Chapter **3**

The Regulatory Management System in Selected East Asia Summit Countries

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Chapter III

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3.1.   Australia, New Zealand, Singapore, and South Korea

The first three countries have been the front runners in the development of a well-performing regulatory management system (RMS). Indeed, Australia was one of the earliest in the world to develop a coherent system of RMS (Carroll and Bounds, 2016, p.39) while New Zealand moved over a short period of time '...from being one of the most heavily regulated economies in the OECD to being on the regulatory frontier' (Gill and Fenwick, 2016, p.3). Singapore virtually leads the world in rankings on regulatory quality and ease of doing business (EODB). Its RMS is also unique in the world in that it relies less on government ministries but rather on '...specially established committee or commission representing various important stakeholders' (Lim, 2015, p.4); indeed, an important institutional innovation towards a stakeholder-centric RMS. All three countries are in the world's top 10 in the rankings on governance indicators, headlined by Singapore and New Zealand as the world's top two.

Australia.[4] The development of Australia's RMS has been a 30-year enterprise, driven by and woven into the waves of structural and policy reforms the country undertook during the period since the 1980s. The impulse for reform in the 1980s was the '...sharpened Australian appreciation that major productivity reforms were necessary if Australia was to successfully face increasingly competitive international challenges, at a time when its economic performance was relatively weak' (Carroll and Bounds, 2016, p.7).

The systematic waves of reform since the mid-1980s started with major macroeconomic reforms (floating of the Australian dollar, financial deregulation, tariff reduction, and selective sector-based reforms) over the 1983–1996 period, followed primarily by sector-based microeconomic reforms highlighted by the

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[4] This subsection is taken or draws heavily from Carroll and Bounds (2016).

national competition policy reforms in 1996–2006. The third wave of reform, during 2006–2013, towards a 'seamless national economy', focused on reducing inter-jurisdictional regulatory barriers to trade and on strengthening and refining national and intergovernmental policymaking structures and processes. The latest and ongoing reform wave since 2013 has been focused on furthering deregulation by an intensive review of the existing stock of regulation and competition by reducing further the adverse effect of regulatory barriers on business and on refining the system of regulatory management at the national level.

The development of Regulatory Impact Analysis (RIA), a critical component of the RMS, had a '...slow and somewhat painful period of birth and infancy' (Carroll and Bounds, 2016, p.7) in Australia. Introduced in 1985 to improve the quality of the flow of new and modified regulations, the RIA implementation during the latter 1980s and the early 1990s saw '...widespread non-compliance...and little discernible impact on the quality and extent of new or amended regulation regarding business' (Ibid.). There are a number of reasons for this relative failure of RIA in the early years in Australia. Carroll and Bounds highlighted the lack of political commitment by ministers and senior departmental and agency executives arising in part from:

- The lukewarm reception of the departments to the RIA, imposed on short notice to them, largely because of the implication that the departments' policy development systems were inadequate.

- The RIA system was viewed as having primarily an ideological, rather than quality improvement, purpose.

- The RIA system meant an additional workload for the public service in the early years, as well as changes to the established policy processes and practices which naturally take time to implement.

In addition, the initial oversight advisory unit, the Business Regulation Reform Unit, had insufficient resources and staff for the functions it is meant to discharge, was often consulted too late in the policy development process, put little emphasis on its training function, and largely failed to effectively monitor the RIAs undertaken by the departments and agencies. As a result, the RIA system was largely a failure during its first decade of implementation in Australia.

It was during the second decade of RIA implementation, in the context of the second wave of reform that included the successful implementation of the National Competition Policy (NCP) programme, that the RIA system (refined) gained much more traction. The NCP programme undertook a review of 1,800 regulations at the national and state levels. The new RIA, focused on ensuring new regulations, did not have anti-competitive features and did not impose additional red tape, thus complementing the NCP review of stock of regulations. The new modified RIA enjoyed stronger political commitment, with more resources provided to the regulatory oversight body. Also required were Regulatory Impact Statement (RIS) to be incorporated as one of the explanatory documents for proposed new laws in Parliament; a report of the oversight committee on the extent of departmental compliance on the RIS requirement to be provided; and an annual public report by the Productivity Commission on the compliance of government departments and agencies with the RIS requirement. The extent of compliance did improve over time although some dissatisfaction remained in the business sector, especially on the performance of the RIA system.

It is apparent from the discussion above that the development of a well-performing RMS, here highlighted in the context of a well-performing RIA system, was not straightforward. Significant and continuing political commitment and resources were needed; the bureaucracy needed some convincing given that the RIA system necessitated some changes in the existing processes. As Carroll and Bounds (2016) pointed out, it has taken about 30 years for Australia's RIA to develop into a sophisticated system, which now covers national, state, and territory governments and most forms of regulation. In addition, the existing stock of regulations has received detailed reviews with a focus on competition and productivity implications. Indeed, at the Commonwealth level, all regulations must be periodically reviewed. Also, the supporting institutions have been established and strengthened, most notably by the oversight regulatory unit being close to the centre of power, small deregulatory review units within major departments and agencies created, and the independent Productivity Commission developed to act as the major advisory body on all aspects of microeconomic reform and on regulatory performance (see Carroll and Bounds, 2016). Arguably, good regulatory practice (GRP) and a well-performing RMS are already embedded in the whole public service system even if there remains room for improvement as both OECD reviews and the Carroll and Bounds paper bring out. Arguably, there would always be room for improvement in any RMS in a world of changing economic and technological environments and possibly political imperatives.

New Zealand.[5] Like Australia, New Zealand took about 30 years to develop its RMS into a well-performing one. Like Australia, the initial impetus for reform in the 1980s arose from '...sustained poor economic and broader social performance culminating in an economic crisis in 1984' (Gill and Fenwick, 2016, p.2). Like Australia, the development of the country's RMS is woven into the waves of structural reform and regulatory changes. At the same time, however, it appears that, more than Australia, there was a more conscious and deliberate effort in the executive department for a continuing effort at improving the regulatory climate and process, and with it the improvement in the RMS. Arguably, a key reason for this is the difference in the political structure of the two countries: New Zealand is highly centralised and with significant concentration of power on the Cabinet (Gill and Fenwick, 2016, p. 1), whereas Australia is a federal form of government with states having large powers and, with that, the greater importance of Parliament and inter-state agreements in the regulatory reform process.

