

KEY POINTS

- Tajikistan does not have today a Regulatory Impact Analysis (RIA) process to review the more than 1,000 legal acts that are adopted every year. This contributes to high regulatory costs and risks.
- A RIA System is a transformational program difficult to implement.
- This brief proposes a decentralized RIA System for Tajikistan where most responsibilities for ensuring good RIA are delegated to regulators with the support of a central body. The brief also proposes an action plan for the introduction of the RIA System.

A MODEL FOR A REGULATORY IMPACT ANALYSIS SYSTEM IN TAJIKISTAN

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INTRODUCTION

The Government of Tajikistan is setting up by 1 January 2017 a Regulatory Impact Analysis (RIA) policy and management system (RIA System) for newly proposed legal acts.¹ This brief describes a proposed decentralized RIA System for Tajikistan where most responsibilities for ensuring good RIA are delegated to regulators with the support of a central body.

RIA is an evidence-based process used for preparing higher quality regulations and policy decisions. It involves asking key questions in a structured way to understand underlying problems and identify policy options. The various impacts of these options are then analyzed based on facts, and their costs and benefits compared. A transparent policy debate between government and stakeholders accompanies the RIA process. The RIA process enhances accountability of regulators vis-à-vis the state and citizens. It is an important safeguard against regulatory capture by specific interest groups and undue discretion in the application and enforcement of the legal and regulatory framework.

¹ The Asian Development Bank (ADB) has been providing assistance to the government through the Investment Climate Reforms Program. ADB. 2013. *Technical Assistance to Tajikistan for Investment Climate Reforms*. Manila. ADB has also provided assistance to other developing countries in establishing RIA systems, including Bhutan, Cambodia, the Lao People's Democratic Republic, and the Philippines.

Table 1: Strengths and Weaknesses of Tajikistan’s Regulatory Environment

Strengths	Weaknesses
Most ministries and regulators have small units responsible for analytical and rulemaking work	High staff turnover among regulators; limited staff capacity to analyze trends and challenges, and elaborate solutions
Support from businesses and high-level authorities for a more open and transparent policy- and regulatory-making process	Widespread discrepancies and lack of precision in the legislation that results in differing interpretations
Attempts, though sporadic, by some regulatory authorities to circulate draft laws to stakeholders	Lack of an official gazette and a free, online database of enforceable normative acts that businesses and citizens can easily access
Standardized procedures for the development and adoption of normative acts ^a	Inadequate checks and balances to ensure that legal and regulatory drafts are of high quality and minimize costs on businesses
Requirement to conduct financial impact analysis for draft normative acts ^b	Ministries, agencies, and departments have ample discretion to decide when and how to regulate
Standardized procedures for obtaining permits, including requirement for conducting RIA for newly proposed permits ^c	Enforcement and implementation of laws and regulations is weak

^a Law on Normative Acts No. 506, 26 March 2009.

^b Decision of the Head of Presidential Office No. 2, 28 January 2011.

^c Article 20 of the Law on Permitting System No. 751, 2 August 2011.

Source: Authors.

POLICY AND REGULATORY ENVIRONMENT IN TAJIKISTAN

Tajikistan has a rapidly evolving policy and regulatory environment. More than 1,000 legal acts (laws, parliament resolutions, presidential decrees, and government resolutions) are adopted every year.² Asadov (2014) provides a good overview of the public policy process in the government (footnote 2). Table 1 shows key strengths and weaknesses of Tajikistan’s current policy and regulatory environment, and regulatory management system.

Tajikistan does not have a RIA process today. Few regulators undertake ex-ante analysis of potential economic and social impacts of proposed normative acts. This contributes to high regulatory costs and risks. The ability of the government to formulate and implement sound policies and regulations is perceived to be very low.³ Regulators are often unable to identify compliance and enforcement costs, and thus often choose inefficient and costly regulatory solutions to solve problems. Low quality of the legal and regulatory environment contributes to significant challenges to the country’s productivity, investment attractiveness, and ultimately to its sustainable economic development. RIA applied consistently and effectively for a number of years can change the regulatory environment, improve the business climate, and reduce regulatory costs.

