIA, based on costs and other factors:

- Low impact: cost less than CAD 10 million present value over a 10-year period or less than CAD 1 million annually
- Medium impact: Costs CAD 10 million to CAD 100 million present value or CAD 1 million to CAD 10 million annually
- High impact: Costs greater than CAD 100 million present value or greater than CAD 10 million annually

New Zealand employs a qualitative test to decide whether to apply RIA to all types of regulation. Whenever draft regulation falls into both of the following categories, then RIA is required: i) the policy initiative is expected to lead to a Cabinet paper, and ii) the policy initiative considers options that involve creating, amending or repealing legislation (either primary legislation or disallowable instruments for the purposes of the Legislation Act 2012).

European Commission: a qualitative test is employed to decide whether to apply RIA for all types of regulation. Impact assessments are prepared for Commission initiatives expected to have significant economic, social or environmental impacts. The Commission Secretariat general decides whether or not this threshold is met on the basis of reasoned proposal made by the lead service. Results are published in a roadmap.

Source: (OECD, 2015^[12]).

There are a number of mechanisms that the Government of Mauritius could consider for targeting RIA efforts, in order to allocate analytical resources to where they could potentially deliver the greatest added value.

- Establishing a forward planning process (see sub-section on “Establishing a forward planning system”) as a first step towards a more targeted RIA programme.
- Determining the depth of RIA analysis that should be carried out for legislative proposals that are classified as “low impact” and “higher impact” RIAs.
- Defining a list and/or criteria of any regulatory proposals that will be exempted from RIA because they do not have any major impact on regulated parties.

The importance of data collection

Data quality, an essential element of proper analysis, has been recognised as one of the most challenging aspects of RIA because it can be time- and resource-consuming and requires a systematic and functional approach. A poor data collection strategy can mean that appropriate evidence to conduct good analysis is lacking.

For effective implementation of RIA, sound strategies on collecting and accessing data must be developed. Policy making should strive to utilise all potential sources of unbiased data (academics, institutes of statistics, etc.) in order to ensure that governments take the best possible course of action, based on the most complete information set available. This issue is becoming even more pertinent in the era of “big data”.

The availability of data is essential for each step of RIA, i.e. for a meaningful problem definition, for a careful analysis of the alternative solutions available, and for an estimation of the compliance and enforcement costs associated with each of the alternative policy options. It is increasingly important that policy makers rely on statistical institutes in order to ensure that they have a complete and constantly evolving data to draw upon when developing RIA.

The information that RIA requires can be collected in numerous ways. An important procedure to integrate data for RIA takes place during the consultation process. There are, however, other sources for data collection (see Table 3.1, which is also relevant for the sub-section on developing technical capacity for RIA later in this document). In addition, data collection can be classified as primary (collected for the purpose of RIA) or secondary (derived from data previously collected for other purposes). Exploiting all available secondary data helps to limit RIA-related costs and avoid stakeholder disaffection.

Table 3.1. Addressing skills and data requirements for RIA

Source	Action
1. In-house expertise of economists; lawyers and analysts	1. Define problem; analyse its extent through in-house knowledge and expertise, and existing studies and information.
2. Commission research and studies	2. Commission statistics from national research institutes; statistics organisations or consultants, e.g. cost-benefit analyses.
3. Dedicated RIA training	3. Training in quantitative techniques and analysis is imperative, so as to develop a public sector capacity to conduct RIAs.
4. Networking for RIA	4. Establish a central network to provide mutual support for those conducting RIAs and also where “best practice” from international experience can be shared.
5. International data and “best practice”	5. Availability of EU sources – EUROSTAT data, and EUROBAROMETER surveys; and evidence in previous EU reports, studies and green papers. Other international material available from OECD and World Bank.

Source: Ferris (2006), Good RIA Practices in Selected EU States, p. 6.

It is important to consider which mechanisms would be suitable for ensuring that relevant data are available for RIA, while considering how to use integrate the data from Statistics Mauritius (and other secondary sources) into the RIA process.

Developing technical capacity for RIA

This sub-section firstly discusses the main aspects that need to be considered to ensure the availability of the necessary skills and capacity for RIA, both from a methodological standpoint and in terms of building ownership of the RIA system over time. It then presents various options that can be considered for a gradual introduction of RIA in Mauritius – which is advisable given existing skills and capacity constraints.

How to strengthen RIA capacity in the government

As discussed in Section 2, there is presently insufficient technical capacity amongst officials within the Mauritian administration to prepare robust RIAs. Where any analytical capacity does exist at present, it is specific to the policy area, e.g. the Ministry of Finance, Economic Planning and Development has analytical capacity in analysing the financial impact of new regulations, whilst the Ministry of the Environment and Sustainable Development contains expertise in conducting Environmental Impact Assessments and Strategic Environmental Assessments.

Ensuring that ministries are capable of complying with procedural requirements and meeting quality standards is a fundamental factor to increase the chances that RIA reforms in Mauritius last and perform on a sustained basis. Officials in ministries and regulatory bodies charged with carrying out RIAs, as well as those within the regulatory oversight function, must have the skills to prepare high-quality RIAs, including an understanding of the role of RIA in ensuring regulatory quality and an understanding of methodological requirements and data collection strategies. **Training must therefore be provided to civil servants involved in RIA.**

Beyond the technical need for training in RIA, training communicates the message to officials that RIA is an important issue, recognised as such by the administrative and political hierarchy. It can be seen as a measure of the political commitment to RIA principles. It also fosters a sense of ownership for reform initiatives, and enhances co-ordination and regulatory coherence.

According to the World Bank, the effectiveness of RIA training may be limited unless capacity-building efforts focus on clear targets and on-the-job requirements: “RIA reforms should focus less on broad and generic RIA training, but rather be targeted to specific RIA requirements of the country. It seems important that training efforts are well measured, anchored and led by the reforming country, and that experience and knowledge can feed into further developments and learning. Training will only become efficient and useful to motivate reluctant civil servants if they know they will be rewarded through their ability to master RIA in their daily work.” (Ladegaard, Lundkvist and Kamkhaji, 2018^[2])

Key areas that should be covered by RIA training include techniques for problem definition, setting policy objectives, identifying alternative solution, impact assessment, stakeholder engagement, and implementation of RIA. Training should to the extent possible focus on real-life practical examples and case studies, and aim at developing capacity over time (i.e. not a one-off experience). Detailed guidance material on both the procedural requirements associated with RIA and the substantive aspects of RIA preparation should be published. An overview of key aspects to be considered with regard to the training of regulators in this area is provided in Box 3.8.

In addition, pilot projects can be used to make RIA training more targeted and relevant, which helps secure buy-in of the officials who are to implement RIA. These can range from the large-scale rolling out of RIA in selected government departments to very small-scale, half-day workshops to discuss a particular RIA with policy makers and stakeholders. (Adelle et al., 2015^[13])

Box 3.8. “Train the regulators”

Regulators must have the skills to conduct high-quality RIA. They should clearly understand the methodological and data collection processes and the role RIA plays in assuring regulatory quality. The stringency of RIA requirements should be progressively increased as the skills and capacities of the regulating ministries improve.

It is particularly important to provide training in the early stages of a RIA programme, when both technical skills and the cultural acceptance of the use of RIA as a policy tool need to be cultivated.

However, a high level of investment must be maintained over time, to counter staff turnover and assist in developing the broader cultural changes that must be achieved across entire organizations.

One way to improve RIA is to incorporate RIA training into national training programmes for the public administration.

RIA manuals and other guidelines are important complements to training, but not a substitute for it. A guidance manual can be less effective if it is perceived as too legalistic, excessively detailed, or impractical. The best materials seem to be those that are simple and based on concrete examples or case studies, and provide straightforward, practical guidance on data collection and methodologies.

Published guidelines should be updated frequently to reflect changes in specific RIA requirements, especially in light of the need for RIA to gain progressively in rigour and scope as skills and experience accumulate within an administration. It is also important to ensure that published materials accurately reflect new learning about regulatory tools, methods and institutions.

Source: (OECD, 2005^[14]).

Governments should publish detailed guidance material, typically covering both the procedural requirements associated with RIA and the substantive aspects of RIA preparation. In addition, guidance on various analytical techniques should be made available. Given the technical nature of RIA techniques (such as CBA), general RIA guidance documents sometimes refer readers to separate, more detailed guidance documents. More recently, a number of countries have developed software-based tools² that can be used to assist in RIA development. These calculators are, in some countries, accessible also to stakeholders, who can calculate the costs of current, drafted or potential regulations or associated changes.

The OECD also recommend that accountability- and performance-oriented arrangements should be implemented in accordance with the legal and administrative system of a given country. These can include: i) making draft RIAs public and subject to public consultation; ii) specifying the name of the responsible person for every regulatory proposal that is tabled by government and published online; iii) including the evaluation of RIA work as an element in the evaluation of the performance and the determination of productivity of the civil servant; iv) specifying that skills in RIA are an element to be considered for career promotion to specific high-responsibility positions in the administration.

It is therefore crucial that a programme of capacity building is undertaken on RIA in Mauritius.

Accordingly, the following aspects will need to be considered:

- Ensure that sufficient financial and human resources are allocated that allow for the establishment of a dedicated RIA capacity within the oversight function and ministries – RIA is not a cost free activity and will require sustained investment.
- Consider where to focus capacity building initiatives in the short and then longer term to ensure that sufficient technical capacity is built up.
- Develop detailed guidance material covering both the procedural requirements associated with RIA and the substantive aspects of RIA preparation.
- The Government should ensure that ministry officials preparing RIAs have a clear point of contact to approach for advice and training requests throughout the policy process.
- Create informal mechanisms to share experiences and good practices among RIA experts at a technical level.
- Consider what accountability- and performance-oriented arrangements could be implemented within the government.

Implementing RIA: at once or gradually?

Embedding RIA and building capacity within the Mauritian system will not be a sprint but a careful and thorough race that needs to sink into the culture of the public administration. OECD best practice suggests that Governments need to decide whether to implement RIA at once or gradually. **Existing constraints, notably in terms of capacity and expertise, suggest that a gradual approach would be better adapted to the current situation in Mauritius.** Once the above-mentioned preconditions are met, various possible paths can be considered for the gradual introduction of RIA:

- A pilot phase, then the institutionalisation of RIA for all or all major regulations.
- Starting with a simplified methodology, and then expanding it.
- Starting from some institutions, and then expand RIA to others.
- Starting from major regulatory proposals, and then lower the threshold to cover less significant regulations.
- Starting with binding regulation and then moving to soft-law.
- Starting with qualitative analysis, and then gradually moving to quantitative analysis (CBA or other).
- From concentrated RIA expertise to more distributed responsibilities.

Mauritius is clearly at an early stage of its pathway to RIA. As part of this project to institute a RIA framework, the OECD has assisted the Mauritian administration in running one RIA pilot. This pilot has been carried out according to good practices and quality standards and it could be used to “sell” the benefits of deploying the tool. The sample of “proper RIAs” could be expanded over the years, as capacities and familiarity with the tool increase. It will be critical that the Mauritian Government considers how to ensure that the lessons learned from pilot RIAs are capitalised upon, taken forward and disseminated throughout the administration.

Notes

¹ For example in Switzerland, a more complex RIA is required when three criteria from a list of 10 are met.

² In Mexico, a regulatory impact calculator was introduced in 2010, as part of a broader set of regulatory policy reforms, allowing regulators to identify potential impacts of their draft regulation. This is a software tool consisting of ten questions to determine the type of RIA to be conducted.

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4

OECD recommendations for establishing RIA in Mauritius

This section presents the OECD recommendations for establishing a RIA framework in Mauritius that is firmly embedded within the country's rule-making process. These recommendations build on the analysis of the strengths and challenges of the policy-making system and the lessons learned from RIA implementation in a range of countries, as set out in the earlier sections. They also draw upon the outcomes of the stakeholder workshops. They are structured around four main priorities: ensure political commitment and stakeholder buy-in; establish robust governance for RIA; establish an appropriate RIA process and methodology, and ensure the development of relevant RIA-related capacity over time.

Key recommendations

- To foster political commitment across the government, an Inter-Ministerial RIA committee should be set up. It should be chaired by the Prime Minister and include, at a minimum, Ministers or Permanent Secretaries from the key regulatory ministries.
- A formal government-wide policy to promote regulatory quality should be developed which clearly mandates ministries to carry out RIA on prospective primary and secondary legislation. It should stipulate the need to use RIA in a consistent manner with other regulatory management tools: stakeholder engagement and *ex post* evaluation.
- The requirement on ministries to carry out RIA should be established through a legal mandate, i.e. a “RIA Act”. The RIA Act should also define the institutional arrangements that are necessary for effective RIA implementation, with special attention to regulatory oversight functions, and could also spell out the basic steps in the RIA process.
- For regulatory oversight purposes, a dedicated RIA office could be established through the RIA Act that would be in charge of key oversight functions of quality control, co-ordination of the RIA process and provision of guidance and training. The RIA office would report to the Prime Minister’s Office.
- Given capacity constraints, in the short term, it may be advisable to focus the RIA requirement upon the key regulatory ministries. In the medium to long term, all government ministries would be required to conduct RIA.
- Appropriate capacity for RIA should be developed as a strategic priority for the implementation of RIA Mauritius. Relevant capacity includes technical and methodological skills as well as awareness and understanding of the importance of RIA as a policy-improving tool and mind-set, of related roles and responsibilities, and of procedural aspects - including stakeholder engagement and information gathering. The Government should ensure that there are designated RIA officers within each ministry, who will undergo mandatory RIA training and act as focal points for RIA-related matters.
- A RIA methodology should be adopted that is as simple and flexible as possible while ensuring certain key features are covered. In the short-term, this could consist of a simple RIA approach such as qualitative multi-criteria analysis and then gradually incorporate quantitative analysis techniques, such as Cost-Benefit Analysis. This methodology should take into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.
- A principle of proportionality should be established within the new RIA policy stressing that policy teams should target RIA towards regulatory proposals with the largest expected socioeconomic impacts. A triage process should be used by ministries, and overseen by the new RIA Office, to determine which proposed require full detailed RIAs.
- Implementation and enforcement of proposed regulations must be considered an integral part of RIA. Delivery of laws and regulations is complex and involves a variety of actors who need to be part of the RIA process if it is to be effective in enhancing regulatory quality.
- Consultation practices on laws and regulations should be further clarified and systematised. The new RIA Act should contain a requirement that regulatory proposals must undergo stakeholder consultation at both early-stage (at the inception of the policy making process); and at a later stage once draft legislative proposals are available. A consultation website could be developed to facilitate public engagement.

- A framework enabling the appropriate monitoring and evaluation of the RIA system should be defined and implemented by identifying appropriate metrics including performance indicators and clearly allocating responsibilities for monitoring and evaluation; e.g. reporting requirements and involvement in data gathering, processing and analysis.

This section builds on the structure of the OECD RIA Best Practice Principles while providing concrete recommendations tailored to the administrative setting of Mauritius. The reference framework for these recommendations is the same as used in the earlier sections of this report, and includes the OECD RIA Best Practice Principles (OECD, 2020^[1]) as well as Principle No. 4 of the 2012 OECD Recommendation on Regulatory Policy and Governance (OECD, 2012^[2]). It draws upon the long-standing expertise of the OECD Regulatory Policy Committee in this area, including the substantial country work carried out through dedicated Regulatory Policy Reviews and through the Regulatory Policy Outlook series. Recommendations relate to four main priorities: *ensure political commitment and stakeholder buy-in; establish robust governance for RIA; establish an appropriate RIA process and methodology, and ensure the development of relevant RIA-related capacity over time.*

Ensure political commitment and stakeholder buy-in for RIA

Priority 1: Ensure political commitment and broad-based stakeholder buy-in for RIA

Develop a whole-of-government policy on regulatory quality, including RIA as a central element. In order to have the highest level of political commitment, the Cabinet should endorse the policy.

