



Office of the Council of Ministers

Economic, Social and Cultural Council

ECOSOCC

GRANT 0224 - CAM

Regulatory Impact Assessment Subproject

Cambodia

INCEPTION REPORT

Prepared By

POHL CONSULTING & ASSOCIATES 

Economic, Social and Cultural Council

Endorsed by

Asian Development Bank

December 2011

Abbreviations

ADB	Asian Development Bank
ASEAN	Association of South East Asian Nations
CBA	Cost Benefit Analysis
CLJR	Council of Legal and Judicial Reform
COM	Council of Ministers
DAI	Development Alternatives Incorporated
EA	Executing Agency (in this instance ECOSOCC)
ECOSOCC	Economic, Social and Cultural Council
GRP	Good Regulatory Practice Guide, ASEAN
GWG	Gender Working Group (in ministries)
IA	Implementing Agency (in this instance MoC, MoE, MIME and MoT)
IFC	International Finance Corporation
IT	Information Technology
MIME	Ministry of Industry, Mining and Energy
MoC	Ministry of Commerce
MoE	Ministry of Environment
MoT	Ministry of Tourism
MoU	Memorandum of Understanding
MSME	Micro and Small and Medium Enterprises
NGO	Non-government organization
OBPR	Office of Best Practice Regulation (Australia)
OBRP	Office of Best Regulatory Practice (a generic term for OBPR, BRE, OIRA, etc.)
OCM	Office of the Council of Ministers
ORIA	Office of Regulatory Impact Assessment
Q	Quarter
PA	Preliminary Assessment
PC&A	POHL CONSULTING & ASSOCIATES GmbH
PED	Promoting Economic Diversification (an ADB assistance program)
PIU	Project Implementation Unit
PSC	Project Steering Committee
RGC	Royal Government of Cambodia
RIA	Regulatory Impact Assessment (or Analysis)
RIS	Regulatory Impact Statement
s.	Section or subsection.
SME	Small and Medium Enterprises

Contents

	Page
Abbreviations	2
Contents	3
List of tables and figures	4
1 Executive Summary	5
2 Introduction	8
2.1 Objective	8
2.2 Enablers.....	8
2.3 Background.....	9
2.4 Project outputs	10
3 Inception phase activities and outputs	12
3.1 Mobilization of consultants.....	12
3.2 Project office	12
3.3 Project Steering Committee.....	12
3.4 Other development agencies involvement in RIA in Cambodia.....	13
3.5 Meetings during the Inception Phase	13
3.6 Documents generated.....	14
4 Regulation making in Cambodia.....	15
4.1 Legal framework	15
4.2 Strength and weaknesses of the existing rulemaking.....	17
5 The proposed RIA scheme for Cambodia.....	18
5.1 The seven elements of RIA.....	18
5.2 The two stage RIA process.....	18
5.3 How the RIA process fits into the IA’s decision making process	21
5.4 Key aspects of the RIA scheme.....	22
6 Organizational structure and functions	24
7 Project management.....	29
7.1 Summary – project flow	29
7.2 Output 1: Build-capacity at ORIA and IAs.....	30
7.3 Output 2: Support IA’s action plans	32
7.4 Overseas exposure and training: outputs 1 & 2.....	33
7.5 Outputs 3: Developing a community of RIA practitioners	34
7.6 Consolidation and evaluation phases	34

8	Gender action plan	36
9	Administration reporting	38
10	Way forward	39
10.1	Key attributes for success	39
10.2	Legal backing	40
10.3	Expansion	40
10.4	Monitoring and evaluation	41
	Annex: List of attachments	42
	Annex 1: List of equipment to be purchased	43
	Annex 2: List of meetings	44
	Annex 3: Regulatory plan template	46
	Annex 4: Indicative budget and timeline for activities (confidential)	48

List of tables and figures

Table 1:	Mobilization of Consultants	12
Table 2:	Overview – Project duration and personnel inputs	30
Table 3:	Overview of reports	38
Figure 1:	Law making process in Cambodia	16
Figure 2:	Preliminary Assessment process	20
Figure 3:	Approval process for regulation making in the IAs	21
Figure 4:	The new approval process for regulation making in the IAs	22
Figure 5:	Organization Chart – Regulatory Impact Assessment program	25
Figure 6:	ORIA-IA interaction #1	27
Figure 7:	ORIA IA interaction diagram #2	28
Figure 8:	McKinsey’s 7s applied to the Project	39

1 Executive Summary

This report presents the action plan developed to implement the Regulatory Impact Assessment (RIA) Subproject in Cambodia. It also records the activities undertaken and the outputs generated during the Inception Phase which started on 10 October 2011.

The project duration is 30 months, from October 2011 to March 2014. The Executing Agency (EA) for the Project is the Economic, Social and Cultural Council (ECOSOCC). The oversight agency is the Office of Regulatory Impact Assessment (ORIA), which has been established in the ECOSOCC. The Implementing Agencies (IAs) are the Ministry of Commerce (MoC), Ministry of Environment (MoE), Ministry of Industry, Mining and Energy (MIME) and Ministry of Tourism (MoT). POHL CONSULTING & ASSOCIATES GMBH (PC&A) has been selected to assist with the implementation of the Project.

Put simply, the proposed RIA scheme requires a RIA statement to be presented to the decision makers before they sign off on a regulatory proposal, enabling them to make more informed decisions.

Regulatory proposals in Cambodia take the form of Royal decrees, bills, subdecrees or prakases. RIA focuses on the effects (i.e. substance) of a proposal than its (legal) form. Under the proposed scheme, all regulatory proposals that have some business impact will have to undergo a preliminary assessment (PA). Business impact can be compliance costs or competition effects. If the PA reveals that the business impact is significant, then a regulatory impact statement (RIS) will be required. Both PA and RIS will assess impacts on businesses, individuals and the community; analyzing the impacts under seven categories: problem, objective, options, impact analysis, consultation, conclusion and implementation. These seven elements are interrelated and the analysis is iterative. The analysis is relatively superficial at the PA stage and much more robust at the RIS stage. In Cambodia, the focus of RIA will be on consultation, transparency and commonsense based analysis. RIA will also assess gender equity, requiring a gender impact statement in RIS where necessary.

The objective of RIA is to reduce business compliance costs and improve the competitive environment, making the businesses more efficient and effective, boosting Cambodia's competitiveness and economic growth. An important side-benefit of the RIA is a better law making process and an evidence based policy making culture.

For the RIA Subproject to succeed in the long term it needs three major outputs:

- **Output 1: Build capacity at the ORIA** and IAs – establish an appropriate organizational structure and staffing; set up adequate business processes and control systems, including a database and website; design appropriate

documentation such as guidelines, checklists and templates; build capacity by training and exposure to overseas best regulatory practices; and procure necessary equipment.

- **Output 2: Support the action plans of IAs** – including a regulatory plan and training activities; and provide on the job training and assistance to do RIA.
- **Output 3: Build a community of RIA practitioners** – conduct awareness raising and advocacy activities among stakeholders such as other government ministries, business associations, consumer groups, development partners and academia.

To achieve these outputs, the Project is divided into four phases: inception (2011), action (2012), consolidation (2013) and evaluation phase (2014). The project plan matrix (below) summarizes the activities planned.

- A substantial part of the output 1 and some of the output 2 activities have been progressed during the **inception phase**.
- These activities will be completed during the **action phase**, where there will be extensive input by the Consultants. Most training activities, including overseas study tours and secondments, will be conducted. Outreach activities to advocate regulatory reform and extensive liaison with the stakeholders will also take place. IA staff will be given one-on-one help to conduct RIAs.
- The Project will move to **consolidation phase** in 2013 where the Consultants input will be wound down, enabling the project staff to work independently. The focus at this stage will be on fixing any unexpected problems and gaps in the capacity of the staff. The first annual report will be published in early 2013.
- The progress of the Project will be reviewed towards the end of 2013 and the final report will be published in early 2014, completing the **evaluation phase**.

A full political commitment to the Project by the Cambodian government is critical for the success of the Project, as it involves the cooperation of other ministries and stakeholders. Also, whole-hearted full-time commitment by the staff is essential, because a significant proportion of the staff have other government duties also. Certainty and continuity of the Project is necessary to gain staff commitment.

Regulatory certainty can be provided by enacting a subdecree to mandate RIA. This would also signal continuing government commitment. There are various ways in which the Project can be continued. Additional pilot ministries can be co-opted, eventually leading to RIA throughout the government. RIA can be extended to existing (stock) of regulation to achieve regulatory burden reduction. And the scope of RIA can be expanded beyond regulation that affects business. These measures will ensure that the government's regulatory reform initiative will continue beyond this Project.

RIA Cambodia – Project plan matrix: 2011-2014

ACTIVITIES	2011	2012				2013				2014
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
ORIA organizational structure & job descriptions										
Procurement of equipment and facilities										
Develop ORIA's business processes and reporting										
Design RIA templates, checklist and guidelines										
In-house training to ORIA staff on business processes										
Develop a procedures manual, including purchasing guidelines										
Publish the RIA handbook										
Prepare the annual regulatory report										
Basic RIA training to ORIA and IA staff										
Advanced CBA training to ORIA staff										
Ongoing RIS training to ORIA and IAs										
Develop action plans in IA										
Implement the RIA system in the ORIA and IAs										
Testing of database and website										
i-Centre operational and training to ORIA & IAs										
Ongoing i-Centre development & maintenance										
Data entry for existing regulations (one-off)										
RIA project launch (implementation report)										
Advocacy seminars and retreats.										
Overseas study tours ORIA & IAs										
Secondment for ORIA & IA staff										
Evaluation and final report										

2 Introduction

2.1 Objective

This report presents the action plan developed to implement the RIA Subproject in Cambodia. The plan was developed during the Inception Phase of the Project, from 10 October to 21 November 2011. The project implementation period is 30 months, i.e. from October 2011 to March 2014. Also, the report records the activities undertaken and the outputs generated during the Inception Phase.

