

WTO SPS Transparency Workshop
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Malaysia's Experiences in Establishing a Mechanism for Public Consultation in Rule-making Process

by
Roziana Othman
Smart Regulation
Malaysia Productivity Corporation
Malaysia



GOOD REGULATORY PRACTICE *for better quality*



Malaysia's Regulatory Reform Journey



Documents on Regulatory Policy



Reference should be made to the government circular on National Policy on the Development and Implementation of Regulations issued by the Chief Secretary to the Government of Malaysia on 15 July 2013 (*Pekeliling Am Bilangan 1 Tahun 2013*)



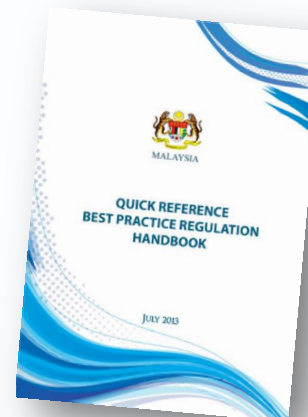
National Policy on the Development and Implementation of Regulations

Provides a systematic guideline based on best practices adopted from other countries



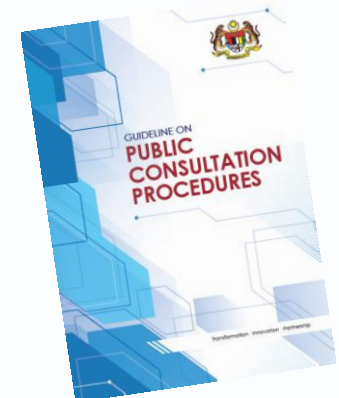
Best Practice Regulation Handbook

Tool to facilitate the implementation of Best Practice Regulation system and provides detailed guidance for the implementation



Quick Reference Best Practice Regulation Handbook

Summarised version of Best Practice Regulation



Guideline on Public Consultation Procedures

Establish guiding principles and requirements for carrying out an adequate public consultation exercise

*“With the implementation of National Policy on the Development and Implementation of Regulations (NPDIR), the Government is seeking to reinforce the key elements of **accountability, transparency, and evidence-based informed decision making** in the rule-making process. The aim is to ensure regulatory quality which addresses the concerns of stakeholders in an effective and equitable manner.”*

Tan Sri Dr Ali Hamsa,
Chief Secretary to the Government of Malaysia

Impacts of GRP at International and Intergovernmental Agreements



- Alignment with International Standard
- Increased training and employment opportunities
- Greater choices in the marketplace
- Cheaper goods and services
- Improved access to international markets
- Eliminates tariff and non-tariff barriers to trade and investment
- Reducing the costs of business transactions
- Regulatory coordination and consistency
- Harmonised standards and technical regulations
- Recognition of other countries' technical regulations
- Non-discrimination



**The Trans-Pacific
Partnership Free Trade
Agreement:
Regulatory Coherence**



WORLD TRADE ORGANIZATION **The WTO Technical
Barriers to Trade
Agreement**



**ASEAN Free Trade Agreement
(AFTA)**



**Asia-Pacific
Economic Cooperation**

APEC Regulatory Coherence



**Other multilateral, regional
dan bilateral Agreements**

Importance of Public Consultation

WHAT

- Two-way process to seek and receive views of stakeholders, business, affected parties and general public on proposed changes in policy

WHY

- Promotes transparency and accountability
- Improves awareness and understanding
- Encourages public ownership and commitment

WHO

- Stakeholder, experts, regulators, Business community, Employees, NGOs, Interest groups, Citizen

