

5 September 2017

The Hon Mrs Carrie Lam Cheng Yuet-ngor, GBM, GBS  
Chief Executive  
Hong Kong Special Administrative Region  
Tamar  
Hong Kong

*Dear Carrie*

### **Policy Address Submission**

I am pleased to submit herewith proposals from the Hong Kong General Chamber of Commerce for consideration in your forthcoming Policy Address.

The Chamber's proposals are intended to accentuate and augment recommendations in two of our recent submissions, namely, policy priorities for the incoming Administration made in May and the Greater Bay Area made last month.

We are especially concerned about the cumulative effect of incremental change caused by the Government's attitude to legislating, which, if allowed to continue, could have grave implications on Hong Kong's hard-won and cherished reputation as a premier business hub. In that connection, we have set out concrete measures for incorporating Regulatory Impact Assessment (RIA) into the lawmaking process through enhancements to the pre-existing "Be the Smart Regulator" Programme.

A business-friendly environment is also closely correlated to the Government's management methods, specifically the ability of different departments to work together. To that end, we would like to see serious effort be given to the realization of a joined-up government, an initiative that you championed in your previous capacity as Chief Secretary for Administration. The benefits accruable from such an effort would be considerable and have the virtuous effect of further affirming Hong Kong's attractiveness as a place to do business. To fulfill the objective of creating a joined-up government, a comprehensive review of the Government's structure should be carried out by an independent body either within or without the Administration.

We look forward to exchanging views with yourself and/or your Administration on any of our proposals at your convenience.

Yours sincerely,



Stephen Ng  
Chairman

Encl.

c.c. The Hon Matthew Cheung Kin-chung, Chief Secretary for Administration  
The Hon Paul Chan Mo-po, Financial Secretary  
The Hon Edward Yau Tang-wah, Secretary for Commerce and Economic Development

## **Hong Kong General Chamber of Commerce 2017/18 Policy Address Submission**

The Chamber's policy recommendations to the Government remain more or less the same as those as set out in the submission on policy priorities for the current term Administration made in May. Since then, we have also made a detailed representation on ways to successfully implement the Greater Bay Area concept.

We believe that the recommendations from the aforementioned submissions continue to be quite relevant to Hong Kong's economic agenda going forward. For the purpose of the Chief Executive's 2017-18 Policy Address, we have highlighted certain issues or areas from the said submissions that we feel to be especially pressing while also expanding upon recommendations on actions by the Government to address these challenges.

### **1. Better legislation through RIA adoption**

There has been a marked increase in legislation over recent years. The introduction of new rules and regulations is often in response to public demands and is therefore politically driven. If the case for regulatory intervention is not properly thought through, the upshot is often overzealous and far-reaching regulations that disrupt and inhibit normal business activities, such as the willingness and/or ability to innovate and invest, drive up costs and make Hong Kong a less desirable place to do business in the region.

Although the Government consistently claims that such laws are formulated after having taken into account Hong Kong's competitiveness and are cost-neutral, the reality is often not the case. When pointed out that there are resultant costs of compliance, these are often dismissed as being easily absorbed by businesses.

A mechanism already exists in the form of the "Be the Smart Regulator" Programme (the Programme) for the purpose of ensuring that Hong Kong maintains a light-touch approach to regulation. However, in practice this falls far short of similar regulatory impact assessment (RIA) programmes implemented elsewhere and appears to be only sporadically applied to new policy interventions. In this respect and to ensure that the Programme serves its intended purpose of promoting Hong Kong as a business-friendly city, we strongly urge the Government to

- Adopt the principles and some of the pre-conditions as provided in the UK's Legislative and Regulatory Reform Act 2006 – many of which are based on Common Law rules;
- Provide concrete guidance and requirements for fulfilling the principles of transparency, accountability, proportionality and consistency as given in the existing Programme; and,
- Promote or make mandatory the application of the revised Programme in respect of every policy intervention.

Detailed recommendations are set out in the attached.

## **2. Promote competitiveness through a review of the taxation system**

Although there are quite a number of issues that we hope to see addressed, there are three major areas that the Government should be tackling as a matter of urgency. These include (1) ensuring the efficacy and usefulness of the Tax Policy Unit (TPU), (2) enhancing tax clarity and certainty, and (3) promoting tax competitiveness.

Details on the three key issues are as follows.

### ***I. TPU***

The establishment of the TPU represents a major breakthrough that is welcomed and supported by the business community. However, recent developments with the TPU leave a lot to desire; although newly established, it appears to be under-resourced and lacking in direction. In order for the TPU to contribute usefully to setting policies on improving Hong Kong's tax competitiveness, the Government should give serious consideration to:

- Formulating a clear set of Terms of Reference for the TPU;
- Providing more resources to the TPU; and
- Involving a greater cross-section of non-official stakeholders including those from the private sector and tax profession.