The proposed scheme requires a RIA statement to be presented to the decision makers before they sign off on a regulatory proposal. Put simply, the RIA statement compares the costs and benefits of the proposal with alternative measures that can achieve the same outcome – enabling the regulation makers to make more informed decisions.

The Project, therefore, will reduce the regulatory compliance costs and improve the competitive environment, making businesses more efficient and effective. It will also achieve a better balance between regulatory costs and the risks that the regulations purport to reduce. Moreover, it will help to reduce the overlap and inconsistency among regulations and encourage a more evidenced based policy making process. All of these will boost Cambodia's competitiveness and economic growth.

The RIA Subproject is a part of the Promoting Economic Diversification (PED) program. PED includes a series of policy reforms that underpin the priorities of the *National Strategic Development Plan 2006-2010*. The aim of the PED is to create an expanded and diversified private sector supported by an improved business climate. The Royal Government of Cambodia's (RGC's) Rectangular Strategy (Phase II) of economic growth, employment and efficiency will be aided through institutionalizing the RIA mechanism within the RGC.

2.2 Enablers

Within the framework of the capacity development to support the PED program the Asian Development Bank (ADB) awarded the contract to support the RIA Subproject (the Project) to the consortium comprising of POHL CONSULTING & ASSOCIATES GMBH (PC&A) and Pinto Consulting, after a tender process.

The Executing Agency (EA) for the Project is the Economic, Social and Cultural Council (ECOSOCC), which is a part of the Office of the Council of Ministers (OCM) of the RGC.

The oversight agency for the Project is the Office of Regulatory Impact Assessment (ORIA), which has been established in the ECOSOCC.

The Implementing Agencies (IAs) for this Project are the following four line ministries:

- Ministry of Commerce (MoC),
- Ministry of Environment (MoE),
- Ministry of Industry, Mining and Energy (MIME) and
- Ministry of Tourism (MoT).

This Project may be expanded by including one or two additional ministries, if the progress in these four ministries is exceptionally good.

2.3 Background

Under PED subprogram 1 (PED-SP1), financed by ADB (\$21 million) in 2008, the RGC implemented a series of investment and trade facilitation measures that laid down the foundations for a more competitive and diversified economy in the long term.

This subprogram (PED-SP2) builds on the reforms undertaken under PED-SP1 with an increased focus on competition policy and regulatory reform. These reforms are designed to promote economic diversification by:

- a) Enhancing competition in domestic markets and regulatory efficiency;
- b) Strengthening investor confidence in the regulatory environment and promoting market based innovation;
- c) Enhancing trade policy capacity and strengthening trade facilitation measures along the entire supply chain.

The RIA project falls under (a) and (b) of the PED-SP2.

The Project follows several fact finding missions, and advocacy and awareness raising activities undertaken since 2009, culminating in the Memorandum of Understanding (MoU) signed between the RGC and the ADB in June 2010.

The recent *Doing Business Report 2012* by the World Bank ranks Cambodia at 138 out of 183 countries for the ease of doing business. Cambodia ranks below most ASEAN countries such as Thailand, Malaysia, Vietnam and Philippines. This highlights the need for Cambodia to reduce its business burdens. RIA could be a valuable tool to achieve this.

2.4 Project outputs

For the RIA Subproject to succeed in the long term, it requires:

- Appropriate organizational structure and business processes for the Project (ORIA and IAs);
- Substantial investment in the capacity development of project staff; and
- Adequate advocacy and awareness raising activities about the Project.

The institutionalization of RIA in the RGC will also assist in policy development, including transparency and stakeholder participation in the policy making process.

The project output has three major components:

- Build capacity at ORIA;
- Support IA action plans; and
- Build a community of RIA practitioners.

These are described below.

(A) Build capacity at ORIA

A1. Provide support to set up the ORIA, including assistance to:

- Prepare the organization chart, job descriptions and qualification requirements;
- Develop internal business processes, control systems and reporting arrangements; and
- Develop a Handbook, guidelines, checklists and assessment templates.

A2. Capacity building of staff at the ORIA by providing training on:

- Internal business processes, control systems and reporting arrangements;
- RIA techniques (regarding the seven elements of RIA);
- Cost benefit analysis (CBA) techniques and other economic tools; and
- 'Train the trainers' (to prepare ORIA staff for training IA staff and for outreach activities).

A3. Help the *i*-Centre to develop the information technology systems. The *i*-Centre's duties include:

- Testing of the intranet database and the website;
- Creating a robust, secure and user friendly database and website; and
- Providing ongoing user-support for the database, website, software and IT equipment.

A4. Compliance reporting – assist the ORIA to prepare its annual reports.

A5. RIA awareness and outreach activities – work with ORIA staff to:

- Conduct awareness raising and outreach activities;
- Assist IAs to develop regulatory plans; and

- Assist with designing a linkage program with an overseas office of better regulatory practice (OBRP).

A6. Assist with the procurement of equipment.

(B) Support for IAs RIA action plans

Work with the ORIA and IAs and develop action plans, outlining:

- In-house training on RIA procedures, practices and techniques;
- Training on using assessment templates and developing regulatory plans; and
- Procure equipment necessary for the effective functioning of IAs.

(C) Develop a Community of RIA Practitioners

This output will have two primary focuses.

- Assist the ORIA and the SME Secretariat (through MIME) with outreach activities and advocacy on RIA, and good practice in regulation making. This will include a series of RIA awareness workshops and retreats within government, the private sector and other stakeholders (NGOs, academia) dissemination of materials to the public.
- Assist the ORIA to develop a critical mass of Cambodians with skills on RIA, cost-benefit analysis and other economic tools. The assistance will include a series of training workshops or retreats on using RIA tools.

There is some overlap between these outputs. For example, capacity building of ORIA and IA staff can be done together. This will include RIA officers sent on study tours and seconded to offices of OBRPs. Also, outputs 'A5' and 'C' are broadly similar.

3 Inception phase activities and outputs

3.1 Mobilization of consultants

The following table shows the details of consultants engaged for the Project.

Table 1: Mobilization of Consultants

Name	Designation	Mobilization	Input Inception Period (months)	Contracted months (intermittent)
Sabesh Shivasabesan	Team Leader – International Regulatory Expert	10 Oct 2011	1.5	12
To be recruited	International Regulation Economist	Expected Jan 2012	0	12
Mao Chhuon	National Senior Project Administrator	10 Oct 2011	1.0	18
(Ms) Rothavy So	National Gender Specialist	10 Oct 2011	1.0	12

3.2 Project office

The project office is located on the 6th floor of the Office of the Council of Ministers (OCM) Building, 44 Russian Federation Blvd, Phnom Penh. The office equipment and furniture were loaned by the OCM to the Project, making the office fully operational on the first day of the inception period. Arrangements are being made to purchase the equipment and furniture.

All of the Consultants were able to work effectively since 10 October, in their office. All of the office facilities such as internet connection and printers, photocopiers, and a scanner were provided by the EA.

A list of equipment and furniture to be purchased is at attachment 1.

3.3 Project Steering Committee

A Project Steering Committee (PSC) will be established to oversee the implementation of the Project. It will consist of the Chairman of the ECOSOCC, Program Director, Deputy Program Director, Program Manager, ADB Task Manager

and the Chiefs of the IAs. The Consultants will provide the logistical and secretarial support for the PSC.

The PSC will meet at least once in every six months. Its functions include:

- Assessing the progress of the Project, including identifying any difficulties and bottlenecks and proposing remedial measures.
- Assessing the performance of the Consultants, including commenting on Consultants' major reports (inception, mid-term and final report).
- Making decisions on any changes in timing and cost of activities, and project outcomes.

The Chairman of the ECOSOCC will report the progress of the Project to the Deputy Prime Minister, Minister in charge of the Office of the Council of Ministers (OCM).

3.4 Other development agencies involvement in RIA in Cambodia

There has been little specific RIA work done in Cambodia, apart from the activities carried out with the support of the ADB since 2009. However, there has been some RIA related activity which may provide useful synergies to the RIA project.

USAID funded MSME2/BEE project (administered by DAI) drafted a concept paper on law-on-laws, which had a component referring to RIA. DAI is also working on measures to regulate water supply, which may be subject to RIA.

The Asia Foundation conducted a study of business costs and published Provincial Business Enterprise Scorecard (PBES).

The Council for Legal and Judicial Reform (CLJR) coordinates the implementation of the Legal and Judicial Reform Strategy (2003) including the drafting and enforcing of laws prioritized in the Strategy. This task requires coordinating the law drafting process within responsible line ministries and, if necessary, providing technical assistance. In this context, there is a likelihood that CLJR may look to RIA to strengthen the policy backing for making regulations. Thus, this project is likely to have synergies with the RIA project and preliminary discussions have been held.

3.5 Meetings during the Inception Phase

The consulting team (see table 1 in section 3.1) met with the Chairman and senior members of the ECOSOCC on the first day of Inception Phase (10 October 2011) to discuss how to progress the Project.

In the following week (17 October 2011) a second meeting was organized. This was attended by the consulting team, the ADB Task Manger, the PC&A Project Manager,

and most of the IA staff and ORIA staff (including the Managing Director and Program Manager).