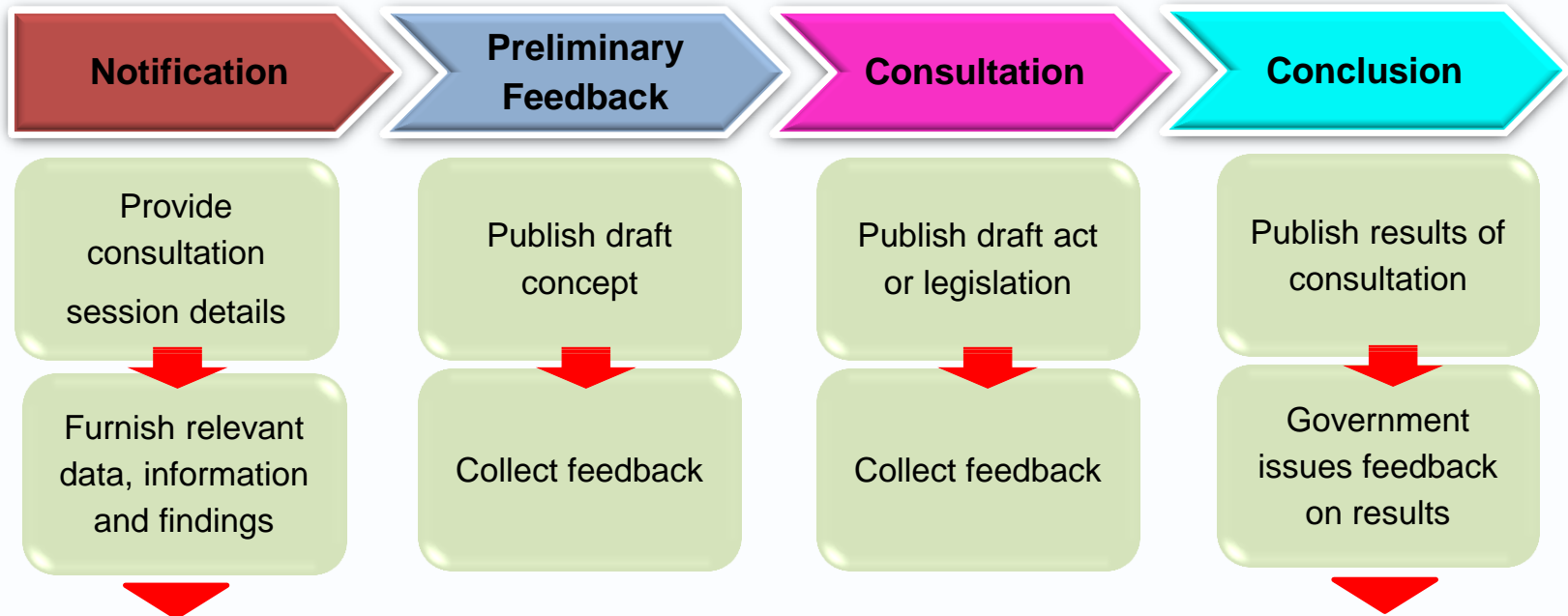
WHEN

- As early as possible - Integral part of RIA process
- Informal dialogue prior to a more formal consultation to obtain initial feedback & gain an understanding of the issues
- Early stage of impact assessment to gather inputs
- Various stages of the policy making process

HOW

- **Online platforms operate 24/7**
- **Website**
- **Portal**
- **Social media**

Public Consultation Process



Brings in the required expertise.
Allows for preparation and foster better understanding of the issues being consulted

Key benefits

Boost public confidence in government rule-making process.
Instil accountability in government in rule-making

