



ICSA

INTERNATIONAL COUNCIL of SECURITIES ASSOCIATIONS

Improving the Regulatory Impact Analysis across Emerging Market Countries

ICSA Emerging Markets Committee

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Improving the Regulatory Impact Analysis across Emerging Market Countries

I. Preface

“Regulatory Impact Analysis’s most important contribution to the quality of decisions is not the precision of the calculations used, but the action of analyzing – questioning, understanding real-world impacts and exploring assumptions.”

– OECD, 2008

In January 2017, the U.S. House of Representatives passed a bill requiring the Securities and Exchange Commission to add up the costs of following new rules before putting them into force. The SEC currently conducts voluntary economic analyses of its rules, but if the Senate also passes a bill and legislation is enacted it would be required to identify specific problems before issuing regulations; adopt regulations only after conducting a cost-benefit analysis; identify and assess alternatives to new regulations; and ensure regulations are written in plain, clear language.

Government’s rules and regulations must be built upon the foundation of rationality. If regulation is introduced without proper examination of its rationality, it may bring about a host of unexpected effects, including market distortion, overly constraining authority, and inconsistent implementation and impacts across different segments.

To be more specific, the introduction of ineffective regulations can lead to substantial consequences. For one, businesses and other entities will face a rise in compliance costs. Furthermore, it can create unnecessary complexity and uncertainty about the surrounding regulatory obligations, thereby hindering the government from achieving its objectives. To avoid these issues, governments must take a systematic approach to ensuring the regulations they seek to develop are effectively designed and thoughtfully implemented.

In this regard, governments around the world have implemented a Regulatory Impact Analysis (RIA) to examine regulatory objectives and expected outcomes before introducing or amending rules and regulations, thereby maintaining the highest quality of rationality. The RIA is defined as “a process of systematically identifying and assessing the expected effects of regulatory proposals, using a consistent analytical method, such as benefit/cost analysis”. Through RIA, decision-makers will be more fully informed on the effectiveness and efficiency of various options, enabling them to select one which best suits their needs.

The RIA should be integrated with a public consultation process, as this provides better information to underpin the analysis and gives affected parties the opportunity to identify and correct erroneous assumptions and reasoning. In this regard, the International Council of Securities Associations (ICSA) published its “Best Practices for Regulatory Consultation” in 2013. This paper outlined a set of best practices intended to emphasize the key aspects of the consultation process including the need to ensure that a full range of participants are consulted, sufficient time is allocated for responses to be delivered, and feedback on responses is provided.

It is noted in the OECD research paper that most of the OECD countries use the RIA when implementing new laws, but in the case of many emerging market countries and for some OECD countries, ~~an~~ the RIA – including public consultation process – either does not

exist at all or is only conducted at a minimal level in order to comply with government administrative requirements.

In this paper, we will examine RIA practices within each jurisdiction of ICSA's Emerging Market Committee (hereinafter, "EMC") and compare the findings with the best practices of advanced nations, such as the U.S. and U.K. More specifically, this paper will focus on the cost-benefit analysis and stakeholder consultation aspects of RIAs in each of ICSA's EMC jurisdictions. For this purpose, the members of ICSA's EMC were, among other things, asked to answer questions such as:

Is the cost-benefit analysis conducted thoroughly using rational calculation methods?

Are both the analysis and stakeholder consultation made publicly available through general public disclosure?

We examined various jurisdictions to see if any fall below the average in RIA practices and if so why (e.g. scarcity of resources, lack of regulatory tools). Our findings are summarized below.

II. Mandate

Considering the importance of the RIA and its impact on the financial industry, the EMC has decided to conduct a study on RIA practices related to the adoption of new financial laws within each EMC jurisdiction. The EMC's proposal was approved by ICSA's Board of Directors during the board meeting held on February 7, 2017.

ICSA's EMC is chaired by the Korea Financial Investment Association (KOFIA), with the committee being composed of the following members:

1. Turkey - Turkish Capital Markets Association (TCMA)
2. Mexico - Asociación Mexicana de Instituciones Bursátiles, A. C. (AMIB)
3. Thailand - Association of Thai Securities Companies (ASCO)
4. India - Bombay Stock Exchange Brokers' Forum (BBF)
5. Taiwan - Taiwan Securities Association (TSA)

III. Findings

Below is the summary table of the survey results.