New Zealand's RMS underwent four overlapping phases, starting with sector-based reforms from the mid-1980s to the early 1990s as part of the wide-ranging programme of macroeconomic stabilisation, trade liberalisation, and structural reforms affecting private capital and labour markets in response to the 1984 economic crisis. The sector-based reforms were to shift from sector-specific regulations to general regulatory regimes, from reduction in economic regulations and expansion of broader social and environmental regulation, and from a command-and-control approach to regulation towards performance-based regulation and economic instruments. This 'big bang' reform programme in New Zealand was possible in the 1980s and early 1990s because of the heavy concentration of power in the Cabinet that was not required to undertake formal consultations with stakeholders and because the bureaucratic elite was supportive of the structural reform programme (see Gill and Fenwick, 2016).

The next phases are compliance cost reduction (early 1990s to mid-2000s), regulatory flow management (since 1998), and regulatory stock management in addition to flow management (since 2009). These phases constitute '...consolidation, refinement and more incremental change to economic regulatory regime' (Gill and Fenwick, 2016, p.3). Thus, for example, the introduction of RIA and RIS expands the compliance cost to include the costs of wider distortions into the analysis of new policy proposals, as well as embedding it as part of a good policy process rather than as a compliance requirement at the

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[5] This subsection is taken or draws heavily from Gill and Fenwick (2016).

end of the policy development process. The latest phase of regulatory stock management deepens further the development of the country's RMS by instituting a regular scanning of the existing legislative instruments on a systematic and ongoing basis as well as annual regulatory plans of expected new regulations or review of existing regulations. Equally important is that the perspective and approach to regulatory stock management is on '... encouraging departments to exercise responsible regulatory stewardship over their regulatory regimes and institutions, using tools that are better tailored to individual departmental circumstances... [and thereby mainstream] regulatory management as part of the public management duties of departments' (Gill and Fenwick, 2016, p.8).

Particularly noteworthy in the New Zealand case are the emphasis on the total costs of regulations due to their distortionary effects and their impact on the behaviour of firms and persons, as well as the institution of regulatory stewardship mainstreamed as part of public management. The New Zealand RMS is one of the most comprehensive in the OECD with few exceptions, and the regulatory stock review covers all central government primary law, secondary regulations, and tertiary rules. The RIAs emphasise mainstreaming the assessment as part of the policy development process rather than a compliance document prepared at the completion of the process.

From the initial 'crash through' with little consultation on the reform programme in the 1980s, New Zealand has moved significantly towards greater public consultation. This is reinforced by the Parliament Select Committee that scrutinises all government legislation that includes the routine involvement of the public in its public submission process. Finally, New Zealand has a '...robust interdepartmental process in the Executive in the policy development phase focused on improving policy coherence horizontally across policy regimes, ...ensur[ing] consistency with international trade obligations, and to a lesser extent, ...on ensur[ing] [vertical] consistency with Local Government policy regime and capability' (Gill and Fenwick, 2016, p.11). This reflects high-quality RMS embedded in the whole bureaucracy. It also demands a well-qualified bureaucracy to implement them; clearly, the capability is there as is reflected in the top two global ranking in governance and EODB indicators.

Singapore.[6] Singapore shares with Australia and New Zealand the importance given to a well-performing RMS to improve or at least maintain the country's

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[6] This subsection is taken or draws heavily on Lim (2015).

international competitiveness and investment attractiveness. Singapore, with no cheap land and natural resources, has to be efficient and have a regulatory regime that is friendly to business and investments, both local and foreign, to attract investments and grow. In addition, given its limited policy space in view of its small size and no natural resources, it has to '…pro-actively adopt and adapt its governance and regulatory system ahead of or at least parallel with changes in the external economic environment' (Lim, 2015, pp.4–5; 7). In short, the quality and adaptability of the regulatory regime and RMS are an important competitiveness tool for Singapore.

The development of Singapore's RMS is anchored on the country's post-independence administrative, institutional, and attitudinal reforms; developed efficient and effective statutory boards in the implementation of socio-economic development programmes, thereby letting the civil service focus on regulatory and routine matters; and the strong emphasis on meritocracy and performance in the bureaucracy (Lim, 2015). Of particular interest in the development of the country's RMS are the initiatives since 2000 starting with the 'Cut Red Tape' campaign which was essentially a regulatory guillotine initiative to remove regulations that are no longer needed and to reduce the burden on the stakeholders. The setting up of the Pro-Enterprise Panel, the Rules Review Panel (RRP) that was later reconstituted as the Smart Regulation Committee (SRC) during the 2000s, marked the emergence of the country's RMS that relies primarily on specially established committees or commissions representing various important stakeholders as its core institutions. This is vastly different from most countries wherein the RMS is anchored on government agencies and ministries. To some extent, this is the institutional innovation of the RMS in Singapore that appears to be well suited for the country.

Pro-Enterprise Panel's mandate is to '…actively solicit public feedback and suggestions on rules and regulations that hinder businesses and entrepreneurship' (Lim, p.4). RRP was tasked to oversee the process of review of rules and regulations in the public sector. It mandated that the rules and regulations of government agencies be reviewed every 3 to 5 years. RRP caused the review of about 19,000 rules and regulations. It was reconstituted into SRC in 2005, '…with the broader mandate to shift the mindset of the public service from being merely a regulator to that of a facilitator as to develop a regulatory regime that is friendly to business and investment' (Ibid., p.4).

The mandate to SRC to make the public service a facilitator meant a more stakeholder- or citizen-centric approach to regulations. The SRC principles that underpin the stakeholder-centric approach include (i) agencies fostering self-regulation and market discipline as much as possible; (ii) new regulations always taking into account the views of relevant stakeholders and their implications to existing regulations; (iii) benefits outweighing the costs of the regulation; (iv) regulations being facilitative of a competitive and innovative climate; and (v) adopting a risk-management approach, instead of a zero tolerance approach, to regulations. A risk management approach means that regulators focus on high risk areas, thereby reducing regulatory burden for stakeholders in lower risk areas. The last principle has important implications. It means a thorough assessment of the risks and trade-offs, thereby requiring both data, analysis, consultations, and exploration of various perspectives. It means determining what is acceptable; at the same there is great likelihood that the problem the regulation is meant to address would be addressed. The regulators are also urged to take a broader and national perspective in evaluating the risks, costs, and benefits of regulation (Lim, 2015).

