



Consultation Session for the Proposed Integration of Competition Impact Assessment (CIA) into Regulatory Impact Analysis (RIA)

13 June 2023

Unified Public Consultation Portal

► Presented By :
Malaysia Competition Commission (MyCC)

► Presented to :
Regulators

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Agenda

PART I	Background, Objectives and Overview
PART II	Competition Impact Assessment (CIA) Framework
PART III	Competition Impact Assessment (CIA) Checklist
PART IV	Competition Impact Assessment (CIA) Guideline

Part I

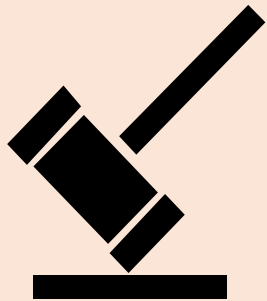
Background, Objectives and Overview

Background



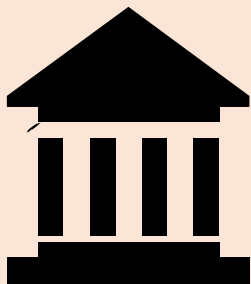
Competition Impact Assessment (“**CIA**”) is an existing component under the Regulatory Impact Analysis (“**RIA**”) framework as provided under the National Policy on Good Regulatory Practice (“**NPGRP**”). (see page 1 and 11 of NPGRP).

The integration of CIA into RIA is pertinent in the rule making process as it ensures that the regulations issued comply with **competition law and in line with Good Regulatory Practice**.



There has been a total of **79 policy advice issued by MyCC between 2011 to 2022**. It covers among others prohibition on anti-competitive practices as well as abusive conduct stemming from dominant position. The policy notes are issued typically because the regulators need to undergo the RIA process.

However, CIA has **not been clearly enforced and implemented due to the lack of mechanism and/or information on CIA**.



Malaysia Competition Commission (MyCC) is the regulator that oversees the CIA for proposed regulations in Malaysia that may affect competition. (see page 11 of NPGRP)

They assess the impact of the regulation on market competition in both short and long terms, and may propose recommendations to policymakers on promoting competition. Their involvement ensures regulatory measures align with competition law principles.

Objectives

OBJECTIVES OF THE CONSULTATION SESSION

In line with the National Policy on Good Regulatory Practice (NPGRP) which requires consultation as part of Good Regulatory Practice, MyCC intends to conduct Consultation Session with the stakeholders in order to:

- ✓ To **inform the stakeholders** and assist them in understanding the framework of CIA; and
- ✓ To **obtain feedback and input** from stakeholders to better understand the needs, concerns, and perspectives of the regulators

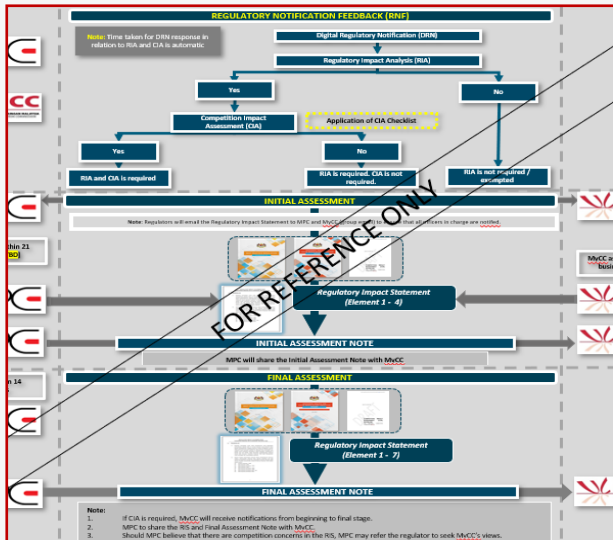


OUTPUT OF THE CONSULTATION SESSION

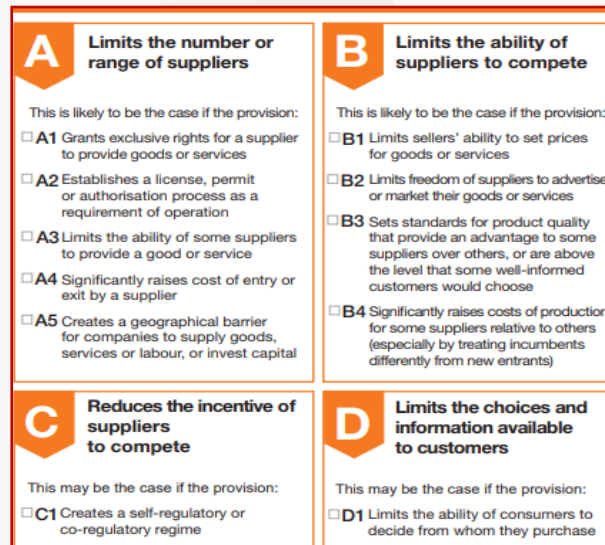
The feedback received during the Consultation Session will be evaluated to enhance the draft CIA framework.