Korea (KOFIA)

Mexico (AMIB)

Taiwan (TSA)

1. RIA in General

1-1. Are your financial regulators required to conduct an RIA when developing legally binding documents for 1) primary law; and 2) subordinate rules and regulations?

Yes

Yes

Yes. Our government has integrated the RIA process into our law-making procedures. Administrative agencies are required to conduct an overall and thorough evaluation of the effects, such as costs, benefits, and other possible impacts when drafting laws, rules and regulations.

1-1-1. Under what circumstances – prior to the drafting of a law, rule or regulation (hereinafter, “law”), when a draft version of a law has been prepared, when developing a final version of a law – do the financial regulators in your jurisdiction conduct the RIA?

By law, it is supposed to happen prior to the drafting of a law, rule or regulation.

The RIA is conducted when a draft version of a law has been prepared by its Regulatory Authority.

The RIA is normally conducted prior to a law being drafted, and when a draft version of a law has been prepared.

1-1-2. If yes to Q1-1, please describe the name and details of the governing law for the RIA.

The Framework Act on Administrative Regulation. With regard to new and reinforced regulations, under this Act, the head of the central administrative agency – in the case of the Korean financial sector, the Financial Services Commission – should prepare a written analysis on the effects of the regulations and submit it for examination to the Regulatory Reform Committee.

In the Mexican financial sector, RIAs are regulated by the Federal Administrative Procedure Law (Ley Federal del Procedimiento Administrativo or LFPA), which has granted an administrative body from the Secretariat of Economy, the Federal Regulatory Improvement Commission (Comisión Federal de Mejora Regulatoria, or COFEMER), the capacity to promote transparency with regard to the creation and implementation of regulations in Mexico in a manner that is beneficial to society (in a socially beneficial way). A legal document, the “Regulatory Impact Manifestation” (Manifestación de Impacto Regulatorio, or MIR) has also been released by the LFPA to achieve this goal.

“Administrative Procedure Law”, “Legal Process Directions for Central Administrative Organizations” and other directives

<p>1-1-3. If yes to Q1-1, how often do regulators conduct the RIA? (e.g. always required by a governing law, sometimes, depends on industry demands, etc.) If not always required, please state how regulators decide whether or not to conduct the RIA.</p>	<p>Always required by a governing law when the law is newly enacted or has been amended to strengthen regulation.</p>	<p>Regarding financial regulations, undertaking/conducting the RIA is mandatory by law.</p>	<p>All acts and codes are required to undergo the RIA. For regulations made by the Financial Supervisory Commission, whether the RIA should be conducted is left to the discretion of the regulators.</p>
<p>1-1-4. If yes to Q1-1, please describe the RIA process in detail. (If the details of the RIA process cannot be determined, tell us if a cost-benefit analysis and stakeholder consultations are conducted.)</p>	<p>1) The Regulatory Reform Committee decides if the subject law is considered as “newly enacted” or “reinforced” regulation. 2) If the subject law is considered as “newly enacted” or “reinforced,” the relevant government official shall conduct the RIA. 3) After preparing the RIA report, the government can make a pre-announcement of the subject law along with the RIA report open to public. 4) The RIA report will be revised to accommodate feedbacks made from various stakeholders during the pre-announcement period. 5) The Regulatory Reform Committee reviews the subject law along with the RIA report.</p>	<p>Prior to submitting a financial regulation, the regulatory authority must send a preliminary project to COFEMER, which handles Mexico's RIAs.</p> <p>An MIR must be submitted with the preliminary project by the regulatory authority.</p> <p>If the preliminary project does not set fulfillment costs for its stakeholders, the authority involved may ask COFEMER to permit the submission of the MIR to be exempted.</p>	<p>Preparatory stage: Formulate a policy objective, establish possible measures, propose directions, review current regulations.</p> <p>Drafting stage: Establish a thorough and mature regulatory framework, consult with parties and organizations in charge, request external opinions (including from experts), hold legislative hearings and seminars, and consult with local autonomous organizations. The levels and ranges of effects revealed by the RIA must all be taken into consideration in evaluation reports.</p>
<p>1-1-5. If no to Q1-1, in what ways do the regulators in your jurisdiction identify and assess the expected effects of regulatory proposals?</p>	<p>N/A</p>	<p>N/A</p>	<p>N/A</p>
<p>1-2. Is there a government body or non-government organization responsible for reviewing the quality of RIAs?</p>	<p>Yes, a government body called the Regulatory Reform Committee.</p>	<p>Yes, COFEMER.</p>	<p>Yes. In our executive system, draft bills by government agencies must be sent to the higher authority (Executive Yuan) for monitoring.</p> <p>In addition, all draft bills must also be sent to the Legislative Yuan for screening and approval.</p>
<p>1-2-1. If yes to Q1-2, what law, statute or executive order governs the government body’s RIA oversight activity?</p>	<p>Framework Act on Administrative Regulation</p>	<p>LFPA (Articles 69-A to 69-Q)</p>	<p>“Administrative Procedure Law”, “Legal Process Directions for Central Administrative Organizations” and other directives</p>