A workshop was organized later in the week (21 October 2011) to brainstorm ideas about how best to achieve the objectives. The team, PC&A Project Manager, ORIA staff and IA staff participated in the workshop. After an introductory presentation by the Team Leader, Mr Shivasabesan, and a short introduction on gender issues by the Gender Specialist, Ms So, the participants separated into several working groups to brainstorm ideas and then presented those to the rest of the group. Their views were taken into account in devising the strategy for the Project.

Three training sessions were held during the inception period. In addition to training to the ORIA staff and IAs to conduct RIA, these sessions were useful in engaging the ORIA and IA staff to find out their views and build consensus towards the way-forward.

A project launch is planned for the first quarter 2012 to present the Inception Report to influential senior management in the Government. This will also be an outreach activity to advocate regulatory reform within the country.

Several meetings were held with IAs and stakeholders (DAI, CJLR, IFC, etc.) during the inception period.

A list of meetings showing the date, subject matter and the people met is at attachment 2.

3.6 Documents generated

The following documents were generated:

- PA template*
- Checklist for the PA template*
- Guidelines for doing RIA*
- Job descriptions*
- Further development of the organizational chart
- Regulatory plans – each IA has prepared a regulatory plan (based on the regulatory plan template at attachment 3).

* These documents have been translated to Khmer.

These documents are expected to be modified in the light of experience gained in the action phase of the Project.

4 Regulation making in Cambodia

4.1 Legal framework

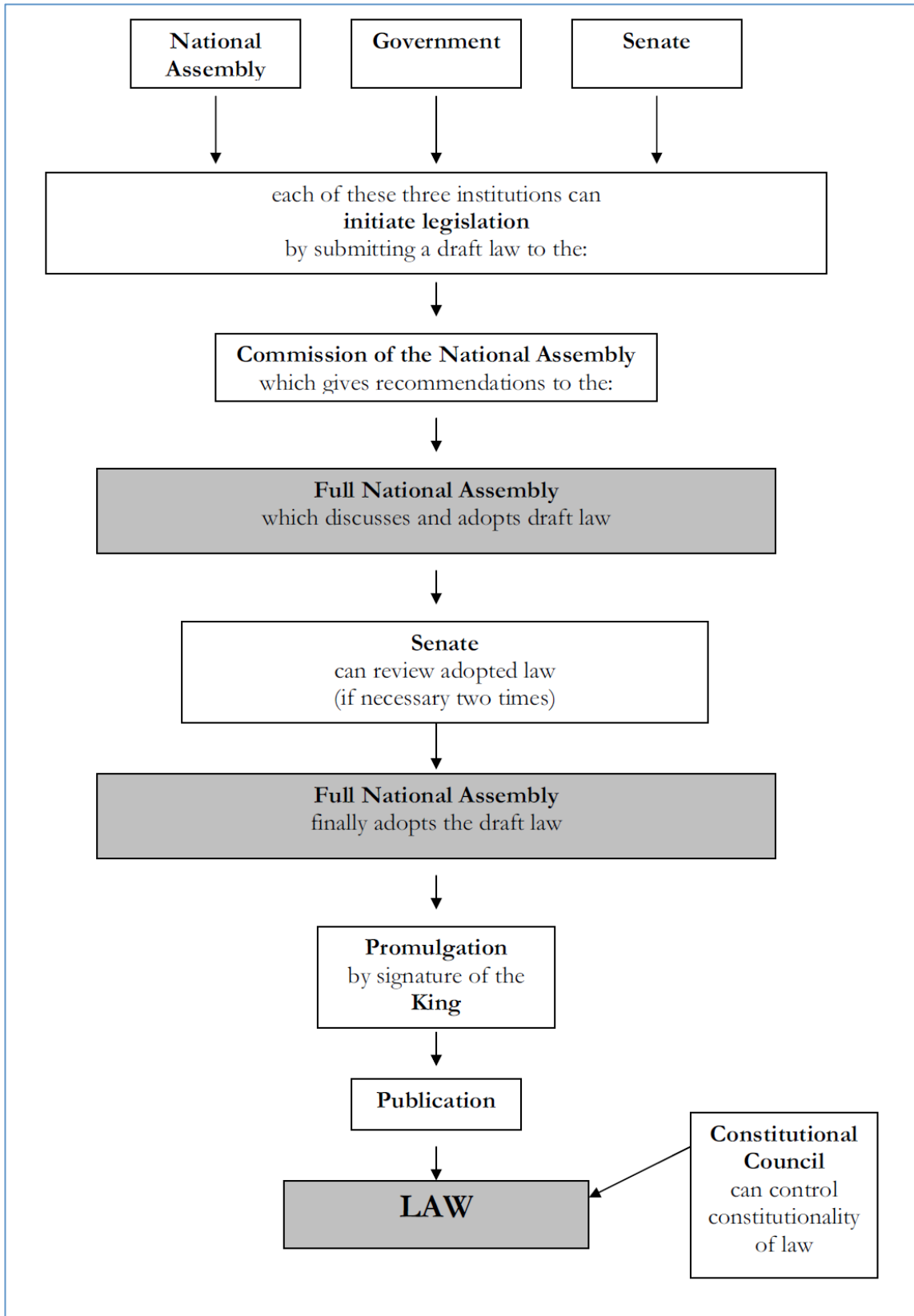
Formal regulatory instruments in Cambodia take the form of Royal decrees, bills, subdecrees and prakas.

- Royal decrees are made under the powers provided by the Constitution and the law, and are endorsed by the King.
- Bills are primary legislation, which have to be passed by the National Assembly and Senate, and receive Royal Assent (see diagram below).
- Subdecrees are made under the powers provided by the law, and are authorized by the Council of Ministers and signed off by the Prime Minister.
- Prakas are made by the ministers, under the powers vested on them by the law or subdecrees. Prakas generally do not bind other ministries and the government, though they bind the public.

Currently all regulations are checked by the ECOSOCC and the Council of Jurists for legal conformity. Both organizations are a part of the OCM.

Figure 1 depicts the law making process in Cambodia. A similar process is used to make Royal decrees also.

Figure 1: Law making process in Cambodia



Source: The Khmer Institute of Democracy.

Subdecrees (and laws) are drafted by the line ministry and then sent to the General Secretariat of the RGC, which convenes the following three meetings where the drafts (subdecrees and laws) are discussed and approved:

- The line ministry presents the draft in the **first meeting**, which is chaired by the ECOSOCC and the Council of Jurists. The economic, social and legal aspects of the draft are discussed and a recommendation is made to the inter-ministerial meeting.
- The **inter-ministerial meeting** has a broader participation. Representatives of relevant ministries participate, in addition to the participants of the first meeting.
 - Usually agreement is reached in this meeting on most of the drafts: cleared draft subdecrees are submitted to the Prime Minister for approval; cleared draft legislation is submitted to the Parliament (see diagram above); and some drafts are assessed as unsuitable.
- Some drafts, for urgent and important matters, would be discussed and decided at the **Cabinet meeting**, which is chaired by the Prime Minister.

Prakases regulations or edicts made by the ministries within the framework authorized by law, Royal decrees or subdecrees.

4.2 Strength and weaknesses of the existing rulemaking

As shown above, though formal procedures exist for making bills, Royal decrees and subdecrees, none of them include written economic analysis. Also, the procedures for making prakases are less formal. This has resulted in a lack of awareness of the costs imposed by them, and in some instances, even their existence may not be public knowledge. Lack of delineation of responsibilities among ministries, has led to overlapping and inconsistent prakases, exacerbating the situation.

5 The proposed RIA scheme for Cambodia

5.1 The seven elements of RIA

RIA is a *systematic appraisal* of new regulatory proposals (the flow of regulation) comparing the costs and benefits of the proposal with the alternative mechanisms that can achieve the same objective.

RIA also *documents* the process and makes the analysis transparent to the decision maker and all the interested parties (for example by publishing the RIA documents, Preliminary Assessments (PA) and the Regulatory Impact Statements (RISs), on the website).

The primary purpose of RIA is to provide information to the decision maker, enabling him/her to make a more informed decision regarding the regulatory proposal. The other purposes include providing information to the stakeholders and consulting with them.

The systematic appraisal mentioned above consists of seven interrelated elements.

1. **Problem** – establish the case for action;
2. **Objective** – articulate the objective;
3. **Options** – examine alternatives to regulation;
4. **Impacts** – analyze the impact of *each* option;
5. **Consultation** – consult effectively with stakeholders;
6. **Conclusion** – select the option with the greatest (positive) net benefit, if the regulation restricts competition ensure that there are offsetting public benefits;
7. **Implementation** – review regulations, establish sunset clauses.

These seven interrelated elements are analyzed in an interactive process. These elements are identical to the ASEAN Good Regulatory Practice Guide (GRP, 2008), section 3.14. Australia also uses the same elements. Most RIA systems use a variant of the above elements, which are broadly similar.

5.2 The two stage RIA process

For easy administration and procedural efficiency a two-stage approach is proposed for Cambodia.

- At the outset a PA is done for ALL regulatory proposals that have some business impact (only those proposals that have nil nor negligible business impact are exempted). PA analyzes the seven elements usually on a qualitative basis, although it is advisable to estimate compliance costs.
- If the PA shows that the impacts are significant, then the proposal requires a full RIA which produces a Regulatory Impact Statement (RIS).

Transparency and consultation are very important aspects of RIA. Therefore, a draft of the proposed regulations, PA and RIS should be made public (say by placing them on a website).

RIA is a process whereby all options are considered before deciding on a regulatory solution. It recognizes the risk that governments often consider regulation as the first, or worse the only, option without considering alternatives – usually in a knee-jerk reaction to problems.

Regulations affect businesses in two ways: by imposing compliance costs; and by changing the competitive environment in which they operate. The RIA process addresses both these aspects.