### ***II. Tax clarity and certainty***

Tax clarity and certainty, and the tax rate represent the two major factors which businesses invariably take into account when deciding where to set up a presence. Although the notion of a lower tax rate has not been ruled out, we feel that priority should be given to refining two aspects of the Inland Revenue Ordinance to provide greater certainty for businesses. These are

- Reducing the statutory time limit for tax reassessment from 6 to 3 years; and
- Treating a loss statement as a taxable assessment so that taxpayers can object to the Inland Revenue Department's decisions in loss cases.

As well, the IRO is long overdue for a review. We appreciate that this will not be an easy task. However, the benefits of modernizing the tax code would far exceed the associated costs of doing so if the Companies Ordinance Rewrite exercise, which took 8 years to complete, is of any useful indication.

### ***III. Tax competitiveness***

In light of Hong Kong's dwindling comparative advantage as a low tax jurisdiction, there is the compelling need to review our tax regime to find ways of restoring our attractiveness. In this regard, we would recommend that loss carry-back be allowed as this would be especially beneficial to SMEs and in the context of increasingly uncertain and volatile global economic conditions.

We welcome the Government efforts to put in place a two-tiered profits tax arrangement, which is expected to be introduced into the Legislative Council for debate in the second half of 2018. We look forward to assisting the Government for the purpose of bringing about substantive change in this regard.

Last but by no means least, we suggest that the Government gives serious consideration to other more optimal means of returning budget surpluses to the economy. Although the tendency to invest in new or the upkeep of existing infrastructure and welfare (including education) are worthwhile undertakings, we feel that the domestic economy would reap greater benefits by reducing the tax burden on the middle class and businesses. In the case of the former, the economic dividends accruable would be increased consumption while for the latter this would translate into investment growth.

### **3. Grooming local talent and ensuring stable labour supply**

According to the Census and Statistics Department's October 2015 projections for the period 2015 to 2064, the labour force is projected to increase slightly from 3.60 million in 2014 to 3.65 million in 2018, and then decrease to 3.43 million in 2031. It will then hover between 3.42 million and 3.43 million until 2038, before decreasing to 3.11 million in 2064.

To overcome Hong Kong's looming human-capital challenge, there is the compelling need to come up with effective solutions to maintain a sustainable pool of employable workers. We suggest adopting a two-prong approach whereby strategies to fill the labour gap involve looking within and without the domestic market.

In the above regard, we wish to reiterate the proposals made in our 2014 response to the Government's then consultation on an appropriate Population Policy for Hong Kong. These include:

- Setting up a dedicated government agency to oversee Hong Kong's future human capital needs;
- Providing quality English-based education option at affordable cost;
- Enhancing remuneration of teachers and instructors to recruit and retain the best and brightest;
- Promoting awareness on the future prospects offered in vocational occupations to increase young people's exposure and receptiveness to careers in these professions;
- Improving working conditions or the training of women and older workers to promote labour participation and sustainable employment through flexible working arrangements such as part-time work, job sharing, working from home, seasonal employment and flexible retirement;
- Removing professional barriers;
- Optimising immigration arrangements to attract international talent; and
- Relaxing labour importation requirements including a review of the existing Supplementary Labour Scheme.

#### **4. GBA**

The 56,500 sq km, 11-city Guangdong-Hong Kong-Macau Greater Bay Area (GBA) has an estimated population of 66 million and a combined GDP of about US\$1.3 trillion in 2015, which would rank it as the 11<sup>th</sup> largest economy in the world if it were a country. Compared to other bay areas, the GBA's combined GDP is approximately twice that of San Francisco, equal to that of New York and two-thirds the size of Tokyo. The area recorded more than 65 million TEUs (twenty foot equivalent units) of annual container throughput and in 2016 handled close to 185 million passengers travelling by air.

The potential for GBA as a unified economic area is therefore considerable given the existing strengths of its individual metropolitan components. In order to realise such potential, it is essential that there ultimately be the free and unfettered movement of capital, people, goods and services within the GBA. To achieve this, we suggest that the SAR Government considers the following:

- The Government should set up a GBA Office to formulate proposals, strategies, and policy directions to position and define Hong Kong's involvement and role in the GBA. The Office will be the agency to coordinate policies with local GBA governments, as well as being responsible for highlighting business opportunities and disseminating information to the general public.
- Given that liaison and coordination are integral aspects to the uniform implementation of policies across the GBA, it is crucial that the SAR Government adopt a more holistic approach to its development and planning strategies so that the conditions and outlook in other GBA cities are also taken into account.
- Likewise, the creation of a GBA would facilitate better utilisation and deployment of resources especially in major infrastructure investments such as container terminals and airports. The unified economic framework provided under GBA would promote division of labour depending on the intrinsic strengths of individual GBA constituents to ultimately develop synergistic collaborations and relationships. The strengthened collaboration between ports should enhance the overall capability and capacity of the whole GBA. Meanwhile, better airspace coordination among the GBA airports could improve airport capacity, route efficiency and flight safety.
- As optimising people flows constitutes a key outcome of the proposed GBA, a visa system based more or less on the APEC Business Travel Card Scheme could be considered for selected categories of GBA residents to enter Hong Kong and vice versa for work and business purposes. We suggest carrying out a pilot scheme at the Lok Ma Chau Loop before deciding on implementation throughout the GBA.

- The enlarged economic and physical space offered under the GBA opens up new solutions to recurrent and chronic issues that Hong Kong has to contend with. These include quality of life issues such as municipal waste and inadequate land supply. Under the GBA framework, the SAR Government could work with its counterparts on creating a regional circular economy to address the challenge of handling solid waste in Hong Kong and other GBA cities. Similarly, the blurring of borders could also provide some relief to the high density living conditions in Hong Kong.
- The GBA could act as a centre and driver for innovation and technology by leveraging on the innate strengths of the eastern and western regions through the specialisation of advanced IT industries and advanced equipment manufacturing respectively, with Hong Kong responsible mainly for providing financial backing and professional services. To test the viability of this division of labour approach, a pilot scheme could be introduced in the Lok Ma Chau Loop wherein research funding sourced from GBA cities could be made available to institutes located in the Loop. The Loop could also provide a launch-pad for promoting awareness of and respect for Intellectual Property Rights within the GBA.
- Hong Kong could further facilitate RMB internationalisation through the establishment of a “Commodity-Connect” with Shenzhen. This would help underpin Hong Kong’s standing as an international financial centre and be mutually beneficial to both cities.

HKGCC Secretariat  
5 September 2017

## Enhancing “Be the Smart Regulator” Programme

The Government launched the “Be the Smart Regulator” Programme (“Programme”) in 2007 with the aim of promoting Hong Kong’s reputation as a business-friendly city<sup>1</sup>. Although the Programme appears to have adopted basic elements of good regulatory practices (“GRP”) found in many developed countries, it is, however, of a non-binding nature and is not applied consistently to the regulatory process. Indeed, there has been a notable decline in the practice of the Programme, which is aimed at streamlining licensing processes and reducing business compliance costs.

The trend towards gradual marginalization of the Programme is a worrying development especially against the backdrop of perceived regulatory creep and a corresponding rise in compliance burden to local businesses. A 2005 report for the UK Prime Minister<sup>2</sup> made the following observations, which are relevant in many jurisdictions, including Hong Kong:

*“Regulation, as well as providing us with necessary protection and safeguarding our rights, also represents a significant cost for the economy. This cost is borne by government, regulators and those being regulated, including businesses, public sector organisations, the voluntary sector and ultimately tax-paying citizens. However, the OECD (1997) reported that, “Today, regulatory costs are the least controlled and least accountable amongst government costs. Many governments have no idea how much of their national wealth they are spending through regulation.” Information from the United States and the Netherlands suggests that the total cost of regulation is 10% - 12% of GDP. It is unlikely to be much different in the UK, so regulation here is probably costing us around £100 billion per year.”*

In the interest of maintaining and strengthening Hong Kong’s reputation and competitive edge as a business-friendly city, the Chamber strongly urges the Government to carry out a critical and systemic review of the Programme for the purpose of putting in place a proper and effective Regulatory Impact Assessment (RIA) mechanism. As Hong Kong enjoys the advantage of a partial RIA already in place through the Programme, a fully-fledged RIA should therefore be the logical next step. In this regard, we suggest referring to APEC’s 2011 Regulatory Report on perceived gaps with the Programme. These shortcomings include:-

- Deficiency in information on potential regulatory costs;
- Failure to take into account information on cost and effectiveness in regulatory reviews;
- Absence of trade and competition principles from regulatory reviews and analyses;
- No definition of problems;
- Omission of clear principles on options for problem solving in the conduct of impact analysis;
- Exclusion of trade impacts;
- Imprecise accounting of benefits as a result of not quantifying measurable impacts; and
- Lack of a systematic comparison for benefits and costs impacts.