<p>1-2-2. If yes to Q1-2, can this oversight body return the RIA for revision when it is deemed inadequate?</p>	<p>Following the submission of the RIA report by the relevant agencies, the Regulatory Reform Committee will examine the validity and rationality of the proposed legislation. If necessary, the Committee can recommend the withdrawal or improvement of the proposed legislation.</p>	<p>Yes. According to article 69-I of the LFPA, when COFEMER reviews the preliminary project, if it determines that the MIR is unsatisfactory, (further detailed in question 2-1-1), the MIR may be returned to the submitting body, which is granted a period of 10 working days to make adjustments.</p> <p>In addition, if COFEMER determines, based on the MIR, that the preliminary project could have a substantial impact on stakeholders or the Mexican economy, it may request a review of the MIR by an expert representative within 40 days from such a determination.</p>	<p>Yes</p>
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<p>1-3. Are RIA reports publicly available? (e.g. published online)</p>	<p>Some RIA reports are available. RIA reports are supposed to be published when the government makes a pre-announcement of legislation. However, from 2013 until March 27, 2017, only 15% (56 of 382 legislations) of pre-announcements in the finance sector have provided an RIA reports to the public.</p>	<p>Yes, on the same website where the projects are published, along with documentation by the regulatory authority supporting each project and COFEMER's final decision.</p>	<p>The Executive Yuan accesses RIA reports when conducting monitoring, and sends the reports to the Legislative Yuan.</p>
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2. Cost-Benefit Analysis

<p>2-1. Are regulators required to identify the costs of a new law?</p>	<p>Yes</p>	<p>Yes</p>	<p>Yes</p>
<p>2-1-1. If yes to Q2-1, is there a requirement to assess any of the following categories of costs? And how specifically are these costs quantified and/or qualitatively assessed? (e.g. inclusion of a mathematical formula using the most recent and relevant statistical data)</p>	<p>Regulators have to quantify the costs as much as possible if the costs are quantifiable, and also provide a qualitative analysis of the costs as well.</p>	<p>The Regulatory Impact Calculator determines the potential impact of regulatory projects and defines the MIR to be applied to them. Used when COFEMER's opinion is requested for a preliminary project. Applies direct and indirect costs. If there are no costs, it is published without an MIR. If there are, a high/moderate impact of the MIR is published with the project.</p> <p>Other evaluated costs include long-term structural costs, compliance costs, and administrative costs.</p>	<p>The Financial Supervisory Commission conducts the appropriate qualitative and quantitative research for various cases and calculates impacted matters and ranges.</p>