THE PROPOSED REGULATORY IMPACT ANALYSIS MODEL FOR TAJIKISTAN

The key objective in implementing the RIA System in Tajikistan should be to reduce unnecessary costs and risks on businesses arising from low quality normative acts and regulatory changes. This can be done through systematic ex-ante assessment and quality control of new regulatory proposals on the costs of doing business, trade competitiveness, and investment attractiveness. The RIA scope should include all normative acts prepared by the executive with a potential impact on businesses. The government’s target should be to publish by 2018 on an authorized government website the RIA results for all new legal acts eligible for RIA.

The RIA System should be based on a “decentralized” model where most responsibilities for ensuring good quality RIAs will be delegated to regulators with the support of a central body and under a “Trust, but Verify” approach.⁴ RIA quality will be verified through extended consultation mechanisms to find agreements and consensus with affected groups and government stakeholders. The decentralized model gives a significant role to regulators for self-assessment in preparing their forward regulatory plans and RIA reports (see box).

² S. Asadov. 2014. The Policy Process in Government in Tajikistan: Recent Dynamics, Challenges and Opportunities. *Working Paper*. No. 28. Bishkek: University of Central Asia.

³ Tajikistan scores very low (–1.01) in the estimate of regulatory quality by the World Bank, where scores range from around –2.5 (very low regulatory quality) to +2.5 (very high regulatory quality). World Bank. *Worldwide Governance Indicators*. www.govindicators.org (accessed on 9 November 2015).

⁴ The “Trust, but Verify” approach is a trademark of Jacobs, Cordova & Associates. It is based on models mostly founded in Chile, Denmark, or Ireland as they have set up weak oversight bodies relying mostly on publication and consultation.

Box: Why a Decentralized Regulatory Impact Analysis System Should Work Better in Tajikistan

A Regulatory Impact Analysis (RIA) system contributes to better regulations in most developed countries by functioning as a quality filter at the end of the rulemaking process. This ex-ante evaluation mechanism is based on a “command-and-control” logic, where strong political will is delegated to a principal oversight body in charge of enforcing RIA requirements before promulgation of new legal measures. This centralized RIA model needs a powerful, well-staffed, and well-funded oversight body with significant and technical independence to challenge regulators on substantive aspects of their regulatory proposals. It follows political traditions for checks and balances, accountability, and transparency in the decision-making processes.

Unfortunately, these elements have been wanting in most public governance of emerging and developing countries. The experience in deploying centralized RIA models in these countries has been patchy and often discouraging. The RIA System just adds one more layer to bureaucratic internal paperwork.

The proposed RIA model for Tajikistan is adapted from the decentralized system based on the principle of “Trust, but Verify.” It gives importance to self-assessment by regulators when preparing their RIA reports. It relies on ex-post verification, transparency, accountability mechanisms, and peer pressure. The Government of Tajikistan should in a few years be able to move toward the standard centralized model as open and challenging rulemaking is embedded in the policy-making process.

Box Table: Pros and Cons of a Decentralized Regulatory Impact Analysis Model

Pros	Cons
Less expensive to implement than the centralized model	Quality of the RIA tends to be lower
The RIA oversight body can be smaller and focused mostly on ensuring transparency and accountability of RIA drafters	Regulators often start RIA too late and tend to use them as justifications for their prejudged option
Can strengthen active public consultation	Results tend to rise slowly in the short run, unless the “name and shame” mechanism is established
The system is seen by regulators as less intrusive on their discretion to regulate	Without proper ex-post verification, the system loses credibility and tends to be unsustainable in the long run

RIA = Regulatory Impact Analysis.

Source: Authors.

Principles of the Regulatory Impact Analysis System

Mainstreaming of the RIA System in Tajikistan shall abide by the following principles.

- (i) **Public participation through active and passive consultation.** The RIA-making procedure is not a purely government initiative. The public and the business sectors must be consulted to help inform about potential costs and risks of new regulatory proposals.
- (ii) **Credibility based on appropriate authority.** The government shall provide clear power and resources to

a designated institution (i.e., the RIA Oversight Body) to implement and enforce the RIA requirements and principles (see Institutional Setting on page 4). The RIA Oversight Body should have the authority to ensure that regulators publish their forward regulatory plans (see Forward Regulatory Planning System on page 4) and RIA reports (see Regulatory Impact Analysis Reports on page 4) for notice and comments.