Singapore does not have a formal RIA and RIS system except for major projects, in sharp contrast with Australia and New Zealand, which have this as one of the critical pillars of their RMSs, with an agency tasked to review the RIAs/RISs of government departments and agencies. The reason offered is that Singapore is a small economy with a well-connected government that makes it relatively easy to evaluate policy impact and to get feedback from stakeholders (Lim, 2015, p.5).

In addition, we can argue that it is also likely that (i) the SRC with its composition that includes major stakeholders and tasked for continuous refinement of regulations of the public service to better serve stakeholders, (ii) the risk management approach that looks at possible effects on various stakeholders of regulatory options consistent with risk configurations; and (iii) the facilitation mindset inculcated on the regulators provide a robust alternative to the formal RIA/RIS system. That is, the essential elements of a good RIA/RIS system are already embedded in the whole bureaucracy, and as such a formal RIA/RIS system would be largely superfluous except for major projects. Moreover, those same institutional and attitudinal factors engender GRP and would produce regulatory decisions that are consistent with the characteristics of good and responsive regulations discussed earlier in the Report. Arguably, the embeddedness of GRP

and the essence of a good RIA/RIS system is the ultimate expression of a well-performing, high-quality RMS.

***South Korea*[7].** South Korea (henceforth Korea) experienced the most marked improvement in indicators of regulatory quality and government effectiveness among the East Asian countries from the late 1990s to the early 2010s. The country ranks among the top five in the world in EODB rankings. Behind this remarkable performance is the strong push at the highest political level, one presidential administration after another successively raising the bar towards a well-performing RMS. Like New Zealand, Korea's regulatory reform drive started in earnest in the aftermath of the 1997 East Asian financial crisis as part of the bailout package of the International Monetary Fund (IMF) to the country:

- Under the Kim Dae-jung administration, a Presidential Regulatory Reform Committee (RRC) was established which undertook a major regulatory guillotine, abolishing about 55 percent and improving about 27 percent out of the 11,125 registered regulations during 1998–1999.

- Under the Roh Moo-hyun administration, the focus was on improving the regulatory quality by improving 'lump regulations' that cover a broad variety of ministries.

- Under the Lee Myung-bak administration, regulatory reform was put at the top of the policy agenda to bolster the country's competitiveness and to boost employment. Policy areas that had been untouchable before were tackled. The sunset system was pushed, determining that about 23 percent of the stock of regulations need to be subject to the sunset system. The government also established a regulatory information system and portal that allows citizens to voice their opinions on regulatory reform matters.

- Under the current Park Geun-hye administration, the focus of regulatory reform is further reductions in regulations, eliminating unnecessary barriers among government agencies to provide one-step administrative services, and engendering change in '…culture in civil service that is conducive to regulatory reform' (Kim and Choi, 2016, p.7). The government also strengthened further the regulatory review system through the formation of an expert committee to evaluate existing

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[7] This subsection is mostly taken from Kim and Choi (2016).

regulations issued by industries and another expert committee on the operation of the country's regulation cost system.

It is worth highlighting that the RRC, which has played a key role in the development of the country's RMS, consists of both government and civilian members, with the Prime Minister and a civilian as two co-chairs of the Committee. The RRC has the legal mandate to undertake regulatory review on all proposed regulations or modification of existing regulations, and its review requirements include an RIA, an opinion from an independent examination, and a summary of opinions from administrative agencies, interested parties, etc. Similarly, the central administrative agencies and local governments also have regulatory committees composed of both government official and civilian representatives. Thus, similar to Singapore, Korea has institutionalised private sector involvement in the RMS through the RRC and the regulatory review committee in the central administrative agencies and local governments.

As the country pushes on the change in culture in the civil service conducive to regulatory reform, the well-performing, high-quality RMS becomes deeply embedded in Korea.

3.2.   Japan, Malaysia, and Viet Nam

Japan, Malaysia, and Viet Nam are firmly in the 'enabled' to 'practised' stages of the evolution of RMS. This means that the country considers regulatory policy as an important tool for growth and competitiveness for the whole country, and initiatives to improve the regulatory processes and mechanisms are being put into place.

As the countries' experiences, the process towards a fully practised quality RMS is dynamic, not necessarily monotonic, and takes time. Nonetheless, a strong political support goes a long way in pushing and accelerating the process forward.

Japan.[8] Japan did not start its regulatory reform agenda in response to an economic crisis (as in the case of Korea and New Zealand) or deepening concern over declining international competitiveness (as in Australia). Instead, Japan's regulatory reform journey in the mid-1980s drew inspiration from the policy line of US President Reagan and UK Prime Minister Thatcher, which was popular at that time. Thus, the initial focus was on administrative reform and privatisation of state enterprises. It was largely after the 'Lost Decade' since the early 1990s and the economic recession in 2001–2002 that regulatory reform became a key focus of economic growth strategy under the Koizumi government, with emphasis on further privatisation of state enterprises (most notably the Postal Corporation) and strengthening coordination among the ministries. Regulatory reform did not figure significantly during the succeeding administration; it is only during the current Abe administration that regulatory reform is given prominence in the government's economic policy agenda. Overall, although Japan started its regulatory reform programme and development of its RMS during the mid-1980s almost during the same period as Australia and New Zealand, and significantly earlier than Korea and Singapore, it is yet to firmly establish and practise consistently and robustly a well-performing RMS in the country.

Two factors that can help explain Japan's experience are worth mentioning. First, Japan has a powerful central government that is '…characterized by decentralized and independent ministries by powerful bureaucrats… [together with a relatively less powerful legislature (or Diet) where about] two-thirds of the bills presented are those by the civil servants, whose ratio of passing to introducing is 80 percent compared with 30 percent of those by the congressmen' (Yashiro, 2015, p.2). In addition, the ministries '…have broad administrative discretion and …[have]…close and informal links between public servants, producer groups, and political parties [and at the same time]…have maintained their administrative control over the local governments…' (Ibid., p.2). Note that given decentralised, independent, and powerful ministries, there would be a need for strong Prime Minister to have effective coordination between and among the ministries. However, '…the political leadership of the Prime Minister is usually weaker than his counterpart in other democracies with the exception of Koizumi…' (Ibid., p.3).