2-1-1-1. Direct costs (e.g. costs that are directly borne by the main purpose of the laws)	Economic/social costs that could be directly born by the main purpose of the laws should be assessed.	As stated in the response to 2-1-1, the calculator evaluates direct costs.	When regulators-release important and major regulations, it is necessary to conduct the RIA to ensure that the benefits outweigh the costs, particularly with tax- and fee-related regulations.
2-1-1-2. Indirect costs (e.g. costs that are incidental to the main purpose of the laws)	The law's expected effects on fair competition	As stated in the response to 2-1-1, the calculator evaluates indirect costs, using sources such as economic studies, public records, and government agency databases.	Indirect costs include fair competition, consumer burden, environment, and culture.
2-1-2. If yes to Q2-1, for which groups – e.g individuals/citizens, financial firms, small businesses, the government, etc. – are costs quantified?	These costs are written in a very general way. Instead of conducting a detailed calculation of costs to obtain a quantitative result, only a qualitative cost analysis is carried out in most cases.	<p>The Standard Cost Model is a framework for defining and quantifying administrative burdens for businesses using an eight-factor system. This model identifies costs inherent to the process, and quantifies the time needed to fulfill each procedure in monetary terms. It analyzes time spent in the following eight areas.</p> <ul style="list-style-type: none"> • Identification and requirement comprehension by citizens • Generation of new information • Gathering of pre-existing information • Inside meetings • Reports and format filings • External service meetings • Back-up file creation • Waiting for/commuting to gov.offices 	Yes, for individuals, financial consumers, financial firms, and the government, on a case-by-case basis.
2-2. Are regulators required to identify the benefits of a new law? Do they carry out a separate paperwork reduction analysis when identifying the benefits of a new law?	Yes, they are required to identify the benefits of a new law, but do not carry out a separate paperwork reduction analysis.	<p>Yes. The LFPA stipulates that preliminary projects from regulatory authorities must be submitted to COFEMER for review and opinion-seeking along with the MIR if costs are expected to be incurred. The MIR investigates the following aspects:</p> <ul style="list-style-type: none"> • The reason for issuing a regulation • The risks the problem represents • Verification that the project is in line with the national legal framework and issued by the appropriate authority • Identification and analysis of all alternative solutions for the problem • Analysis of the costs and benefits for the private sector in the event of approval 	Yes. An evaluation of the overall benefits is taken into consideration when analyzing new regulations, and includes an analysis on paperwork reduction.

<p>2-2-1. If yes to Q2, please describe how regulators quantify and/or qualitatively assess the benefits, and for which groups – e.g. individuals/citizens, businesses, small businesses, the government, etc. – are benefits quantified?</p>	<p>Economic/social benefits that could be directly incurred by the main purpose of the laws should be assessed. Regulators have to quantify the benefits as specific as possible if the benefits are quantifiable. However, in reality, these benefits are written in a very generalized way. Instead of conducting a detailed calculation of benefits to obtain a quantitative result, only a qualitative benefit analysis is carried out in most cases.</p>	<p>-</p>	<p>Individuals: Determining if financial services improve, with lower costs</p> <p>Financial firms: Determining whether compliance costs are lower, with a better resource distribution in the overall industry</p> <p>Government: Determining if supervision is better, and more effective</p>
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3. Public Stakeholder Consultation

<p>3-1. How often do the regulators conduct stakeholder engagement? And when does the government conduct stakeholder engagement? (e.g. prior to a law being drafted, when a draft version of a law has been prepared, when developing a final rule)</p>	<p>Prior to a law being drafted, when a draft version of a law has been prepared, when developing a final rule.</p>	<p>Comments are available once the preliminary project is published on COFEMER's website, and anyone may submit them. The comments and resolutions COFEMER derives from them are accessible to the public. In cases where they decide to proceed, a partial pronouncement is sent to the responsible authority to analyze the comments and respond to them.</p>	<p>Regulators conduct stakeholder engagement both prior to a law being drafted and when a draft version of a law has been prepared.</p>
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<p>3-2. What forms of stakeholder engagement are used? (e.g. public consultation conducted over the internet with the invitation to comment, public hearing, another form of physical(face-to-face) or virtual public meetings, informal consultation with selected groups, advisory groups, etc.)</p>	<p>1) Online public consultations with the invitation to comment when making a pre-announcement of legislation 2) Informal consultations with selected groups (usually industry associations) before the RIA 3) Field visits - a team comprised of financial regulators and self-regulators visits financial companies to seek out areas where regulation can be improved</p>	<p>Stakeholder engagement is made possible through COFEMER's website, where all updated information is published. The website enables various comments to be submitted. Should COFEMER detect any inconsistencies, it can suggest that the relevant authority consult with experts on the matter.</p>	<p>Public consultations conducted over the internet with the invitation to comment, public hearings, and requests for opinions from related commercial associations.</p>
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<p>3-3. Is there a formal requirement for a minimum period for consultations with the public, including citizens and businesses?</p>	<p>N/A</p>	<p>Yes. Once a the regulatory authority has determined the applicable MIR using COFEMER's calculator, the following deadlines apply to gathering comments: Moderated Impact MIR: 10 working days High Impact MIR: up to 30 working days</p> <p>However it is also acceptable (and a good practice) to send additional comments outside of this time frame.</p>	<p>Yes, 60 days in principle, at least two weeks.</p>
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<p>3-4. Are the discussions and results of stakeholder consultations and public comment letters publicly available?</p>	<p>No. But the results of Field visits are publicly available.</p>	<p>Yes, the results are publicly available as well as all the information received during all the process. For instance, if a preliminary project is published in a certain date at COFEMER's website, as of that date all comments received are made public in chronological order; as well as the partial reports issued by the authorities, the answers for these and in case the COFEMER agrees, the Final resolution is also submitted.</p>	<p>Public hearings are held at the Committees of Legislative Yuan for major law cases, and meeting minutes are available on the Legislative Yuan's website.</p>
<p>3-5. Are the views expressed in the consultation process included in the RIA? If not, are they passed on to decision-makers in some other ways together with the draft regulation or proposed rule?</p>	<p>Yes, for some cases.</p>	<p>Yes, once the preliminary project is submitted to COFEMER and the consultation period with stakeholders has concluded, COFEMER collects the opinions that have been presented. It is important to outline all documents, comments, and analyses received.</p>	<p>Yes</p>
<p>4. Other Questions</p>			
<p>4-1. Is a complete online database of all laws freely available to the public in a searchable format? If yes, is it up-to-date?</p>	<p>Yes, and it is up to date.</p>	<p>Yes. All regulations have to be published on the Official Journal of the Federation to be considered formally issued.</p> <p>In addition, on the website of each government secretariat, the relevant regulations are published.</p>	<p>Yes, and it is up to date.</p>
<p>4-2. Do financial regulators have a webpage for ongoing consultations regarding the development of new laws?</p>	<p>Yes</p>	<p>All consultations take place on COFEMER's website.</p> <p>The websites owned by financial regulators are not permitted to hold ongoing consultations, and only publish previously approved and current laws.</p>	<p>Yes</p>
<p>4-3. Do financial regulators conduct an ex-post evaluation to consider the consistency of primary laws and take steps to address areas of overlap/duplication/inconsistency?</p>	<p>No</p>	<p>No such evaluation is carried out. However, as long as it does not infringe upon other issued regulations, doing so would enable regulators to get responses to comments about the current law.</p>	<p>Financial regulators track analyses and review them on a regular basis, so as to put in necessary and up-to-date amendments.</p>