CIA Integration into RIA

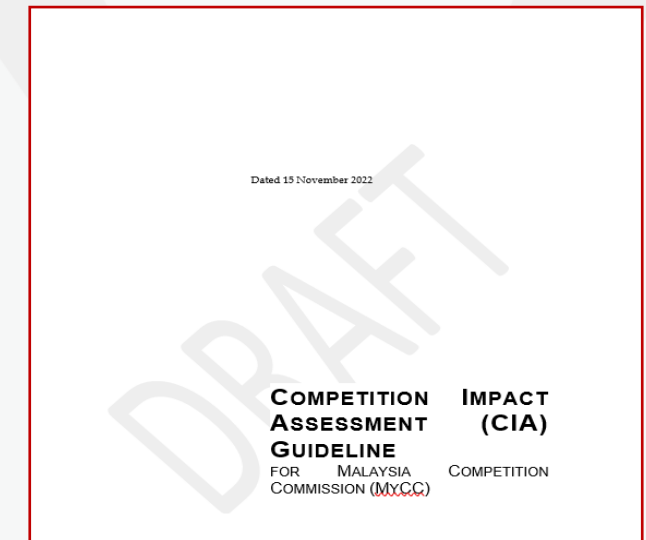
MyCC has developed a comprehensive toolkit to support the integration of CIA into RIA. The toolkit includes three main components:



CIA Framework



CIA Checklist for the initial screening process

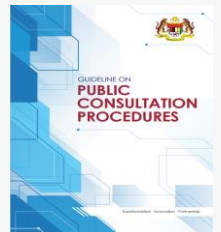
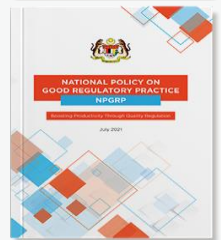
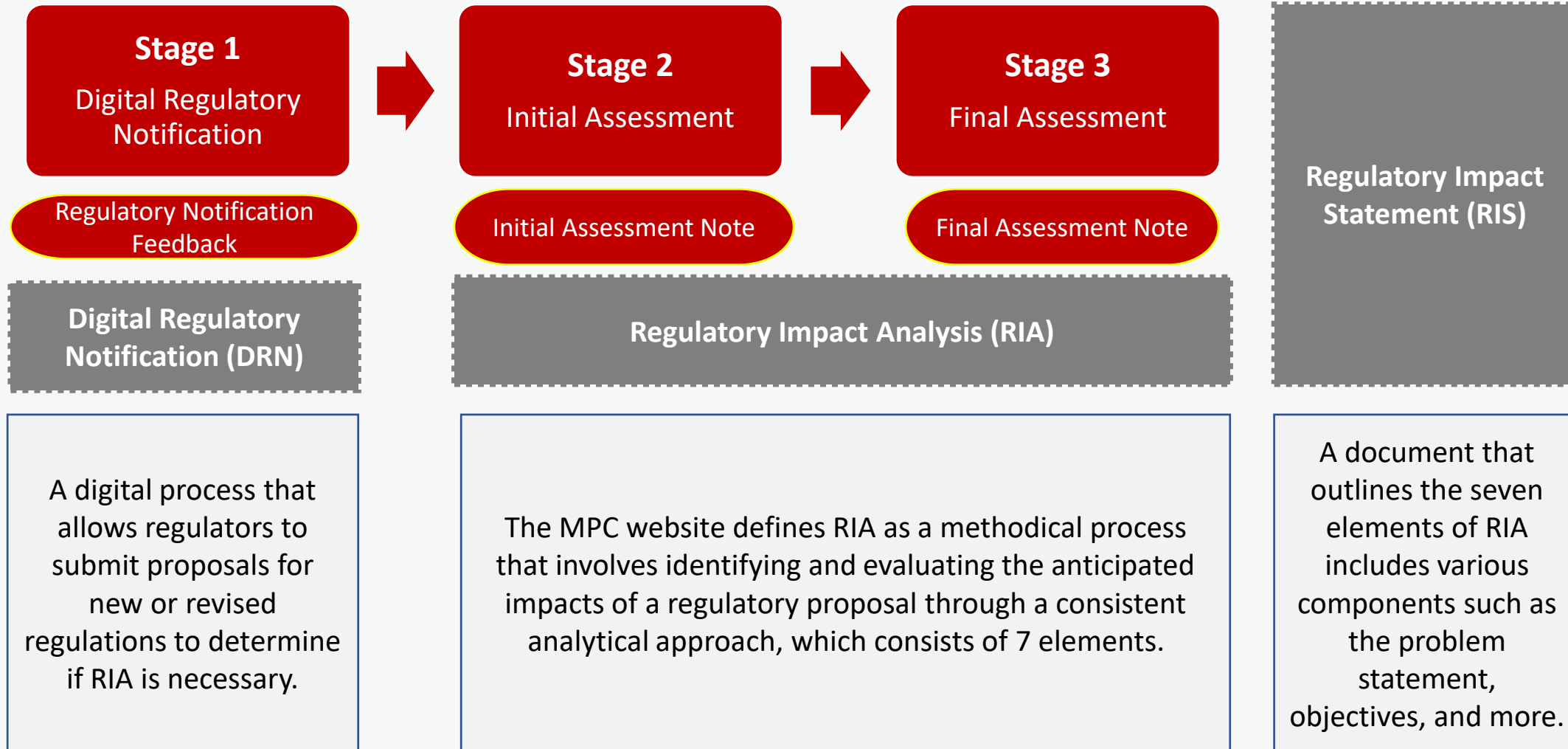