**4-12 weeks
(20-60 days)**

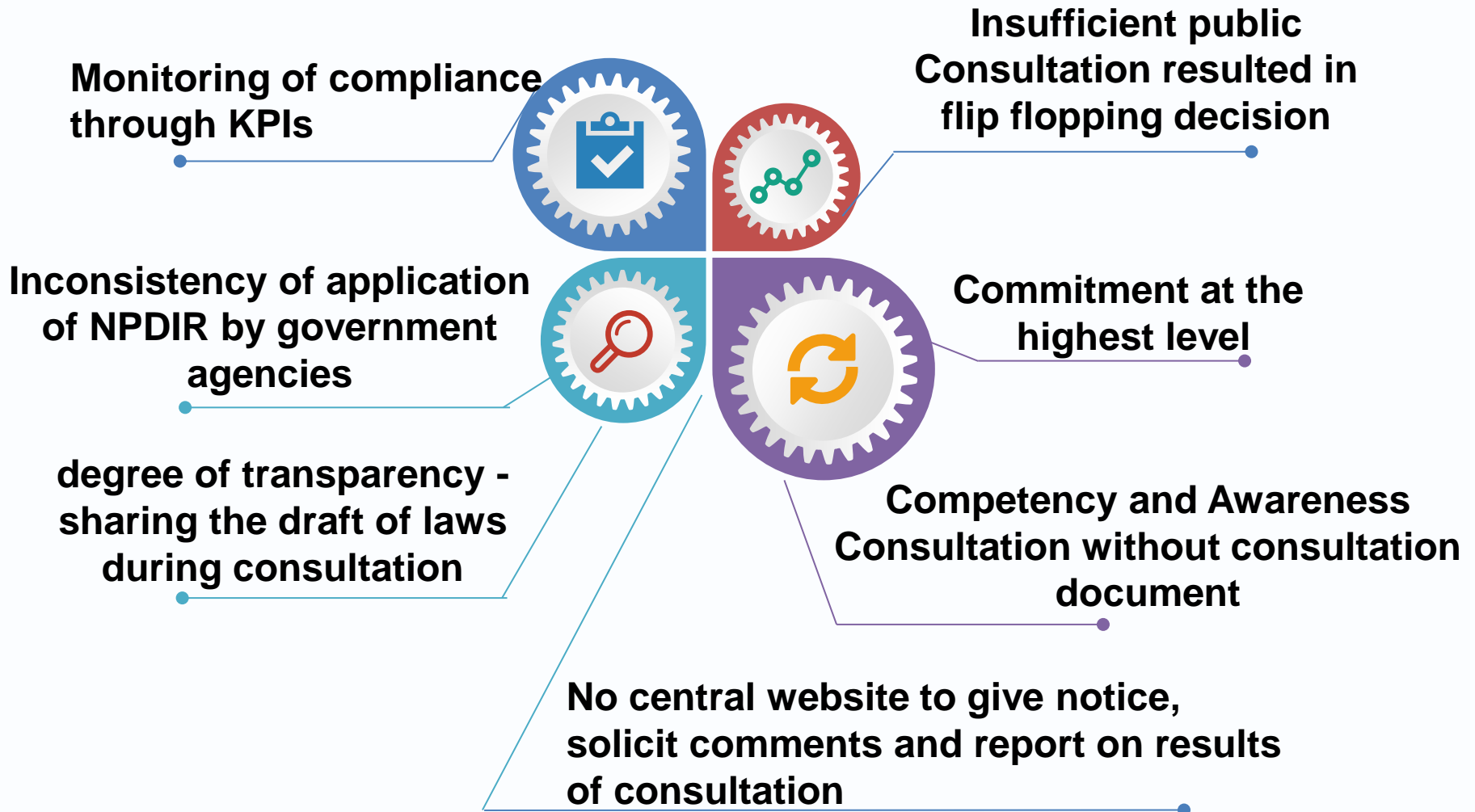
**12 weeks
(60 days)**

**4 weeks
(20 days)**

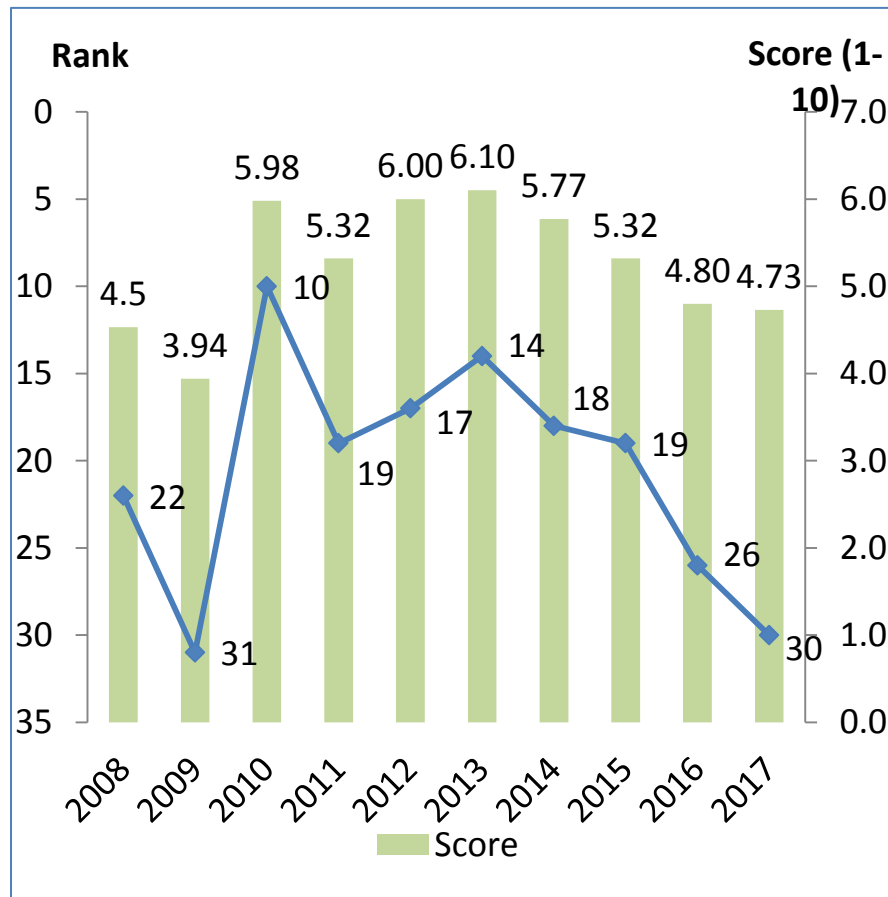
The institutional foundation for public consultation practices in rulemaking in Malaysia