- Require ministries to carry out *ex ante* RIA on prospective primary and secondary legislation through a legal mandate (RIA Act).
- Introduce RIA as part of a comprehensive long-term plan to enhance the quality of laws and regulations.
- Stipulate the need to use RIA in a consistent and mutually supporting manner with stakeholder engagement and *ex post* evaluation.
- Clearly allocate leadership, responsibilities and operational duties throughout the stages of the policy and regulatory process.
- Set up a cross-government ministerial RIA committee to provide the strategic orientations for regulatory policy reform and champion its implementation across government.

Conduct outreach and communication actions to ensure an appropriate understanding of the goals and relevance of RIA, and renew them over time as appropriate.

- They should be aimed at both internal and external stakeholders, with special attention to critical constituencies such as MPs, line ministries and civil society representatives.
- They should explain the purpose of the RIA framework and present it as a pivotal tool for enhancing regulatory quality and thus prosperity and well-being, especially RIA's direct link with better policy making and the Government's policy priorities such as the Improving Business and Investment Climate project and Vision 2030.

Put in place a consultation policy to clarify and systematise consultation practices on laws and regulations.

- Embed in the legal mandate establishing the RIA framework should contain a requirement that regulatory proposals must undergo stakeholder consultation. The consultation activities undertaken should be proportionate to potential impacts.
- Stakeholder engagement should include 1) early-stage consultation in the form of discussion groups representing all relevant categories of stakeholders (at the inception of the policy making process); and 2) general public consultation once draft legislative proposals are available accessible to all stakeholders.
- Make the draft regulatory proposal and the corresponding RIA available for consultation for a minimum period of time (3 to 6 weeks).
- Provide feedback on the results of the consultation process by summarising the comments received and explaining how the draft regulatory proposal has evolved following the consultation process; then produce an updated RIA document and make it publicly available before the proposal is submitted to Cabinet.

Develop a RIA consultation website that:

- Centralises and includes all regulatory proposals and the corresponding RIA under consultation.
- Allows regulated parties to send their comments, and that they are made public.
- Allows ministries and entities issuing regulation to reply to the comments, make them public and inform about actions undertaken in response to consultation outcomes.

In Section 3, it was established that political commitment and effective stakeholder engagement have been critical to the success of RIA projects internationally and their sustainability over time. There are a number of best practice measures to ensure ongoing political commitment to RIA implementation and to enhance the ongoing engagement with external stakeholders in the rule making process, including ensuring adequate publicity of the RIA process. External stakeholders will play a critical role in creating demand for good RIA as well as holding successive administrations to account if RIA is not fully implemented. The National Assembly has, in this context, an important role to play to help develop evidence-based policy making (see the sub-section “Ensure Parliament’s active involvement in the RIA process”).

Establish a whole-of-government RIA policy

The OECD RIA Best Practice Principles state that it is necessary for Governments to create frameworks that will secure RIA in practice and will counter any efforts to avoid or undermine it, including bureaucratic inertia, political pressure, or an appetite to adopt certain politically sensitive proposals without much scrutiny. Political commitment has always been an important factor for the successful take up of RIA as a systematic undertaking by line ministries in the development of laws and regulations. To make sure this political commitment and buy-in are sustained, Mauritius should, among other measures, introduce RIA as part of a comprehensive long-term plan to enhance the quality of laws and regulations. **In order to establish a whole-of-government RIA policy, a number of recommended actions are set out below which can mostly be taken forward in the short term.**

To foster political commitment, it is recommended to set up an Inter-Ministerial RIA committee comprising high level officials and meeting regularly to champion the uptake of RIA practices and, chaired by the Prime Minister and including, at a minimum, Ministers or Permanent Secretaries from ministries producing the largest amounts of regulation.¹ All ministries and regulatory agencies could however be invited to participate.

The committee would be in charge of setting out the strategic orientations for regulatory policy reform and championing its implementation across government, thereby ensuring appropriate co-ordination and providing political support to the work of the new technical body entrusted with the appropriate implementation and oversight of the RIA framework, later on denominated the RIA Office (see the sub-section “Put in place an effective regulatory oversight mechanism that ensures the critical functions of quality control, co-ordination, and guidance, advice and support”). It is recommended for the ministers from the ministries represented on the committee to meet at least twice a year and the respective Permanent Secretaries to meet more frequently (possibly four times a year) especially during early implementation stages.

Several examples exist of institutional arrangements that could constitute relevant references for offsetting up such a committee. One of them, from the government of the UK, is provided in Box 4.1. The examples of the inter-ministerial committee and technical committees set up to drive forward whole-of-government policy reform in a number of areas of business regulation (“Doing Business”) would also be worth considering.

Box 4.1. Composition of the UK’s Reducing Regulation Sub-Committee (RRC)

In the government of the United Kingdom, the Cabinet and Cabinet Committees are groups of ministers that can take collective decisions that are binding across government. Cabinet Committees reduce the burden on Cabinet by enabling collective decisions to be taken by a smaller group of ministers. The composition and terms of reference of Cabinet Committees are a matter for the Prime Minister. They are each supported by a secretariat of Cabinet Office officials.

The RRC, which was abolished in 2019, was responsible for overseeing the Government’s policy on better regulation, including the principles of good regulation. Any new regulatory measure, needed clearance from the RRC (in addition to any other relevant Cabinet committees) before it could proceed. The RRC was composed of the following Cabinet Ministers:

- Secretary of State for Business, Energy and Industrial Strategy (Chair)
- Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office
- Lord Chancellor, Secretary of State for Justice
- Secretary of State for International Trade
- Secretary of State for Environment, Food and Rural Affairs
- Lord President of the Council, Leader of the House of Commons
- Chief Secretary to the Treasury
- Minister of State for Employment
- Minister of State at the Department for Exiting the European Union
- Parliamentary Under Secretary of State at the Department for Business, Energy and Industrial Strategy.

Source: (UK Government, 2020^[3]).

In addition, it will be crucial to develop a formal government-wide policy to promote regulatory quality including a requirement to conduct *ex ante* RIA as part of a broader toolbox of good regulatory practices. This policy should clearly mandate that ministries must carry out RIA on prospective primary and secondary legislation. It should also stipulate the need to use RIA in a consistent and mutually supporting manner with other regulatory management tools with which it is inextricably linked: stakeholder engagement and *ex post* evaluation. Doing so is necessary to enhance regulatory quality and demonstrate

the benefits from better regulatory design. Mauritius's policy for regulatory quality should also clearly allocate leadership, responsibilities and operational duties throughout the stages of the policy and regulatory process. In order to have the highest level of political commitment, the Cabinet should endorse the policy to promote active involvement from line ministries and their public entities.

To ensure the continuity of the RIA across different governments as well as consistency in implementation, **the requirement on ministries to carry out RIA should be established through a legal mandate**, i.e. through an Act of Parliament, hereinafter referred to as the "RIA Act". This could be further stipulated by placing requirements to conduct RIA into the Procedure Manual for Legislation as well as into the Cabinet Manual (Cabinet Office, 2018^[4]).

The RIA Act should also define the institutional arrangements that are necessary for effective RIA implementation, with special attention to regulatory oversight functions (see the sub-section "Put in place an effective regulatory oversight mechanism that ensures the critical functions of quality control, co-ordination, and guidance, advice and support" for further details).

The new RIA framework would be expected to apply to both primary legislation and secondary legislation (regulations). RIA requirements should, as a matter of principle, apply to all ministries and regulatory agencies. In the short term, during the early stages of implementation, whilst resources are limited and the administration builds up its capacity to conduct RIAs, it may however be advisable to focus the requirement upon the key regulatory ministries: Finance & Economic Planning, Health & Wellness, Commerce & Consumer Protection, Environment, Solid Waste Management & Climate Change and Local Government and Disaster Risk Management. In addition, priority could be given to those regulatory proposals that are expected to have significant impacts on business and economic activity.² Experience acquired by performing RIAs can act as a demonstration effect upon other ministries, and lessons can be shared on best practice.

In the medium to long term, all government ministries would be required to conduct RIA. The policy should also establish that RIA should be proportional to the significance of the regulation (see the sub-section "Define clear processes and criteria to ensure a proportionate approach to RIA").

The RIA policy should set out the basic elements and steps of the RIA process that ministries have to follow; e.g. problem definition, identification of regulatory alternatives, and selection of the regulatory option providing the greatest net benefit. These steps of the RIA process may be spelled out in the RIA Act itself, although in a way that is compatible with the above-mentioned proportionality approach. The RIA handbook to be delivered by the OECD team will provide information on the practical steps and emphasise that RIA should be started in the early stages of the public policy design (see the sub-section "Establish a RIA process" for more details) so as to effectively contribute to evidence-based decision making.

The RIA policy should spell out what the Mauritian government consider to be "good regulation". Box 4.2 and Box 4.3 provide further details on the OECD RIA Best Practice Principles and Canada's regulatory quality principles respectively. Additional relevant examples include Australia's Principles of best practice regulation (Australian Government, n.d.^[5]) and New Zealand's Government Statement on Regulation: Better Regulation, Less Regulation (New Zealand Government, 2017^[6]). The RIA policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised.

The policy should specify that consultation is an essential element of policy making and, ideally, foresee two stages of consultation: the early consultation and the general public consultation once the proposal is available. It should also foresee the systematic and timely publication of RIA-relevant documents. Please refer to the section "Promote enhanced stakeholder engagement as an integral part of the RIA process" for further details.

In addition, the government should run an outreach campaign in the short term to clearly communicate the goals and relevance of RIA. Outreach and communication efforts should then be renewed over time as appropriate. They should be aimed at both internal and external stakeholders, with special attention to critical constituencies such as MPs, line ministries and civil society representatives. Outreach and communication efforts should explain the purpose of the RIA framework and present it as a pivotal tool for enhancing regulatory quality and thus prosperity and well-being. In addition, it would be valuable to organise public relations and training activities (e.g. forums, seminars, interviews, communicational campaigns) explaining the use and importance of RIA and its direct link with better policy making and the Government's policy priorities (notably the *Improving Business and Investment Climate* project and *Vision 2030*).

Box 4.2. OECD Regulatory Quality Principles

The OECD RIA Best Practice Principles state that governments should abide by the following principles when developing new regulations:

1. Administrations should only intervene when necessary.
2. Regulations should lead to achieving the stated policy goals.
3. Proposed solutions should be appropriate to the risk posed, and costs identified and minimised.
4. The processes and rules for developing, amending and reviewing regulations should be clearly set and followed consistently.
5. Administrations should be open, and keep regulations simple and user-friendly.
6. Administrations must be able to justify decisions, and be subject to public scrutiny.
7. Both regulations and regulation-making processes should be simple and easy to understand.
8. All stakeholders should have an opportunity to express their views.

Source: (OECD, 2020^[1]).

Box 4.3. Regulatory Quality Principles in Canada

Countries considering the introduction of a policy for regulatory quality across the whole of government face the issue of where and how to start the process of embedding regulatory policy as a core element of good governance. An incremental approach has worked in some settings, such as the Netherlands or Denmark, while other countries like the United Kingdom, Australia or Mexico have used a more comprehensive approach.

In **Canada**, the first whole-of-government policy was introduced in 1999 with the *Government of Canada Regulatory Policy*, which was replaced by the *Cabinet Directive on Streamlining Regulations* in 2007, the *Cabinet Directive on Regulatory Management* in 2012 and the *Cabinet Directive on Regulation* in 2018. The latest version of the Directive sets out the government's expectations and requirements in the development, management, and review of federal regulations. It outlines four guiding principles for departments and agencies:

1. *Regulations protect and advance the public interest and support good government:* Regulations are justified by a clear rationale in terms of protecting the health, safety, security, social and economic well-being of Canadians, and the environment.
2. *The regulatory process is modern, open, and transparent:* Regulations, and their related activities, are accessible and understandable, and are created, maintained, and reviewed in an open, transparent, and inclusive way that meaningfully engages the public and stakeholders, including Indigenous peoples, early on.
3. *Regulatory decision-making is evidence-based:* Proposals and decisions are based on evidence, robust analysis of costs and benefits, and the assessment of risk, while being open to public scrutiny.
4. *Regulations support a fair and competitive economy:* Regulations should aim to support and promote inclusive economic growth, entrepreneurship, and innovation for the benefit of Canadians and businesses. Opportunities for [international] regulatory co-operation and the development of aligned regulations should be considered and implemented wherever possible.

Source: (OECD, 2019^[7]).

Promote enhanced stakeholder engagement as an integral part of the RIA process

Securing stakeholder support for RIA is essential to create consensus on a given RIA policy and secure support by key constituencies over time. In most of the countries that have successfully introduced RIA, the centre-of-government (defined as the body or group of bodies that provide direct support and advice to heads of government and the council of ministers, or cabinet) has been instrumental in convincing government officials of the need to draft high quality RIAs also by creating expectations among, and a constant dialogue with, external stakeholders. Governments should view stakeholders as beneficiaries of their policies and an integral part of regulatory policy. Stakeholder engagement, and regulatory policy more generally, should be predicated on the capacity of citizens to articulate problems and offer possible solutions.

Stakeholder engagement and RIA are two tools that must be developed hand in hand and could gradually make a difference to the quality of interventions the government of Mauritius uses to achieve public policy goals. In order to strengthen stakeholder engagement practices and ensure their effective articulation with the RIA framework, the following actions are recommended, as explained below.

In the *short term*, the government should clarify and systematise the consultation practices on laws and regulations.³ There should be clear expectations in terms of how open and balanced public consultation in the process of developing legislation should be. The new RIA Act should contain a requirement that regulatory proposals must undergo stakeholder consultation. This should include:

1. early-stage consultation in the form of discussion groups representing all relevant categories of stakeholders (at the inception of the policy making process); and
2. general public consultation once draft legislative proposals are available accessible to all stakeholders, e.g. through a dedicated government website.

Stakeholder engagement efforts should be proportionate to the significance and potential impact of regulations under consideration. **The Government should issue the necessary guidance to establish stakeholder engagement as a flexible and open but necessary process with the following characteristics:**

- The guidance should specifically focus on guiding civil servants through the early stages of the legislation-making process, setting up discussion groups, ensuring representativeness of the process, etc. More systematic training to public officials on stakeholder engagement techniques should be provided following the issuance of the guidance. The new RIA Handbook to be developed by the OECD team will outline further methodological guidance on undertaking stakeholder engagement as part of the RIA process.
- The draft regulatory proposal and the corresponding RIA should be made available for consultation for a minimum period of time. Typical length ranges from 3 to 6 weeks according to the OECD 2015 Regulatory Policy Outlook (very much in line with WTO's requirement of 30 days for notification of technical regulations).
- Ministries should endeavour to provide feedback on the results of the consultation process by summarising the comments received and specifying the extent to which the draft regulatory proposal has evolved following the consultation process. They should then produce an updated RIA document and make it publicly available before the proposal is submitted to Cabinet.
- The published RIA document should provide stakeholders with detailed and substantive information on the costs and benefits of regulatory proposals considered, including the underlying analysis, sources of information and alternative options considered (for more information on the RIA template see the sub-section "Establish a RIA process based upon best practice").

In addition, the Inter-Ministerial RIA committee could consider inviting external stakeholders from the private sector, academia and the civil society with a view to benefiting from targeted expertise and a diversity of viewpoints on the matters under consideration.

In the *short to medium term*, Mauritius should consider developing a consultation website, that:

- Centralises and includes all regulatory proposals and the corresponding RIA under consultation.
- Allows regulated parties to send their comments, and that they are made public.
- Allows ministries and entities issuing regulation to reply to the comments, and that they are made public.
- Allows ministries and entities issuing regulations to publish the document summarising all the comments received and the actions that will be taken to address the relevant ones.