Turkey (TCMA)

Thailand (ASCO)

India (BBF)

1. RIA in General

1-1. Are your financial regulators required to conduct the RIA when developing legally binding documents for 1) primary laws; and 2) subordinate rules and regulations?	There has been a decree by the Council of Ministers mandating the use of RIAs prior to passing laws and regulations; however, the law is not being rigorously applied.	No	It is not compulsory for the Financial Regulator (Securities and Exchange Board of India, or SEBI) to conduct an RIA.
1-1-1. Under what circumstances – prior to the drafting of a law, rule or regulation (hereinafter, “law”), when a draft version of a law has been prepared, when developing a final version of a law – do the financial regulators in your jurisdiction conduct the RIA?	On certain occasions, regulators consult with the industry before introducing regulations. However, there is no systematic and consistent compliance with the procedures set out in the “By-Law on Principles and Procedures of Drafting Legislation” decree.	N/A	While SEBI does not conduct RIAs, it does invites associations to offer their views on regulations before a final law is drafted, and seeks comments from the associations on key issues.
1-1-2. If yes to Q1-1, please describe the name and details of the governing law for the RIA.	<p>The “By-Law on Principles and Procedures of Drafting Legislation” decree issued by the Council of Ministers on 17 February 2006.</p> <p>According to the decree: An The RIA is required prior to introducing laws and decrees that are estimated to have an impact that will exceed TL 10mn. This amount is subject to revision by the Prime Minister’s Office. The Prime Minister may at times require the RIA to be conducted for laws and decrees that do not exceed the TL 10mn threshold.</p> <p>RIAs are not conducted for matters relating to national security and appropriations. RIAs are conducted by the government body and/or agency that proposed the regulation.</p>	N/A	N/A
1-1-3. If yes to Q1-1, how often do regulators conduct the RIA? (e.g. always required by a governing law, sometimes, depends on industry demands, etc.) If not always required, please state how regulators decide whether or not to conduct the RIA.		N/A	N/A