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<sup>1</sup> The cover page of the Be the Smart Regulator: <https://www.gov.hk/en/theme/bf/smart/>

<sup>2</sup> See: [http://www.regulation.org.uk/library/2005\\_less\\_is\\_more.pdf](http://www.regulation.org.uk/library/2005_less_is_more.pdf)

As such, we propose that the Government gives serious consideration to the following GRP as a means to bringing about a formal and effective framework for introducing and reviewing legislations in Hong Kong:

1. Adopt the principles and some of the pre-conditions as provided in the UK's Legislative and Regulatory Reform Act 2006 – many of which are based on the Common Law requirements as provided in the recent Court of Final Appeal's decision on *Hysan Development Limited v Town Planning*<sup>3</sup>;
2. Provide concrete guidance and requirements for each of the 4 stages of the law-making process as given under the existing Programme; and
3. Promote or make mandatory the application of the enhanced Programme.

The following sets out in detail the enhancements we would like to see incorporated into each cycle of the 4-stage approach based upon the existing Programme. We have also included an appendix of the experiences in two other jurisdictions, namely, the United Kingdom and Australia, as references and contrasts on the approach to GRP.

Principles & Preconditions	<ul style="list-style-type: none"> <li>• The proposal must comply with the principles of:               <ol style="list-style-type: none"> <li>(a) transparency</li> <li>(b) accountability</li> <li>(c) proportionality</li> <li>(d) consistency</li> </ol> </li> <li>• The proposal must satisfy the preconditions that:               <ol style="list-style-type: none"> <li>(a) the objective could not be satisfactorily secured by non-legislative means,</li> <li>(b) the effect of the proposal is proportionate to the objective,</li> <li>(c) the proposal strikes a fair balance between the public interest and the interests of any person being adversely affected, and</li> <li>(d) the proposal does not remove any necessary protection.</li> </ol> </li> </ul>
Stage 1 - Plan	<ul style="list-style-type: none"> <li>• Appraisal               <ol style="list-style-type: none"> <li>(a) Establish a case for action.</li> <li>(b) Identify a range of feasible policy options including self-regulatory, co-regulatory and non-regulatory approaches.                   <ul style="list-style-type: none"> <li>○ The objective and all feasible options should be considered.</li> <li>○ The "status quo" and effectiveness of existing regulation should be considered as an option for meeting the objective.</li> </ul> </li> <li>(c) Generic issues to be considered                   <ul style="list-style-type: none"> <li>○ strategic impact on organization including the relevant trade/business,</li> <li>○ economic rationale which should include a cost/benefit analysis,</li> <li>○ financial arrangements and affordability,</li> <li>○ achievability,</li> <li>○ commercial and partnering arrangement,</li> </ul> </li> </ol> </li> </ul>