The Government of Mexico has developed a comprehensive stakeholder engagement process, with various opportunities for both domestic and international stakeholders to input into the development of regulations or standards (see Box 4.4 for more information). In addition, Box 3.1 in Chapter 3 provides a number of examples of good practice from a range of countries internationally.

Box 4.4. RIA consultation in Mexico

Mexico has several different means for stakeholder consultation, during the process of development of subordinate regulations, technical regulations, or both.

Stakeholder engagement for all subordinate regulations and NOMs (Mexican Official Standards)

All subordinate regulations and NOMs are submitted to public consultations as an integral part of the RIA process. As soon as CONAMER (National Commission for Regulatory Improvement) receives a regulatory draft and the accompanying RIA, both are submitted to public consultation, until the publication, in the Official Gazette, of the definitive regulation. In parallel, the regulatory project can be made public on the website of the Ministry or the regulatory agency. Quality is ensured by CONAMER who publishes and considers the comments and inputs from stakeholders, and submits a final opinion on the RIA. In practice, beyond this procedure, regulators may choose to consult with stakeholders at

their own initiative in the early stages of drafting. To verify whether regulators chose to do so, the RIA questionnaire includes a section to verify the conduct of prior consultations. Regulators are asked to indicate among others which means they used to conduct stakeholder consultations, and particularly if authorities from foreign countries or international organisations were consulted (question 18).

Additional stakeholder engagement processes for NOMs

The NOM development process opens various opportunities to engage with stakeholders. They are consulted both while drafting the NOMs and after the publication in of the drafts in the Official Gazette, as follows:

- Regulators developing NOMs must do so within the framework of an established National Advisory Committees for Standardisation (*Comités Consultivos Nacionales de Normalización*, or CCNN). These committees are themselves composed of private stakeholders, as well as social, academic and consumers' representatives.
- When a draft NOM is published in the Official Gazette. This publication opens a consultation period of 60 days. After the 60-day period, each CCNN analyses the comments received and responds to them. The responses are also published on the Official Gazette. After this consultation, the final NOM is published on the Official Gazette. The process is overseen by the Ministry of Economy.

Beyond these procedures, regulators may receive feedback on their regulations from foreign stakeholders or countries through the WTO notification process.

Source: (OECD, 2018^[8]).

Establish robust governance for RIA in Mauritius

Priority 2: Establish robust governance for RIA in Mauritius

The government should gradually put in place an effective regulatory oversight mechanism. In the short term, establishing the following oversight functions should be prioritised:

- Co-ordinating and promoting a whole-of-government, concerted approach to regulatory quality.
- Providing guidance, advice and support on the RIA process (including capacity building).
- Preliminary scrutiny and quality control by providing constructive feedback on RIA design and execution in the short term.

In medium to long term, the “challenge” functions of regulatory oversight should be further developed: checking that due process is followed, controlling the quality of RIA analysis and underlying evidence, and the function of monitoring and evaluating the effectiveness of the RIA process (including reporting to senior political leaders and Parliament as appropriate).

Ensure Parliament's active involvement in the RIA process by means of information and awareness raising actions to ensure that MPs are both willing and able to use RIA results as part of their work. In the longer run, set up a dedicated parliamentary committee to assess the evidence base underpinning regulatory proposals and request adjustments as appropriate. As capacity and expertise are developed, such a committee could also take up a visible role in post-legislative scrutiny, possibly in co-operation with the Law Reform Commission.

Make the regulatory process more predictable by establishing a forward planning system, and link it as appropriate to the budgetary process for greater visibility.

Develop and implement a systemic approach to enable and foster appropriate co-ordination and management of the RIA process by:

- Ensuring the systematic sharing of draft RIAs and legislative drafts between ministries. To do so, build upon the notification process that will inform the proposed legislative forward planning system as well as existing consultation and information-sharing mechanisms currently used in the budgetary process.
- Develop a “RIA” community of practice through exchanges amongst regulators and between regulators and the oversight body in charge of the co-ordination and guidance functions by designating RIA officers within ministries to act as focal point for RIA-related matters and act as a government-wide network for dialogue, exchange of promising practices and timely dissemination of relevant information.

Monitor and evaluate the outcomes and performance of Mauritius’ RIA system on the basis of a transparent framework; assess, on a regular basis, the outcomes and performance of RIA in Mauritius and identify options for improvement. It would be advisable for such assessments, which could take the form of annual reports, to be communicated upon and to be made publicly available

Put in place an effective regulatory oversight mechanism that ensures the critical functions of quality control, co-ordination, and guidance, advice and support

In Section 3, it was established that an appropriate regulatory oversight mechanism for RIA is a determining factor for its success. The need for robust mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy, and thereby foster regulatory quality, is indeed a key tenet of the 2012 OECD Recommendation on Regulatory Policy and Governance. As previously mentioned, the OECD has defined the key functions of regulatory oversight, of which three are directly related to RIA: *quality control, co-ordination, and guidance, advice and support* (the definitions of these functions were set out in Section 3 under the sub-section “Establishing regulatory oversight is crucial for effective RIA”).

The co-ordination and guidance functions are especially important during the early stages of RIA development as they help foster uptake and consistent application. These functions are generally held by oversight bodies within government in the vast majority of OECD countries, although there are a variety of institutional arrangements. **In light of Mauritius’ institutional set-up and administrative culture, it may be worth considering the establishment of a dedicated RIA office** that would be in charge of key oversight functions and whose functioning would be governed by the RIA Act (see the sub-section “Establish a whole-of-government RIA policy”). The RIA office would moreover act as secretariat providing technical and administrative support to the Inter-Ministerial RIA committee. It would report to the Prime Minister’s Office. Giving the RIA office a reporting relationship to the Prime Minister’s Office would represent a strong political symbol of the government’s commitment to RIA.

For accountability purposes, the RIA office could periodically provide update reports on the RIA framework’s implementation progress and results to the Inter-Ministerial RIA committee. It would also inform the National Assembly of its work and undergo parliamentary scrutiny as appropriate. However, it should be able to carry out its regulatory oversight functions autonomously, and should be sufficiently endowed with financial resources and analytical capacity. In order to provide illustrative examples of the level of supporting staff resources available to regulatory oversight bodies internationally, Table 4.1 shows that this varies from 4 FTE staff (the Technical Unit for Legislative Impact Assessment in Portugal), 5 FTE staff (the Regulatory Impact Assessment Board in the Czech Republic), to 15 FTE in the *Nationaler*

Normenkontrollrat in Germany and 27 FTE staff in the UK Regulatory Policy Committee. It should be noted that the bodies presented in the table differ from each other in terms of mandate and tasks performed, so comparisons may not be straightforward. Other comparable bodies include the Mauritius' Procurement Policy Office and Belgium's Administrative Simplification Agency.⁴

For brevity and ease of reference, the remainder of this report assumes the establishment of a RIA office for regulatory oversight.

In the short term, during the early stages of RIA implementation, the oversight functions that should be given priority are: (1) co-ordinating and promoting a whole-of-government, concerted approach to regulatory quality, and (2) providing guidance, advice and support on the RIA process (including capacity building). The co-ordination function here should be understood broadly and also include, to the extent possible, exchanging information and joining efforts with relevant government functions such as those in charge of strategic planning and regulatory delivery. During the initial stages of establishing the RIA Office, the scrutiny and quality control functions should focus on providing constructive feedback on RIA design and execution, then develop progressively (see below).

In medium to long term, as the RIA culture takes root in Mauritius, the “challenge” functions of regulatory oversight should be further developed. These critical functions consist of checking that due process and core steps of the RIA process have been followed, controlling the quality of RIAs (notably the quality of analysis and of the evidence provided), and monitoring and evaluating the effectiveness of the RIA process - including reporting to senior political leaders and Parliament as appropriate; see the sub-section “Ensure Parliament’s active involvement in the RIA process” below for more details.

Regardless of the precise institutional arrangements, it would be advisable for the scrutiny and quality control function to first operate on the basis of “friendly advice” to be provided to regulators to instil a climate of trust, build ownership of RIA and continue to develop appropriate capacity, and then move progressively towards the issuance of more formal opinions on the quality of RIA and related processes including by reviewing and providing feedback to ministries on RIAs and their associated draft regulatory proposals. If a negative opinion is issued, ministries should be given the opportunity to resubmit the RIA. These formal opinions would be made publically available to parliamentarians and other external stakeholders and could be published on the new consultation website – see the sub-section “Promote enhanced stakeholder engagement as an integral part of the RIA process”. Once sufficient awareness and analytical capacity have been developed, the oversight body could be issued with more stringent sanctioning powers; e.g. it could be able to prevent a regulatory proposal from moving ahead if the RIA quality is not satisfactory.

Table 4.1. Supporting staff resources for selected regulatory oversight bodies

Body	Secretariat staff	Expertise of Secretariat staff	Annual budget
OIRA - Office of Information and Regulatory Affairs (USA)	25 civil servants	25 analysts	USD 10 million
ATR - The Advisory Board on Regulatory Burden (Netherlands)	10 civil servants	1 head, 7 analysts, 2 administrators	EUR 1.7 m
UTAIL (Portugal)	4 civil servants	4 analysts	(no data provided)
Finnish Council of Regulatory Impact Analysis (Finland)	2 civil servants	2 analysts	EUR 0.25 m

Body	Secretariat staff	Expertise of Secretariat staff	Annual budget
Nationaler Normenkontrollrat (Germany)	15 civil servants	1 Head of Secretariat, 11 analysts, and 3 support staff	EUR 1.0 m
Regelrådet (Norway)	6 civil servants	1 head of secretariat, 5 analysts, and some administrative support (0.5 people).	EUR 1.04 m (NOK 10 m)
Regelrådet (Sweden)	6 civil servants	1 head of secretariat, 5 analysts, and 1 administrator	All costs for the Secretariat are covered by the budget of the Swedish Agency for Economic and Regional Growth.
Regulatory Impact Assessment Board, RIAB (Czech Republic)	5 civil servants	(no data provided)	Does not have own budget, but expenses are covered by the state budget
RPC - Regulatory Policy Committee (United Kingdom)	27 servants	(no data provided)	EUR 1.455 m (GBP 1.3 m)
RSB - Regulatory Scrutiny Board (EU)	2+15 (part time) civil servants	2 administrative assistants, plus the RSB relies on the part-time support of a 15-staff unit of the Secretariat-General of the European Commission	N/A

Notes: In addition to the secretariat resources, a number of regulatory oversight bodies internationally have been constituted as autonomous, arms-length bodies with boards of experts who carry out scrutiny of new regulatory proposals e.g. the EU RSB has a Commission Director-General who chairs the Board, 3 high-level Commission officials and 3 external experts recruited from outside the Commission.

Source: OECD Survey of RegWatchEurope Bodies, RPC Corporate Report 2020, authors' elaboration.

Ensure Parliament's active involvement in the RIA process

The Recommendation of the Council of the OECD on Regulatory Policy and Governance states that *“Ensuring the quality of the regulatory structure is a dynamic and permanent role of governments and Parliaments”*. Parliaments can exercise oversight and control over the application of good regulatory practices, help develop evidence-based policy making through transparent dialogue on the relative merits of regulatory options and help monitor and assess the effectiveness and efficiency of regulation. There is scope for more active involvement of the National Assembly in regulatory policy in Mauritius; ensuring it plays an appropriate role in RIA can be a first step in this direction (OECD, 2013^[9]). At a minimum, MPs should be a critical audience, or “clients” of RIAs developed by the executive. These RIAs substantiate the government's choice of action and could therefore form an important basis for parliamentary committee discussions.

In the short term, information and awareness raising actions could be carried out to ensure that MPs are both willing and able to use RIA results as part of their work. This would require a shift in mentality and work habits, and needs to be appraised as a long-term undertaking. Efforts to bring about such shifts should however start as early as possible.

In the longer run, a more ambitious role for the Mauritian National Assembly, following the examples of some of the foreign peers, could be envisaged. Beyond using the RIAs produced by the executive, the National Assembly could provide more active oversight of these RIAs and use these documents to “question” the government on its actions. This could be done through setting up a dedicated parliamentary committee or support service relying on dedicated permanent staff to ensure continuity and contribute analytical work and procedural and administrative support on an ongoing basis. This committee would be an important element of Mauritius' regulatory oversight architecture as well as a strong signal of institutional commitment to evidence-based policy making in Mauritius. It could build upon the experience and working methods of the Public Accounts Committee, which examines the audited accounts of the

Republic of Mauritius for each financial year. The committee should focus as a priority on assessing the evidence base underpinning regulatory proposals and request adjustments as appropriate. As capacity and expertise are developed, the committee could take up a role in post-legislative scrutiny, possibly in co-operation with the Law Reform Commission.

For both the short-term and longer-term actions discussed above, capacity building efforts are likely to be required (see the sub-section “Adequate training and guidance needs to be provided to civil servants”). Several examples of parliamentary involvement in regulatory policy are presented in Box 4.5.

Box 4.5. Parliament involvement in regulatory policy: selected examples

- The Directorate for Impact Assessment and European Added Value within the **European Parliament’s Research Service** works to strengthen the Parliament’s capacity for scrutiny and oversight of the executive at successive stages of the legislative and policy cycles and contribute to the quality of law-making. The Ex-Ante Impact Assessment Unit within the Directorate analyses the quality of impact assessments (IAs) produced by the European Commission – in the form of Initial Appraisals of these documents, which are routinely supplied to parliamentary committees in advance of their consideration of new legislative proposals – and then offers the committees a range of follow-up services, including more detailed appraisals of Commission IAs, substitute or complementary IAs, and IAs on parliamentary amendments.⁵
- **Chile’s** Law Evaluation Department was created in 2010 to perform the following functions: (1) Evaluate the legal norms approved by the National Congress and propose corrective measures to improve implementation of the evaluated law; (2) Create and maintain a network of social organisations interested in participating in the evaluation process; (3) Inform the Secretary-General, through the Commission of Internal Regime, Administration and Regulations, about the results of the evaluation; and (4) Suggest amendments to current legislation, if needed.
- **Sweden’s** Evaluation and Research Secretariat, established in 2002, is a specialist function within the Committee Services Division of the Swedish Parliament supporting the committees in their *ex post* evaluation. In particular, the Secretariat helps parliamentary committees to prepare, implement and conclude evaluation projects, appoints researchers and external expertise to carry out projects, prepares background materials, and requests reports from government on the operation and effects of laws.
- In **Switzerland**, the Parliamentary Control of the Administration (PCA) was established in 1991 to support Parliament’s monitoring activities through scientific assessments and evaluate the concepts, implementation and impact of measures taken by the federal authorities. The PCA deals directly with federal authorities and public agencies and may request relevant information from them. Committees, with the assistance of PCA, focus on verifying that: the activities of the federal authorities comply with the constitution and legislation (legality control), the measures taken by the state are appropriate (control of appropriateness) and bear fruit (efficiency control).

Source: (OECD, 2012^[10]) (OECD, 2013^[9]); (EPRS, 2019^[11]).