- ❑ NPDIR provides a structured and systematic process to establish Good Regulatory Practice (GRP).
- ❑ Guideline on Public Consultation Procedures to help regulators with preparation and implementation of consultation. Requirements to conduct public consultations and report on results.
- ❑ Best Practice Regulation handbook provides structured ways to improve design and development of regulations. Regulatory Impact Analysis require regulators to comply to the adequacy criteria.

Issues and Challenges

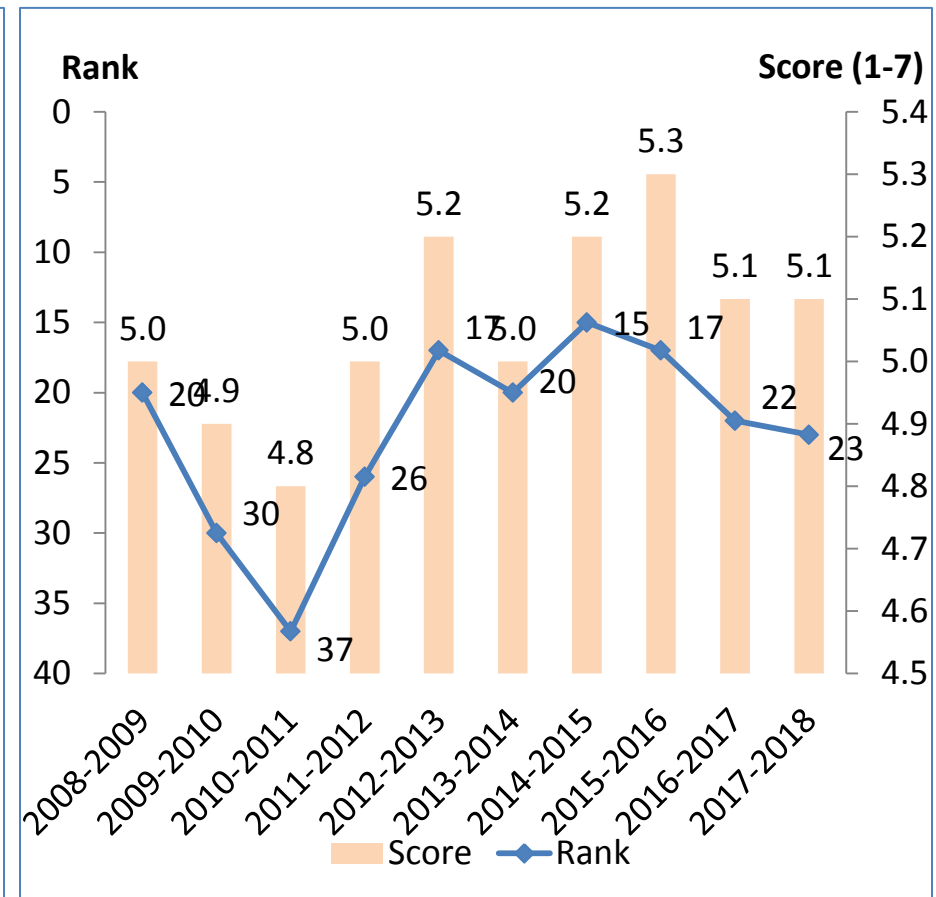


Transparency of government policy is satisfactory



Source: IMD World Competitiveness Yearbook 2008-2017

Transparency of government policymaking



Source: WEF Global Competitiveness Report 2009-2018

Elements of Regulatory Impact Analysis (RIA)