<sup>3</sup> FACV 21/2015

	<ul style="list-style-type: none"> <li>○ RIA,</li> <li>○ legislation consideration such as human rights and data protection,</li> <li>○ information management and control,</li> <li>○ environmental impact, and/or</li> <li>○ equality impact assessment.</li> </ul> <ul style="list-style-type: none"> <li>● RIA <ul style="list-style-type: none"> <li>(a) Assist canvassing the regulatory options under consideration, in order to determine the relative costs and benefits of those options.</li> <li>(b) A final RIA should draw conclusion on whether a regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be.</li> <li>(c) Approaches as part of the RIA may include: <ul style="list-style-type: none"> <li>○ Risk analysis,</li> <li>○ Cost-benefit analysis,</li> <li>○ Measuring business compliance costs,</li> <li>○ Assessing effects on competition, and</li> <li>○ RIA contents should include: <ul style="list-style-type: none"> <li>▪ Statement of the problem,</li> <li>▪ Objectives,</li> <li>▪ Statement of options,</li> <li>▪ Impact analysis,</li> <li>▪ Consultation,</li> <li>▪ Evaluation and conclusion, and</li> <li>▪ Implementation and review.</li> </ul> </li> </ul> </li> <li>(d) One-in, Two-out approach <ul style="list-style-type: none"> <li>○ IN: the direct incremental economic cost to business of a measure exceeds the direct incremental economic benefit to business.</li> <li>○ OUT: the change is deregulatory and the direct incremental economic benefit to business exceeds the direct incremental economic cost to business.</li> <li>○ Zero Net Cost - a measure should be classified as Zero Net Cost if: <ul style="list-style-type: none"> <li>▪ Value of INs, OUTs are calculated using the Equivalent Annual Net Cost to Business (EANCB).</li> </ul> </li> <li>○ EANCB of a measure = the annualized value of the present value of net costs to business, calculated with reference to the counterfactual (Estimating the counterfactual usually means comparing outcomes with a different group of people with similar characteristics who have not received the intervention).</li> <li>○ The EANCB is calculated as part of the impact assessment.</li> <li>○ The Net Present Value (NPV) of direct costs to business is used to calculate the EANCB with the following calculation.</li> <li>○ The NPV is the primary criterion for deciding whether government action can be justified.</li> </ul> </li> </ul> </li> </ul> <ul style="list-style-type: none"> <li>● Regulatory Policy Committee (see page 4 of Annexure 1)</li> </ul>
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<p>Stage 2 - Consultation</p>	<ul style="list-style-type: none"> <li>• Consulting effectively with affected key stakeholders at all stages of the regulatory cycle. Affected key stakeholders should include the relevant trade or business. <ul style="list-style-type: none"> <li>(a) Consultation should occur when the options for regulatory action are being considered (before contemplating the policy) and a draft RIA has been produced.</li> <li>(b) Further consultation is required if the government considers appropriate to change the proposal.</li> <li>(c) Proposal that has more widespread effects should have consultation earlier and on a wide range of options and alternative.</li> </ul> </li>   <li>• Adopting the option that generates the greatest net benefit for the community subject to: <ul style="list-style-type: none"> <li>(a) the Competition Ordinance that the proposal should not restrict competition unless it can be demonstrated that:- <ul style="list-style-type: none"> <li>○ the benefits of the restriction to the community as a whole outweigh the costs; and,</li> <li>○ the objective of the regulation can only be achieved by restricting competition.</li> </ul> </li>   <li>(b) that the proposal should be effective and proportional to the issue being addressed. <ul style="list-style-type: none"> <li>○ Effectiveness should be judged solely in terms of meeting the specified objective. Consideration should be given to the effectiveness of implementation and administration and an assessment of likely compliance rates should be made.</li> <li>○ Proportionality involves ensuring that government action does not overreach or extend beyond addressing a specific problem or achieving the identified objective. The principle of proportionality applies equally to the implementation or regulation, including the development of framework for ensuring compliance.</li> </ul> </li> </ul> </li> </ul>
<p>Stage 3 - Implementation</p>	<ul style="list-style-type: none"> <li>• Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear.</li>   <li>• Performance is tracked and measured, and data captured for later analysis. This involves: <ul style="list-style-type: none"> <li>(a) the systematic collection of data relating to the financial management and outcomes of the policy, program or project during implementation,</li> <li>(b) tracking all categories of benefit,</li> <li>(c) a monitoring system,</li> <li>(d) regular financial reporting,</li> <li>(e) benefits realization management, and</li> <li>(f) contract management.</li> </ul> </li> </ul>

Stage 4 - Review	<ul style="list-style-type: none"><li>• Ensuring that regulation remains relevant and effective over time:<ul style="list-style-type: none"><li>(a) The result should be summarized and led to recommendations for the future.</li><li>(b) The results and recommendation should be fed into future decision making.</li><li>(c) Reports and research should be placed in the public domain unless there are good reason otherwise.</li><li>(d) All regulations should be reviewed annually with a view to encourage competition and efficiency, streamlining the regulatory environment, and reducing the regulatory burden on business arising from the stock of regulation.</li><li>(e) Consideration should be given to insert sunset provision or review requirement in the regulation.</li></ul></li></ul>
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HKGCC Secretariat  
5 September 2017

**Annexure 1**  
**Comparison of Good Regulatory Practices**  
**in Hong Kong, the UK and Australia**

	HK <sup>1</sup>	UK <sup>2</sup>	Australia <sup>3</sup>
Historical Timeline	<p>Be the Smart Regulator</p> <ul style="list-style-type: none"> <li>• Launched in 2007</li> <li>• Reviewed in 2010</li> <li>• Focus shifted in 2013 to BIA</li> </ul>	<ul style="list-style-type: none"> <li>• Better regulation imposed in 2003</li> <li>• Legislation enacted in 2006 – in blue below</li> </ul>	<ul style="list-style-type: none"> <li>• Best Practice Regulation imposed in October 2007</li> </ul>
Principles & Preconditions		<p>Minister must not make regulation unless it:</p> <ul style="list-style-type: none"> <li>• complies with the principles of: <ul style="list-style-type: none"> <li>(a) transparency</li> <li>(b) accountability</li> <li>(c) proportionality</li> <li>(d) consistency</li> </ul> </li> <li>• Satisfies the preconditions that: <ul style="list-style-type: none"> <li>(a) the objective could not be satisfactorily secured by non-legislative means.</li> <li>(b) the effect of the regulation is proportionate to the objective.</li> <li>(c) the regulation strikes a fair balance between the public interest and the interests of any person being adversely affected.</li> </ul> </li> </ul>	

<sup>1</sup> Be the Smart Regulator from the Financial Secretary's Office: <https://www.gov.hk/en/theme/bf/smart/>