1-1-4. If yes to Q1-1, please describe the RIA process in detail. (If the details of the RIA process cannot be determined, tell us if a cost-benefit analysis and stakeholder consultations are conducted.)	There is no formal RIA process.	N/A	N/A
1-1-5. If no to Q1-1, in what ways do the regulators in your jurisdiction identify and assess the expected effects of regulatory proposals?	There is no such process.	The regulator conducts the focus group with selected stakeholders.	SEBI elicits opinions from associations on expected effects through discussions and other forms of dialogues.
1-2. Is there a government body or non-government organization responsible for reviewing the quality of RIAs?	No	No	There is no such mechanism in place.
1-2-1. If yes to Q1-2, what law, statute or executive order governs the government body's RIA oversight activity?	N/A	N/A	N/A
1-2-2. If yes to Q1-2, can this oversight body return the RIA for revision when it is deemed inadequate?	N/A	N/A	N/A
1-3. Are RIA reports publicly available? (e.g. published online)	No	No	N/A
2. Cost-Benefit Analysis			
2-1. Are regulators required to identify the costs of a new law?	No	No	No. But associations at times may conduct a cost-benefit analysis and update SEBI. SEBI conducts its own analyses as well, but they are not made public.
2-1-1. If yes to Q2-1, is there a requirement to assess any of the following categories of costs? And how specifically are these costs quantified and/or qualitatively assessed? (e.g. inclusion of a mathematical formula using the most recent and relevant statistical data)	N/A	N/A	Costs are calculated based on actual trade and volume data. For instance, the impact of an increase in the Securities Transaction Tax (STT) is calculated vis-à-vis how much volume would go up if the tax is removed.

2-1-1-1. Direct costs (e.g. costs that are directly borne by the main purpose of the laws)	N/A	N/A	As stated in the response to 2-1-1, direct costs are evaluated.
2-1-1-2. Indirect costs (e.g. costs that are incidental to the main purpose of the laws)	N/A	N/A	Yes, an indirect cost analysis is also done.
2-1-2. If yes to Q2-1, for which groups – e.g individuals/citizens, financial firms, small businesses, the government, etc. – are costs quantified?	N/A	N/A	The costs are quantified for brokers, who are the main capital market intermediary.
2-2. Are regulators required to identify the benefits of a new law? Do they carry out a separate paperwork reduction analysis when identifying the benefits of a new law?	No	No	While not legally required, they assuredly analyze the benefits of new laws.
2-2-1. If yes to Q2, please describe how regulators quantify and/or qualitatively assess the benefits, and for which groups – e.g. individuals/citizens, businesses, small businesses, the government, etc. – are benefits quantified?	N/A	N/A	N/A
3. Public Stakeholder Consultation			
3-1. How often do the regulators conduct stakeholder engagement? And when does the government conduct stakeholder engagement? (e.g. prior to a law being drafted, when a draft version of a law has been prepared, when developing a final rule)	The regulator conducts stakeholder engagement, although there is no formal process for conducting them.	It is uncommon. The regulator does conduct stakeholder engagement when a draft version has been prepared.	SEBI invites associations to conduct engagement on key issues affecting the securities market. Public discussion and white papers in particular are highly encouraged. Every quarter, SEBI asks the associations and stock exchanges to conduct a joint meeting and then update it on any developments.
3-2. What forms of stakeholder engagement are used? (e.g. public consultation conducted over the internet with the invitation to comment, public hearing, another form of physical(face-to-face) or virtual public meeting, informal consultation with selected groups, advisory groups, etc.)	Written consultations with the invitation to comment, informal consultations with selected groups, meetings with industry professionals.	Public hearings	All forms of stakeholder engagement are used by SEBI, such as public comments, invitations for meetings, white paper discussion, and so forth. Associations like BBF provide input as and when required by SEBI, and, at times, <i>sua sponte</i> as well. This process is performed several times for critical issues.

3-3. Is there a formal requirement for a minimum period for consultations with the public, including citizens and businesses?	No	30 days in general	No, there is no formal requirement for a minimum period.
3-4. Are the discussions and results of stakeholder consultations and public comment letters publicly available?	No	They are available on the relevant website.	Yes, the discussions and results of stakeholder consultations are available on SEBI's website.
3-5. Are the views expressed in the consultation process included in the RIA? If not, are they passed on to decision-makers in some other ways together with the draft regulation or proposed rule?	There is no formal RIA methodology. Views are considered by the regulator prior to making laws and regulations.	No. The results of the public hearing are summarized and included with the draft regulation.	It depends on the view of the regulator. At times, it will take into account the views expressed by the associations, and at other times, will make its own decision.
4. Other Questions			
4-1. Is a complete online database of all laws freely available to the public in a searchable format? If yes, is it up-to-date?	Yes, and it is up to date.	Yes, and it is up to date.	All circulars, orders, public discussion papers, and so forth are available on the different sections of SEBI's website, allowing for easy reference when submitting views and opinions.
4-2. Do financial regulators have a webpage for ongoing consultations regarding the development of new laws?	No	Yes	Yes. On SEBI's website is a separate "public discussion" section where the general public is able to express views.
4-3. Do financial regulators conduct an ex-post evaluation to consider the consistency of primary laws and take steps to address areas of overlap/duplication/inconsistency?	No	No	Yes. At times, SEBI takes steps to ensure that there are no overlaps, duplications, or inconsistencies. Associations like the BBF also raise such market issues at the appropriate time and provide input.