Identify the Problem or Issues



Explain the Objectives



Identify a Range of Alternative Options (Regulatory and Non Regulatory)



Provide Adequate Impact Analysis (Cost, Benefits and Risks)



Describe How Consultation was Conducted



Clearly State Conclusion and Recommended Option



Provide Strategy to Implement and Review

Issues in Evaluating RIA Proposals

<ul style="list-style-type: none"> ➤ Weaknesses in identification of problem/issue . ➤ For example symptoms are mistaken for problem. 	<ul style="list-style-type: none"> ➤ Evidence on the magnitude of the problem is not presented 	<ul style="list-style-type: none"> ➤ Regulators fail to identify the relevant existing regulation that may be related to the problem 	<ul style="list-style-type: none"> ➤ Objective stated too general and does not measured with SMARTER criteria
<ul style="list-style-type: none"> ➤ Options given are sometimes not realistic. ➤ Regulators should be proposing various alternative solutions to addressing problem identified. 	<ul style="list-style-type: none"> ➤ Lack of evidences based analysis, ➤ Lack of data, ➤ Insufficient analysis of impact & cost, ➤ Lack of projected analysis on status quo option 	<ul style="list-style-type: none"> ➤ Impact on stakeholder tend to be categorized very broadly. ➤ Lacks of information on online consultation ➤ Consultation duration is too short ➤ Report on the consultation inadequate. ➤ The regulators usually provide minutes of meeting as evidence of consultation. 	<ul style="list-style-type: none"> ➤ Inadequate description of implementation plan, monitoring, review, communication and resources required.

2016 Final Report on Good Regulatory Practices in APEC Economies

- 2011 to 2016 :

The rate of change in the adoption of GRP seems to be accelerating as trade agreements and regional groupings place more emphasis on the need for better regulation as a condition of beneficial economic integration.

GRP	% of change 2011-2016	% of APEC economies adopting this GRP in 2011	% of APEC economies adopting this GRP by 2016
Public Consultation and Transparency Mechanisms			
Are draft legal documents and RIAs published for comment before adoption?	50%	38%	57%
Publication is done on a central web portal rather than on individual ministry websites	75%	38%	67%
Does the government use social media tools to notify stakeholders of regulatory activities or to consult?	NA*	NA*	43%
Is feedback given to stakeholders after consultation is completed?	20%	48%	57%
Is there a single online location for regulatory information across the whole of government, such as a legal code or online registry of regulations?	NA*	NA*	62%

Public Consultation Mechanism

- Are draft legal documents and RIAs published for comment before adoption?

Survey	Publication is required for all draft legal documents	Consultation requirement is a legal requirement established by law or high level Decree	Published routinely on the Internet	Publication is done on a central web portal rather than on individual ministry websites
Number of economies, 2011	8	13	13	8
Number of economies, 2016	12	16	17	14

- Business perception on central web portals for consultation. **Yes:89.57%, No:10.43%**
- Is feedback given to stakeholders after consultation is completed? **10(2011),12 (2016)**
- Are proposed regulations notified to the WTO, as required under relevant WTO agreements, including an electronic copy of the proposals in the notifications?**13(2016)**
- Are public comments submitted to the web portal from foreign stakeholders on proposed regulations linked to domestic TBT and SPS Inquiry Point Services? **9(2016)**

Way Forward : Initiatives to improve public consultation mechanism – Collaboration with World Bank