The other important factor is that Japan's corporate sector, especially its trade-exposed manufacturing sector, primarily utilised the creation and expansion of regional production networks in the lower-cost ASEAN and the People's Republic

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[8] This subsection is taken or draws heavily from Yashiro (2015).

of China (PRC) as its major means of adjusting to the changing international competitiveness environment. This means that there was less domestic pressure on Japan to reform its relatively sheltered agriculture and services sectors to maintain or improve the competitiveness of its manufacturing sector and raise significantly overall productivity as wages rose (and its currency appreciated) in Japan. At the same time, the strong producer influence in ministries – and such ministries are 'independent' from one another – suggests that it would be difficult to have a comprehensive and coherent overall reform programme unless there is a strong Prime Minister (which usually was not the case).

Thus, it is not surprising that foreign pressure, especially from the United States, and peer reviews in OECD meetings became an important means of reforming the domestic protective measures and rebalance somewhat the power from producer interest towards the interest of consumers (Yashiro, 2015, pp.7–8). This Japanese experience contrasts markedly with that of, for example, New Zealand where the reforms that opened up the trade-exposed sectors (through trade liberalisation measures, etc.) led to an internal political economy dynamic of greater pressure for reforms in the sheltered sectors (see Gill and Fenwick, 2016).

Japan also innovated by establishing 'special zones for regulatory reform' at the subnational level, where experimentation on decentralisation and inter-zone competition are encouraged. However, the economic effects have so far been limited in part because of inconsistent push by the central government by succeeding administrations (see Yashiro, 2015, pp.9–10).

'Japan's tradition of decentralized policymaking by each ministry' (Yashiro, 2015, p.13) does not necessarily mean that the government is ineffective and its regulatory quality is low. In fact, the world governance indicators indicate that they are relatively high, albeit trailing substantially behind the front runners like Singapore, New Zealand, and Australia. It is likely that the strong producer influence in the (sectoral) ministries implies the efficient provision of services of interest to the producers in the concerned sector(s).

Given the above and the apparent lack of a deep need for a comprehensive regulatory reform in the country, the RMS is not yet well established and well performing. Thus, for example, although Japan formally adopted RIA in 2007, RIA is '...not used in the actual process of establishing a regulation but after the basic

framework of the regulation is made as a formality' (Ibid., p.12). Moreover, there is little quantification of the costs and benefits of the effects of the regulations, and no common method is used in evaluating the quantitative effects of regulations. In effect, there is yet no effective use of RIA. Arguably, the importance of more effective quantification of the cost and benefits of regulations becomes more salient as the regulatory issues increasingly involve social issues, as is apparently the case in Japan. Similarly, regulatory management is not a top priority of the ministry where the bureau responsible for efficient management of administrative procedures including RIA is located.

Moving forward, that the RMS is not yet well established and well performing may well be an untapped opportunity or resource for Japan as it aims to raise investments in the country. As the empirical studies on institutions, regulatory quality, and RMS on the one hand, and economic performance on the other, as discussed earlier in the Report indicate, improving the regulatory quality, institutions, and the overall regulatory regime in Japan could raise the country's investment attractiveness and enhance the country's economic growth potentials. Viewed in this light, investing in embedding GRP, responsive regulation, and well-performing RMS towards the level reached by countries such as Australia, New Zealand, and Singapore could be an important catalyst and anchor of Japan's 'economic renaissance' moving forward.

Malaysia.[9] Although the 6th Malaysia Plan and Vision 2020 in 1991 raised the concern on overregulation and the need for 'productive deregulation' to reduce constraints on enterprises towards a competitive, robust, and resilient economy, and although Malaysia undertook a major privatisation and deregulation reform in the 1990s, it was essentially from the 9th Malaysia Plan for 2006–2010 that reviewing and improving administrative procedures, reviewing and improving the quality of existing and new regulations, and improving its RMS became an important pillar of Malaysia's growth and competitiveness plan. Malaysia's 10th Plan for 2011–2015 deepened further the country's regulatory initiatives as critical elements of the country's transformation plan towards realising its vision of becoming a developed/high-income country by 2020 (and in effect address its concerns of 'middle income trap'). Indeed and remarkably, over the past decade, Malaysia has been assiduous in streamlining administrative processes, improving the quality of its regulations, strengthening its institutional capacity, and

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[9] This subsection is taken or draws heavily from Seman and Bahari (2015).

instituting GRP principles in the Malaysian bureaucracy. The country is well on the way towards instituting a robust and well-performing RMS.

The clarity and cohesiveness of Malaysia's plan at improving its regulatory regime and system is worth highlighting. In the 9th Plan:

- Rules, regulations, and work procedures would be reviewed and simplified.

- Issuance of licences, permits, and approvals for trade, investment, and commercial activities would be expedited.

- Regulations and statutes would be reviewed to eliminate cumbersome regulations and procedures.

- Greater transparency would be promoted.

- The level of consultation with the private sector on new policy initiatives and legislation would be enhanced.

Similarly, the 10th Plan regulatory initiatives include the modernisation of business regulations, liberalisation of the services sector, rationalisation of subsidies to remove market distortions, introduction of competition law, and improvement of government–business interface (Seman and Bahari, 2015, pp.6–9). Most importantly, the National Policy on the Development and Implementation of Regulations (NPDIR), launched in 2013, set out Malaysia's policy and principles institutionalising GRP and provides structured process of rule-making to ensure quality new regulations and a quality RMS. This includes the mandatory requirement to all Malaysia's federal government regulators to undertake RIA on all new regulations and review of existing regulations related to or have impact on business, investment, and trade (Ibid., pp. 159–160).

Three institutions have been critical in the implementation of the regulatory vision and strategies embodied in the 9th and 10th Malaysia Plans. The first is the special high-level public–private task force to facilitate business, or PEMUDAH, established in February 2007. PEMUDAH and its task forces and working groups used the World Bank's EODB areas as the main focus and reference for its activities. PEMUDAH has succeeded in markedly improving business regulations and processes, thereby raising substantially Malaysia's global ranking to 18th best in 2015. The second institution is the National Development Planning Committee (NDPC), which oversees the implementation of the NPDIR. The NDPC, which

includes the highest civil servants in core units as members and is headed by the Chief Secretary to the government (who also co-chairs PEMUDAH), also examines the adequacy of the RIS – that presents the conclusions of the RIA – on new or modified regulations that have significant impact on business, investments, and trade.