Develop and implement a systemic approach to enable and foster appropriate co-ordination and management of the RIA process

Different parts of government need the right incentives to share information and pool expertise and knowledge on a systematic basis. **Steps must therefore be taken to facilitate the co-ordination across ministries, thus ensuring effective governance of the RIA process.**

- In the short term, several actions would be warranted. **First, draft RIAs and legislative drafts should be systematically shared between ministries within the Mauritian administration.** To do so in an efficient and timely manner, it would be advisable to build upon the notification process that will inform the proposed legislative forward planning system (see the sub-section “Improve the predictability of the regulatory process by establishing a forward planning system”). In the same vein, existing consultation and information-sharing mechanisms currently used in the budgetary process should be utilised. The new Inter-Ministerial RIA committee could be instrumental in overseeing this process. Moreover, the importance of cross-government information sharing should be clearly stated in the RIA policy’s strategic documents and associated legislation.
- **Second, the new RIA Office should help develop a “RIA” community of practice through the facilitation of exchanges amongst ministries.** This should build upon existing networking opportunities that line ministries and agencies may already have. RIA officers within ministries could also be designated and trained to act as focal points for RIA-related matters within ministries – this training should be mandatory for designated officials in ministries to ensure that RIA capacity is developed. Reputable experts, including from international organisations and from civil services in relevant peer countries, could be invited to work with these RIA officers in order to help develop RIA-relevant analytical capacity. Once sufficient RIA knowledge and expertise has been developed within local research institutions, such as the University of Mauritius, they could also be involved in this process.
- **In the medium to long term, the RIA officers would be expected to work as a government-wide network** acting as a platform for dialogue, exchange of promising practices and timely dissemination of relevant information across government (see Box 4.6) with international examples of such networks). Once sufficient capacity is in place, RIA officers could also perform an advisory role (e.g. on the different steps of the RIA process), provide methodological support and act as (informal) first reviewers of draft RIAs.

Box 4.6. Structuring communities of regulatory practices in Canada and New Zealand

Canada’s Community of Federal Regulators (CFR) is a partnership of Canadian regulatory organisations at the federal level that aims to facilitate professional development, collaboration and advancement of the regulatory field. The CFR focuses its events, activities and resources to meet three strategic objectives:

- Talent Management – initiatives to strengthen the regulatory profession across the system;
- Collaboration – events to connect organisations to foster collaboration and sharing of regulatory expertise; and
- Experimentation – pursuing prototypes, projects and other activities to increase community understanding of innovative regulatory concepts and enabling their application.

Key activities include an annual two-day Regulatory Conference, annual one-day Law Enforcement Symposium, Regulatory Professional Development Program, Regulatory Speaker Series, Regulatory Excellence Awards, Prototyping Workshops and Communities of Practice/Working Groups on specific regulatory issues.

The community serves approximately 40 000 regulatory professionals who support Canada's regulatory lifecycle including policy analysts, program officers, compliance and enforcement officers, performance evaluators, risk assessors, legal counsel and cost-benefit analysts. The community is governed by a Deputy Minister Champion, two Assistant Deputy Minister Co-Champions and representatives from each of the departments and agencies providing financial support to the community, responsible for setting direction and areas of focus for the community in conjunction with the CFR Office.

New Zealand Government Regulatory Practice Initiative (G-REG) is a network of central and local government regulatory agencies established to lead and contribute to regulatory practice initiatives. G-REG focuses on developing people capability, organisational capability, and building a professional community of regulators. It is a network for all regulators in the public sector, whether at central or local government.

Among other things, G-REG implements the recommendations of the New Zealand Productivity Commission, which reported in 2014 on the need “to build on the hard work and dedication of those individuals who see the practice of being a regulator as important, and who have sought to improve the capability of regulatory agencies and those that work within them”.

G-REG's primary activity to date has been the development and delivery of a qualifications framework. Having a common qualification in the public sector is intended to make it easier for regulatory agencies to work together, when their people have common ways of operating and transferable skills and qualifications.

G-REG is working to unify and professionalise the regulators of New Zealand and has made the sector more aware of itself, by bringing it together through a series of workshops, in highly successful annual conferences, articles in industry journals, and intellectual credibility by establishing a Chair in Regulatory Practice at Victoria University of Wellington. Collectively this represents the development of a professional community of regulatory professionals.

The Chair in Regulatory Practice plays a crucial role in connecting the New Zealand regulatory community to the rest of world. The Chair's research programme incorporates advances in regulatory practice outside New Zealand, focusing on innovative regulators, regulatory instruments and processes. This enables international regulatory best practice and knowledge to be disseminated to G-REG and the wider regulatory community (through blogs, seminars and guest lectures), so New Zealand can learn from the rest of the world. G-REG's peer learning framework incorporates an international element by, among other things, focusing on the need to minimise the potential for unintended negative impacts of regulatory activities on regulated entities or affected supplier industries and supply chains, which are often international or regional.

Source: (OECD, 2020^[12]).

It would also be highly advisable and productive to gradually implement ICT solutions to facilitate the RIA process as well as interaction among ministries and with the oversight body - and link them to the stakeholder consultation website discussed earlier in this report (see the sub-section “Promote enhanced stakeholder engagement as an integral part of the RIA process”). See boxes 3.3 and 3.4 in Chapter 3 for relevant examples of governmental networks and IT tools from OECD countries.

Improve the predictability of the regulatory process by establishing a forward planning system

In Section 2, it was pointed out that rulemaking in Mauritius suffers from lack of planning and anticipation, and relies excessively on amendments introduced by the Executive. To ensure an effective implementation of RIA in the country, it is important to address this shortcoming.

In the short term, predictability and clarity could be enhanced by requesting ministries to periodically submit plans of upcoming primary and secondary legislative proposals to the new RIA Office, as well as to notify any substantial changes to such plans in a timely fashion. On this basis, a preliminary analysis of the scope of the proposed legislation as well as of the magnitude of potential impacts and their distribution could be carried out. Based on this preliminary analysis, a decision could be made on the relative priority in terms of analytical work as well as of the necessary depth and focus of RIA of each proposal – thus also contributing to a well-targeted RIA programme (see the sub-section “Define clear processes and criteria to ensure a proportionate approach to RIA”)

In the medium to long term, this prospective list of regulatory proposals could be collated into a forward plan, published and made available to all stakeholders to alert them about upcoming legislative proposals and related RIAs to be carried out.⁶ As discussed earlier in this section, it will be important to ensure an appropriate articulation between the annual budgetary process (including the Budget Speech and Finance Act) and the forward planning mechanism, which provides a broader and longer-term perspective. Clear and timely communication will be paramount in that respect. The ICT tool(s) to be developed in support of RIA would enable the gathering and processing and appropriate dissemination of the relevant information. To the extent possible, rolling plans spanning at least a two-year or three-year period would be advisable. Benefits of doing so would include enhanced preparedness and transparency as well as stronger co-ordination and coherence in the rule making process. In addition, this forward planning tool would facilitate broad stakeholder engagement from an early stage. Box 3.5 in Chapter 3 sets out some examples of forward planning from OECD members.

Monitor and evaluate the outcomes and performance of Mauritius’ RIA system

Individual RIAs need to foresee how performance of a given regulation will be assessed and identify the related data. In the same vein, monitoring and evaluation of the outcomes and performance of regulatory tools such as RIA are of the utmost importance. Monitoring and evaluation are moreover necessary to understand whether the RIA process is helping increase the effectiveness and efficiency of regulation over time.

In the short term, to ensure appropriate monitoring and evaluation of the RIA system, the new RIA Office should set up the appropriate internal processes. This involves, as a priority, identifying appropriate metrics including performance indicators and clearly allocating responsibilities for monitoring and evaluation (including reporting requirements and involvement in data gathering, processing and analysis). Consideration should also be given to associated resource needs and how to meet them.

A draft monitoring and evaluation framework should be developed by the RIA Office during the early stages of RIA implementation in Mauritius. Important aspects that should be covered by such a framework and subsequently operationalised by means of suitable indicators (of which illustrative examples are provided in brackets) include the following:

- Recent regulatory activity (e.g. number of proposals put forward and, number of laws passed...)
- Number of RIAs produced over a certain period, average time required for RIAs
- Information on the quality of RIAs; e.g. completeness of the analysis, coverage of all impacts, consideration of alternatives, comprehensiveness of stakeholder engagement (each of these

criteria can be rated along a scale; e.g. if all significant impacts are assessed, the RIA would obtain the maximum score)

- Use of RIA documents, including consideration in the decision making process
- Impact of RIA on regulatory decisions being made, including evidence of RIA-induced changes, explicit references to RIA findings in regulatory proposals, etc. (e.g. number of explicit references to RIA findings in relevant legal or policy documents, by type of document)
- Stakeholders' perception of/experience with RIA (e.g. as measured by means of survey-based indicators on transparency –including regarding the use of stakeholder inputs-, inclusiveness, quality, etc.) These information gathering activities can be part of a broader effort to assess stakeholder engagement practices. For example, in 2019, the European Court of Auditors published a report on the European Commission's public consultations which notably relied on a satisfaction survey and an expert panel (European Court of Auditors, 2019^[13]).
- Effectiveness and efficiency of the overall RIA framework: Is there evidence of improvements in regulatory quality (e.g. as measured by administrative costs, citizens' trust in government, etc.)? Are RIA efforts being appropriately targeted?

In the medium to long term, the RIA office could further refine the monitoring and evaluation framework as well as any related processes as appropriate. It should then build upon the data and information gathered within this framework to assess, on a regular basis, the outcomes and performance of RIA in Mauritius and identify options for improvement. It would be advisable for such assessments, which could take the form of annual reports, to be communicated widely and made publicly available.

OECD data shows that internationally around half of the regulatory oversight bodies responsible for the quality control of regulatory management tools use some form of evaluation mechanism for their activities, and the results of evaluation efforts are frequently made public. Half of all bodies responsible for quality control prepare reports on their effectiveness. About two thirds of these evaluation reports (from 16 different countries) contain performance indicators (OECD, 2018^[14]). Despite the existence of these mechanisms, there is little evidence on the impacts of regulatory oversight on regulatory improvement and societal outcomes, as monitoring and evaluation efforts often focus primarily on process, activities and outputs, such as the number of reviews or interventions. It will be important for Mauritius to bear in mind the importance of tracking and measuring outcomes and impacts when developing its monitoring and evaluation framework.

There are a number of examples pertaining to monitoring, reporting and evaluation that can be built upon. For instance, in the EU, the Regulatory Scrutiny Board has identified three key performance indicators against which it can be assessed annually: the number of impact assessments and evaluations scrutinised; on-time delivery of opinions; and impact assessments' quality improvements following interactions with the Board. The Swedish oversight body, *Regelrådet*, surveys ministries' and government agencies' perception of the body's opinions and their impacts, and makes the information available in its annual reports. It publishes the annual reports on the implementation of RIA on its website⁷ in accessible language, using graphs and tables and including an easy to read summary up front to display results in a user-friendly manner. Other selected examples of countries where the oversight bodies formally report on their activities and performance include the *Nationaler Normenkontrollrat* in Germany, the Regulatory Policy Committee in the UK and the Dutch Advisory Board on Regulatory Burden.⁸

Establish an appropriate RIA process and methodology

Priority 3: Establish a RIA process and methodology

Put in place a RIA process based upon best practice:

- Use the RIA handbook to be delivered in the context of this project as starting point to structure this process. Progressively expand and update it as appropriate.
- Ensure that policy teams in ministries begin RIA at the early stages of the policy process for the formulation of new regulatory proposals.
- Develop a RIA template in order to effectively communicate the results.
- Consider international regulatory frameworks and instruments systematically; assess potential impacts beyond domestic borders and engage foreign stakeholders.

Select a clear and well-targeted RIA methodology that can be adapted over time. This methodology should take into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.

In the short-term, select a simple RIA approach such as qualitative multi-criteria analysis, and then gradually move towards more quantitative analysis, in which costs and benefits are expressed in numerical, sometimes monetary terms.

In the long-term, once sufficient analytical expertise has been built-up across the administration, the RIA policy could commit to using Cost-Benefit Analysis (CBA) in its RIA framework.

Define clear processes and criteria to ensure a proportionate approach to RIA:

- Put in place a screening (or “triage”) mechanism based on a set of clear criteria to determine which regulatory proposals need to undergo a RIA and define a list and/or criteria of any regulatory proposals that will be exempted from RIA. This mechanism could be implemented through a list of questions to be answered for all regulatory proposals.
- Have the regulatory oversight body in charge of scrutiny assess and evaluate, on the basis of the qualitative assessment submitted by the regulators, the rationale for deciding to exclude a regulatory proposal from undergoing a RIA, or deciding not to submit the proposal to a RIA. An *ex post* assessment of the regulation may be required in case of a RIA exemption.

Develop and start implementing a comprehensive data strategy, as part of the RIA policy, to make sure that relevant data are available for RIA. Consider how to integrate the data from Statistics Mauritius as well as the Mauritius Revenue Authority and the Ministry of Finance, Economic Planning and Development (and other secondary sources) into the RIA process.

Develop implementation, enforcement and compliance strategies:

- In the short term, consult representatives of inspection agencies having direct experience with implementing and enforcing regulations as well as accreditation and conformity assessment bodies in the process of developing regulations and conducting RIA.
- In the medium term, develop guidance on tools to be used when implementing regulations to ensure compliance.
- In the long term, develop a government-wide policy on improving regulatory enforcement and inspections, as part of Mauritius’ broader regulatory policy.

A transparent, systematic and consistent RIA process and methodology is imperative to promote continued regulatory quality. The choice of RIA methodology should be tailored to Mauritius' needs and specificities if it is to be successfully integrated into the country's administrative culture. There are however a number of elements that are common to the majority of successful RIA systems in the world and may therefore inform the development of such methodologies. It is particularly important to establish the RIA process in such a way that it can be followed across the administration and incentivises officials to integrate RIA into the early stages of the policy process for new regulatory proposals.

RIA-related analytical efforts need to be well-targeted for impact maximisation and follow a methodological approach that enables comparing the costs and benefits of proposed regulations in a straightforward manner. With these guiding principles in mind, this sub-section sets out recommendations in a number of relevant areas: *key RIA steps*; *methodological choices available*; *practical application of the proportionality principle*; and *data collection and the evidence base*.

Establish a RIA process based upon best practice

In the short term, the basic RIA process should be established and communicated upon as part of the Government's RIA policy. The RIA handbook to be delivered by the OECD team in the context of this project, will be based on best practice and take Mauritius' specificities into account. The RIA Handbook may constitute a useful starting point to structure this process, although it will need to be progressively expanded and updated as appropriate. One of the key messages that will need to be conveyed as a priority is that policy teams in ministries should begin RIA at the early stages of the policy process for the formulation of new regulatory proposals, when there is a genuine interest in identifying the best available solution and there is an opportunity to consider alternatives to regulation.

Table 4.2 below outlines the main RIA steps that will need to be conducted. It should be noted that these steps are part of an iterative process; therefore, some of the steps might be performed repeatedly using inputs from the subsequent ones. It is crucial that, at the beginning of the RIA process, policy teams should set out to systematically identify the problem at hand, its causes and consequences as well as its likely evolution in the absence of further public intervention. It is also important that policy teams strive to identify all plausible options for public intervention in order to achieve these objectives, including "doing nothing", different implementation/enforcement modalities and non-regulatory options (see Box 4.7).

Table 4.2. Basic steps for RIA

Step	Main actions
Consultations and stakeholder engagement	Use inputs from all potentially affected stakeholders as well as other relevant experts in all stages of the RIA process. Iterative process.
Problem definition	Describe assessment of the nature and extent of the problem to be addressed, preferably in quantitative terms.
Objective(s)	Clearly state the policy objective(s) and goal(s) of the regulatory proposal.
International scan	Review the international evidence and practices adopted elsewhere, including the existence of international instruments in the same field and the measures adopted by key economic partners.
Description of the regulatory proposal	Describe the existing regulatory framework, the proposed draft, identify administrative bodies and institutions responsible for drafting, implementing and enforcing the proposal, and outline the enforcement regime and proposed strategy for ensuring compliance.
Identification of alternatives	List the practical alternatives, including any non-regulatory approaches considered as potential solution of the identified problem.
Analysis of benefits and costs -	Clearly outline the benefits and costs expected from alternatives identified in previous steps.
Identification of the preferred solution	Outline how and in what ways the identified regulatory proposal is superior to the alternatives considered.
Setting out the monitoring and evaluation framework	Describe how performance of the regulation will be evaluated and anticipate the associated data requirements.