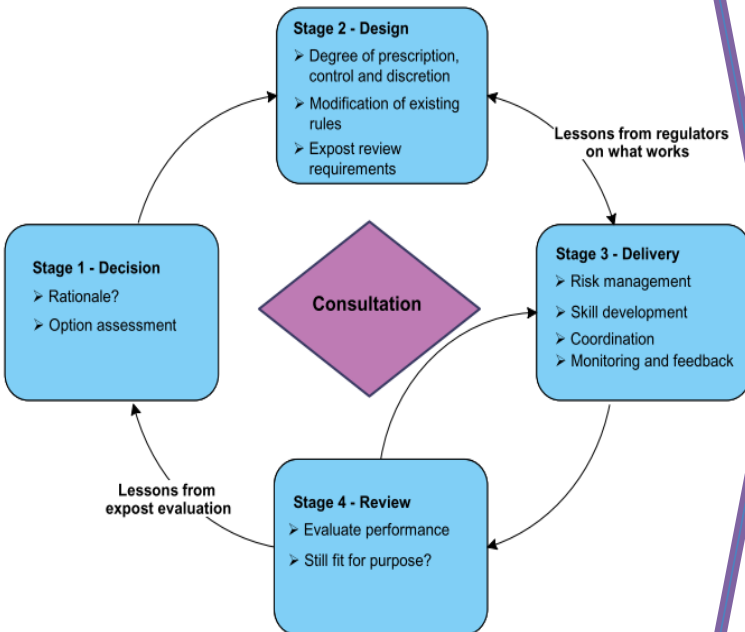
Support further improvements of Malaysia's regulatory consultation practices through new and innovative approaches to web-based “notice and comment” procedures.

Action plan that includes:

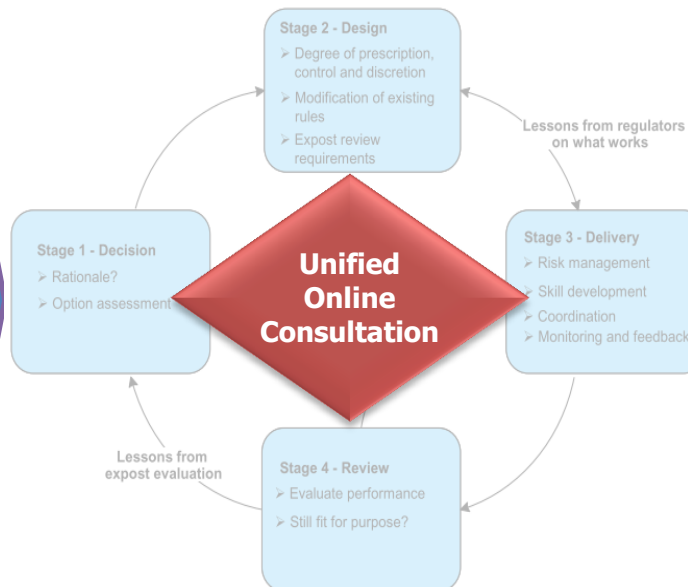
- 1. Review of consultation practices**
- 2. Review of international N&C websites**
- 3. Co-design blueprint for website**
- 4. Procurement of web-development services and required hardware**
- 5. Design experiments**
- 6. Execute experiments**
- 7. Develop strategy and guidelines for online public consultation procedures**
- 8. Final report**

Collaboration with the World Bank to establish and institutionalise an innovative policy development engagement mechanism

Consultation is across regulatory cycle and fragmented



Unified Online platform is needed to consolidate consultations



Benefits of consolidated online consultation

- **more transparent, predictable, inclusive and trust in government**
- **eliminate inconsistency in implementation of consultation**
- **Tracking tool for better monitoring and evaluation of regulatory initiative**

Establish and institutionalise an innovative policy development engagement mechanism

Apr 2017 – May 2018

A. Online system development for consultation on rulemaking

- ✓ Desk Review
- ✓ Interview Key Ministries
- ✓ Survey on current practices of online public consultation
- ✓ Review of international N&C website
- ✓ Design framework on requirement and specification of N&C website
- ✓ Engagement to obtain feedback and secure buy in from ministries/ agencies and business association
- ✓ Briefing on experiment projects

Oct 2017 – Sept 2018

B. Testing and Implementation

- Testing different assumptions to understand how different intervention in N&C process provides better outcomes

Nov 2017 – Sept 2018

C. Policy development

- Develop strategy and guidelines
- Institutional framework
- Drafting legal and policy requirement
- Strategy for implementation

- Enforcement of KPIs for ministries
- Increase skills and capacity building of ministries and agencies
- Evaluation and Report

Oct 2018 – Dec 2018

D. Training, monitoring and evaluation

Survey on current practices of online public consultation to 41 Regulators (Malaysia)