<sup>2</sup> Legislative and Regulatory Reform Act 2006

<sup>3</sup> Best Practice Regulation, A Guide for Ministerial Councils and National Standard Setting Bodies, October 2007: <https://www.pmc.gov.au/resource-centre/regulation/best-practice-regulation-guide-ministerial-councils-and-national-standard-setting-bodies>

			<ul style="list-style-type: none"> <li>(d) the regulation does not remove any necessary protection</li> <li>(e) The regulation does not prevent any person from continuing to exercise any right or freedom.</li> <li>(f) The regulation is not of constitutional significance.</li> </ul>	
Overview of Framework	1.	<p>Plan:</p> <ul style="list-style-type: none"> <li>• All direct and indirect costs fully understood <ul style="list-style-type: none"> <li>(a) analyse the burden of regulations such as admin and compliance costs, pricing and regulator’s costs; and</li> <li>(b) investigate the costs of alternatives to regulation</li> </ul> </li> <li>• Alternatives to regulation meticulously evaluated <ul style="list-style-type: none"> <li>(a) consider industry self- regulation, code of practice, etc. before prescriptive regulation</li> </ul> </li> </ul>	<p>Appraisal:<sup>4</sup></p> <ul style="list-style-type: none"> <li>• Research to identify the scope of the issues involved.</li> <li>• Determine the rationale for the proposal.</li> <li>• State the objectives of the proposal clearly so as to identify the full range of options.</li> <li>• Further appraisal. The “do minimum” option should always be carried forward.</li> <li>• Generic issues include: <ul style="list-style-type: none"> <li>(a) strategic impact on organization.</li> <li>(b) economic rationale which should include a cost benefit analysis.</li> <li>(c) financial arrangements and affordability.</li> <li>(d) achievability.</li> <li>(e) commercial and partnering arrangement.</li> <li>(f) RIA*.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Principle 1: Establishing a case for action before addressing a problem</li> <li>• Principle 2: A range of feasible policy options must be considered, including self-regulatory, co-regulatory and non-regulatory approaches, and their benefits and costs considered. <ul style="list-style-type: none"> <li>(a) The objective and all feasible options should be considered.</li> <li>(b) The “status quo” and effectiveness of existing regulation should be considered as an option for meeting the objectives.</li> </ul> </li> </ul>

<sup>4</sup> The Green Book – Appraisal and Evaluation in Central Government – HM Treasury: <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

			<ul style="list-style-type: none"> <li>(g) legislation consideration such as human rights and data protection.</li> <li>(h) information management and control.</li> <li>(i) environmental impact.</li> <li>(j) equality impact assessment.</li> </ul> <p>* RIA<sup>5</sup></p> <ul style="list-style-type: none"> <li>• It summarises the rationale for the proposal, the options considered and the expected costs and benefit. It also sets out the net costs to business, as required under One-in, Two-out.</li> <li>• The content varies depending on the stage at which it is produced but should generally set out: the problem being addressed, the rationale for intervention, policy objectives and the options considered.</li> <li>• It should be published at the 4 stages in the process: <ul style="list-style-type: none"> <li>(a) consultation</li> <li>(b) final proposal stage</li> <li>(c) enactment</li> <li>(d) review after enactment</li> </ul> </li> <li>• It should be uploaded to the government website at the same time as of the relevant legislation or consultation document is published.</li> </ul>	
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<sup>5</sup> Better Regulation Framework Manual – Practical Guidance for UK Government Official, July 2013 (which has been officially withdrawn on 17 January 2017).