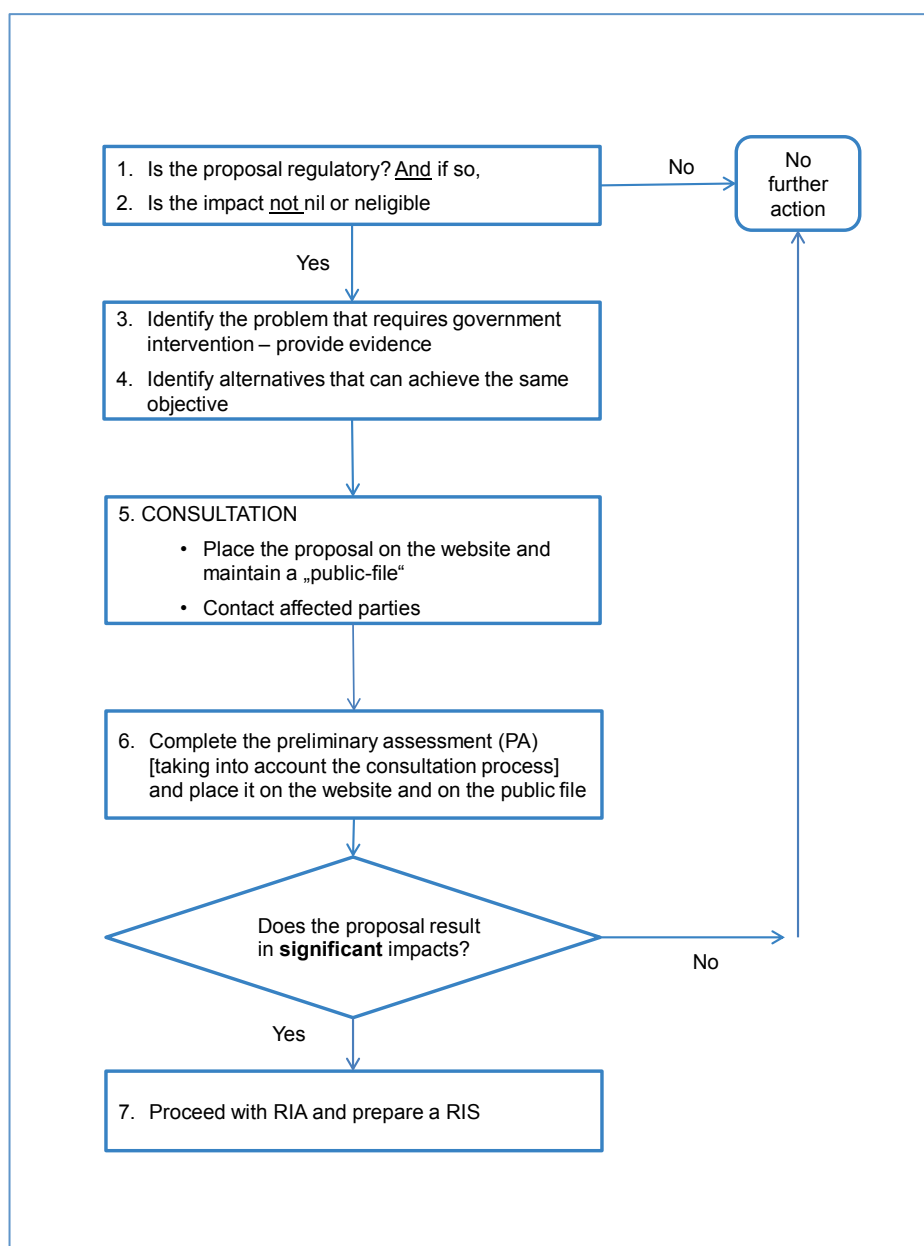
The figure 2 (below) shows the steps in the PA process, the details of which follow.

- i. All proposals are assessed to determine whether they are regulatory. Put simply, whether the proposals influence the businesses to behave differently, either directly or indirectly? If the answer is “no” the proposal is not regulatory, hence there is no need for further analysis.
- ii. All regulatory proposals are assessed to eliminate those which are likely to result in negligible or no impact. Unless this is obvious, the analysis moves to the next stage.
- iii. The rationale for government intervention is examined closely. This is a very important part of the analysis and sets the tone for the rest of the assessment process. The usual mistakes at this stage are: confusing the problem with the objective; and relying on assumptions and assertions rather than factual evidence. The PA form adopts a process of elimination, by excluding proposals regarding generally acceptable government intervention, such as to protect public safety and to collect information.
- iv. List all the alternatives that can achieve (or come close to achieving) the objective. Out of this, shortlist the alternatives that are feasible.
- v. Consultation is a critical part of the RIA process. However, as this the first stage, the purpose of the consultation here is to clarify the issues, and get a preliminary estimate of compliance costs and competition impacts. Hence the process is similar to engaging with an appropriate focus-group. This consultation can take the form of speaking to peak-bodies or affected businesses. The proposal should be placed on the proposing ministry's and the ORIA's website. The ministry should also maintain a public-file.
- vi. Completing the PA requires making a preliminary estimate of the scope of the regulatory proposal and its impact on businesses. The inputs from the consultation process should be used in this estimate. At this (initial) stage, the estimates of costs and benefits may be qualitative. However, for compliance costs a quantitative estimate is recommended. A duly completed PA form is a record of the process which should be placed on the website of ORIA and on the ministry's public file (similar to (v) above).

- vii. If the assessment indicates that the impacts are significant a RIS will be required. If not the analysis is completed. Overseas experience shows that a majority of the regulatory proposals stop with the PA.

A RIS is required for those regulatory proposals that significantly affect businesses. RIS process is similar to the above, whereby the seven elements are assessed. The level of analysis required, commensurate with the significance of the proposal. For example, a proposal with a very high impact and scope is likely to require a fully-fledged cost benefit analysis, whereas for a proposal with a lower impact a qualitative assessment may suffice.

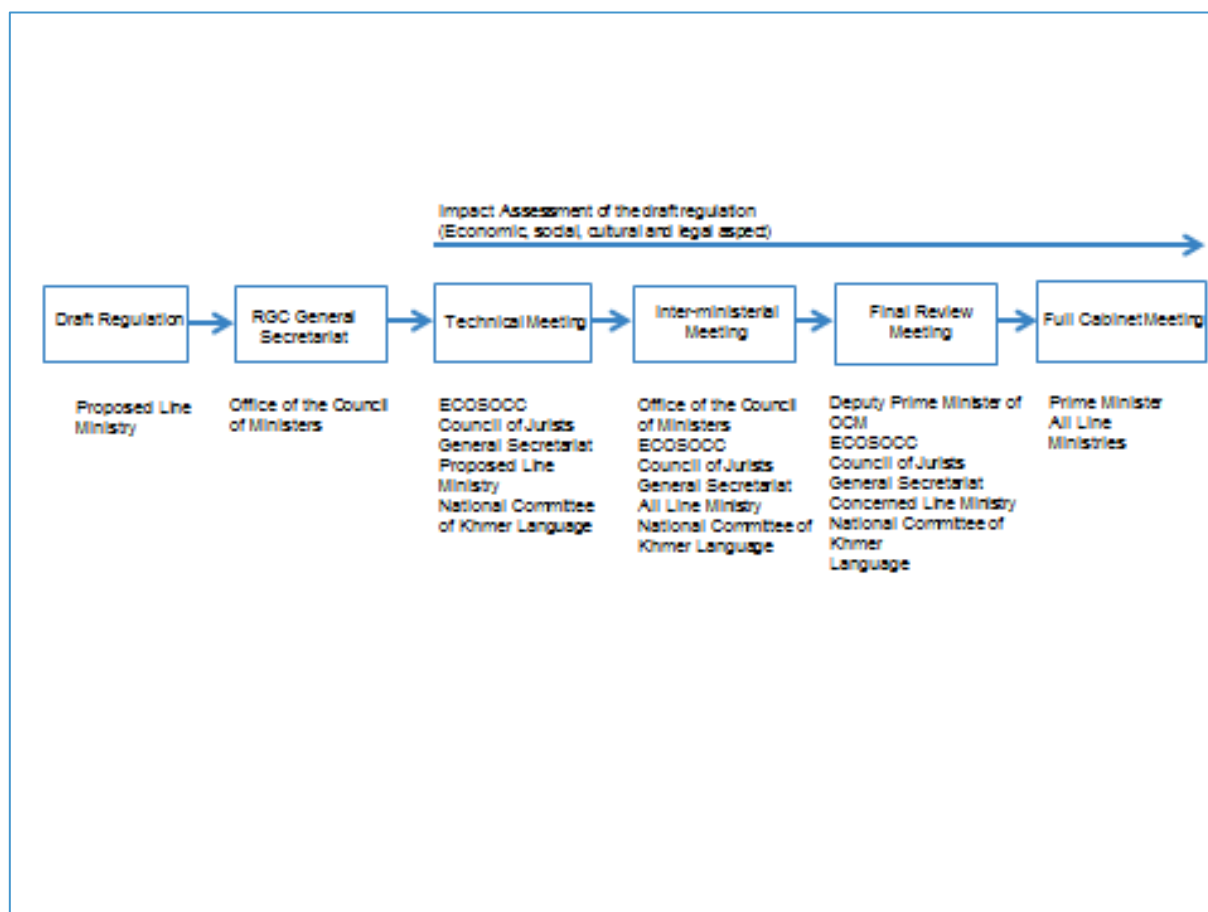
Figure 2: Preliminary Assessment process



Source: Compiled by the Author.