- (iii) **Public accountability.** The RIA System will have mechanisms (e.g., a dedicated web portal and an annual monitoring report submitted to the Parliament) that facilitate regulators’ accountability and reporting to the government and to the broader public.

- (iv) **Proportionality.** Through an analysis of the likely impacts of the actions proposed in the forward regulatory plans, the RIA Oversight Body and other stakeholders will be able to demand more in-depth RIAs for normative initiatives with the highest expected compliance costs. The RIA Oversight Body should have the possibility to exempt proposals from RIA on a case by case basis through publicly listed exemptions. The government should set up a special process for issuing emergency normative acts.
- (v) **Efficiency.** The RIA System shall be designed to minimize the costs of enforcing RIA discipline and of compliance by regulatory authorities when drafting RIA reports.
- (vi) **Gradualism.** The RIA System should start small and simple. In due time, the government should increase the quality standards for preparing RIA reports, extend the consultation period, and give more power to the RIA Oversight Body to publicly challenge the quality of RIA reports.

Institutional Setting

The RIA Oversight Body should be an independent and specialized government body accountable to the President and responsible for (i) implementation of the RIA System and of the principles of good regulation; (ii) endorsing all RIA reports and draft normative acts to the government; (iii) encouraging regulators to publish the most complete and precise forward regulatory plans and RIA reports; (iv) coordination and training of regulators, and facilitation of the RIA Network; (v) updating and maintaining the Normative Acts Web Portal (Section III.E) with updated forward regulatory plans, RIA reports, and draft normative acts; (vi) notification of target groups potentially affected by newly proposed regulatory initiatives; and (vii) preparing an annual monitoring report assessing the compliance of regulators with the RIA policy and processes (see Monitoring and Evaluation on page 5). The RIA Oversight Body should be headed by a senior official and have a staff of lawyers, economists, and other experts as needed.

The Government will be responsible for (i) regular monitoring and evaluation of the RIA System and of its outputs and outcome, (ii) funding of the RIA Oversight Body and other participants of the RIA System, and (iii) review and approval of the annual monitoring reports prepared by the RIA Oversight Body.

The RIA Network of focal points in each regulator should be in permanent contact with the RIA Oversight Body, and meet frequently to discuss the status of the RIA System. The members of the RIA Network—two or three senior legal and economic officials of each regulatory agency—will be trained to train other government officials on RIA techniques.

Forward Regulatory Planning System

The Forward Regulatory Planning System aims to increase transparency of the government's regulatory efforts. It will obligate all regulators to submit biannual forward regulatory plans, i.e., the list of proposed new normative acts and amendments to enacted normative acts they plan to work on during the following 6 months.

The forward regulatory plans should be short but clear, and help in the identification of legal and regulatory initiatives that will be presented to the government for consideration; situate these initiatives within the broader governmental agenda; identify linkages with other initiatives under way or planned; and help the RIA Oversight Body to anticipate proposals and work closely with regulators to address issues that may delay consideration of time-sensitive proposals (e.g., those that require policy discussion or funding from the state budget).

Regulatory Impact Analysis Reports

Undertaking RIA will precede the drafting of the normative act, which will be described in a RIA report. The RIA reports should detail the information presented in the forward regulatory plan. The RIA System should have two types of RIA reports: a basic RIA report for all normative acts, and a full-fledged RIA report (10–15 pages) using advanced methodologies for a small but progressively growing number of normative acts that might have significant impact. Full-fledged RIAs should entail a greater effort of quantification and monetization of costs and benefits of the normative act. The RIA reports should include appropriate evidence and benefit from effective public consultation techniques. To ensure accountability, the RIA reports shall be signed by the concerned ministers.