For more information, the Australian Government’s Guide to Regulatory Impact Analysis provides another useful example of how to structure a RIA process (see Annex D). In the same vein, the Norwegian Government Agency for Financial Management has clearly outlined the minimum requirements regarding the contents of the basis for decision-making, in its Guidance Notes on the Instructions for Official Studies.⁹

Box 4.7. Alternatives to “command-and-control” regulations

Performance-based regulations: Performance-based regulation specifies required outcomes or objectives, rather than the means by which they must be achieved. Firms and individuals are able to choose the process by which they will comply with the law. This allows them to identify processes that are more efficient and lower cost in relation to their circumstances, and also promotes innovation and the adoption of new technology on a broader scale.

Process-based regulations: These regulations require businesses to develop processes that ensure a systematic approach to controlling and minimising production risks. They are based on the idea that, given the right incentives, producers are likely to prove more effective in identifying hazards and developing lowest-cost solutions than is a central regulatory authority. They are particularly useful where there are multiple and complex sources of risk, and *ex post* testing of the product is either relatively ineffective or prohibitively expensive.

Co-regulation: Under co-regulation, the regulatory role is shared between government and industry. It is usually effected through legislative reference or endorsement of a code of practice. Typically, the industry or a large proportion of industry participants formulate a code of practice in consultation with government, with breaches of the code usually enforceable via sanctions imposed by industry or professional organisations rather than the government directly. This approach allows industry to take the lead in the regulation of its members by setting standards and encouraging greater responsibility for performance. It also exploits the expertise and knowledge held within the industry or professional association.

Economic regulation: A more modern explanation sees economic regulation being less about correcting for market failures and more about enabling markets to work more effectively. That is, where the disciplines of competition are weak or absent, an economic regulator acts as a ‘visible hand’ seeking to guide service providers towards outcomes (e.g. in terms of price, quality or both) that would have occurred had the market been subject to those competitive disciplines.¹

Economic instruments: At a theoretical level, the use of economic instruments should a priori be the preferred means of achieving policy objectives in a wide range of situations. This is because these tools – taxes, subsidies, tradable permits, vouchers and the like – operate directly through the market, thus harnessing market incentives and avoiding the substantial potential for distorting market incentives inherent in most forms of regulation.

Information and education: The most widely used alternative approach to regulation in OECD member countries is information and education campaigns. These approaches address information asymmetries and empower citizens and consumers to adopt actions or make informed choices that match their preferences and align their sensibility to risks. While many information campaigns simply seek to inform citizens and enhance consumer choice, some information campaigns are more explicit in seeking to change behaviour.

Voluntary approaches: Voluntary approaches are arrangements initiated and undertaken by industry and firms, sometimes formally sanctioned or endorsed by government, in which self-imposed requirements which go beyond or complement the prevailing regulatory requirements. They include

voluntary initiatives, voluntary codes, voluntary agreements, and self-regulation and can vary in regard to their enforceability and degree of voluntarism.

Behavioural insights (BI): Uses an inductive approach to policy making that seeks to understand how context and biases influence decision-making, and pre-test solutions to determine what works before implementing at larger scale. This method uses insights from psychology, cognitive science, and social science to anticipate the behavioural consequences of policies.

1. <https://www.esc.vic.gov.au/sites/default/files/documents/What-Is-Economic-Regulation.pdf>.

Source: (OECD, 2002^[15]) (OECD, 2019^[16]).

As part of the RIA process, small open economies such as Mauritius need to carefully consider the international environment when developing laws and regulations, in particular in problem definition, consideration of alternative solutions and assessment of benefits and costs. It requires significant expertise and resources to gather the relevant evidence for rule development. The complexity of contemporary challenges makes effective and efficient regulatory regimes based on science and solid evidence crucial. Building on the evidence collected by other countries facing the same challenges and on the collective intelligence gathered by international organisations can help reduce the overall costs of good regulation. Failure to do so is also likely to result in unnecessary regulatory divergences with key partners and cause frictions and undue costs, including to traders. The forthcoming OECD Best Practice Principles on International Regulatory Cooperation highlight four key areas where such considerations can improve the quality of rulemaking (see Box 4.8).

Box 4.8. Embedding international considerations in domestic rulemaking

Gather and rely on international knowledge and expertise in gathering intelligence before or for the RIA process

In developing laws and regulation, policy makers and regulators should gather evidence and expertise that may go beyond their own jurisdiction. It is fairly rare that a new issue arises without any other jurisdiction and international organisation having had to deal with it. Gathering the intelligence around the incidence of the issue at stake and the approaches adopted by others can help build the body of evidence on the area under consideration, gather a greater range of options for action, and develop the narrative around the chosen measure.

In developing regulation, systematically use by default existing international instruments and document the rationale for departing from them

International instruments are usually the result of significant evidence gathering and consensus building (including scientific) efforts. Using them in domestic legislation provides a strong driver for regulatory consistency internationally therefore reducing the opportunities for arbitrage and the costs for the regulated entities of having to comply with multiple requirements. When specific circumstances justify departing from the international instrument, this should be justified based on evidence.

Note that the principle of adoption of international standards in technical regulation is already strongly embedded in the WTO SPS and TBT agreements from a trade impact perspective, i.e. it is already part of a country's international obligation for a limited scope of the regulatory brief (technical regulations with significant trade impacts). It deserves being extended beyond the technical standard area and to apply more broadly to recognised international instruments.

Assessing impacts beyond borders

Governments should ensure that their rulemaking takes into account the potential impacts on parties outside of the national boundaries. The RIA process provides an opportunity to do so, in particular through the assessment of trade impacts and of impacts on foreign jurisdictions. To be effectively implemented, opportunities for consultation with external partners on the development of regulations must be provided.

Engage foreign stakeholders

Engagement of foreign stakeholders in regulatory processes can help raise awareness for regulatory approaches in other jurisdictions or provide information about unintended impacts for third parties of maintaining the same or different regulatory approaches. In practice, it is necessary but not sufficient to rely on open, non-discriminatory engagement processes domestically, for example via open-access internet platforms accessible to all. Countries should make an extra effort to involve foreign stakeholders. This can take the form of specific communication through business platforms or chambers of commerce. Compulsory notification of draft regulations to international fora provides an important means by which to alert and draw inputs from foreign stakeholders. The WTO TBT and SPS Agreements provide such an opportunity through the single central government authority responsible for notifications (OECD/WTO, 2019^[17]).

Source: (OECD, Forthcoming^[18]).

In addition, in the short term, the RIA policy should stipulate that the results of RIA must be well communicated, and avoid obfuscating important information or skewing the analysis to support a particular outcome. Each RIA document should include a short, easy-to-understand summary, e.g. in the form of a table that briefly introduces the assessed options as well as their costs and benefits, and justifying why the preferred option has been selected. To complete the publication, references should be made available in annexes to allow interested users to find the background information used to undertake the RIA and inform about the robustness of the evidence base, assumptions and their limitations, etc. The RIA template developed by the Government of the United Kingdom represents a best practice example of how to communicate the results of RIA (see Annex F).

Select a clear and well-targeted RIA methodology that can be adapted over time

It is recognised that RIA efforts should be scaled to the specific capacities of a country, especially given the scarce government resources to collect and analyse the required data. This, however, does not mean that RIA efforts are futile in circumstances where resources are scarce, rather the contrary, since RIA is more about the process of asking the right questions to and by the right people (and thus creating a framework for regulatory policymaking) than a process of preparing technically precise estimates of impact.

The Mauritian Government should adopt a RIA methodology that is as simple and flexible as possible, while ensuring certain key features are covered. This is particularly important in the early stages of RIA implementation. The chosen methodological approach should enable policy teams to identify all groups of stakeholders who would be impacted and estimate how, and to what extent, they will be impacted. Policy teams should attempt to identify and, wherever possible, quantify and monetise all potential direct and indirect impacts to enable a meaningful comparison of alternative regulatory options that could in principle address the problem identified. OECD best practice states that RIA should go beyond direct economic impacts and include various types of impacts, such as impacts on environment, social impacts (jobs, public health, gender equality, poverty, inequalities and their reduction, working conditions,

etc.), impacts on innovation, cross-border impacts and also second-round effects and unintended consequences (OECD, 2020^[1]).

In the short-term, whilst the Mauritian Government builds up analytical skills across ministries, it should select a simple RIA approach such as qualitative multi-criteria analysis (MCA – for more information see Box 3.6 in Chapter 3), and then move gradually towards more quantitative analysis, in which costs and benefits are expressed in numerical, sometimes monetary terms.

As a first step towards greater quantification of regulatory costs and benefits, the Mauritian Government could focus its RIA system on assessing costs to business such as administrative burdens, through an internationally recognised methodology such as the Standard Cost Model. This is viewed as a less intrusive and complex method for assessing a specific set of impacts of legislation. However, the government's RIA policy should set out a clear aspiration that the RIA system will move over time to a wider measurement of economic, social and environmental impacts.

In Portugal, for example, analytical requirements during the early implementation stages of RIA (2017) consisted of a qualitative description of benefits and quantification of the impact of new regulations on businesses (it also included an SME test and a competition impact assessment). Starting 2018, ministries were required to assess legislative impacts on citizens and, as of 2019, also impacts on public administration.

In the long-term, the RIA policy could commit to using Cost-Benefit Analysis (CBA – see Box 3.6 in Chapter 3) in its RIA framework, once sufficient analytical expertise has been built-up across the administration. In line with OECD best practice, this methodology should take into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.

Define clear processes and criteria to ensure a proportionate approach to RIA

With limited resources and whilst civil servants and stakeholders are familiarised with the new process, efforts within the Mauritian administration should concentrate on the most challenging regulatory areas. The costs and time to develop a RIA should be clearly outweighed by the benefits brought terms of improved policy decisions or regulatory quality. Therefore, it is important that the amount of resources involved in carrying out a RIA are proportionate to the magnitude of the policy problem and proposed interventions.

In the short-term, a principle of proportionality¹⁰ should be established within the new RIA policy stressing that policy teams should target RIA towards regulatory proposals with the largest expected socioeconomic impact, and ensure that all such proposals be subject to a more detailed RIA. The RIA Handbook to be developed by the OECD team will provide further methodological guidance on proportionality.

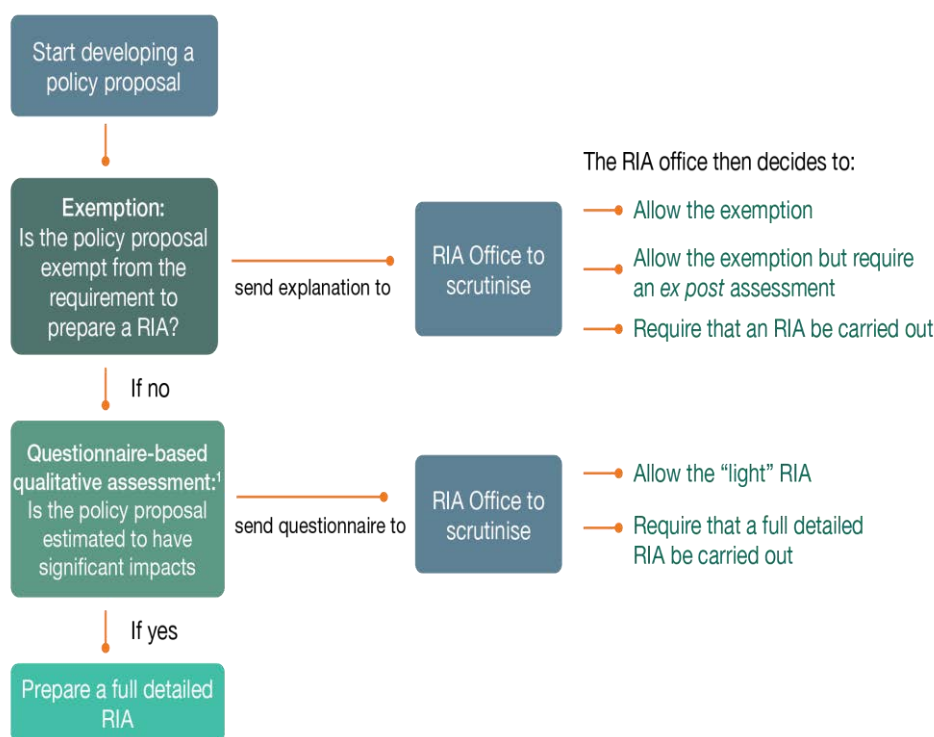
A forward planning process should be established as a first step towards a more targeted RIA programme (see the sub-section “Improve the predictability of the regulatory process by establishing a forward planning system”). This would allow the Government to carry out a quick analysis of the scope of upcoming legislation, stakeholders that would be impacted and the magnitude of potential impacts. Based on this preliminary analysis, a decision could be made on the need for RIA as well as its depth.

In the short term, a screening (or “triage”) process could be put in place as part of the new RIA system, using a set of clear criteria to determine which regulatory proposals need to undergo a RIA. These practical criteria can be of a qualitative or a quantitative nature, comprising both of economic and non-economic impacts, and taking into account both positive and negative impacts on the economy and on social welfare. The proposed screening process could be implemented through a list of questions to be answered for all regulatory proposals. This list of questions would assist in determining the potential impact

of a draft regulation and targeting analytical efforts and resources, whilst also providing a basic understanding of the rationale and expected impacts of all regulatory proposals (even in the absence of a RIA).

The proposed triage approach (see Figure 4.1) would help ensure a proportionate RIA approach and would be in line with the approaches taken in numerous OECD countries which require lighter analysis (“light”, “preliminary” or “small” RIA) for all regulations and a more thorough analysis for selected draft regulations estimated to have a more significant impact. The ministries’ responses to the triage questionnaire should be shared with the RIA Office, who will evaluate the responses and should be able to request (this decision could be made binding upon ministries) that the ministries undertake a full detailed RIA.

Figure 4.1. Proposal for RIA Triage system



Note: In the long term, the government could consider using a number of complementary approaches; e.g. setting a quantitative threshold (e.g. potential impacts over a certain amount, expressed in million MUR), or introducing a more comprehensive set of criteria to determine the depth of analysis required.

Most countries have adopted explicit triage mechanisms that limit the number of regulations that are subjected to RIA. In some cases, threshold tests are used which vary the extent of the RIA required to be undertaken according to the defined thresholds (see Box 3.7 in Chapter 3 which provides numerous international examples). For example, Mexico operates a quantitative test to decide whether to require a RIA for draft primary and subordinate regulation. Regulators and line ministries must demonstrate zero compliance costs from a new piece of legislation in order to be exempt of RIA. Otherwise, a RIA must be carried out. For ordinary RIAs comes a second test – qualitative and quantitative – what Mexico calls a “calculator for impact differentiation” whereby, based on a 10-question checklist, the regulation can be subject to a high-impact RIA or a moderate-impact RIA, the latter containing fewer details.

In Mauritius, the set of triage criteria could be formulated as a qualitative questionnaire assessment. The list of qualitative questions should address, at a minimum, the elements outlined below. A useful example of such a checklist has previously been developed by the OECD to provide countries with guidance in developing and implementing better regulation (see Box 4.9):

- Regulatory proposal corresponds to criteria for exemption from RIA
- Clear rationale and justification for government intervention
- Consideration of alternative options
- Potential impacts on businesses (small/medium/large)
- Potential impacts on key sectors for the economy (e.g. tourism)
- Potential impacts on competition
- Potential threats to sustainability
- Potential impacts on health and well-being
- Potential distributional or discriminatory effects / impact on vulnerable groups

In the medium to long term, when the ministries and oversight function have developed greater analytical capacity, the government could consider using a number of complementary approaches; e.g. setting a quantitative threshold (e.g. potential impacts over a certain amount, expressed in million MUR), or introducing a more comprehensive set of criteria to determine the depth of analysis required (regarding, for example, potential impacts on innovation, market openness, employment or productivity).