Based on the survey results, it is observed that Korea, Mexico, Taiwan, and Turkey have legal requirements and governing laws to always conduct the RIA when developing legally binding documents for both primary laws and subordinate rules and regulations. It is noteworthy, however, that in Turkey, although there has been a decree by the Council of Ministers mandating the use of RIAs, the law is not being rigorously applied across the various industry sectors, including the financial industry.

Thailand and India have indicated that there are no legal requirements and governing laws for conducting the RIA. In case of Thailand, the regulators conduct a focus group with selected stakeholders instead of the RIA. India takes a similar approach—while its financial regulator, SEBI, Securities Exchange Board of India, does not conduct the RIA, it invites industry associations to offer their views on rules and regulations before the final version is being drafted.

Countries with the RIA in place also have a governmental body responsible for reviewing the quality of RIAs, mandated by the same laws that require the RIA, with the exception of Turkey. This body can also examine the quality of the RIA report, and if it is deemed unsatisfactory, the report may be returned to the submitting body for improvement.

It is also observed that Korea and Mexico release RIA reports publicly. It was noted, however, in Korea, that although it is compulsory by law to provide the reports when the government makes the pre-announcement of legislation, the report was only publicly available 15% of the times : that is, 56 of 382 cases from 2013 to March 2017. In case of Taiwan, RIA reports are only available for the governmental body responsible for monitoring legislations, and not for the general public.

As part of the RIA, Korea, Mexico, and Taiwan all identifies the cost and benefit of a new or amended law. In case of Mexico, they have an analysis tool called the Regulatory Impact Calculator, which determines the potential impact – cost and benefit – of a new or amended law. It is noteworthy that they actually measure direct and indirect costs along with possible benefits of the law prior to producing the RIA report, which is called the MIR, abbreviated for Manifestación de Impacto Regulatorio in Spanish. If the calculator calculates that there is no cost involved with a new or amended law, the Mexican government authority, COFEMER, allows the submitting body to publish the preliminary draft of a law without a the MIR.

Both direct and indirect costs were identified in all three regions. Direct costs include economic costs, social costs, operational and maintenance costs, compliance costs, and administrative costs that are directly incurred by the main purpose of the laws. Indirect costs include the law's expected effects on fair competition, consumer burden, environment and culture.

Although the submitting body has to quantify the costs and benefits as specific and detailed as possible given that they are quantifiable, in case of Korea, costs and benefits were often mentioned in the report very briefly in a generic writing. Instead of providing a detailed calculation of costs to obtain a quantitative result, only a qualitative

analysis is carried out in most cases. Also, no other country, except for Taiwan, conducted an analysis on paperwork reduction when identifying the benefits of new or amended laws.

Countries who do not legally oblige the RIA process – Thailand and India – conduct stakeholder engagement in a certain degree. Thai regulators conduct stakeholder engagement through channels such as public hearings and a focus group when a draft version of a new or amended law has been prepared. In case of India, stakeholder engagement is very active in that SEBI invites financial industry associations for stakeholder engagement when key issues affecting the securities market come up. Public discussions and white papers in particular are highly encouraged. In addition, in every quarter, SEBI invites associations and stock exchanges for a joint meeting—where SEBI provides updates on any new developments in financial legal environment.

For all EMC countries, the financial regulators conduct stakeholder engagement usually through online public consultations conducted with an invitation to comment to solicit feedback, public hearings, and requests for opinions from related trade associations. In the case of Korea, financial regulators with self-regulators take a regular field visit to financial companies to seek out which rules and regulations should be improved.