Normative Acts Web Portal

As one of the key pillars of the RIA System, the Normative Acts Web Portal will publish all forward regulatory plans, RIA reports, draft normative acts, and adopted normative acts. The portal will have three interconnected registries: (i) the registry of forward regulatory plans for the next 6 months for each regulator; (ii) the registry of draft RIAs of normative acts that are in a “notice and comment” period (see Public Consultation to Ensure the Quality of Normative Acts in Tajikistan on page 6); and (iii) the official registry of normative acts as approved by the minister, cabinet, or Parliament, which should become the electronic official gazette with positive security.⁵ Subject to stable and reliable network connections,⁶ a special e-consultation tool should become an integral part of the portal to allow affected groups to actively participate at all stages of the decision-making process.

⁵ “Positive security” means that regulations must be included in the registry to have legal effect.

⁶ Tajikistan faces significant challenges in its network readiness and has not made progress over the last 2 years. World Economic Forum. 2015. *Global Information Technology Report*. Geneva.

Public Consultation to Ensure the Quality of Normative Acts in Tajikistan

Public consultation should be an essential element of the RIA System and enable stakeholders to play an active role in the decision-making process. Consultation will provide an important safeguard against regulatory failure and regulatory capture.

Three main types of consultation mechanisms are envisaged: (i) consultation resulting from the forward regulatory planning system, (ii) consultation during preparation of RIA reports, and (iii) consultation for notice and comments of draft normative acts. The RIA Oversight Body will be able to verify ex-post (through random or risk-based selection of the information provided by regulators in the RIA reports) if an adequate analysis of impacts was made.

The RIA Oversight Body should require systematic application of quality filters to each proposed normative act. The regulator should send the documents (the RIA report and the legal text of the normative act) to the RIA Oversight Body who will publish them for comments for a period of at least 2 weeks. If stakeholders provide comments on RIA reports and draft normative acts, the RIA Oversight Body will send back the documents and comments to the regulator for review and improvement before submitting the final draft to the government. Only after the consultation period is over and the regulator responds in a constructive manner, will the legal text be finalized, approved, and enacted according to the current practices.

Regulatory Impact Analysis Guidelines

The RIA Oversight Body should develop customized RIA Guidelines for regulators to facilitate capacity building and ensure that all regulators adopt the principles of good regulation and apply uniform approaches when conducting RIA.

The RIA Guidelines should include checklists for required procedures; standardized forms to be used in the RIA process; methodologies and indicators to analyze significant impacts with an emphasis on economic, social, and gender dimensions; quality scorecards for each stage of RIA preparation; consultation practices; reference materials; and contact points. In the short term, the RIA Guidelines should emphasize the use of the Standard Cost Model⁷ for reduction of administrative burdens and other methods for

measuring costs of regulatory compliance. The RIA Guidelines should eventually shift toward soft benefit-cost analysis and cost-effectiveness analysis. The government should favor the latter in case of a full-fledged RIA.

Monitoring and Evaluation

The RIA System should be subject to proper monitoring and evaluation based on a results-based framework. The RIA Oversight Body should prepare annual monitoring reports on the quality of forward regulatory plans and RIA reports, as well as on the compliance with implementation of the principles of good regulation. The annual reports should score and rank the performance of each regulator in complying with the RIA System. The report should be reviewed by Parliament within 90 days, and disclosed in the Normative Acts Web Portal.

The RIA System should be reviewed by independent experts after 5 years from establishment. The review should include an ex-post assessment of the quality of a selected number of RIA reports. The review should also assess the opportunity to expand the scope of RIA to other areas, such as social and environment, and include an ex-post impact assessment of the existing laws and regulations.

ACTION PLAN FOR MAINSTREAMING REGULATORY IMPACT ANALYSIS IN TAJIKISTAN

A RIA System is a transformational program difficult to implement. This section proposes an action plan for the introduction of the RIA System by 1 January 2017. This date should not be confused with the full establishment of the RIA System. The experience of other countries shows that it can take up to 7 years to have the RIA System fully integrated in the policy and regulatory processes. The detailed Action Plan for Mainstreaming RIA is presented in Table 2.