CIA Guideline to assist regulators in preparing for the CIA

Part II

Competition Impact Assessment (CIA) Framework

Overall RIA Framework



Current RIA process

STAGE 1 - DIGITAL REGULATORY NOTIFICATION (DRN)

Regulator notifies MPC using DRN system



STAGE 2 - INITIAL ASSESSMENT

Regulator submits RIS that consists of first 4 elements

MPC assesses the first 4 Elements then provide and submit initial assessment note together with cover letter



STAGE 3 - FINAL ASSESSMENT

Regulator provides all 7 Elements and submit to MPC

MPC assesses the adequacy of all 7 Elements and provide final assessment together with cover letter

Proposed Integration of CIA into RIA

STAGE 1 - DIGITAL REGULATORY NOTIFICATION (DRN)

Regulator notifies MPC and **MyCC** using DRN system. The system will assess whether RIA is required and if so, will assess whether CIA is required (using the CIA Checklist).



STAGE 2 - INITIAL ASSESSMENT

Regulator submits RIS that consists of first 4 elements. If the regulator is required to undertake CIA, the regulator should refer to the CIA Guideline for Element 3 and 4 of RIA to ensure that competition impact information is provided.
MPC assesses the first 4 Elements and **MyCC assesses Element 3 and 4 only**. MPC will then provide and submit the Initial Assessment Note together with cover letter



STAGE 3 - FINAL ASSESSMENT

Regulator provides all 7 Elements and submit to MPC. In the submission to MPC, the regulator must state that they have considered and addressed the competition issues raised in the Initial Assessment Note.
MPC assesses the adequacy of all 7 Elements and provides the final assessment together with the cover letter

Stage 1: Digital Regulatory Notification

Stage 1: Digital Regulatory Notification

Name	<input type="text"/>
Designation	<input type="text"/>
Name of Ministry	<input type="text" value="Click to select"/>
Name of Agency	<input type="text" value="Click to select"/>
Division/Department	<input type="text"/>
Phone	<input type="text"/>
Email	<input type="text"/>

PROPOSAL

Title of the Proposal	<input type="text"/>
Proposal Objective	<div><p>Please provide a brief outline of the proposal. This could include the following information:</p><ul style="list-style-type: none">• The problem that the regulation is attempting to solve, and the government's objectives• Any preliminary options that are being considered.<div><div></div><div></div></div></div>
Regulatory Option	<input type="text" value="Click to select"/>
Relevant Industry	<input type="text" value="Click to select"/>

DECLARATION

I hereby declare that the details furnished in the Form are true and accurate to the best of my knowledge and belief. I understand that the information provided by me in the Form shall be used for the purposes of determining as to whether a RIA is required for the Proposal and as such, I undertake to inform MPC of any changes therein immediately. I am responsible for the information that I have submitted and I am aware that I may be held liable in case any of the information that is found to be false, untrue, or misleading. Lastly, I also agree to hold harmless and indemnify and keep indemnified Malaysia Productivity Corporation based on the information that I have submitted.

By pressing the "Submit" button below, I hereby acknowledge that I have completely read, understood, and agree to be bound by this Declaration Form.