The Malaysian Productivity Corporation (MPC) is the third and crucial anchor to the other two because it provides the critical technical secretariat support to the PEMUDAH and is responsible for the implementation of NPDIR together with NPDC. It facilitates and provides technical support and advice to the PEMUDAH task forces and working groups; in addition, it undertakes Reducing Unnecessary Regulatory Burden (RURB) on business studies to help refine the existing stock of rules and regulations. For NPDIR and NPDC, MPC provides guidance and assistance to regulators in RIA and preparation of RIS, assists NPDC in assessing the RISs, develops guidelines and programmes for the implementation of NPDIR, undertakes or ensures availability of capacity building programmes to regulators, and promotes transparency of RIS. MPC is also the coordinating and oversight body for all the regulatory coordinators in each ministry and regulatory body; the regulatory coordinators are responsible for championing GRP in their respective institutions (see Seman and Bahari, 2015, pp.20–21).

Malaysia is implementing NPDIR on a pilot basis in a few ministries. Thus, Malaysia is in the early stages of practising quality RMS. In **Figure 2.1**, Malaysia is straddling the 'enabled' and 'practised' stages of RMS development simply because NPDIR has not yet been implemented in most ministries. Nonetheless, it is apparent from the discussion above that the pace of RMS development in Malaysia has been remarkably fast. Given the strong political commitment towards a high-quality RMS in the country, it is likely that Malaysia will be firmly in the 'practised' stage in the near future.

Viet Nam.[10] Although it has the lowest per capita income among the 10 countries in the study, Viet Nam is noteworthy for its aggressive administrative simplification programme, highlighted by Project 30, and the strong political push for improving the quality of regulations in the country. This has been part of the ongoing process of comprehensive reform in the country since the latter 1980s, including market-oriented reforms covering a '...wide range of institutional

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[10] This subsection is taken or draws heavily from Vo and Nguyen (2015).

changes, seeking to enhance the freedom of doing business and to strengthen market competition. ...The functions of the Government and public administration agencies at all levels shifted progressively from direct interventions into indirect management, using legal and economic instruments' (Vo and Nguyen, 2016, p.1). Another critical pillar of the comprehensive reform, i.e. proactive economic integration, also puts pressure towards improved regulatory regime and management. Specifically, 'Vietnam has made numerous efforts to better harmonize the domestic laws in line with international norms and practices' (Ibid., p.4). This has meant aligning the reform efforts with international integration, including among others institutional and regulatory reforms.

Project 30 has its genesis in the comprehensive public administrative reform initiated in 1995 'to rationalize the legal and regulatory framework of the public administration, reform the administrative machinery at all levels, and "renovate" the civil service with a focus on training' (OECD, 2011, p.36). Indeed, Project 30, or more formally known as Master Plan to Simplify Administrative Procedures in the fields of the State Governance, is part of the successor public administration reform programme for 2006–2010. The approach to the implementation of Project 30 may have been influenced also by the success of the implementation of the 2005 Enterprise Law, with the Task Force for Implementing Enterprise Law monitoring and reviewing the implementation of the law, and the continuous consultation with stakeholders from the design to the implementation phases of the law.

Project 30 is the comprehensive inventory and review (as to necessity, legality, and user-friendliness) of all the administrative procedures on the four levels of government in Viet Nam. It aims to eliminate or simplify at 30 percent all administrative procedures and 30 percent of administrative/compliance cost using the standard cost model as the method in estimating administrative/compliance cost. Project 30 had the strong support of the Prime Minister who took charge of the project and who personally announced key achievements (OECD, 2011, p.12).

The achievements of Project 30 are remarkable (Vo and Nguyen, 2016, pp.20–21):

- An accessible electronic database of more than 5,000 existing administrative procedures became baseline information for the control of administrative regulations.

- By December 2014, about 93 percent of 4,723 administrative procedures to be simplified had been simplified.
- Administrative burdens on businesses were reduced.
- Investors' confidence in the Vietnamese government's reform efforts was enhanced.

A related initiative to Project 30 is the decision in 2003 requiring the establishment of one-stop shops in all the thousands of districts and communes in the country. There has indeed been a proliferation of such one-stop shops, although the apparent limited connectivity and linkages among the one-stop shops had yet to result in dramatic improvement in the process of registering business in the early 2010s (OECD, 2011, p.56).

In addition to Project 30, the 2008 Law on Laws has a tremendous bearing on the development of the RMS in Viet Nam. Specifically, the 2008 Law on Laws gives official endorsement of RIAs, makes regulators more responsible for ensuring the consistency of new regulations, improves public consultation, and mandates the publication of draft legal documents on websites for comments, among others. The implementation decree on RIA includes detailing justification for the proposed new law and the types of impacts (i.e. economic, social, environmental, and legal) that need to be looked into. However, as Vo and Nguyen (2016, p.10) point out, the quality of the RIAs is usually not good and the capacity to review and assess the RIAs is limited in the country.

Resolution 19, dated 18 March 2014, is effectively the follow-up policy initiative after Project 30. A key focus of Resolution 19 is to have a more conducive domestic business environment and to strengthen Viet Nam's national competitiveness. Whereas Project 30 was a stand-alone initiative, Project 19 is a continuing initiative. More importantly, Resolution 19 improves on Project 30 in that the former sets specific targets, especially '...in areas that need improvement and the minimum requirement for improvement.... [Such] specific areas of business environment that are consistent with the World Bank's Doing Business survey' (Vo and Nguyen, 2016, p.23). The specific targets include some benchmarking with the average for the ASEAN–6 in customs clearance. The targets and benchmarking using the World Bank Doing Business survey means the use of specific indicators for monitoring compliance, which is an improvement over Project 30 that did not use specific indicators. The implementation performance of Resolution 19 has been relatively significant, with 30 out of the

total 49 specific measures under the Resolution implemented, with 10 of them having significant outcomes. Although the implementation is incomplete, a clear indication of the positive impact of Resolution 19 is exemplified by the marked reduction in the number of procedures and the time needed for business incorporation (see Vo and Nguyen, 2016, for more details).

