

## **STRENGTHENING THE EFFECTIVENESS OF APPLYING REGULATORY IMPACTS ASSESSMENT (RIA) IN VIETNAM**

The actual execution of laws in our country has shown that the system of legal documents in Vietnam is best described as a “forest” of provisions with numerous overlapped and contrary Laws and Decrees. After having been applied for some time, a huge part of the legislation has become out-of-fashion and is inappropriate to meet the demands of a changed reality. Besides, some newly issued legal documents haven’t taken effect but have rather proven to have unfeasible implications. Additionally, one of the important steps in the establishment of legal documents is to consult the community. In fact, in Vietnam at present, there is a lack of tools to analyze policies in a scientific manner to ensure that laws have satisfied the peoples' needs. Due to the impacts of international integration, a harmonized process of establishing legal policies is a requirement to ensure the similarity for economic development. RIA will be a good tool for the establishment of legal policies, clearly determining which objectives need to be met in order to minimize undesirable impacts. This ensures the adequacy of the means in applying legal tools and policies to the ends of such size. Then, sustainable legal policies suitable to natural and social rules will exist longer, ensuring the effectiveness of policies and promoting the socio-economic development in a more rapid and sustainable manner.

### **I. Concept and significance of the Regulatory Impact Assessment (RIA)**

#### ***1.1. General concept***

Regarding its concept, as defined by the OECD, Regulatory Impact Assessment (RIA) is “a tool of making decisions in a systematic manner, which is used to check and measure possible interests, expenses and impacts of a current regulation, and it is often used in the public area to evaluate different circumstances, laws or policies”. RIA includes the following processes: (i) analysis of possible impacts of a policy change and methods of making such change, and (ii) dissemination of information, results of the analysis and the evaluation to policy makers and the people.

In fact, in addition to some key factors, an unique “correct” model is not available to implement RIA systems. The appropriate itinerary to reform policies

and regulations will depend on political, cultural and social characteristics of each country.

### ***1.2. Elements constituting RIA***

A RIA process often includes the following four elements: (i) Identification of objectives and scope of RIA; (ii) Consultation with the people affected by RIA; (iii) Supervision of quality via independent appraisal and other regimes; (iv) Methods of data collection.

Basically, a RIA report often includes the following 6 basic steps: *Firstly*, to identify the issue; *Secondly*, to make policy plans; *Thirdly*, To consult (as far as possible) relevant parties to obtain the optimum plan, with certain priorities in the plan determined in the second stage; *Fourthly*, to complete a RIA report in which expenses and interests of the selected plan shall be stated in detail; *Fifthly*, to apply policies real circumstances; *Finally*, policy makers shall continue the evaluation after policies have been implemented. If any adjustment of policies is required through a new round of assessments, a new RIA cycle shall be conducted.

The above-mentioned steps are intended to deal with the following three main points: firstly, to identify the issue to be adjusted and state clearly risks which may occur; secondly, to determine a list of solutions and evaluate their impacts; thirdly, to analyse, consult and perfect recommendations.

In theory, there are a number of methods for analysis and evaluation such as cost-benefit analysis, evaluation of a policies effectiveness, or risk analysis. Every analysis should include the following elements: risk analysis, analysis of impacts on the level of competition and markets and Cost-Benefit nalysis.

### ***1.3. Significance of RIA***

The general objective of an RIA is to assist the governments of countries to make policies in a more effective manner. Therefore, the benefit of using RIA is to improve the quality of legal documents, through which to improve the competitiveness of an economy, to increase social equality, minimize legal risks, increase the responsibility for policy actions as well as results and, at the same time reduce errors in policy making.

However, it is noted that RIA is not a “solution” for all “policy problems”. In addition to its advantages, during the course of its application in developing

countries and transition economies, this tool is also exposed to numerous problems which are need to be studied and for which one has to adjust.

## **II. Experiences of applying RIA in some areas in Japan**

### ***II.1. Assessment of policy impacts in Japan***

Up to the late of 1990s, attention has just been paid to the assessment of policy impacts as RIA was applied in Japan. Subject to Article 1 of the Law on the Assessment of Policy Impacts, the purpose of the assessment of policy impacts in Japan is: (i) to speed up the administrative process in an effective and productive manner by applying administrative skills with high and effective quality and the lowest necessary costs for the people, and at the same time, improve the authority's capability for policy making; (ii) to transform the administrative process in a way that it pays attention to achievements and is based on the peoples' viewpoints; (iii) To increase the administrative agencies' responsibility to communicate policies to the people so as to ensure the people support through improved transparency of the administrative process.

The process of the assessment of policy impacts in Japan is conducted on the basis of the “self assessment” principle. Accordingly, ministries and departments shall assess their policy impacts by themselves and have the obligation to reflect on the results to the policy assessments. The assessment of policy impacts is conducted based on the following main methods, namely: project evaluation (cost-benefit analysis), performance measurement, and program evaluation. The results of the assessment of policy impacts are directly and practically reflected in the national budget.

Although numerous advantages have been promoted, in fact the assessment of policy impacts in Japan has also revealed certain limitations. For example, it is impossible to investigate explanations because the regime for investigation of explanations is not available at present and the National Assembly has not yet strictly conducted investigations, and the researchers' actual knowledge is still restricted.