SUBMIT

Front page
Information of PIC, title and details of proposal
and statement of truth

Stage 1: Digital Regulatory Notification

WHICH CATEGORY IS SUITABLE TO DESCRIBE YOUR PROPOSAL? (PLEASE CHOOSE ONE)

☐ National security and sovereignty

JUSTIFICATION

☐ Criminal Law, such as the Penal Code

JUSTIFICATION

☐ Administrative circulars that are intended for public service administration

JUSTIFICATION

☐ Exceptional circumstances which deal with urgent matters and require immediate action.
Example - Pandemic outbreak that occurs which requires immediate passing of legislation.

JUSTIFICATION

☐ Government/Public Policy (Policy/Blueprint/Vision) that act as strategic planning in long term example Shared Prosperity Vision 2030

JUSTIFICATION

☐ None of the Above

NEXT

Exemption questions

Should the proposal fall under these subject matters, it will be exempted from conducting RIA

Stage 1: Digital Regulatory Notification

PLEASE CHOOSE THE MOST RELEVANT IMPACT OF YOUR PROPOSAL

- ☐ create barriers for businesses to enter or exit an industry?
- ☐ deter foreign investors to enter the local market or local investors to enter the foreign market?
- ☐ cause trade barriers? Including the impact on trade export or import?
- ☐ impact on international trade?
- ☐ impact on employment?
- ☐ impact environment? Including deforestation and biodiversity?
- ☐ have risks of toxic clouds, fire and explosion?
- ☐ has possible impact of wastes? (e.g. Effluents and emissions)
- ☐ impact on public health?
- ☐ impact on education system?
- ☐ lead to resources depletion and affected the livelihood of nearby community economically?
- ☐ None of the above

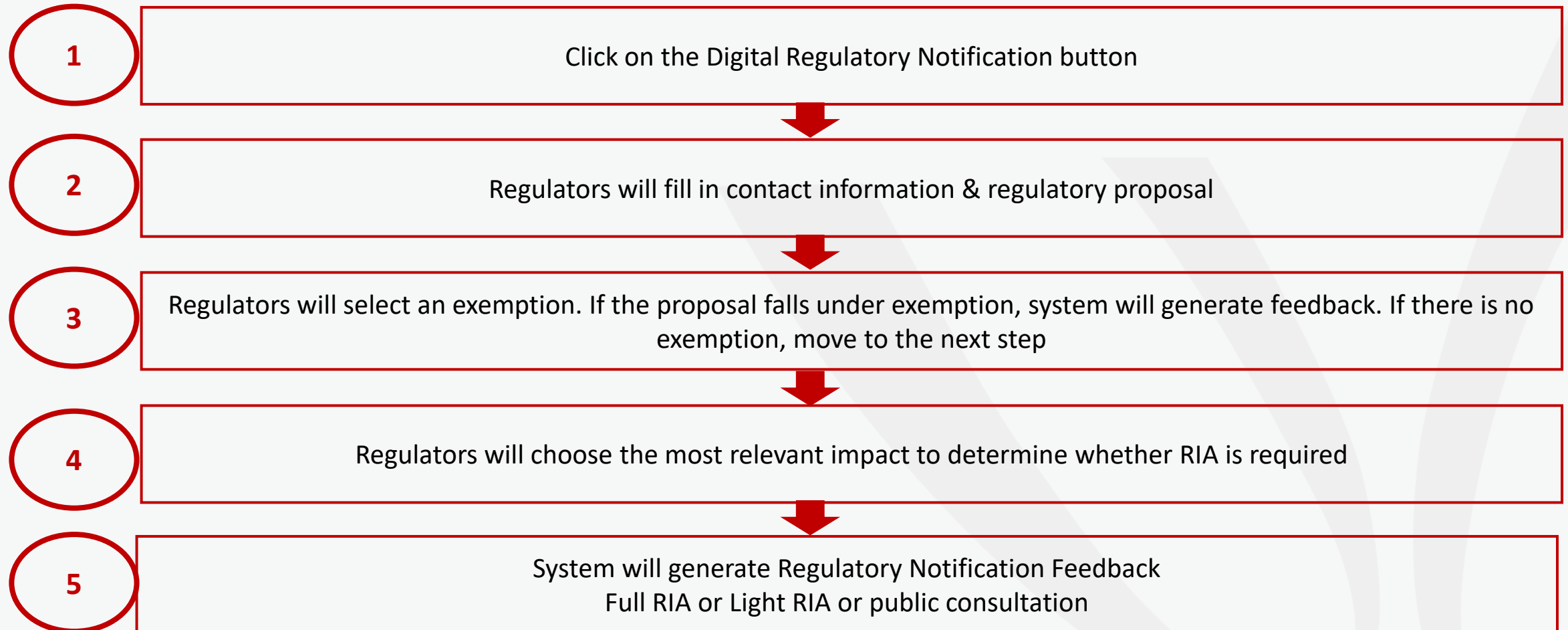
DOES YOUR PROPOSAL: (PLEASE CHOOSE ONE)