		<ul style="list-style-type: none"><li>• Its analysis should be accessible to those without a technical background or in depth knowledge of the policy area.</li></ul> <p>One-in, Two-out:</p> <ul style="list-style-type: none"><li>• IN: the direct incremental economic cost to business of a measure exceeds the direct incremental economic benefit to business.</li><li>• OUT: the change is deregulatory and the direct incremental economic benefit to business exceeds the direct incremental economic cost to business.</li><li>• Zero Net Cost - a measure should be classified as Zero Net Cost if:</li><li>• Value of INs, OUTs are calculated using the Equivalent Annual Net Cost to Business (EANCB).<ul style="list-style-type: none"><li>○ EANCB of a measure = the annualized value of the present value of net costs to business, calculated with reference to the counterfactual (Estimating the counterfactual usually means comparing outcomes with a different group of people with similar characteristics who have not received the intervention).</li><li>○ The EANCB is calculated as part of the impact assessment</li></ul></li></ul>	
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		<ul style="list-style-type: none"><li>○ The Net Present Value (NPV) of direct costs to business is used to calculate the EANCB with the following calculation</li><li>○ The NPV is the primary criterion for deciding whether government action can be justified</li><li>● Regulatory Policy Committee (RPC)<ul style="list-style-type: none"><li>(a) An independent body, sponsored by the Department for Business, Innovation &amp; Skills.</li><li>(b) Established in 2009 and became an independent advisory Non-Departmental Public Body in 2012.</li><li>(c) First body in the UK set up to provide independent scrutiny of proposed regulatory measures put forward by government.</li><li>(d) "body which has a role in the processes of national government, but is not a government department or part of one, and which accordingly operates to a greater or lesser extent at arm's length from ministers".</li><li>(e) Composition/Structure.</li><li>(f) RPC Committee.</li></ul></li></ul>	
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			(g) Comprises eight independent experts from a range of backgrounds, including business, the voluntary sector and academia.	
2.	<p>Consult:</p> <ul style="list-style-type: none"> <li>• Open and inclusive consultation <ul style="list-style-type: none"> <li>(a) Start before proposals are developed.</li> <li>(b) Consult widely.</li> <li>(c) Use quantitative and qualitative techniques to gain a full understanding of different views.</li> <li>(d) Provide easy access to consultation paper, RIA, etc.</li> <li>(e) Explain rationale for positive and negative decisions before they are taken.</li> </ul> </li> <li>• RIA undertaken <ul style="list-style-type: none"> <li>(a) Publish the intended outcome of proposed regulation.</li> <li>(b) Describe alternatives and the result of consultation.</li> </ul> </li> </ul>	<p>Consultation:</p> <ul style="list-style-type: none"> <li>• Consult such organization which is representative of interests substantially affected by the proposal.</li> <li>• Such other person as the Minister considers appropriate.</li> <li>• Further consultation is required if the Minister considers appropriate to change the proposal.</li> <li>• Proposal that have more widespread effects should have consultation earlier and on a wide range of options and alternative.</li> </ul>	<ul style="list-style-type: none"> <li>• Principle 7: Consulting effectively with affected key stakeholders at all stages of the regulatory cycle. <ul style="list-style-type: none"> <li>(a) Public consultation is an important part of any regulatory development process.</li> <li>(b) Consultation should occur when the options for regulatory action are being considered and a draft RIA has been produced.</li> <li>(c) Consultation can: <ul style="list-style-type: none"> <li>○ help regulators assessing competing interests;</li> <li>○ provide a check on the regulator’s assessment of costs and benefits, and whether/how the proposed option will work in practice so as to reduce the risk of unintended consequence.</li> <li>○ identify interaction between different types of regulations</li> </ul> </li> <li>(d) Possibly enhancing voluntary compliance through greater understanding and acceptance.</li> </ul> </li> <li>• Principle 3: Adopting the option that generates the greatest net benefit for the community <ul style="list-style-type: none"> <li>(a) The requires rigorous Regulatory Impact Statement (“RIS”) of all the feasible policy options available</li> </ul> </li> </ul>	

	<p>(c) Analyse potential costs and benefits to all stakeholder groups.</p> <p>(d) Prioritise preferred courses of action and detail how they will be implemented, monitored and reviewed.</p>		<p>(b) RIA</p> <ul style="list-style-type: none"> <li>○ The purpose of a draft RIA for consultation is to canvass the regulatory options under consideration, in order to determine the relative costs and benefits of those options.</li> <li>○ The purpose of a final RIA for decision makers is to draw conclusion on whether a regulation is necessary, and if so, on what the most efficient and effective regulatory approach might be.</li> <li>○ A number of approaches exists as part of the RIA: <ul style="list-style-type: none"> <li>✓ Risk analysis</li> <li>✓ Cost-benefit analysis</li> <li>✓ Measuring business compliance costs</li> <li>✓ Assessing effects on competition</li> <li>✓ RIS contents should include: <ul style="list-style-type: none"> <li>▪ Statement of the problem</li> <li>▪ Objectives</li> <li>▪ Statement of options</li> <li>▪ Impact analysis</li> <li>▪ Consultation</li> <li>▪ Evaluation and conclusion</li> <li>▪ Implementation and review</li> </ul> </li> </ul> </li> </ul> <p>• Principle 4: In accordance with the Competition Principles Agreement, legislation should not restrict competition unless it can be demonstrated that</p> <ul style="list-style-type: none"> <li>(a) The benefits of the restriction to the community as a whole outweigh the costs; and</li> <li>(b) The objective of the regulation can only be achieved by restricting competition</li> </ul>
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				<ul style="list-style-type: none"> <li>• Principle 8: Government action should be effective and proportional to the issue being addressed. <ul style="list-style-type: none"> <li>(a) Effectiveness should be judged solely in terms of meeting the specified objective. Consideration should be given to the effectiveness of implementation and administration and an assessment of likely compliance rates should be made.</li> <li>(b) Proportionality involves ensuring that government action does not overreach or extend beyond addressing a specific problem or achieving the identified objective. The principle of proportionality applies equally to the implementation or regulation, including the development of framework for ensuring compliance.</li> </ul> </li> </ul>
			<p>Parliamentary procedure:</p> <ul style="list-style-type: none"> <li>• After consultation, the Minister must lay before the Parliament a draft order and an explanatory document with specific details.</li> <li>• The explanatory document must recommend which parliamentary procedure should apply: <ul style="list-style-type: none"> <li>(a) negative resolution procedure</li> <li>(b) affirmative resolution procedure</li> <li>(c) super-affirmative resolution procedure</li> </ul> </li> </ul>	