In addition, the Government must also define a list and/or criteria of any regulatory proposals that will be exempted from RIA, because they do not have any impact on regulated parties. Regulatory proposals concerning internal processes of the administration, the reorganisation of existing legal texts or the direct transposition of international treaties into the domestic framework as well as government budgetary proposals are generally considered valid reasons for granting an exemption. In all other cases, however, regulations should only be exempt from completing the RIA process in *real emergencies*, when a significant delay could objectively put the well-being of citizens at risk.

The new regulatory oversight body, the RIA Office, should assess and evaluate the rationale for deciding to exclude a given regulatory proposal from undergoing a RIA, or deciding not to submit the proposal to a RIA. Policy teams should send their rationale for exempting a proposal from RIA and the qualitative assessment to the oversight body, who should review the arguments presented. Accordingly, the oversight body should be able to make the following decisions (which could be made binding upon ministries):

- An exemption from RIA may be allowed.
- An exemption from RIA may be allowed but an *ex post* assessment of the regulation should be carried out.
- A RIA may be required due to the relevance of the regulation under consideration.

Box 4.9. 1995 OECD Recommendation on Improving the Quality of Government Regulation

In 1995, the OECD published the Recommendation on Improving the Quality of Government Regulation to improve the effectiveness and efficiency of government regulation by upgrading the legal and factual basis for regulations, clarifying options, assisting officials in reaching better decisions, establishing more orderly and predictable decision processes, identifying existing regulations that are outdated or unnecessary, and making government actions more transparent. In order to provide guidance for

countries in developing and implementing better regulation, a Reference Checklist for Regulatory Decision-making was issued containing the following ten questions:

- Q1. Is the problem correctly defined?
- Q2. Is government action justified?
- Q3. Is regulation the best form of government action?
- Q4. Is there a legal basis for regulation?
- Q5. What is the appropriate level (or levels) of government for this action?
- Q6. Do the benefits of regulation justify the costs?
- Q7. Is the distribution of effects across society transparent?
- Q8. Is the regulation clear, consistent, comprehensible, and accessible to users?
- Q9. Have all interested parties had the opportunity to present their views?
- Q10. How will compliance be achieved?

Source: (OECD, 1995^[19]).

Establish a data strategy for RIA

The availability of data is essential for each step of RIA, i.e. for a meaningful problem definition, for a careful analysis of the alternative solutions available, and for an estimation of the compliance and enforcement costs associated with each of the alternative policy options. Data quality, an essential element of proper analysis, is one of the most challenging aspects of RIA because it can be time- and resource-consuming and requires a systematic and functional approach.

In the short to medium term, the Government should develop and start implementing a comprehensive data strategy, as part of the RIA policy, to make sure that relevant data are available for RIA. This should also involve considering how to integrate the data from Statistics Mauritius as well as the Mauritius Revenue Authority and the Ministry of Finance Ministry of Finance, Economic Planning and Development (and other secondary sources) into the RIA process.

The data strategy should reference the public sources of data and information that could be used to carry out the corresponding assessment. Complementary data sources must likewise be defined, e.g. surveys or meetings with stakeholder groups. Particular attention should be paid to fully using the potential of stakeholder consultation as a source for data as well as a means to verify its quality. It should be emphasised that in the early consultation stages, there are multiple opportunities for gathering information, which, ultimately, will allow to conduct a correct assessment of public policy proposals. In addition, other countries or jurisdictions as well as international organisations and institutions may offer valuable data and information that are of relevance to the policy problem at hand. For more information on how to obtain the data to conduct RIA, see Box 4.10. The data strategy may also foresee the outsourcing of data collection for high-impact RIAs. Additional guidance on the data strategy for RIA will be provided in the handbook to be delivered at a later stage of this project.

The data strategy must be conceived as a cornerstone of Government efforts to improve public policy. Indeed, the EU's Better Regulation toolbox (tool 4) defines a robust evidence base as "*an essential component of better policymaking*" which "*is needed both to evaluate existing interventions and to substantiate a need for new ones*". In that sense, it is encouraged that governments identify evidence needs as early as possible in the policy process by mapping out available evidence mapping based on

desk research (covering a broad range of sources) and cross-government consultation. This enables the identification of the most important gaps in terms of information and analysis. Based on this gap analysis, “*decisions need to be taken on whether and how to obtain the missing information in line with the principle of proportionate analysis which will need to be addressed*”. (European Commission, n.d._[20]).

Further information and best practices for such a data strategy can be found in the OECD Digital Government Studies issue *The Path to Becoming a Data-Driven Public Sector*, Chapter 2 (OECD, 2019_[21]), the OECD Digital Government Toolkit, Principle 3, *Creation of a Data-Driven Culture in the Public Sector* (OECD, 2018_[22]) and the OECD Best Practice Principles for RIA (OECD, 2020_[1]).

Box 4.10. How to obtain the data needed for a RIA: basic concepts

Obtaining high quality data is a basic challenge to conduct a RIA. Without good data, RIA will contribute relatively little to good policy-making. However, data collection can be a time-consuming and expensive exercise. This means that a careful and strategic approach must be adopted. The following are data collection strategies that should be considered when commencing a RIA and should be carefully weighed according the particular RIA project. As many of these data collection methods may require considerable resources, it may be necessary to rely on third party sources to obtain information, which saves time and research costs.

Surveys

By designing a questionnaire, specific information on major elements of a proposed regulation can be asked. A well-designed survey of affected groups can provide a good basis for estimating the costs of compliance. Particularly where compliance costs are complex, one may wish to consider direct interviews as a way of improving the quality of the data received. Remember that surveys covering relevant issues may have been completed previously, either by government or by other bodies. It should try to identify relevant survey results that are already available to improve existing knowledge and reduce the costs of data collection.

Business test panel

An innovation pioneered in Denmark is the Business Test Panel, a list of companies that have agreed to assist government in conducting RIA. These companies volunteer to advice on the likely costs of regulatory proposals. This group is used as the basis for administering surveys. This model has the advantage that, over time, the business involved will become familiar with the RIA concept and gain a better understanding of the nature of the questions being asked and the information that is needed. It needs to be ensured, however, that the answers received are not biased by the fact that a particular “insider” group is questioned on a frequent basis.

Review of experience in other countries

In many cases, a similar regulation to the one being considered may have been adopted in neighbouring countries. Contacting government officials, or other sources, in those countries can be an effective way of obtaining information on the likely impacts of your regulatory proposal.

Other government agencies

A large amount of relevant data is held by government agencies. For example, the government statistical office is a rich source of general information on issues such as the number of firms in various industries, the number of people employed and the like. Other useful material may also be available within government. For example, regulations with similar features may previously have been adopted.

Literature reviews

Reviewing the existing academic literature can be a very interesting way of obtaining relevant information. The Internet can increasingly be used to conduct literature searches; likewise, market reports and other research documents commissioned by industry associations or similar groups can be very useful. For example, insurance companies may have much relevant data on the size and nature of the harms that regulations try to prevent. This can be used to estimate the size of likely regulatory benefits.

Source: (OECD, 2008^[23]).

Develop implementation, enforcement and compliance strategies

Considering implementation and enforcement of proposed regulations must be an integral part of a good RIA. In the absence of appropriate compliance and enforcement, regulatory delivery will be compromised, as will underlying public policy objectives. Delivery of laws and regulations is complex and involves a variety of actors, all of whom need to be part of the RIA process if it is to be effective in enhancing regulatory quality.

In order to ensure proper delivery of regulation, it is necessary to properly consider the level of inspections and type of conformity assessment processes that will be needed, how they should be organised and resourced, and what methods should be applied to do so. The availability of proper quality infrastructure supporting the implementation of regulation (e.g. the qualification of relevant testing facilities) needs to be assessed and addressed upfront. To identify potential issues connected with implementing the regulations and ensuring compliance, key stakeholders including inspection agencies and inspectors as well as accreditation and conformity assessment bodies should be involved in the process of designing regulations as they have relevant “front-line” experience. (OECD, 2020^[24])

In the short term, representatives of inspection agencies having direct experience with implementing and enforcing regulations as well as accreditation and conformity assessment bodies (a non-exhaustive list could include the Mauritius Standards Bureau, the Mauritius Tourism Authority, the Mauritius Fire & Rescue Service, and the Mauritius Revenue Authority) **must be consulted in the process of developing regulations and conducting RIA** to ensure regulations are designed in a way that they can be enforced and complied with at reasonable cost.

In the medium term, the RIA Handbook should be complemented with guidance on the appropriate tools to be used when implementing regulations to ensure compliance. These tools should be based on evaluation of risk potentially stemming from non-compliance. The Dutch *Table of Eleven* can be used as an example.¹¹ The RIAs should focus not just on how regulation will be enforced and how potential breaches will be punished through sanctions, but also on promoting compliance through guidance and practical assistance. Guidance should also discuss alternatives to state-led regulatory enforcement, such as market forces, private sector and civil society actions. It will also need to consider whether direct inspections and enforcement would be needed at all, or whether evidence suggests that compliance could be achieved by other means (e.g. high likelihood of voluntary compliance, possibility to rely on insurance mandates, civil litigation where relevant, etc.).

In the long term, steps should be taken to develop a government-wide policy on improving regulatory enforcement and inspections, as part of Mauritius’ broader regulatory policy. This policy should be developed on the basis of a careful analysis of the country’s strengths and weaknesses in this area, and focus on various aspects of regulatory delivery, such as co-ordination and consolidation of inspection agencies, use of risk-based approaches to regulatory enforcement, compliance promotion, etc. The OECD Best Practice Principles on Regulatory Enforcement and Inspections as well as the OECD

Regulatory Enforcement and Inspections Toolkit (OECD, 2018^[25]) could serve as a basis for such policy. The OECD Secretariat stands ready to assist the Government of Mauritius in developing such a policy.

Ensure the development of relevant RIA-related capacity over time

Priority 4: Ensure the development of relevant RIA-related capacity over time

Provide RIA training for relevant government officials and other stakeholder groups as appropriate – including by ensuring awareness and understanding of the RIA handbook and other relevant guidance.

- Organise a series of capacity-building sessions for government officials involved in the rule-making process in Mauritius, with the new RIA Office as a central repository for RIA-related knowledge and expertise.
- Ensure that ministry officials preparing RIAs have a clear point of contact to approach for advice and training requests throughout the policy process.
- Consider addressing the RIA-related skills of stakeholders beyond government officials in charge of RIA; e.g. civil society and business organisations, MPs.

Capitalise upon the proposed network of RIA officers to create informal mechanisms to share experiences and good practices among RIA experts at a technical level. To strengthen communication channels, regularly schedule activities to gather all regulatory bodies undertaking RIA.

Implement accountability- and performance-oriented arrangements in accordance with Mauritius' legal and administrative context.

Develop a software-based tool that can be used to assist in RIA development, for example to estimate certain regulatory impacts, identify relevant research and examples (including beyond national borders) and make any other relevant resources readily available.

Adequate training and guidance needs to be provided to civil servants

Developing appropriate skills for RIA needs to be understood as a strategic priority for the implementation of a RIA framework in Mauritius. Relevant capacity notably refers to technical and methodological skills, crucially including problem appraisal, costing methods and collecting and interpreting relevant data. It also refers, however, to sufficient awareness and understanding of the importance (and limitations) of RIA as a policy-improving tool and mind-set, of the role and responsibilities of each official in that context, and of procedural aspects - including stakeholder engagement and information gathering aspects.

Ensuring the availability of appropriate capacity is key to promoting cultural acceptance of RIA and guaranteeing its sustainability over time. A holistic approach would be preferable in this respect whereby capacity development for RIA is envisioned in connection with other relevant areas, such as stakeholder engagement, regulatory enforcement and delivery. In the same vein, incorporating RIA training into national training programmes for the public administration has proven to be an effective means of developing the relevant skills set. New Zealand, for example, has developed and implemented a common qualifications framework in the public sector aimed at helping regulatory agencies work together by instituting common ways of operating as well as transferable skills and qualifications (see Box 4.6 for more information).

Moreover, a precondition for effective capacity development is that sufficient financial and human resources are available for the establishment of dedicated RIA capacity within the oversight function and ministries.

In the short term, it would be valuable to organise a series of capacity-building sessions for government officials involved in the rule-making process in Mauritius. The new RIA Office should have responsibility for developing a central repository for RIA-related knowledge and expertise (see the sub-section “Develop and implement a systemic approach to enable and foster appropriate co-ordination and management of the RIA process”). This would involve undergoing appropriate training, gathering and disseminating relevant materials for capacity building, organising awareness raising and capacity building seminars, seeking advice and establishing co-operation agreements with relevant jurisdictions for knowledge sharing. The new RIA office could work with the University of Mauritius and the Civil Service College of Mauritius to develop the training courses for civil servants. It could also be useful to have international RIA experts contribute to capacity building efforts.

As this central repository function matures, training and capacity building efforts should be progressively expanded to encompass all staff responsible for RIA in line ministries. Pilot RIAs could be carried out, to raise awareness of the value of utilising RIA in policy making, such as the pilot prepared in the area of fire safety under the supervision of the OECD team. Moreover, the Government should ensure that ministry officials preparing RIAs have a clear point of contact to approach for advice and training requests throughout the policy process. To facilitate this, the government should ensure that the designated RIA officers within each ministry, to act as focal points for RIA-related matters, should undergo RIA training.

Consideration should likewise be given to addressing the RIA-related skills of stakeholders beyond government officials in charge of RIA. For example, civil society and business organisations may benefit from training in responding to consultation processes and procedures so that they are ready to contribute to the process. In the same vein, parliamentarians can benefit from training in order to analyse the government’s RIA and to challenge them as part of a democratic process on the benefits of proposed regulations (see the sub-section “Ensure Parliament’s active involvement in the RIA process”) (OECD, 2008^[23])

The OECD will develop a tailored RIA Handbook as part of the present project. The body in charge of capacity building for RIA (i.e. the new RIA Office as per the recommendation above) will have the responsibility for ensuring that those involved in RIA are acquainted with the framework and make use of it. Further down the line, it would be advisable to update and/or expand as appropriate this handbook (which should be conceived as a “living document”) to reflect state-of-the-art theory and practice of RIA. Box 4.11 below provides best practice examples in the provision of RIA training programmes and guidelines.

Box 4.11. Training programmes and guidelines in OECD countries

In most OECD countries, central oversight bodies for regulatory reform are in charge of drafting and distributing guidelines. If this institution is not responsible for the training on RIA, strong co-ordination mechanisms should be arranged in a timely manner. In the cases where expertise is not available locally, training has to be outsourced.

Several countries with long RIA experience demonstrate different ways of addressing training needs. One common element to the vast majority of approaches is the need for constant renovation and improvement. Leading RIA jurisdictions such as the **United States**, the **United Kingdom** and the **EU** have proceeded to subsequent updates of their guidance document over the years. These should be

conceived as living documents to be continuously improved as experience and knowledge of RIA accumulates and new techniques or methodologies are embraced.

In **Australia**, another RIA leader, RIA training is provided to a significant number of officials every year. This includes tailored RIA training courses that are oriented toward the specific RIA needs of individual regulatory agencies. The existing guide and training sessions are used to promote the Regulatory Impact Statement process and enhance co-operation within departments and agencies. In **Mexico**, the National Regulatory Improvement Commission (CONAMER) provides training courses for RIA users and provides technical assistance to agencies upon request. Ireland has in turn made significant efforts to deliver relevant training in the context of implementing its RIA framework, including courses which place RIA requirements in a broader policy context. **South Korea** and **Italy** are further examples of countries having introduced a variety of RIA-related training programmes for government officials over the years.

Source: (OECD, 2008^[26]).

In the medium to long term, the proposed network of RIA units should be capitalised upon to foster the creation of informal mechanisms to share experiences and good practices among RIA experts at a technical level (see the sub-section “Develop and implement a systemic approach to enable and foster appropriate co-ordination and management of the RIA process”). To strengthen communication channels, it may be valuable to regularly schedule activities to gather all regulators undertaking RIA.