5.3 How the RIA process fits into the IA’s decision making process

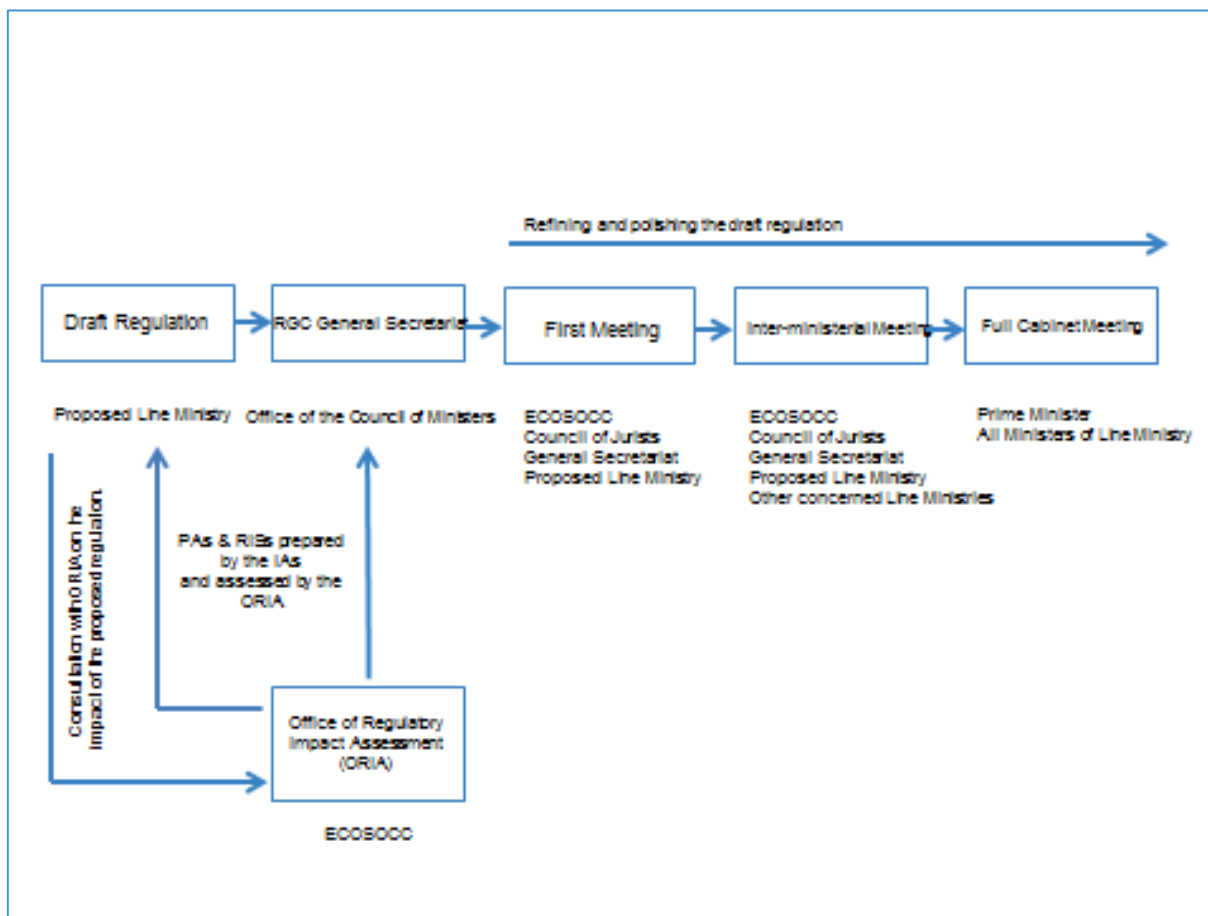
Figure 3: Approval process for regulation making in the IAs



Source: ECOSOCC RIA Strategic Plan, August 2010.

The current process focusses on the legal aspects of the draft and whether it conforms to existing legal instruments, whereas the RIA would focus on the economic impacts of the regulation complementing the current process.

Figure 4: The new approval process for regulation making in the IAs



Source: Based on the ECOSOCC's RIA Strategic Plan, August 2010

The IAs would prepare a regulatory plan listing the regulatory proposals that are being contemplated (a template of the regulatory plan is at attachment 3).

When a regulation is being contemplated at the policy stage, which is much earlier than the drafting stage, the IA will contact its primary contact officer at the ORIA's RIA section and decide on the approach to RIA. It will then prepare a PA or RIS depending on the significance of the impact as explained in section 5.2 (see figure 2). The RIA statement will be presented to the decision maker before a decision is made to accept the proposal.

5.4 Key aspects of the RIA scheme

Even long established RIA systems face difficulties in practice. So it is important to design a system that can work in Cambodia. There are a lot of low hanging fruits that can be picked easily. Therefore the initial focus should be on easily attainable objectives, before moving to more difficult challenges. The necessary elements specific to Cambodia are:

- **Information only:** The proposed RIA scheme provides information to the decision maker about the costs and benefits of the regulation and the alternatives which can achieve the same objective. It enables the decision makers to make more informed decisions, without restricting their options.
- **Simplicity:** Most benefits of the RIA are likely to be gained through good consultation, simple logic, elementary calculations and rigorous testing of assumptions – rather than through the application of complex economic techniques. So the RIA in Cambodia will be a light-handed version of the RIA practiced in developed countries.
- **Transparency:** Transparency enables good consultation and good governance. And this can be achieved at low cost by placing the information on relevant websites. To assist small businesses which may not have internet access, an easily accessible 'public-file' should be maintained so that interested parties can read the hard-copy.

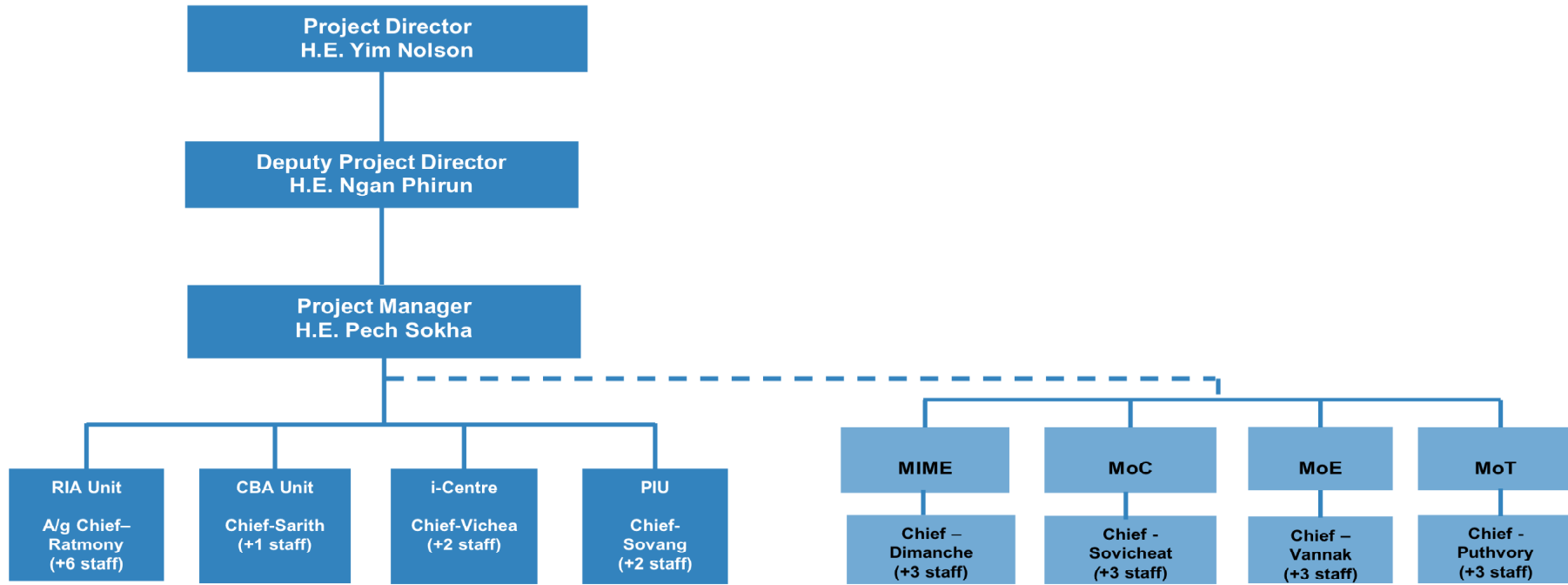
6 Organizational structure and functions

The objective of the Project is to implement regulatory reform, and through this, achieve a culture of better policy making and superior governance. To deliver this outcome a well-functioning ORIA and IAs are essential.

All three outputs specified (see section 2.4), require a well-designed organizational structure, staffing and functions.

- Output 1: Build capacity of the ORIA and the IAs
- Output 2: Support line ministries RIA action plans (requires output 1 also)
- Output 3: Develop a community of RIA practitioners (part of ORIAs capacity).

Figure 5: Organization Chart – Regulatory Impact Assessment program



Source: Compiled by the Author.

The ORIA will play a central role in implementing the RIA project. Its major functions are:

- Assess the PAs and RISs prepared by the IAs.
- Train the IAs in best practice regulation, including how to prepare PAs and RISs and assisting them in the preparation.
- Monitor the compliance of IAs with best practice regulatory practices and prepare reports.
- Liaise with the IAs, other government ministries, private sector organizations, academia and other relevant organizations to promote best practice regulation in Cambodia.

The ORIA has 18 staff, in four sections: Regulatory Impact Assessment (RIA) section, Cost Benefit Analysis (CBA) unit, Information Centre (i-Centre) and the Project Implementation Unit (PIU).