	<p>3. Implement:</p> <ul style="list-style-type: none"> <li>• Clear, transparent and accessible rules and regulations <ul style="list-style-type: none"> <li>(a) Use simple and unambiguous language.</li> <li>(b) Apply rules openly and consistently.</li> <li>(c) Issue guidance together with regulation.</li> <li>(d) Make guidance readily available.</li> </ul> </li> <li>• Proportionate and effective enforcement <ul style="list-style-type: none"> <li>(a) Ensure enforcement to achieve desired outcomes.</li> <li>(b) Encourage compliance, rather than merely penalizing offenders.</li> <li>(c) Target limited resources on areas of greater risk.</li> </ul> </li> </ul>	<p>Implementation:</p> <ul style="list-style-type: none"> <li>• Performance is tracked and measured, and data captured for later analysis. This involves: <ul style="list-style-type: none"> <li>(a) the systematic collection of data relating to the financial management and outcomes of the policy, program or project during implementation.</li> <li>(b) tracking all categories of benefit.</li> <li>(c) a monitoring system.</li> <li>(d) regular financial reporting.</li> <li>(e) benefits realization management.</li> <li>(f) contract management.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Principle 5: Providing effective guidance to relevant regulators and regulated parties in order to ensure that the policy intent and expected compliance requirements of the regulation are clear <ul style="list-style-type: none"> <li>(a) Good regulation should attempt to standardize the exercise of bureaucratic discretion, so as to reduce discrepancies between government regulators, reduce uncertainty and lower compliance costs.</li> <li>(b) Regulatory instrument should be drafted in plain language to improve clarity and simplicity, reduce uncertainty and enable the public to understand better the implication of regulatory measure.</li> </ul> </li> </ul>
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	<p>4. Review:</p> <ul style="list-style-type: none"> <li>• Streamlined processes <ul style="list-style-type: none"> <li>(a) Review processing time and carry out process audits to identify inefficiencies.</li> <li>(b) Streamline process.</li> <li>(c) Review internal and external guidelines periodically.</li> <li>(d) Ensure performance pledges regularly reviewed for continuous improvement.</li> </ul> </li> <li>• Timetabled reviews <ul style="list-style-type: none"> <li>(a) Schedule periodic reviews of regulation.</li> </ul> </li> </ul>	<p>Evaluation:<sup>6</sup></p> <ul style="list-style-type: none"> <li>• It examines the outturn of a proposal against what was expected, and is designed to ensure that the lessons learned are fed back into the decision-making process. <ul style="list-style-type: none"> <li>(a) The result should be summarized and led to recommendations for the future.</li> <li>(b) The results and recommendation should be fed into future decision making.</li> <li>(c) Reports and research should be placed in the public domain unless there are good reason otherwise.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Principle 6: Ensuring that regulation remains relevant and effective over time <ul style="list-style-type: none"> <li>(a) All regulation should be reviewed annually with a view to encourage competition and efficiency, streamlining the regulatory environment, and reducing the regulatory burden on business arising from the stock of regulation.</li> <li>(b) Consideration should be given to insert sunset provision or review requirement in the regulation.</li> </ul> </li> <li>• Principle 8: Government action should be effective and proportional to the issue being addressed. <ul style="list-style-type: none"> <li>(a) The principle of proportionality applies equally to the implementation or regulation, including the development of framework for ensuring compliance.</li> </ul> </li> </ul>
<p>Consequence for Non-compliance</p>	<ul style="list-style-type: none"> <li>• Non-binding but could lead to loss of competitive edge, divided society and/or judicial review.</li> </ul>	<ul style="list-style-type: none"> <li>• Breach of the binding Legislative and Regulatory Reform Act would lead to nullification of the regulation enacted.</li> <li>• Breach of the non-binding Better Regulation Guidance may lead to election loss.</li> </ul>	<ul style="list-style-type: none"> <li>• Breach of the non-binding Better Regulation Guidance may lead to election loss.</li> </ul>

<sup>6</sup> Ibid 3