As a complement to these technical-level mechanisms, senior officials and political leaders should encourage information exchange and provide endorsement and support during the learning process. In addition, it would be valuable for the new RIA Office to develop a software-based tool that can be used to assist ministries in each of the different steps of developing RIAs e.g. to assist with problem definition, estimating regulatory impacts of different policy alternatives, identify relevant research and examples (including beyond national borders) and make available any other relevant resources. Box 4.12 sets out examples of innovative software tools developed in South Korea and Mexico.

Developing relevant capacity will also require the implementation of accountability- and performance-oriented arrangements in accordance with Mauritius’ legal and administrative context. These arrangements may include some version of the following:

- Making draft RIAs public and subject to public consultation.
- Specifying the name of the responsible person for every regulatory proposal that is tabled by government and published online.
- Including the evaluation of RIA work as an element in the evaluation of the performance and the determination of productivity of the civil servant.
- Specifying that skills in RIA are an element to be considered for career promotion to specific high-responsibility positions in the administration.

Box 4.12. Innovative tools for better RIA

In **Mexico**, a regulatory impact calculator was introduced in 2010, as part of a broader set of regulatory policy reforms, allowing regulators to identify potential impacts of their draft regulation. This is a software tool consisting of ten questions to determine the type of RIA to be conducted.

To increase the quality of RIA and lessen the burden of preparing RIA statements in **South Korea**, e-RIA was launched in 2015. It is linked to the national statistical database and provides the public officials who prepare RIAs the possibility to automatically obtain the necessary data for cost-benefit analysis, and a sufficient amount of descriptions and examples for all fields. As all fields are mandatory, e-RIA also prevents users (regulators) from omitting important data and information. RIAs are produced automatically upon completion of all fields.

Source: (OECD, 2016^[27]); (OECD, 2017^[28]).

Notes

¹ For example, these ministries could include the Ministries of Finance & Economic Planning, Health & Wellness, Commerce & Consumer Protection, Environment, Solid Waste Management & Climate Change and Local Government and Disaster Risk Management.

² In the short term the scope of the RIA policy should include regulation with significant impacts on business and economic activity, coming from the key regulatory ministries. However the scope should be wider than regulations that only impact upon the business sectors, i.e. it should include regulations impacting upon health, the environment etc.

³ Further guidance on stakeholder consultations will be provided in the RIA handbook to be delivered as part of the present project. For an overview of recommended principles and relevant examples regarding stakeholder engagement, please refer to the draft OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy (forthcoming), available in the form of draft for public consultation on the following link: <http://www.oecd.org/governance/regulatory-policy/public-consultation-best-practice-principles-on-stakeholder-engagement.htm>.

⁴ http://www.simplification.be/webfm_send/988.

⁵ More information at: <https://www.europarl.europa.eu/eprs/eprs-impact-assessment-european-added-value-presentation.pdf>.

⁶ For an example of comprehensive overview of planning, preparing and proposing legislation (including assessing potential impacts), please refer to the European Commission's dedicated online portal: https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law_en.

⁷ Reports are available in English and Swedish here: <https://www.regelradet.se/om-regelradet-granskning/arsrapporter-och-ovriga-rapporter/>.

⁸ The report (OECD, 2018^[29]) compares the common features and differences of seven regulatory oversight bodies, and draws some lessons from their establishment and their experience.

⁹ https://dfo.no/filer/faqområder/utredningsinstruksen/guidance_notes_on_the_instructions_for_official_studies.pdf, p. 14ff.

¹⁰ The OECD's December 2020 report *Establishing Regulatory Impact Assessment (RIA) in Mauritius: Module 1 Report* contains international best practice examples of how other governments have implemented the proportionality principle.

¹¹ http://www.sam.gov.lv/images/modules/items/pdf/item_618_nl_the_table_of_eleven.pdf.

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5 Action plan to establish RIA within Mauritius

Based on the analysis and recommendations presented earlier in this report, the OECD has developed an action plan outlining the four priority areas for reform and with concrete actions for establishing a robust RIA framework in Mauritius. The action plan provides a timeline and key milestones for rolling out this programme of work. It also indicates the responsible entities for the various actions proposed under each priority. Moreover, it will also help to assess progress made in delivering the new RIA framework.

Key priorities and actions for implementation

Action	Description	Responsible entities	Timeframe (short/medium/long term)
Priority 1: Ensure political commitment and buy-in for RIA			
1.1	<p>Develop a whole-of-government policy on regulatory quality, including RIA, clearly allocating responsibilities and operational duties throughout the regulatory process. including:</p> <p>Development of a legal mandate requiring ministries to carry out RIA and defining oversight institutional architecture [Cabinet's approval, RIA Act]</p> <p>Set-up of an Inter-Ministerial RIA committee [Cabinet's approval]</p> <p>Establishment of RIA office</p> <p>Establishment of the basic elements and steps of the RIA that ministries have to follow [In RIA Act, Circular Note to all Ministries]</p> <p>Definition of the scope of RIA including which ministries and what types of legislation are included.</p> <p>Development of a set of regulatory quality principles.</p>	Prime Minister's Office ¹	Short term
1.2	Run an outreach campaign to clearly communicate the goals and relevance of RIA	Prime Minister's Office	Short term
1.3	<p>Clarify and systematise stakeholder engagement practices as an integral part of RIA process, including:</p> <p>Requirement that proposals must undergo consultation embedded in the legal mandate establishing RIA.</p> <p>Develop guidelines for officials on different types of stakeholder engagement practices.</p> <p>Systematic training to officials on stakeholder engagement techniques.</p> <p>Draft proposal and RIA made available for consultation for a minimum period of time.</p> <p>Feedback by ministries on the results of the consultation process.</p> <p>Published RIA document providing stakeholders with detailed and substantive information.</p>	RIA office	Short term
1.4	<p>Develop a RIA consultation website that:</p> <p>Centralises and includes all regulatory proposals and RIAs under consultation.</p> <p>Allows regulated parties to send comments, which are published,</p> <p>Allows ministries issuing regulation to reply to the comments.</p>	RIA office	Medium term
Priority 2: Establish robust governance for RIA in Mauritius			
2.1	<p>Put in place an effective regulatory mechanism that ensures critical oversight functions of <i>quality control</i>, <i>coordination</i>, and <i>guidance</i>, <i>advice and support</i>.</p> <p>During early stages, prioritise: 1) co-ordination and promotion of a whole-of-government, concerted approach to regulatory quality, and 2) provision of guidance, advice and support on the RIA process (including capacity building).</p> <p>Progressively develop the "challenge" functions of regulatory oversight (3), focus on friendly advice at first.</p>	Prime Minister's Office for (1) RIA office for (2) and (3)	Short term for (1); short to medium term for (2) and (3)
2.2	<p>Ensure Parliament's active involvement in the RIA process by means of information and awareness raising actions to ensure that MPs are both willing and able to use RIA results as part of their work.</p> <p>Set up a dedicated parliamentary committee to assess the evidence base underpinning regulatory proposals and request adjustments as appropriate.</p>	Prime Minister's Office, National Assembly	Short term for information and awareness raising; Medium term for creation of dedicated instance
2.3	Develop and implement a systemic approach to enable and foster appropriate co-ordination and management of the RIA process, including by developing a "RIA" community of practice and designating a network of RIA officers to act as focal point for RIA-related matters	Prime Minister's Office/Inter-Ministerial RIA committee, RIA units in line ministries	Short term for establishment of basic coordination mechanism; Medium to long term for community of practice and RIA officers' network

Action	Description	Responsible entities	Timeframe (short/medium/long term)
2.4	Improve the predictability of the regulatory process by establishing a forward planning system	Prime Minister's Office, line ministries	Short- to medium term
2.5	Monitor and evaluate the outcomes and performance of Mauritius' RIA system.	RIA office Inter-Ministerial RIA committee	Medium- to long-term (ongoing)
Priority 3: Establish a RIA process			
3.1	Establish a basic RIA process based on best practice and taking Mauritius' specificities into account.	RIA office	Short term
3.2	Develop a RIA template in order to effectively communicate the results, including introducing assessed options & their costs and benefits, and justifying preferred option.	RIA office	Short term
3.3	Select a clear and well-targeted RIA methodology that can be adapted over time. Start with a qualitative approach such as multi-criteria analysis. As a first step towards greater quantification of regulatory impacts, assess costs to business such as administrative burdens. Commit to using Cost-Benefit Analysis in longer term.	RIA office	Short term for initial qualitative approach Long term to adopt quantitative methodology
3.4	Define clear processes and criteria to ensure a proportionate approach to RIA. Established a principle of proportionality within new RIA policy. Develop a triage process using a set of criteria to determine which regulatory proposals need to undergo a RIA. Consider using more analytical threshold approaches in longer term.	RIA office	Short-term for proportionality principle and triage process. Long term to adopt more detailed threshold criteria
3.5	Develop and start implementing a comprehensive data strategy comprehensive data strategy, as part of the RIA policy, to make sure that relevant data are available for RIA.	RIA office	Short to medium term
3.6	Develop implementation, enforcement and compliance strategies, including: Establish systematic consultation with representatives of inspection agencies in the process of developing regulations. Update RIA Handbook with guidance on the appropriate tools to be used when implementing regulations to ensure compliance. In longer term, develop a government-wide policy on improving regulatory enforcement and inspections, as part of Mauritius' broader regulatory policy.	RIA office Prime Minister's office and Inter-Ministerial RIA committee for developing a government-wide policy on improving regulatory enforcement and inspections ²	Short term to establish systematic consultation with inspection agencies. Medium term to update RIA Handbook. Longer term to develop a government-wide policy.
Priority 4: Ensure the development of relevant RIA-related capacity over time			
4.1	Plan and organise RIA training for relevant government officials and other stakeholder groups as appropriate – including by ensuring awareness and understanding of RIA handbook and guidance.	RIA office	Short to medium term
4.2	Update and, if needed, expand RIA handbook and guidance.	RIA office	Long term
4.3	Implement accountability- and performance-oriented arrangements in accordance with Mauritius' legal and administrative context	Prime Minister's office and Inter-Ministerial RIA committee	Medium term
4.4	Develop a software-based, "calculator-like" tool to assist RIA development.	RIA office	Medium to long term

Note: Short-term measures: < 1 year; medium-term: < 3 years; long-term: > 3 years.

1. This as well as subsequent references to the Prime Minister's Office in this action plan should be understood as potentially involving, to some extent, the Ministry of Finance and Economic Planning – so the latter's relevant expertise (e.g. in the context of the budgetary process) can be capitalised upon.

2. Bodies with experience in implementing and enforcing regulations as well as accreditation and conformity assessment bodies, such as the Mauritius Standards Bureau, the Mauritius Tourism Authority, the Mauritius Fire and Rescue Service and the Mauritius Revenue Authority should be consulted.

Annex A. The 2012 OECD Recommendation on Regulatory and Policy Governance: Principle 4

Box A A.1. Principle 4

Integrate Regulatory Impact Assessment (RIA) into the early stages of the policy process for the formulation of new regulatory proposals. Clearly identify policy goals, and evaluate if regulation is necessary and how it can be most effective and efficient in achieving those goals. Consider means other than regulation and identify the trade-offs of the different approaches analysed to identify the best approach.

4.1 Adopt *ex ante* impact assessment practices that are proportional to the significance of the regulation, and include benefit cost analyses that consider the welfare impacts of regulation taking into account economic, social and environmental impacts including the distributional effects over time, identifying who is likely to benefit and who is likely to bear costs.

4.2 *Ex ante* assessment policies should require the identification of a specific policy need, and the objective of the regulation such as the correction of a market failure, or the need to protect citizen's rights that justifies the use of regulation.

4.3 *Ex ante* assessment policies should include a consideration of alternative ways of addressing the public policy objectives, including regulatory and non-regulatory alternatives to identify and select the most appropriate instrument, or mix of instruments to achieve policy goals. The no action option or baseline scenario should always be considered. *Ex ante* assessment should in most cases identify approaches likely to deliver the greatest net benefit to society, including complementary approaches such as through a combination of regulation, education and voluntary standards.

4.4 When regulatory proposals would have significant impacts, *ex ante* assessment of costs, benefits and risks should be quantitative whenever possible. Regulatory costs include direct costs (administrative, financial and capital costs) as well as indirect costs (opportunity costs) whether borne by businesses, citizens or government. *Ex ante* assessments should, where relevant, provide qualitative descriptions of those impacts that are difficult or impossible to quantify, such as equity, fairness, and distributional effects.

4.5 Regulatory Impact Analysis should as far as possible be made publicly available along with regulatory proposals. The analysis should be prepared in a suitable form and within adequate time to gain input from stakeholders and assist political decision making. Good practice would involve using the Regulatory Impact Analysis as part of the consultation process.

4.6 *Ex ante* assessment policies should indicate that regulation should seek to enhance, not deter, competition and consumer welfare, and that to the extent that regulations dictated by public interest benefits may affect the competitive process, authorities should explore ways to limit adverse effects and carefully evaluate them against the claimed benefits of the regulation. This includes exploring whether the objectives of the regulation cannot be achieved by other less restrictive means.

4.7 When carrying out an assessment, officials should:

- Assess economic, social and environmental impacts (where possible in quantitative and monetised terms), taking into account possible long term and spatial effects;
- Evaluate if the adoption of common international instruments will efficiently address the identified policy issues and foster coherence at a global level with minimal disruption to national and international markets;
- Evaluate the impact on small to medium-sized enterprises and demonstrate how administrative and compliance costs are minimised.

4.8 RIA should be supported with clear policies, training programmes, guidance and quality control mechanisms for data collection and use. It should be integrated early in the processes for the development of policy and supported within agencies and at the centre of government.

Source: (OECD, 2012^[1]).

Reference

OECD (2012), *Recommendation of the Council on Regulatory Policy and Governance*, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264209022-en>. [1]

Annex B. OECD Best Practice Principles for Regulatory Impact Analysis

Box A B.1. OECD Best practice principles for RIA

1. Commitment and buy-in for RIA

- Governments should:
 - Spell out what governments consider as “good regulations”.
 - Introduce RIA as part of a comprehensive long-term plan to boost the quality of regulation.
 - Create an oversight unit for RIA with sufficient competences.
 - Create credible “internal and external constraints”, which guarantee that RIA will effectively be implemented.
 - Secure political backing of RIA.
- Securing stakeholder support is essential.
- Governments have to enable public control of the RIA process.

2. Governance of RIA – having the right set up or system design

- RIA should be fully integrated with other regulatory management tools and should be implemented in the context of the Regulatory Governance Cycle.
- RIA and its implementation should be adjusted to the legal and administrative system and culture of the country.
- Governments need to decide whether to implement RIA at once or gradually.
- Responsibilities for RIA programme elements have to be allocated carefully.
- Efficient regulatory oversight is a crucial precondition for a successful RIA.
- Resources invested in RIA must be carefully targeted.
- Parliaments should be encouraged to set up their own procedures to guarantee the quality of legislation, including the quality of RIA.

3. Embedding RIA through strengthening capacity and accountability of the administration.

- Adequate training must be provided to civil servants.
- Governments should publish detailed guidance material.
- There should be only limited exceptions to the general rule that RIA is required.
- Accountability- and performance-oriented arrangements should be implemented.

4. Targeted and appropriate RIA methodology

- The RIA methodology should be as simple and flexible as possible, while ensuring certain key features are covered.

- RIA should not always be interpreted as requiring a full-fledged, quantitative cost-benefit analysis of legislation.
- Sound strategies on collecting and accessing data must be developed.
- RIA has to be undertaken at the inception stage of policy development.
- No RIA can be successful without defining the policy context and objectives, in particular the systematic identification of the problem.
- All plausible alternatives, including non-regulatory solutions must be taken into account.
- It is essential to always identify all relevant direct and indirect costs as well as benefits.
- Public consultations must be incorporated systematically in the RIA process.
- Insights from behavioural economics should be considered, as appropriate.
- The development of enforcement and compliance strategies should be part of every RIA.
- RIA should be perceived as an iterative process.
- Results of RIA should be well communicated.