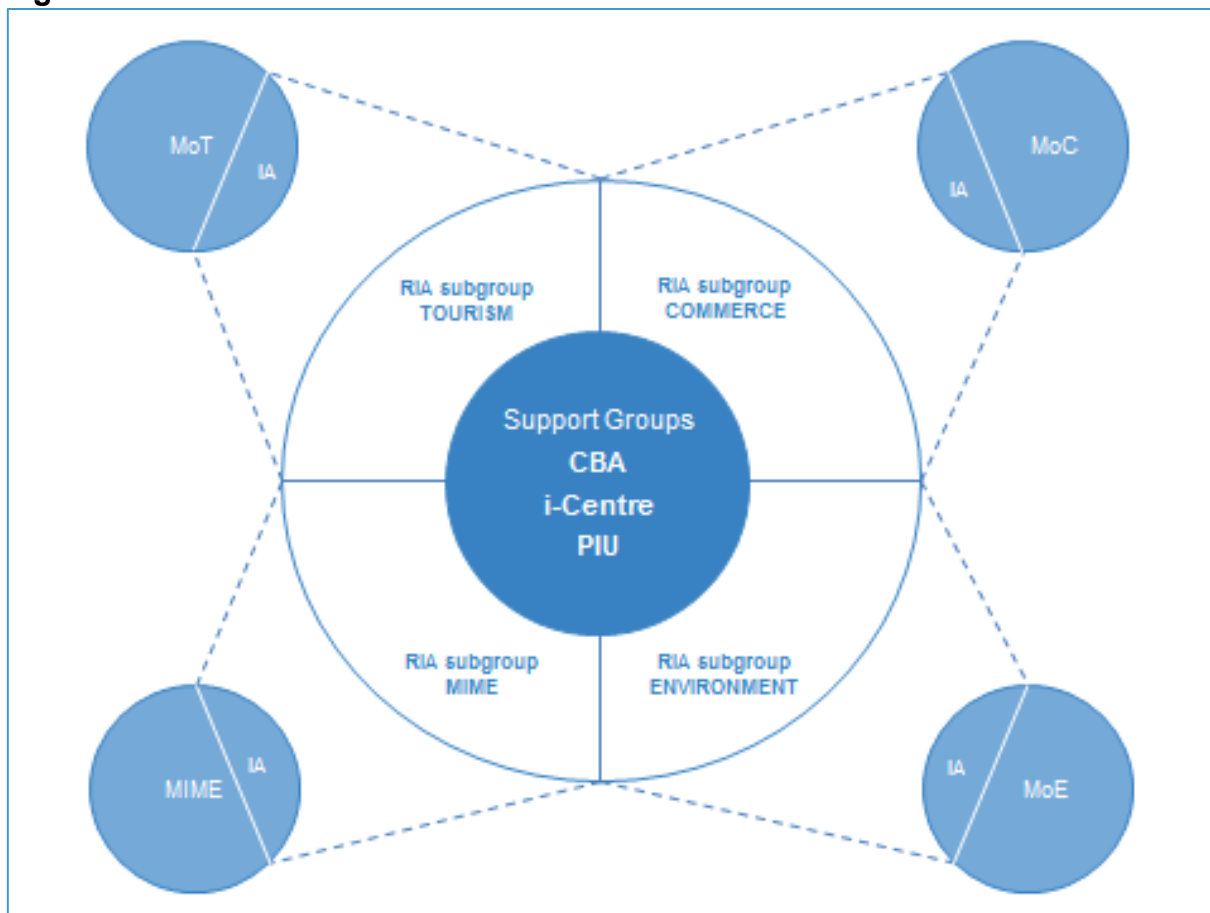
- The RIA section will work with the IAs to ensure best practice regulation. Therefore it has four subsections: commerce, environment, industry and tourism – overseeing the corresponding IAs: MoC, MoE, MIME and MoT. Each ORIA subsection has a primary contact officer and a back-up officer.
- The CBA section will provide technical advice to the RIA section and the IAs on the seven elements of the RIA process, especially compliance costs and impact analysis. It will also organize outreach activities and undertake compliance reporting. The compliance reporting is in the CBA section for better internal control – i.e. the monitoring has to be separate from the RIA section which has primary carriage for ensuring that RIAs are carried out.
- The i-Centre is responsible for the maintenance of the database, website, software and IT equipment. It will provide the IT support for ORIA and IA staff. It will also have the responsibility for the one off task of entering all government regulations on the website.
- The PIU unit will be responsible for administration, finance, accounting, organizing training and outreach activities, and general office support.

The IAs conduct RIA with the help of ORIA. Each IA unit has four staff. The major functions of the IAs are:

- Prepare a regulatory plan for all likely regulatory proposals;
- Prepare an action plan for all of its activities;
- Monitor the regulatory activity in their ministries and ensure PAs and RISs are prepared where necessary;
- Provide input to the periodical compliance reports.

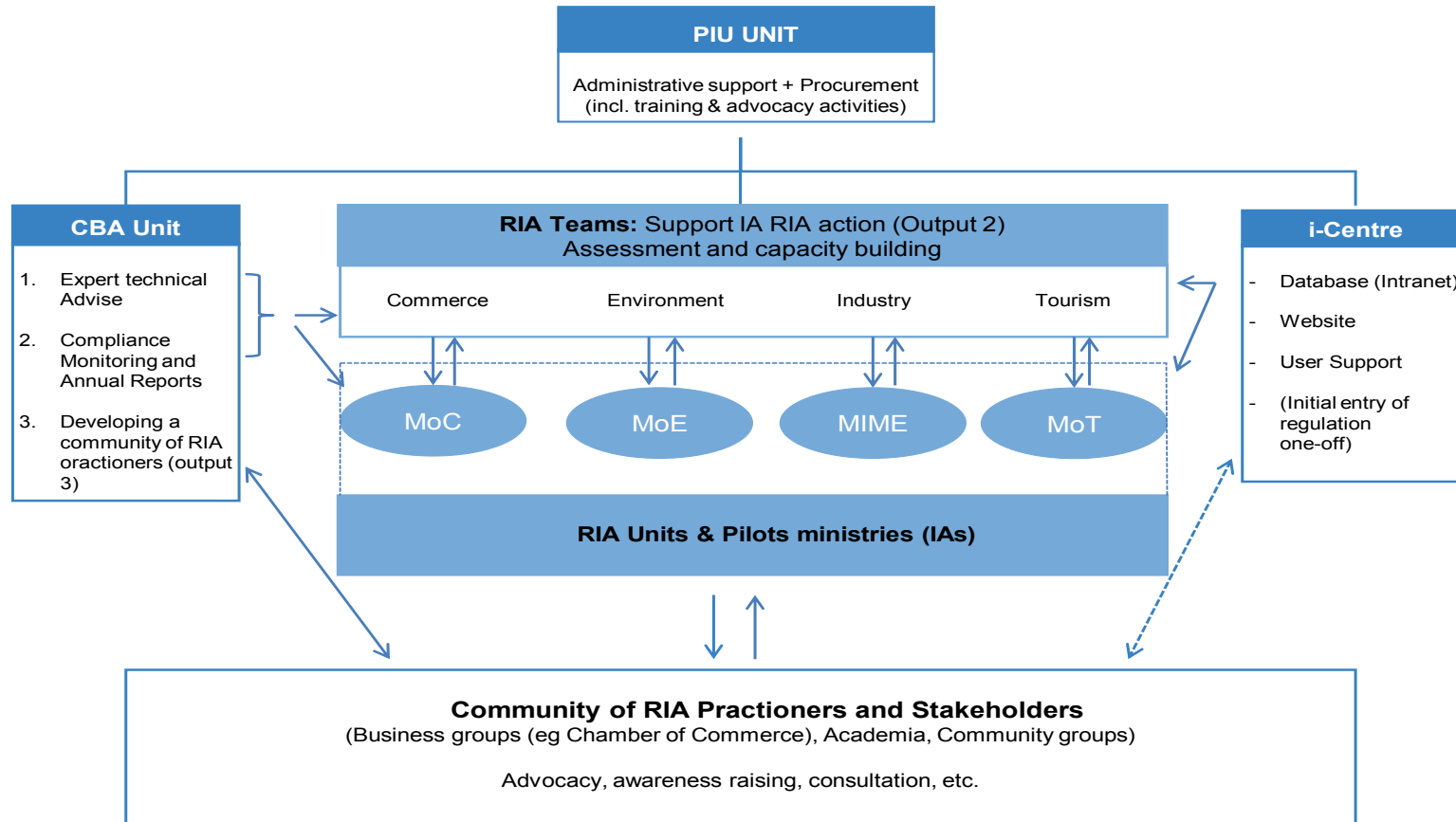
Job descriptions of the staff have been prepared.

Figure 6: ORIA-IA interaction #1



Source: Compiled by the Author.

Figure 7: ORIA IA interaction diagram #2



Source: Compiled by the Author.

7 Project management

7.1 Summary – project flow

The activity matrix (see Executive Summary) provides a snapshot of activities planned during the Project. The details of the matrix and the project management plan are described in the following paragraph.

The project timeline is divided into the following phases:

The **inception phase** in the last quarter of 2011 builds the foundation for the Project. During this phase the ORIA and the IAs have been established, staffed and became fully operational. Business processes and internal control measures were developed. And (preliminary) action plans for the IAs were prepared (see sections 3.6 and 7.3).

The Project moves to the **action phase** in 2012. During the early part of this phase there will be intense training in RIA, and the project staff are expected to become fully competent during this stage.

The involvement of Consultants will be gradually wound down during the **consolidation phase** in 2013. The local staff are expected to ‘pick the baton’ at this stage with limited involvement from consultants.