Overall, Viet Nam has worked hard at improving its RMS, highlighted by the regulatory guillotine and further refinements in procedures starting in 2007, the setting out of the requirements and the procedures for new regulations including RIA and public consultation, and the setting of specific targets and international benchmarks with the attendant reliance on specific indicators for compliance monitoring. Nonetheless, there remains significant room for improvement in the regulatory system (Vo and Nguyen, 2016, p.30) as reflected in the experience of the RIA implementation. And the still relatively low rating and ranking on governance indicators for Viet Nam despite the progress on the regulatory reform front suggest that implementation, together with capacity building, would be the most significant challenge facing Viet Nam in its drive towards a well-performing RMS.

3.3.   Indonesia, Philippines, and Thailand

Although these three ASEAN countries have undertaken significant policy and structural reforms, they are largely in the early stages of the evolution of their RMSs. The three have some of the elements of a well-performing RMS, but there is yet no operative cohesive system and overarching economy-wide framework on regulatory policy and process for quality regulations for the whole economy. Nonetheless, there are indications of heightened policy resolve to improve the regulatory systems and processes in the three countries: (i) Thailand's new laws in 2015, specifically the Royal Decree on Review of Law B.E. 2558 and the Licensing Facilitation Act B.E. 2558; (ii) the slew of regulatory reform packages in Indonesia since mid-September 2015 until the 10th package released in mid-February 2016; and (iii) continuing joint public–private efforts at streamlining procedures and revising laws towards greater liberalisation primarily pushed by the Philippine National Competitiveness Council.

Indonesia.[11] Indonesia's RMS is evolving, as it faced two major 'shocks' in the late 1990s and early 2000s, i.e. democratisation and decentralisation. During the Suharto era (1967–1998), the President was very powerful and the executive power was highly centralised. Among the characteristics of the regulatory formulation and development planning during the period are the following (Damuri and Silalahi, 2014):

- Planning biased, with the Basic Guidelines of State Direction (GBHN), adopted as a decree (and hence, given legal force) by the People's Consultative Assembly (MPR), which was transformed into the 5-year development plans (Repelita) and further elaborated in the short run through the budget process;
- Top–down, with limited inputs from the regions even if the plans and regulations are implemented at the subnational level;
- Sectoral approach and perspective, with most of the implementing regulations formulated to address specific sectoral issues;
- Coordination problems were addressed through a number of mechanisms such as the coordinating minister positions, consultative councils, intra-ministerial teams, a presidential decree (Inpres) to give regulatory guidance, and the formulation of policy packages of interrelated policies and programmes with the President himself being in charge of coordinating the policy package(s).

The fall of Suharto led to the two major 'shocks' to the regulatory decision process. The first is democratisation, which means much greater powers of the Parliament in regulation and rule-making especially through the budget process, as well as greater voice from stakeholders including seeking judicial review of legislated regulations. The second is decentralisation, with subnational units having substantial regulatory powers in their own jurisdictions. The result was a proliferation of local regulations, significant use of judicial review, and the need to bring in the comments of Parliament members in the budgeting of ministries.

In response to the two major shocks, Indonesia revised its regulatory decision process as follows:

- Law No. 10/2004 (and improved by Law No. 12/2011) – provides several principles and a common approach to the formulation of laws and

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[11] This subsection draws heavily from Damuri and Silalahi (2014), but has been updated with the reports on the series of deregulation and stimulus packages since mid-September 2015.

regulations. Two aspects are worth highlighting. One is 5-year planning (Prolegnas) and subsequent prioritisation of laws and regulations on a yearly basis; the regulations include presidential regulations. The other is the mandatory RIA in terms of an academic study of the new bill. The academic paper differs substantially from the usual RIA because the former focuses on legal aspects, does not assess the direct and indirect effects to the economy and cost to stakeholders, does not have quantitative and empirical analysis, and seldom undertakes consultations with stakeholders.

• Specification of the scope of local authority, procedure in the formulation of local regulation, and the mechanism to ensure local regulations are consistent with national policy. This also includes the review of the thousands of local regulations and determining which need to be withdrawn.

• Coordination and harmonisation of regulatory elements through the coordinating ministers and ad hoc inter-ministerial committees to discuss concerned bill. Law No.12/2011 mentions consultation mechanism between ministries but there are no implementing regulations on the matter.

• Law No. 12/2011 also describes the consultation process with civil society and academics, but does not provide guidelines on appropriate public consultation as of 2014. The law also stipulates the dissemination of bills and drafts of regulations. However, websites of ministries and agencies are 'often poorly managed and infrequently updated' (Damuri and Silalahi, p.13).

Overall, the elements of an RMS are present in Indonesia. However, most of them – such as RIA, stakeholder consultation, and dissemination – are merely the semblance of the elements of a quality RMS. Moving forward, the challenge is in reframing and strengthening them towards a well-performing RMS. However, this calls for the more fundamental way forward; that is, a clear policy and concerted effort at instituting GRP and at establishing a well-performing RMS as a major growth and competitiveness strategy for Indonesia.

There are strong indications that Indonesia is moving more forcefully into improving its regulatory regime. In response to the economic slowdown and the need to move the economy away from heavy dependence on commodities exports whose prices have plunged, the Indonesian government has unveiled a

series of 10 deregulation packages (so far) since mid-September 2015. Thus, in the first package, 89 regulations were restructured out of 154 regulations under investigation for reasons of inefficiency due to overlapping or duplicative regulations '...in order to strengthen coherence and consistency, while slashing regulations that were blocking further development of the nation's industrial sector' (Indonesia Investments, 10 September 2015). Indeed, the President declared to reduce and streamline around 42,000 regulations (presidential, ministerial, central, local, and district levels) that he believes hinder investment. Bappenas' tool of regulatory review process allows for classifying the regulations into 'inconsistent', 'duplication', multi-interpretative', and 'inoperative' (CSIS, 2016, p.2). The review and reform of regulations that support cutting of red tape and EODB has been complemented with a series of other economic reform policies that include speeding up investing licensing for investment in industrial estates, relaxation and/or reducing tariffs, tax incentives, scrapping of double taxation on real estate investment trusts, deregulation in investment banking, and opening up further to foreign ownership of more economic sectors. It appears that the series of economic reform would continue, with the preparation of the planned 11th package focusing on reducing dwell time at ports and reduction of logistics cost in Indonesia (Indonesia Investments, 25 February 2016).