Establishing a Legal Framework

Anchoring the RIA System in a statutory legal measure will provide it with credibility, authority, publicity, and sustainability. The Law on Normative Acts should be amended to include the definition of RIA and determine its scope and basic requirements. A government resolution should detail the administrative procedures and RIA

⁷ The Standard Cost Model is a popular methodology used by reviewers to assess the administrative compliance costs of formalities. This accessible methodology to evaluation and active consultation of regulations allows a rapid capacity building on regulatory appraisal among regulators. See <https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/business-regulation/better-regulation-for-growth/the-standard-cost-model-scm.cfm>; and <http://www.administrative-burdens.com/>

guidelines (including official submission formats). All regulatory proposals falling within the scope of the RIA System should be presented to the government with its RIA report. Regulators must be required to follow key administrative procedures based on the Organisation for Economic Co-operation and Development principles of quality regulations.

Piloting and Training

The government should undertake two “full-fledged” RIA pilots before the RIA System becomes fully operational. The pilots will, among other things, raise capacities of the RIA Oversight Body staff, regulators, public officials, and private stakeholders in planning, managing, and preparing RIAs. The government should set up a task force for each pilot RIA composed of officials in charge of the concerned policy, future members of the RIA Oversight Body, and other active public sector officials in charge of drafting RIA reports.

Training and capacity building designed by the RIA Oversight Body should target government officials (RIA drafters) and business representatives, as public administration bodies currently lack the necessary skills for conducting RIAs. A training program should gradually raise the capacity of participants in the RIA System.

The RIA Oversight Body should also conduct awareness events targeting civil society and business organizations to build basic knowledge about the RIA System and the overall regulatory system, and the role of public participation. This should facilitate participation of stakeholders in the RIA process and build trust in the decision-making institutions.

Cost Estimates and Financing Plan

The costs of setting up and operating the RIA System should be smaller than the expected benefits. However, this has not always been the case in other countries where expensive RIA systems have been established without significant results. The RIA System in Tajikistan should therefore be simple and avoid expensive RIAs that do not provide significant benefits.

The government budget should finance the costs of operating the RIA System, which basically entail financing operations of the RIA Oversight Body and the Normative Acts Web Portal. Development partners such as the Asian Development Bank are likely to share the investment costs of introducing the RIA System estimated at between \$200,000 and \$300,000.

Table 2: Action Plan for Mainstreaming Regulatory Impact Analysis in Tajikistan

Action	Responsible Entity	Milestone Date	Investment Costs	Source of Financing
1. Set up two task forces for RIA piloting	Government	November 2015	0	
2. Recruit consultants to train and guide members of the task forces for RIA piloting, and staff of the RIA Oversight Body	Development partners	November 2015	\$115,600	Development partners
3. Prepare and approve the road maps for the RIA pilots	Task forces for RIA piloting, Consultant	December 2015	0	
4. Develop and approve the blueprint (functional and technical requirements) of the IT system for the Normative Acts Web Portal	Government, Consultant	January–February 2016	\$35,000	Development partners
5. Finalize RIA piloting	Task forces for RIA Piloting, Consultant	December 2015–March 2016	0	
6. Amend the Law on Normative Acts to define the regulatory framework for RIA	Government, Ministry of Justice	January–June 2016	0	
7. Appoint the Head of the RIA Oversight Body	Government	March 2016	0	
8. Set up the RIA Oversight Body	Head of the RIA Oversight Body	April–September 2016	\$9,000 (equipment)	Development partners
9. Procure and install the IT system for the Normative Acts Web Portal in line with approved blueprint	RIA Oversight Body, Development partners	April–September 2016	To be defined	RIA Oversight Body, Development partners
10. Draft RIA Guidelines based on the lessons from the two pilot RIAs	RIA Oversight Body, Task forces for RIA Piloting, Consultant	April–June 2016		
11. Approve the RIA Guidelines	Government	July 2016		
12. Develop and approve the communication strategy for the RIA System	RIA Oversight Body	April–June 2016		
13. Train staff of the RIA Oversight Body	Consultant	July–September 2016	(included in line item 2 above)	Development partners
14. Train RIA drafters on RIA techniques	RIA Oversight Body	July–December 2016	(included in line item 2 above)	Development partners
15. Launch the RIA System through a conference	Government, RIA Oversight Body	December 2016	\$25,000	Government and development partners

IT = information technology, blank cell = not applicable, RIA = regulatory impact analysis.

Source: ADB.

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