Consultants’ involvement in the Project will finish in the **evaluation phase** which will be in December 2013/ January 2014. The Team Leader, the International Regulation Economist and the Gender Specialist will work for less than one month in preparing the evaluation report. However, the administration support for the Project will continue till the end of the Project in March 2014. The Senior Project Administrator will be available for the entire duration of the Project by working part-time equivalent of his 18 months. The following diagram summarizes this process.

The discussion below covers the following:

- Activities that relate to output 1 (section 7.2) and output 2 (s 7.3) during the inception and action phases;
- Activities that relate to overseas training (s 7.4);
- Activities that relate to output 3 (s 7.5); and
- Activities undertaken during the consolidation and evaluation phases (s 7.6).

Indicative budget and timelines for the activities have been prepared and submitted to the members of the Project Steering Committee. Given the sensitive nature of some of the activities it has been decided not to publish the budgets at this stage. Hence it is included as confidential attachment 4.

Table 2: Overview – Project duration and personnel inputs

	2011	2012				2013				2014	
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	
Project duration											
Inception phase											
Action phase											
Consolidation phase											
Evaluation phase											
Input personnel											
Team Leader (12m)											
Regulation Economist (12 m)											
Project Administrator (18m)											
Gender Specialist (12m)											

7.2 Output 1: Build-capacity at ORIA and IAs

The activities relating to this output can be classified into two major categories:

- Establish the organizational structure, staffing and business processes;
- Build capacity of staff by training them and providing them with necessary guidance material to conduct RIAs.

Most of these activities will be completed by the end of 2012. And in 2013 the Project will move to a consolidation phase where limited support will be provided, mainly to fix unexpected shortcomings.

Though this output refers to ORIA, it is more effective to carry out these activities for IAs at the same time – due to the strong interdependency between ORIA and IAs. Having these activities for the whole project staff also promotes better team building and communication.

Inception Phase

Substantial work has been done during the inception period (and before) in setting up the ORIA. Several meetings have been held during the inception period in developing and explaining the structure (see attachment 2) to ORIA and IA staff. Job descriptions for the staff have also been written up.

Three in-house training sessions have been conducted during the inception period to ORIA and IA staff on RIA, control systems and business processes. The interaction between RIA and IAs is summarized in figures 6 and 7 in section 6. Training on gender issues in RIA has also been provided.

Most RIA reference material (apart for the handbook) have been finalized and translated during the inception period (see section 3.6).

The ORIA office has been fully operational throughout the inception period (see section 3.2). Procedures have been put in place to purchase equipment (the list of equipment is at attachment 1) which is expected to be completed by 2012-Q1.

Action phase

Further training in business processes, controls systems and reporting will continue in the 2012-Q1. Advanced training in RIA and CBA will be provided to ORIA and IA staff in 2012-Q1 and Q2. This training activity will take the form of internal training workshops conducted in the OCM building. Such training will continue at a reduced level in the second half of 2012, during which more hands-on, one-on-one assistance, will be provided to conduct RIA. Over 2012, the focus of training will change from teaching to learning by doing.

All the RIA reference material (templates, checklists and guidelines) will be published in 2012-Q1. The RIA manual will be drafted and published in 2012-Q2.

In 2011-Q4 the IT section will complete testing the database and website, which will become operational in 2012-Q1. During first half of 2012, the i-Centre will provide training to all ORIA and IA staff on how to use the database and the website. It will also provide general training in effective use of software and equipment. The IT section will continue to develop the website and the database, and provide ongoing support to the ORIA and IA staff for the rest of the Project period.

IT section will undertake a one off data-entry of all the existing regulations (other than Prakas) in the database in the first half of 2012. Such data already exists in other areas of the Cambodian government. So it may be possible to electronically upload these data-files into the ORIA database. Alternatively, data can be manually entered into the database. These two options will be evaluated and decision made about how best to do this in early 2012.

The IT section also explores whether IA's Prakases can be included in the database. If possible, this can be carried out in late 2012 and early 2013.

Provision has been made for engaging external consultants to conduct studies, surveys or to further develop the IT system. The exact nature of this will be determined during the first half of 2012.

7.3 Output 2: Support IA's action plans

The four IA's MoC, MoE, MIME and MoT have undertaken measures to implement RGC's (pilot) RIA project. The respective ministers have formally set up the unit by appointing the RIA officers.

The major part of the output 2 is to build capacity by training, direct one-on-one support and to give RIA officers training in best practice regulation in overseas OBRPs. In addition, support to establish the IA offices, business processes and IT systems will also be provided.

Like in the previous section most of these activities will be completed by the end of 2012. And in 2013 the Project will move to a consolidation phase where limited support will be provided, mainly to fix unexpected shortcomings.

Inception period

Several meetings were held with IA staff, individually and collectively, during the inception period. During the 'brainstorming workshop' of 21 October 2011 where most of the project staff participated, the IA staff expressed their views about how best to implement the Project. Their views and concerns were also expressed in subsequent meetings, and are reflected in this Inception Report.

The IA staff were asked to prepare a regulatory plan listing the proposed regulations (also some past regulations for practice only) on which the IAs plan to do RIA. A template for the regulatory plan is at attachment 3 (see section 3.6). The regulatory plan is a working document, agreed between the IA and the ORIA. It helps to plan the regulatory activity and workload, and makes the process more informative and transparent. A training session on how to prepare a regulatory plan was held on 2 November 2011.

The IA officers expressed the view that they have to consult all the departments in their ministries to develop the plan. Also, in some ministries staff were overseas (e.g. in MoC some staff were in Geneva working with the WTO). Hence it was difficult to finalize the plan in time for it to be included in the Inception Report. Hence, it was agreed that a preliminary regulatory plan will be completed during the inception

period. This preliminary plan will be updated in 2012-Q1 and be included in the first six monthly report in March 2013.

Accordingly, each IA prepared a regulatory plan which was circulated to all IAs and discussed at the meeting on 21 November 2011.

Also, initial training was provided to project staff in conducting a PA. Relevant templates, checklists and guidance documents in Khmer were provided to them. They were also provided with training in gender issues.

Action phase

Ongoing RIA training will be given to all project staff throughout 2012. ORIA officers will also participate in the training (train-the trainers) so that they can continue to train the IAs after the completion of Project. As stated in the previous section, the regulatory plan will be finalized in early 2012.

International experts and ORIA staff will work at the IA offices for some time to train the IA staff during 2012. The international experts will rotate their time among ministries as much as it is practicable, helping the IAs to achieve their regulatory plans.

The IAs and the ORIA staff will conduct monthly meetings to share information and monitor the progress of the Project.

7.4 Overseas exposure and training: outputs 1 & 2

A substantial part of the training budget is allocated for providing training in best practice regulation at overseas OBRPs. These activities cut across outputs 1 and 2 because both ORIA and IA staff will be trained overseas. Therefore overseas training issue is dealt separately in this section.

Two types of activities are envisaged to take place during 2012: exposure visits and secondments.

- Exposure visits or study tours last about a week, with the purpose of giving an opportunity for senior managers to learn about overseas best regulatory practices. The managers will meet with senior officers of overseas OBRPs and learn from their experience. The study tours will be spread over various OBRPs, as this would enable ORIA and IA staff to gain a broad range of experience which can be shared among them.
- Secondments last about 2-3 weeks, and are aimed at giving the project technical officers a chance to work with overseas OBPR's technical staff. An arrangement will be negotiated with an overseas OBRP to do this.

The OBRPs around the world which are suitable for such training are:

- Australia, Office of Best Practice Regulation (OBPR, Australian Commonwealth)
- Victoria, Australia - Victorian Competition and Efficiency Commission (VCEC)
- Other Australian States, such as New South Wales and Adelaide
- New Zealand, Regulatory Impact Analysis Unit (RIAU)
- United Kingdom, Better Regulation Executive (BRE)
- United States, Office of Information and Regulatory Affairs (OIRA).

Details about overseas activities will be negotiated with overseas OBRPs and be finalized in the 2012-Q1. Participants for the overseas study will be selected from ORIA and IA staff, based on criteria agreed with the ADB.

7.5 Outputs 3: Developing a community of RIA practitioners

Three major conferences are planned. The invitees for these conferences will include top ranking officials from ministries, representatives of private sector peak-bodies, development partners, and academics. The purpose of these conferences is to promote best practice regulation and to disseminate information about the project to other areas of the RGC, the private sector and the academia. Media coverage will be arranged to promote the activities to other businesses and the community.

- The first one will take place in early 2012 to launch the RIA project and to present this Inception Report.
- The second conference will be held in late 2012 or early 2013, presenting the first year progress report.
- The last conference will be in 2014 January, where the final report will be presented.

In addition to the conferences, quarterly meetings will be organized in Phnom Penh (except in the quarters when the conferences are held) with the objective of building a community of RIA practitioners and to promote evidenced based policy development in Cambodia. This will give a regular opportunity for the project staff to meet potential practitioners of RIA from other ministries, economists, business leaders and academics.

7.6 Consolidation and evaluation phases

Consolidation phase

A review of how the RIA system is being practiced will be undertaken in 2013-Q1. This review will cover the entire RIA activities (i.e. outputs 1, 2 and 3). The focus during this period will be to fix any shortcomings (including training needs), so that the RIA project will be able to function effectively without the support of the Consultants.

The RIA reference material will be updated in the light of the experience gained during the action phase.

Evaluation phase

In December 2013/ January 2014 there will be an evaluation of the progress of the RIA Project, mainly focusing on the period where the system was functioning without the consultants. A report will be prepared by end of January 2014.

8 Gender action plan

The purpose of the gender action plan is to achieve gender equity in the regulation making process in Cambodia. That is, to ensure that all those who are involved in the regulation making process are fully aware how the proposed regulations could affect women; and to advise the decision maker (by incorporating relevant information in the RIA statements) of any adverse effects to women.