As the country deepens and implements its reforms and moves towards a cohesive policy and programme of government-wide efforts at improving the regulatory systems, administrative processes, and institutional coordination, Indonesia would effectively transition from 'starter' to 'enabled' stages.

The Philippines.[12] The Philippines has undertaken a series of major economic reforms since the latter 1980s into the 2000s opening up the economy; dismantling monopolies; liberalising a number of highly regulated sectors like telecommunications, energy, and water; devolving and decentralising a number of national government functions; etc. The big policy reforms tended to be sectoral and macroeconomic stabilisation policies but did not segue into a concerted big push at improving the quality of regulations and the regulatory process, design, and implementation unlike in Viet Nam. Arguably, this is partly because regulatory policy is a relatively new discipline that was largely espoused by the OECD to which the Philippines is not an associate, unlike Indonesia and Viet Nam. As Llanto (2015) highlights, governance issues, together with 'weak

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[12] This subsection is taken or draws heavily from Llanto (2015).

...institutions', have tempered the benefits to the country of the big policy and institutional reforms it has undertaken since the late 1980s.

At the same time, 'alignment of political and institutional interests with regulatory objectives and the expected benefits arising from the regulation can ensure support for and implementation of good regulations...[while] satisfaction of personal political objectives collides with regulatory reform efforts...[can] derail passage of good laws...[thereby bringing out the] tension ...between implementation of good regulations on the one hand, and on the other hand, the weak capacity of Philippine institutions and the intervention of conflicted politicians who have no incentive to arbitrate among competing interests with the general welfare of society in mind' (Llanto, 2015, pp.15–16).

Llanto (2015) asserts that improving the regulatory quality and developing a well-performing RMS can help address the governance issues that the Philippines has faced for a significantly long time. Comparing the country's actual situation with the requirements of a high-quality RMS:

- The Philippines does not yet have a '...strong central oversight body or institutional mechanism that would systematically coordinate, check for consistency and review efforts on new regulations or amendments to existing regulations contemplated by different regulators' (Ibid., p.22). The current regulatory institutions (i.e. NEDA interagency committees under the NEDA Board, congressional oversight committees) are not mandated, nor do they have the capacity, to undertake the oversight and review role on new or existing regulations. In effect, the regulators in the country operate in 'regulatory silos' (Llanto, p.23).
- Philippine regulators are not required to undertake RIAs and issue RISs on their new regulations or revisions of existing regulations, although they typically do cost–benefit analysis. However, the results of such exercises are not made available to analysts, researchers, and the public. The country has started an Asian Development Bank–funded pilot RIA project to develop capacities in three ministries and to be rolled out to other agencies in the future, with NEDA aiming to establish a central office for best regulatory practice (see Llanto, 2015).
- Perhaps more fundamentally, there is yet no overarching government policy and strategy to institute GRP in the whole government and establish a well-performing RMS in the country.

Arguably, it is the institutional weakness of the country's regulatory system, together with the country's comparatively poor business and investment climate and performance vis-à-vis its neighbours in East Asia and globally – as reflected in the low ranking of the Philippines in the EODB, Logistics Performance and Global Competitiveness Indices – which has forced the Philippine business sector to catalyse the creation, and drive the operations, of the National Competitiveness Council (NCC) in 2006. The NCC is a public–private council with two co-chairs from the government and the private sector, and with 14 technical working groups dealing with key areas affecting business and investment, similar to the PEMUDAH Task Force in Malaysia. (NCC was borne out of the earlier Public–Private Task Force on Philippine Competitiveness, which oversaw the drafting of a competitiveness policy framework for the country.) With strong support from the current president, NCC has shepherded some significant business reforms that have helped improve substantially the global ranking of the Philippines in the last few years in indicators such as EODB and Global Competitiveness Index.

As highlighted by Llanto (2015), the success of NCC brings out important lessons, including the importance of transparency, execution and delivery, teamwork, the need to focus on multiple fronts, embedding and institutionalising change, maintaining momentum, and the importance and effectiveness of public–private collaboration. It is also important to emphasise the critical role of political support from the top, which to some extent explains the success of NCC and the weakness of its predecessor, the Public–Private Task Force on Philippine Competitiveness.

Despite the success of NCC, the large gap between the Philippines and the front runners in ASEAN and East Asia in the global ratings and rankings of business and investment climate and performance indicators suggests that much more needs to be done moving forward in the Philippines. What differentiates PEMUDAH from NCC is that the former is operating under a clear government policy and strategy of embedding GRP, modernising business regulations, and establishing a quality RMS as an economic competitiveness and growth strategy, moving Malaysia out of a middle-income trap and towards a high-income country.

Moving forward, Llanto highlights the importance and potentials of a well-performing RMS in the Philippines. The elements of the RMS prevailing in the country would need to be strengthened and be '...pulled together into a coherent

and coordinated system' (p.65), backed by '... political will and able leadership to surmount ....opposition from vested private groups and conflicted politicians' (p.64).

Thailand.[13] Until 2015, significant regulatory reform in Thailand had been largely sectoral, best exemplified by the corporatisation and privatisation (of state-owned enterprises) reforms in the transport, energy, and telecommunication sectors. These reforms were catalysed initially by the need to increase supply capacity in the face of surging demand from a fast-expanding economy, followed by the IMF conditionality after the 1997 crisis in the country and expressed in the Master Plan for State Enterprise Sector Reform. The privatisation drive of SOEs was also emphasised in the early 2000s during the Thaksin government as a driver of Thailand's economic growth.

Until 2015, there was no major policy initiative and concerted government effort at embracing GRP and developing a well-performing RMS, unlike in Malaysia and Viet Nam. There has been a large element of fragmented sectoral policy formulation in Thailand because under its code of administrative law, ministries and departments are given significant legal authority and leeway in setting regulations. At the same time, inasmuch as Thailand's governments are usually coalition governments (except under the Thai Rak Thai party), '...each party would not interfere in the other parties' line of responsibilities' (Poapongsakorn and Nikomborirak, 2003, p.145).