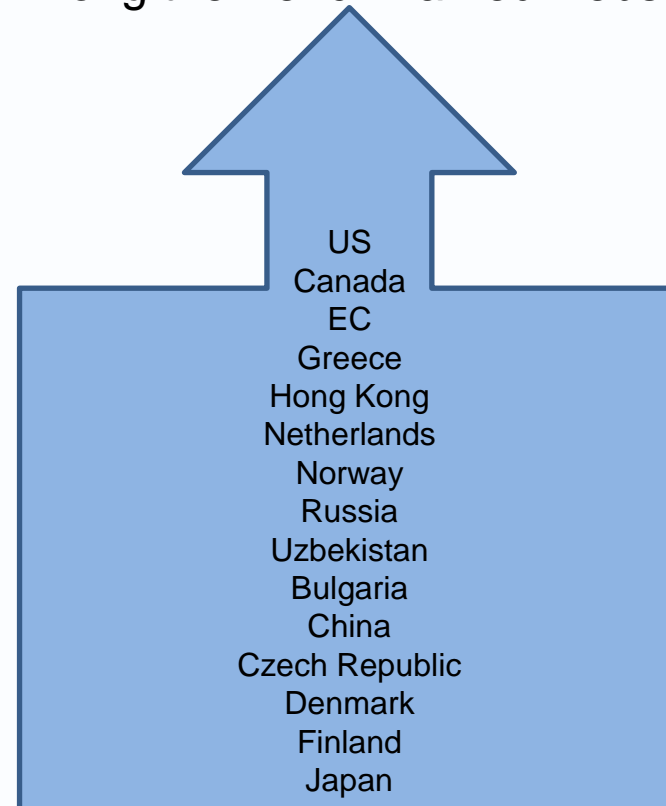
1. 43.9% conducted online consultation while 56.1% did not practice it;
2. 41.2% says full text of new regulation was shared during the consultation but 58.8% think otherwise;
3. 46.2% of the respondents use social media to share the consultation contents and 53.8% did not.

Review of Notice and Comment websites in the world

Among the good practices in the review of 45 public consultation websites:

- ✓ Share full text of the regulation
- ✓ Provide summaries of information in plain language
- ✓ Make comments available to everyone
- ✓ Use multimedia to explain content
- ✓ Exploit the potential of social media
- ✓ Develop mobile friendly user interface
- ✓ Give each regulation an ID / ref number
- ✓ Close the feedback loop
- ✓ Reporting the results

Among the Benchmarked websites



Source: The World Bank Global Review of N&C websites (unpublished report)



Policy Development for Public Consultation



Building on existing consultation methods, e-Government tools, and international norms of transparency to maximize the effectiveness of consultation activities.

Three major components:

Component 1:

Establish minimum standards for Government's consultation policy, procedures, and implementation capacities

Component 2:

Prepare business associations for consultation by improving their capacities to provide good quality information (relevant, timely, reliable)

Component 3:

Build capacities in the Government to implement the Policy and respond to stakeholder views



Like to Know More?

Assistance Offered:



Enquiries
RIA



Advisory
**Public
Consultation**



Information
&
References
on
GRP & RIA



Measuring
**Cost and
Benefits**



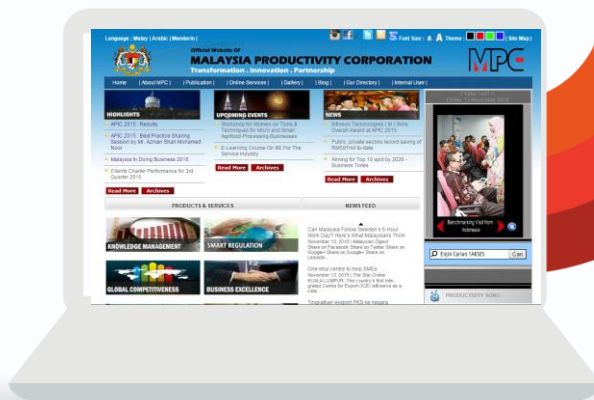
E-mail: regulatoryreview@mpc.gov.my



Visit GRP Portal grp.mpc.gov.my



Visit MPC Website www.mpc.gov.my



We provide lots of information:



RIA
process Flow



**Registry
of
regulation**



**RIS Adequacy
Assessment
Checklist**

Roziana Othman
Smart Regulation, MPC
Email : ogie@mpc.gov.my