### ***II.3. Experiences of applying RIA in Iwante – Japan***

The target of the assessment of policy impacts in Iwante is to review policies in the province with the following contents: What for? (target); Is it really necessary? (necessity); How can the life of the people in the area be changed? (effectiveness); Is the effectiveness higher than the costs paid? (productivity). The

target is to conduct the administrative process on the basis of respect for achievements and from the peoples' viewpoint.

The assessment of policy impacts in Iwate is categorized into two main types including the assessment of policy impacts and the assessment of the work (things). Of these two categories, the work assessment includes three points, namely, the evaluation of policies, the evaluation of public projects and the evaluation of large-size projects. The process of the assessment of policy impacts in Iwate has been conducted with the participation of local people at most stages of the evaluation process. At the same time, the committee of the assessment of policy impacts (the third committee) of the province acts as a professional agency conducting the self-evaluation. It has the duty to provide consultancy to the provincial Chairman on the fulfilment of the respective policy assessment conducted by the province, as a basis for the province to decide on whether to continue the policy or to temporarily or permanently suspend the project.

The system of assessment of policy impacts in Iwate has the following characteristics: the mechanism is based on clear regulations and laws. The assessment of policy impacts must strictly reflect and publish the peoples' desire in the province.

Thanks to the strict application of assessment of policy impacts, the nature of policy making in Iwate has changed and is now conducted in a more effective manner.

### **III. Status of RIA application in Vietnam and some recommendations**

#### ***III.1. Status of RIA application in Vietnam***

##### ***III.1.1. Legal basis for RIA policies in Vietnam***

Pursuant to the Law on the Promulgation of Legal Documents and Decree 24/2009/ND-CP (“Decree 24”), RIA must be conducted in 3 stages including the establishment of laws, ordinances and decrees:

- (i) Proposing stage: clause 1 of Article 23 and clause 1, Article 59 of the Law on the Promulgation of Legal Documents (preliminary RIA);
- (ii) Drafting stage: clause 2 of Article 33 and clause 2 of Article 61 of the Law on the Promulgation of Legal Documents (simple RIA and full RIA, hereinafter collectively referred to as drafting RIA); and

(iii) Post 3-year enforcement stage from the effective date of the legal document: Article 39 of Decree 24 (post-enforcement RIA)

Pursuant to the Law on the Promulgation of Legal Documents, only laws, ordinances and decrees (collectively referred to as “documents”) are required to apply RIA.

### *III.1.2. Actual status of RIA application in Vietnam*

Over the past 4 years of enforcement, up to present no official report on RIA enforcement has been provided. However, as evaluated by RIA experts under the Program for Enhancing Regulatory Quality (PERQ), the RIA application is only being conducted in a formal and procedural manner. RIA reports have low quality, so they are not considered as policy basis for providing specific advice for drafting legal documents. This situation is due to the following main reasons: Drafting agencies, submitting agencies, appraising agencies, verifying agencies, as well as officials directly involved in the establishment of legal documents fail to be fully aware of the role and importance of RIA. The team of organizations and individuals involved in the RIA enforcement are not fully and comprehensively instructed in terms of the relevant level proficiency and special knowledge. No mechanism for supporting and controlling compliance with the process and RIA quality assessment has been provided, and especially the financial resources and skills of RIA practitioners are very limited.

Regarding the quality of the RIA reports there are still some shortcomings when it comes to the identification of problems, the provision of policy objectives, the presentation of solutions for dealing with problems and the impact assessment of methods, although substantial progress has been made,.

It can be realized that such situations arise for the following main reasons: There is no close connection between the RIA report results and the policy contents in the proposed establishment of legal documents or law and/ordinance projects.. No mechanisms have been available and an independent agency has not yet been established to be responsible for control and verification of the quality and the enforcement of the RIA process. No attention has been paid to the seeking of opinions with respect to RIA reports, neither by the consulting agency nor by the opinion providers. In comparison to global reality, the size of impacts to be assessed as stipulated is too large, especially in the context of Vietnam. RIA has just been introduced and there are some resource constraints. There are some

difficulties relating to the post-enforcement RIA report due to the fact that the RIA report is not correctly drafted, so there are no grounds for comparison. In addition, the resources of drafting officials is limited. Concurrently, officials, including the leading ones, failed to be fully aware of the importance of RIA in the whole process of the establishment of legal documents. In some cases, the RIA process has not been used during the process of discussion. Policy analysis skills through RIA of drafting officials failed to satisfy the proposed requirements. There is a lack of funding for the research, survey and purchase of data. A standing agency in charge of supporting the RIA enforcement is not available to provide instructions, training and supply of a shared database.

### ***III.2. Recommendations on the organization of RIA enforcement***

The results of RIA assessments during the 2010-2012 period have shown that compliance with provisions on RIA in 2012 has been improved in terms of its quantity (especially in terms of RIA on drafting). However, the RIA enforcement fails to satisfy requirements as provided by laws and social reality, and fails to make contributions to completely change the legislative culture. To overcome this, specific recommendations mainly focus on the contents relating to legal requirements with respect to RIA, improve the awareness, skills and knowledge on RIA, establish an agency specialized in RIA, and improve the effectiveness of RIA policy.