De jure, Thailand has few of the important elements of a well-performing RMS; however, de facto, they are not. Thus, for example, RIA was made mandatory in 2004 for the submission of any regulation to the Council of Ministers for policy approval; and the RIA is in line with OECD guidelines. However, '...most of the RIA reports are only 3–4 pages and the quality...not useful in the legislation process; the RIA process starts after the draft bill is finalised; RIA is required only [for] the [proposed] Act that [goes] to Parliament but not with the lower levels of legislation; e.g. Royal decree, Ministerial regulations; no RIA guideline...; no stakeholder consultation and/or public participation in the RIA process; no dedicated agency ...scrutinizing the RIA report' (Ongkittikul and Thongphat, 2015, p.29). In short, the RIA is ineffective because the real essence of a good and effective RIA (e.g. stakeholder consultation on alternative options, use of RIA from

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[13] This subsection is taken or draws heavily from Ongkittikul and Thongphat (2015), and Nilprapunt (2015a, 2015b, 2015c).

the beginning of the policy process, quality review of RIA reports) is missing in the way it is implemented in Thailand.

What mitigates the poor RIA process on new regulations is the Thai model of a committee having the legal authority to issue, change, or scrap a regulation (Poapongsakorn and Nikomborirak, 2003, p.129). The committee is composed of senior officials from the core agency and from other ministries which will be affected by the regulation, as well as outside experts (such as academics, businessmen, representatives from business associations, and former senior officials) (Ibid.). The outside experts in the committee could be the venue for stakeholder views, for example. However, the committee members could have a conflict of interests, and/or be subject to heavy influence by business or politics (Ibid., p.129).

Both the Poapongsakorn and Nikomborirak (2003) and the Ongkittikul and Thongphat (2015) papers highlighted the lack of policy coherence arising from the structure of rule-making and dynamics of parliamentary coalitions. The substantial rule-making power of ministries and departments in addition to the Parliament has meant that '...the Council of Ministers often has no incentive to legislate new law since the administrative process could be handled by the executive branch and the legislation process takes longer time' (Ibid., p.31). And as indicated above, ministries tend to be relatively independent because of the nature of coalition governments in Thailand, except when there is a dominant party in Parliament and/or strong Prime Minister. There is yet no inter-ministerial mechanism to coordinate regulatory reform nor a central body that oversees the RMS and ensures the quality of regulations (Poapongsakorn and Nikomborirak, 2003, p.146).

Until 2015, the Thailand case appeared to have some semblance to the Japan case in view of the relatively independent and powerful, de facto, ministries and the vulnerability of the ministries and departments to business interests. In addition, Thailand also performed well in EODB indicators just as Japan performs very well in governance indicators. Like Japan, the challenge had been in forging a comprehensive economy-wide regulatory policy and management system improvement agenda that would help the country propel further upwards in EODB and regulatory quality indicators similar to Malaysia.

The Royal Decree on Review of Law B.E. 2558 (2015) and the Licensing Facilitation Act B.E. 2558 (2015) (see Nilprapunt, 2015a and 2015b) provide the strong legal foundation for a robust government-wide RMS in Thailand. Among the salient provisions of the Royal Decree on Review of Law are the following (Nilpraprunt, 2015a, pp.2–5):

- All portfolio ministers shall order all related agencies to report all laws under their responsibilities and the same reported to the Law Reform Commission within 1 year of the Royal Decree coming into force.
- All portfolio ministers are required to review all laws every 5 years for improvement, revision, or repeal with the aim of strengthening national competitiveness, sustainable development, meeting international obligations, lessening adverse effects or unnecessary burden to the public, preventing, and suppressing corruption, etc.
- All portfolio ministers are required to submit an annual report on the implementation of the Royal Decree to the Council of Ministers and the National Legislative Agency.
- All the laws shall be translated into the ASEAN working language (i.e. English), which needs to be available to the public within 2 years of the Royal Decree coming into force.
- Information on the Law, including the translations, are available to the public without charge and via information technology system.

Similarly, the Licensing Facilitation Act stipulates, among others, the following (Nilprapunt, 2015b, pp.2–5):

- Each government agency with the authority to issue licences is required to review every 5 years those laws that grant it the authority to issue licences, whether such licensing needs to be repealed or replaced by another measure.
- Each government agency with the authority to issue licences is required to prepare a licensing manual that stipulates the rules, procedures, and conditions (if any), work flow, period of time for the granting of licence, and document requirements. Submission of application can be made by electronic means.
- The Public Sector Development Commission must ensure that the work flow and period of time for granting the licence are compliant to the rules and procedures of good public governance.

- Each government agency needs to establish Service Link Centers to accept applications for licences and to provide the licence-related information to the public.
- If warranted, the Council of Ministers may establish a One-Stop Service Centre (OSSC) to service all applications under all the laws related to licensing, the application of which could be done electronically.
- The government authority is liable for any damage caused to other persons (e.g. applicants) if such application is delayed unreasonably.

It may be noted that the two laws were the recommendations of the Law Reform Commission of the Office of the Council of State as a result of its research on 650 Acts of Parliament and their implementation. The Council found that about 90 percent of the legislations are based on a 'close government control system' wherein business activities are subject to licensing; that 'almost all subordinate legislations were made to ease the performance of [the] powers and duties [of the government authorities] rather than public facilitation' (Nilprapunt, 2015c, p.3). In addition, cost–benefit, cost-effectiveness, and public consultation were not considered in the issuance of the subordinate legislations determining the rules, procedures, and conditions for the granting of each licence (Ibid.). Also, 'almost all authorities do their works without collaboration with [other authorities] even within the same agency' (Ibid., p.4).

The laws were apparently meant to address such weaknesses in the regulatory system of the country. If the two laws above are fully implemented within 2 years of the laws having come into force (since mid-2015), then Thailand would be firmly into the 'enabled' stage in the development of its RMS. Nilprapunt (2015c, 2015) indicates that the Thai government is also planning to improve the implementation of the RIA in compliance with the GRP of ASEAN and the Asia-Pacific Economic Cooperation (APEC). The challenge, of course, is whether or not the two landmark laws and the planned improved RIA would really be implemented well, given the unsatisfactory implementation of RIA in the early 2000s.