With the exception of Korea – only the results of field visits are publicly available in Korea – and Turkey, the discussions and results of stakeholder consultations and public comment letters are publicly available on the website of financial regulator. And for the countries with the RIA in place, the diverse views and opinions expressed in the consultation process are included in the RIA as well.

Advanced nations such as the US, and EU, share common characteristics in their RIA schemes in that they guarantee the participation of the general public, open information regarding the regulatory changes, a strict attachment to the prescribed RIA methodology, thereby securing the democracy, transparency, and effectiveness of the RIA process.

In the US, the Securities Exchange Commission (SEC) issued guidance for economic analysis of regulations in 2012. The SEC’s 2012 guidance provides that a complete economic analysis should include an assessment of the agency’s need for the regulation, an articulation of the baseline against which the effects of the regulation would be measured, alternatives to the proposed regulation, an evaluation of the economic impact of the proposed regulation, and reasonable alternatives based on the regulation’s benefits and costs”.¹

Furthermore, the SEC Regulatory Accountability Act was passed in January 2017 at the House level that requires the SEC to perform a cost-benefit analysis on regulation and only adopt regulation only after a cost-benefit analysis.

¹ Ellig, J. (2017, June 08). Systematic Study Shows Improvement in SEC Economic Analysis. Retrieved June 15, 2017, from <https://www.theregview.org/2017/03/20/ellig-systematic-study-shows-improvement-sec-economic-analysis/>

The EU has put forward a better regulation agenda and adopted Impact Assessment Guidelines since 2005 and replaced them for an update frequently. The guideline has set out key analytical steps for the assessment such as identifying the problem, defining the objectives, developing main policy options, analyzing the impacts of the options, comparing the options, and outlining policy monitoring and evaluation. Especially, the EU mandates “a 12-week internet-based public consultation covering all of the main elements of the RIA as part of a broader consultation strategy to target relevant stakeholders and evidence”.²

IV. Policy Recommendation

Based on the above findings, the members of the ICSA’s Emerging Markets Committee recommend the following measures, which we believe, will contribute to the development of a fair, transparent and effective capital market and rule-making.

Recommendation 1: Emerging Market Regulators should develop a formal RIA practice, and if the RIA is already in place, regulators should make the RIA reports public

Recommendation 2: Emerging Market Regulators should develop and use a consistent and detailed Cost-benefit analysis methodology

Recommendation 3: Emerging Market Regulators should hold stakeholder consultation during the RIA development process

Recommendation 4: Emerging Market Regulators should make the results of stakeholder consultation public

In regards to the stakeholder consultation, ICSA has produced Best Practices for Regulatory Consultation in 2013, and entailed 10 best practices as a framework for effective regulatory consultation policies. Emerging market regulators may be able to utilize these best practices to design their consultation program as an effective communicating tool. They are:

- 1. Regulators should develop a formal consultation program to ensure that the consultation process is managed in a transparent and accountable manner
- 2. Regulators should clearly prioritize among planned reforms in order to ensure that consultations on all major reforms are appropriately sequenced
- 3. Regulators should ensure that regulatory proposals have a clearly defined policy objective and scope and to the greatest extent possible are compatible

² European Commission. Guideline on Impact Assessment. Retrieved June 15, 2017 from http://ec.europa.eu/smart-regulation/guidelines/ug_chap3_en.htm/

with the existing regulatory framework

- 4. Regulators should initiate preliminary informal consultation with market participants and other stakeholders on proposed measures as early and as widely as possible
- 5. Once a formal consultation is initiated, regulators should consult with market participants and other stakeholders and, where appropriate, with stakeholders and regulators in other jurisdictions as widely and effectively as possible
- 6. Regulators should ensure that there is adequate time for the entire consultation process so that respondents have sufficient time to prepare their responses and regulators have time to analyze the responses that they have received
- 7. Regulators should take full account of the responses received during the consultation, ensure that all responses are placed in the public domain and publish a feedback or policy statement, explaining the rationale for the decisions taken
- 8. Regulators should ensure that additional consultations are held if the proposed reforms are substantially changed after the initial consultation and/or there is a significant time lag between the conclusion of the initial consultation and implementation of the measures
- 9. Regulators should ensure that any regulations implemented on an emergency basis are considered temporary until a formal consultation is carried out
- 10. Regulators should engage in a periodic review of their regulatory program in order to assess the extent to which major reforms that have already been implemented have achieved their stated objectives