This objective is consistent with Cambodia Millennium Development Goal No. 3 (CMDG 3) to promote gender equality and women's empowerment. Men and women in Cambodia often have different issues and interests. Therefore, they could be *affected* differently by regulations, even though the regulations apply to both *equally*.

Many overseas RIA systems do not have a gender component. Also, the ASEAN Good Regulatory Practice Guide does not address gender issues specifically. However, there are issues specific to Cambodia which may result in women being affected differently, such as a relatively large garment industry which employs a high proportion of women. Also, lack of consultation during the regulation making process and lack of organized representations by women may lead to gender inequity in regulations.

Hence a Gender Specialist has been engaged to mainstream gender issues in the regulatory review process (see table 2, section 7.1). The focus of the Specialist is to:

1. Raise the awareness of gender issues among project staff;
2. Train the project staff on how to integrate gender impact assessment in RIA;
3. Develop appropriate consultation procedures and undertake advocacy activities; and
4. Contribute to the preparation of the Best Practice Regulation Handbook and the first annual report on regulatory performance (by addressing the gender issues).

The activities required to achieve the above are detailed below.

Inception Phase

Two training sessions were conducted for the RIA staff. The first session was focused on objective of gender mainstreaming in the RIA's project, the outputs required and the activities to be undertaken to achieve the outputs. The second session introduced the gender concept and gender analysis in RIA.

Several meetings were held during the inception period:

- Meeting with the ORIA and IA women officers to explore gender issues.
- Meeting with the Gender Working Group (GWG) of MoE to discuss about some gender issues in the ministry, and how GWG can cooperate with the RIA's project.

- GWG be provided with IA-MoE's RIA reports and be given an opportunity to comment.
- GWG be able to meet with the IA as when required.
- Attending a meeting of the NGO Gender Networking Forum.

Gender issues were incorporated into the RIA documents (checklist, templates, and guidelines).

Action phase

- Conduct gender awareness training for project officers.
- Integrate gender impact assessment in RIA.
 - Work with the IAs and train them to examine the regulations in the regulatory plan to identify regulations that affect women more than men.
 - Assist the IAs to complete the requirements regarding gender in the PA.
 - If a RIS is required, include a gender impact statement identifying how the proposed regulation affects women, quantifying the impact wherever possible.
 - Establish appropriate consultation mechanisms and develop consultation procedures and guidelines.
 - Draft the chapter for gender mainstreaming, including the guidelines for the Best Practice Regulation Handbook.
- Participate in the advocacy seminars conducted as a part of the outreach activities (output 3).

Consolidation and evaluation phases

Monitor the RIA activities and statements and address any shortcomings. Furthermore, assist the CBA section in preparing the annual report by providing relevant information about gender in regulations.

9 Administration reporting

The Consultants will produce the following reports:

Table 3: Overview of reports

No.	Report	Timing
1	Inception Report	December 2011
2	First six monthly report	March 2012
3	Second six monthly report	September 2012
4	First year progress report	December 2012
5	Mid-term and third 6 monthly report	March 2013
	Draft and Final reports	January 2014

The Project will have regular meetings:

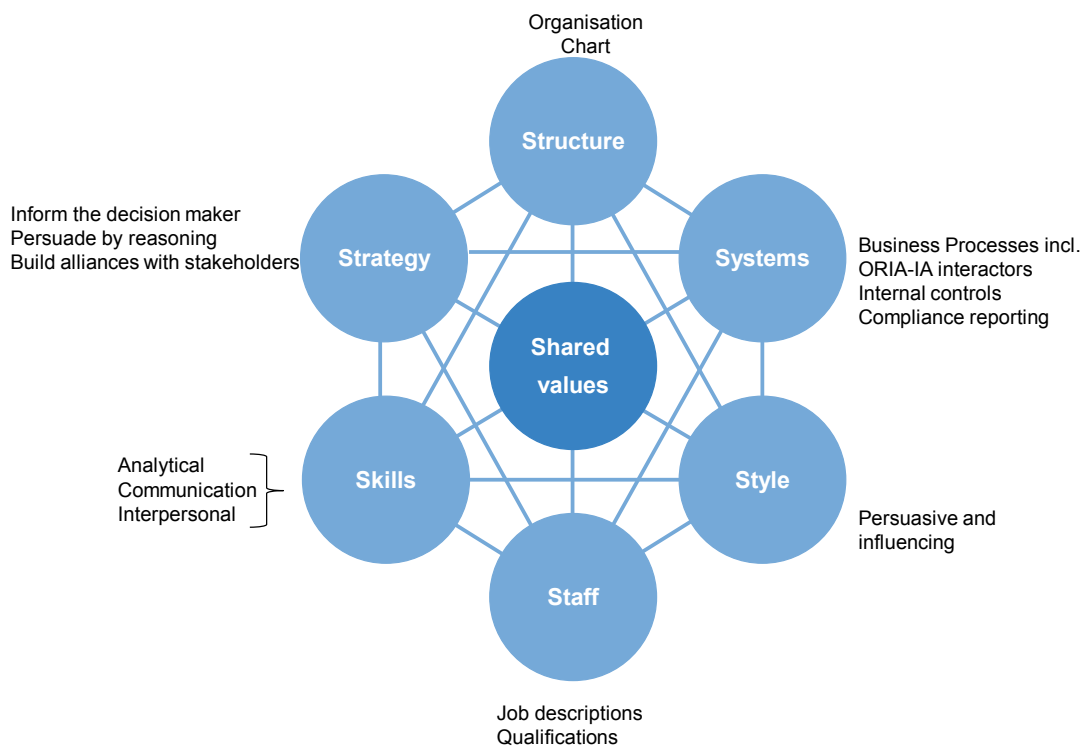
- Fortnightly meetings for the ORIA staff, chaired by the Project Manager.
- Monthly meetings of the project staff at OCM chaired by the Managing Director. Each ORIA section and IAs will present a progress report, which will be uploaded on the intranet site. A template for the report will be designed.
- Bi-annual meetings of the Project Steering Committee.

10 Way forward

10.1 Key attributes for success

The McKinsey’s 7S describes the attributes essential for success. The project staff should focus on RIA and be fully engaged full time in the tasks assigned to them. It is important for all of the project staff to work together and develop a set of shared values.

Figure 8: McKinsey’s 7s applied to the Project



Source: McKinsey’s framework applied to ORIA.

To be successful RIA should add value to the policy making process. Hence ORIA staff should become familiar with the current issues in their oversight areas and provide advice that will be valued. For this, it is important to keep the process simple focusing on consultation, transparency and common-sense based analysis.

The current work of IAs provides ample scope for value adding. The tourism industry is a fast growing industry in Cambodia and accounts for nearly half of the new

investments. The garment industry, which is a large part of the industry sector in Cambodia, is overnighted by MIME and MoC. MoE is involved in several important measures such as sustainable development, climate change and electricity grid policy. These wide ranging activities provide ORIA with a valuable opportunity to earn the respect of the IAs and gain credibility.

10.2 Legal backing

The main advantage of legal backing is that it gives certainty and continuity. In Cambodia where the RIA system is being established, having a legislative backing is likely to be a significant advantage. Hence a subdecree with the following features is likely to be effective:

- Guarantees ORIA's independence to make regulatory assessment;
- Formalizes its reporting to the Deputy Prime Minister through the Chairman of ECOSOCC;
- Requires all regulatory proposals to be placed on a website; and
- Eventually mandate RIA for all regulatory proposals.

Council on Legal and Judicial Reform (CLJR) is currently working on improving the law making process in Cambodia. So there may be an opportunity to include RIA as a part of law making process.

Legal backing for RIA varies from country to country, just like governance structures and procedures. The Australian government's RIA process is by government edict (a Cabinet decision, not enshrined in law). In the Australian State of Victoria the RIA requirement is enshrined in the Subordinate Legislation Act.

In Vietnam RIA is mandated by including it in the Law on Laws, Decree No. 24/2009/NĐ-CP. Under this decree RIA was made mandatory for:

- The proposals that are included in the annual legislative program made by the National Assembly or the Government.
- All legislative instruments issued by the National Assembly and Government, such as law, resolution, ordinance & decree.
- Also RIA is required to be published together with the draft legal instrument at least 60 days on the website of the Government or ministries for public comments.

10.3 Expansion

There are three areas where RIA could be expanded:

- The most straightforward expansion is to extend RIA implementation to other pilot ministries such as Agriculture Forestry and Fisheries (MAFF), Health (MoH),

Economy and Finance (MEF), Ministry of Planning (MoP) and Ministry of Labor (MoL) and finally throughout RCG.

- Extend RIA to existing regulations, leading to regulatory burden reduction. That is, assessing all existing regulations with a view of removing those which do not provide net benefits (i.e. this process deals with the stock of existing regulations). However this should be undertaken only after RIA on new regulations are well established.
- Expand the scope of RIA to cover all regulations, instead of focusing on regulations that have business impact.

10.4 Monitoring and evaluation

Risks

The major risk to the Project relates to continued commitment and support by the RGC. The Project requires the full support of the RGC, especially the Councils of Ministers and the Ministers of the four IAs.

- Existing project staff, especially the senior staff who have other government work and commitments, must be able to give their full time and effort to the Project.
- It is important for the RIA scheme to continue and expand after the end of the Project. Any uncertainty in this regard will demotivate the staff and affect their commitment to the project.

Monitoring and evaluation (M&E)

The ADB is in the process of engaging an M&E specialist to develop a RIA framework and baseline for evaluating the Project. More information on this will be included in the first six monthly report after the mobilization of the Consultant.

Supported by:



Asian Development Bank