5. Continuous monitoring, evaluation and improvement of RIA

- It is important to validate the real impacts of adopted regulations after their implementation.
- RIA systems should also have an in-built monitoring, evaluation and refinement mechanism in place.
- A regular, comprehensive evaluation of the impact of RIA on the (perceived) quality of regulatory decisions is essential.
- It is important to evaluate the impacts in cases where the original RIA document does not coincide with the final text of the proposal
- Systematic evaluation of the performance of the regulatory oversight bodies is important.

Source: (OECD, 2020^[1]).

Reference

OECD (2020), *Regulatory Impact Assessment*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://dx.doi.org/10.1787/7a9638cb-en>.

[1]

Annex C. OECD Best Practice Principles on Stakeholder Engagement in Regulatory Policy

Governments should establish a clear policy identifying how open and balanced public consultation on the development of rules will take place.

- A clear, cross-cutting, government-wide guiding policy should exist on how to engage with stakeholders with clearly stated objectives. It should not and cannot be overly prescriptive; it should, however, provide for a sufficient level of transparency, predictability and uniformity for the engagement process.
- It should set clear objectives for stakeholder engagement.
- Leadership and strong commitment to stakeholder engagement in regulation-making are needed at all levels, from politicians, senior managers and public officials.
- Capacities in public administration to conduct effective and efficient stakeholder engagement should receive adequate attention. Governments should create mechanisms ensuring that civil servants adhere to the principles of open government and stakeholder engagement in regulatory policy.
- For successful stakeholder engagement actions, governments need to plan and act strategically by, for example, planning ahead to allow sufficient time for stakeholder engagement and determine how and when to engage stakeholders at the different stages of developing regulatory proposals.

Mechanisms and institutions to actively provide oversight of regulatory policy procedures and goals, support and implement regulatory policy should be established.

- Control and oversight of the quality of engagement activities and compliance with the engagement policy should exist within all administrations. Clear competences for co-ordinating and promoting stakeholder engagement in regulatory policy across the administration should be established.

Governments should co-operate with stakeholders on reviewing existing and developing new regulations.

- It is important that the engagement policy covers stakeholder engagement at each stage of the Regulatory Governance Cycle.
- Stakeholder engagement should be proportionate to the significance and impact of regulations, there should nevertheless be full transparency and predictability and a certain level of uniformity of the process; there should always exist an opportunity for every stakeholder to express their views and provide inputs.
- Stakeholder inputs should be solicited at the stage of the regulation-making process where there is still sufficient time for the comments to be taken on board.

Governments should actively engage all relevant stakeholders during the regulation-making process and designing consultation processes...

- Governments should try to reach out to those who are usually least represented in the rule-making process. Potentially affected foreign interests should not be excluded from the engagement

process and should have an opportunity to provide their views and arguments as well as data supporting those views.

- Governments should avoid overreliance on consulting advisory bodies or expert groups.

... to maximise the quality of the information received...

- Administrations need to provide stakeholders with the most relevant and timely information available.
- Governments have to provide stakeholders with sufficient time to submit their views. Clear timelines must be set and publicised for stakeholder engagement activities
- It is important to choose consultation tools that are suitable for the types of stakeholder engagement and for the right phase of the engagement process. Governments should avoid overreliance on consulting only with advisory bodies or expert groups.
- Central consultation portals should be created. Governments should not be afraid to experiment with new tools but ICTs are not the only way of communication with the public. Governments should mind the digital gap.
- Governments should consider the stakeholders' perspective and treat them with respect, it might be necessary to educate stakeholders to the engagement culture. Governments have to be aware of and try to prevent 'consultation fatigue' among stakeholders.
- Governments have to be aware of and try to prevent 'consultation fatigue' among stakeholders. It is therefore necessary that stakeholders are not asked for similar information or views too often and that there is a visible impact of engagement activities.

...and its effectiveness.

- It is necessary that administration explains how stakeholder input has been assessed and incorporated in the decisions reached.
- When processing stakeholders' input, it is necessary to balance different interests and prevent 'regulatory capture' by strong lobby groups and special interests. Clarifying that the objective of stakeholder consultations is to obtain information for the benefit of the public as a whole may help deflect pressures to listen to the loudest voices.

Governments should consult with all significantly affected and potentially interested parties, whether domestic or foreign, where appropriate at the earliest possible stage while developing or reviewing regulations

- Engaging with stakeholders should therefore start as early as possible in the process.

Governments should make available to the public, as far as possible, all relevant material from regulatory dossiers including the supporting analyses, and the reasons for regulatory decisions as well as all relevant data.

- To obtain useful input from the public during stakeholder engagement, it is necessary for the government to provide specific information. Taking into account the perspective of stakeholders and depending on the stage of the consultation process, consultees will be more likely to participate if regulators provide detailed, complete information, rather than general descriptions.

Governments should consult on all aspects of impact assessment analysis and use impact assessments as part of the consultation process.

- Stakeholder engagement should be closely integrated with Regulatory Impact Assessment.

Governments should structure reviews of regulations around the needs of those affected by regulation, cooperating with them through the design and conduct of reviews including prioritisation, assessment of regulations and drafting simplification proposals.

- Governments should listen to the perception of regulation by stakeholders all along the Regulatory Governance Cycle.
- Engaging stakeholders who have better information on the real-life effects of regulation can provide invaluable insights into any effort to evaluate the outcome of policymaking *ex post*. These insights, which complete expert advice, could be particularly valuable insofar as they help policymakers to understand the real impact and performance of the policy.

Governments should regularly evaluate both their stakeholder engagement policy and individual engagement activities towards achieving their goals.

- While it is not possible to identify a one-size fit all best practice of engagement in regulatory policy, a robust evaluation system may facilitate the identification of more appropriate methods than others.

All regulations should be easily accessible by the public. A complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.

- Regulatory transparency requires that governments effectively communicate the existence and content of all regulations to the public. The public should therefore enjoy unimpeded access to regulation, free of charge.

Governments should have a policy that requires regulatory texts to be drafted using plain language. They should also provide clear guidance on compliance with regulations, making sure that affected parties understand their rights and obligations.

- Governments need to ensure that regulatory goals, strategies, and requirements are articulated clearly to the public.
- Governments need to ensure that regulatory goals, strategies, and requirements are articulated clearly to the public. Therefore, when drafting regulations, plain language should be used, technical jargon avoided and clear definitions of new terms provided.

Source: (OECD, forthcoming^[1]).

Reference

OECD (forthcoming), *Best Practice Principles on Stakeholder Engagement in Regulatory Policy*, [1]
OECD Publishing, Paris.

Annex D. Basic questionnaire of the analysis to define the preparation or expansion of RIA in Australia

1. What is the policy problem you are trying to solve?

- Clearly identify and define the problem you are trying to solve.
- Demonstrate why it is a problem: are there risks or other dangers to be mitigated?
- Offer evidence about the magnitude of the problem and the costs of not doing anything.
- Describe the businesses, community organisations or individuals affected by the problem.
- Identify if there is any existing legislation which is not being enforced. Explain which, if any, current government measures have sought to address this problem.
- Establish why those measures are not working.

2. Why is government action needed?

- Clearly identify why there is a legitimate reason for government to intervene.
- Demonstrate that government has the capacity to intervene successfully. Identify alternatives to government action.
- Clearly identify what objectives, outcomes, goals or targets you are aiming for.
- Identify the constraints or barriers to achieving your goal.
- Ensure your objectives are:
 - specific
 - measurable
 - accountable
 - realistic
 - timely

3. What policy options are you considering?

- Identify a range of genuine and viable alternative policy options.
- Ensure any of your live options can achieve your stated policy objectives.
- Give the decision maker confidence you have identified all of the available options open to you or any other portfolio of government.
- Identify the context for the options considered (for example, the policy may be an election commitment).

4. What is the likely net benefit of each option?

- Identify who is likely to be affected by each regulatory option and assess, where significant, the economic, competition, social, environmental or other costs and benefits as well as how those costs and benefits are likely to be distributed.

- Where relevant, quantify both the benefits and costs (including regulatory costs) of your policy proposal and alternative options on businesses, community organisations, individuals, the broader community, the environment and Government to a level of detail commensurate with its impact.
- Analyse qualitative impacts as well as quantitative impacts.
- Provide information on applicable international standards and whether the policy proposal differs from or adopts those standards.

5. Who will you consult about these options and how will you consult them?

- Explain the purpose and objectives of consultation.
- Outline the plan for conducting consultation.
- Outline the principal views of stakeholders.
- Summarise the areas of agreement as well as areas of difference.
- Describe how the proposal has been modified to take account of stakeholder views, or why dissenting views have not been adopted.
- In the event your policy proposal is market sensitive, or if you believe open public consultation may compromise your policy analysis, you should discuss your consultation options with OBPR at the earliest opportunity

6. What is the best option among those you have considered?

- Describe what you learned from consultation.
- Indicate which of the identified options you are recommending.
- Explain the decision making process and clearly outline any:
 - caveats or qualifications
 - assumptions
 - unresolved issues
 - weightings applied to evidence or arguments

7. How will you implement and assess your chosen option?

- Discuss any implementation challenges you may face in this policy proposal.
- Assess the implementation risks: their likelihood, consequences and management.
- Outline transitional arrangements in moving from one policy to another.
- Describe how the performance of your policy will be monitored and evaluated against its objectives, during and after implementation.

Source: (Commonwealth of Australia, 2020^[1]).

Reference

Commonwealth of Australia, D. (2020), *The Australian Government Guide to Regulatory Impact Analysis*, <https://www.pmc.gov.au/sites/default/files/publications/australian-government-guide-to-regulatory-impact-analysis.pdf>. [1]

Annex E. OECD Best Practice Principles for Improving Regulatory Enforcement and Inspections

Box A E.1. OECD Best Practice Principles for Improving Regulatory Enforcement and Inspections

1. **Evidence-based enforcement.** Regulatory enforcement and inspections should be evidence-based and measurement-based: deciding what to inspect and how should be grounded on data and evidence, and results should be evaluated regularly.
2. **Selectivity.** Promoting compliance and enforcing rules should be left to market forces, private sector and civil society actions wherever possible: inspections and enforcement cannot be everywhere and address everything, and there are many other ways to achieve regulatory objectives.
3. **Risk focus and proportionality.** Enforcement needs to be risk-based and proportionate: the frequency of inspections and the resources employed should be proportional to the level of risk and enforcement actions should be aiming at reducing the actual risk posed by infractions.
4. **Responsive regulation.** Enforcement should be based on “responsive regulation” principles: inspection enforcement actions should be modulated depending on the profile and behaviour of specific businesses.
5. **Long term vision.** Governments should adopt policies and institutional mechanisms on regulatory enforcement and inspections with clear objectives and a long-term road-map.
6. **Co-ordination and consolidation.** Inspection functions should be co-ordinated and, where needed, consolidated: less duplication and overlaps will ensure better use of public resources, minimise burden on regulated subjects, and maximise effectiveness.
7. **Transparent governance.** Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and results-oriented management. Execution of regulatory enforcement should be independent from political influence, and compliance promotion efforts should be rewarded.
8. **Information integration.** Information and communication technologies should be used to maximise risk-focus, co-ordination and information-sharing – as well as optimal use of resources.
9. **Clear and fair process.** Governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organise inspections and enforcement

needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses.

10. **Compliance promotion.** Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
11. **Professionalism.** Inspectors should be trained and managed to ensure professionalism, integrity, consistency and transparency: this requires substantial training focusing not only on technical but also on generic inspection skills, and official guidelines for inspectors to help ensure consistency and fairness.

Source: (OECD, 2014^[1]).

Reference

OECD (2014), *Regulatory Enforcement and Inspections*, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, Paris, <https://dx.doi.org/10.1787/9789264208117-en>. [1]

Annex F. RIA Template for the government of the United Kingdom

Title: IA No: RPC Reference No: Lead department or agency: Other departments or agencies:		Impact Assessment (IA)			
		Date: 01/01/2018			
		Stage: Development/Options			
		Source of intervention: Domestic			
		Type of measure: Primary legislation			
		Contact for enquiries:			
Summary: Intervention and Options		RPC Opinion: RPC Opinion Status			
Cost of Preferred (or more likely) Option (in 2016 prices)					
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status		
£m	£m	£m	Qualifying provision		
What is the problem under consideration? Why is government intervention necessary?					
Maximum of 7 lines					
What are the policy objectives and the intended effects?					
Maximum of 7 lines					
What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)					
Maximum of 10 lines					
Will the policy be reviewed? It will/will not be reviewed. If applicable, set review date: Month/Year					
Does implementation go beyond minimum EU requirements?		Yes / No / N/A			
Is this measure likely to impact on international trade and investment?		Yes / No			
Are any of these organisations in scope?	Micro Yes/No	Small Yes/No	Medium Yes/No	Large Yes/No	
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded:		Non-traded:	
<i>I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.</i>					

Signed by the responsible SELECT SIGNATORY: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)			
			Low: Optional	High: Optional	Best Estimate:	
COSTS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)		
Low	Optional		Optional	Optional		
High	Optional		Optional	Optional		
Best Estimate						
Description and scale of key monetised costs by 'main affected groups' Maximum of 5 lines						
Other key non-monetised costs by 'main affected groups' Maximum of 5 lines						
BENEFITS (£m)		Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)		
Low	Optional		Optional	Optional		
High	Optional		Optional	Optional		
Best Estimate						
Description and scale of key monetised benefits by 'main affected groups' Maximum of 5 lines						
Other key non-monetised benefits by 'main affected groups' Maximum of 5 lines						
Key assumptions/sensitivities/risks Maximum of 5 lines				Discount rate (%)		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs:	Benefits:	Net:	

Evidence base (for summary sheets)

There is discretion for departments and regulators as to how to set out the evidence base. However, it is desirable that the following points are covered:

- Problem under consideration;
- Rationale for intervention;
- Policy objective;
- Description of options considered (including status-quo);

- Monetised and non-monetised costs and benefits of each option (including administrative burden);
- Rationale and evidence that justify the level of analysis used in the IA (proportionality approach);
- Risks and assumptions;
- Direct costs and benefits to business calculations (following BIT methodology);
- Wider impacts (consider the impacts of your proposals). Document any relevant impact here and by attaching any relevant specific impact analysis (e.g. impact on small and micro businesses, equalities, etc.) in the annexes to this template)
- A brief qualitative summary of the potential trade implications of measure. This should include an assessment of whether the measure is likely to impact on trade or investment. For further assistance and guidance please refer to DIT.
- Summary and preferred option with description of implementation plan.

Source: (Government of the United Kingdom, 2020^[1]).

Reference

Government of the United Kingdom (2020), *Regulatory impact assessment template for government policies*, <https://www.gov.uk/government/publications/impact-assessment-template-for-government-policies>.

[1]

Establishing Regulatory Impact Assessment in Mauritius

As a small, open economy, Mauritius needs a well-performing regulatory system that provides necessary protections while enabling the development of trade and investment and limiting administrative burdens. A robust regulatory impact assessment (RIA) framework can enhance Mauritius' business environment and attractiveness as a trade and investment partner. In particular, RIA can help Mauritius strengthen its rule-making framework, for example by increasing scrutiny and taking a more evidence-based approach to rulemaking.

This report presents OECD recommendations on to how establish a RIA framework in Mauritius. These recommendations are based upon an analysis of the country's strengths and challenges, as well as extensive engagement with stakeholders. The recommendations also draw on lessons learnt from RIA implementation in a range of countries and an initial benchmarking of RIA-related best practices and guidance material from various relevant jurisdictions.



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