- ☐ impact license, permit or any authorisation process?
- ☐ impact on consumers?
- ☐ impact small businesses?
- ☐ impact firm equity requirement?
- ☐ impact on gender inequalities?
- ☐ impact on national heritage?
- ☐ impact on cultural practice?
- ☐ impact non-profit organisations?
- ☐ None of the above

List of impacts

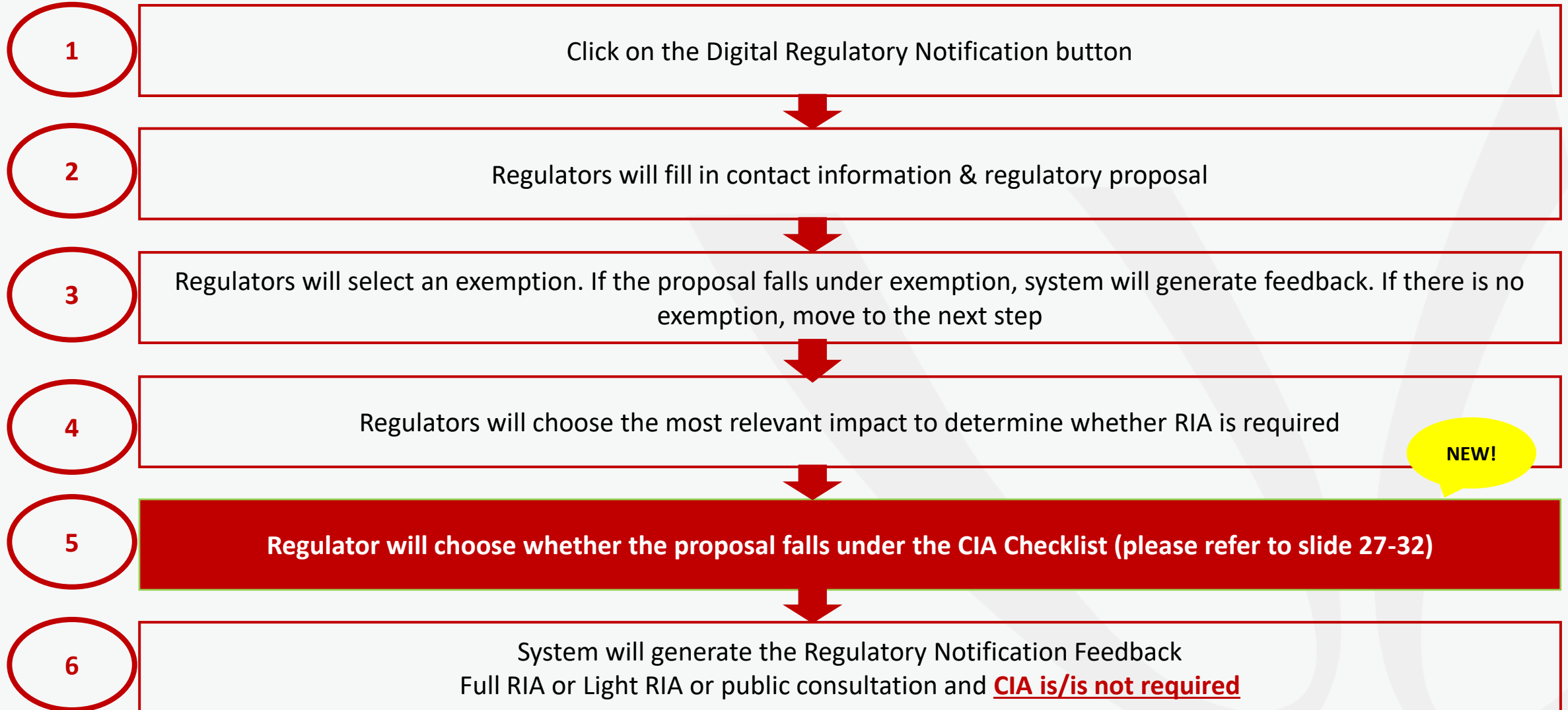
This page will determine whether a light/full RIA or only consultation is required depending if the impact chosen is major/minor

5 Steps in Digital Regulatory Notification

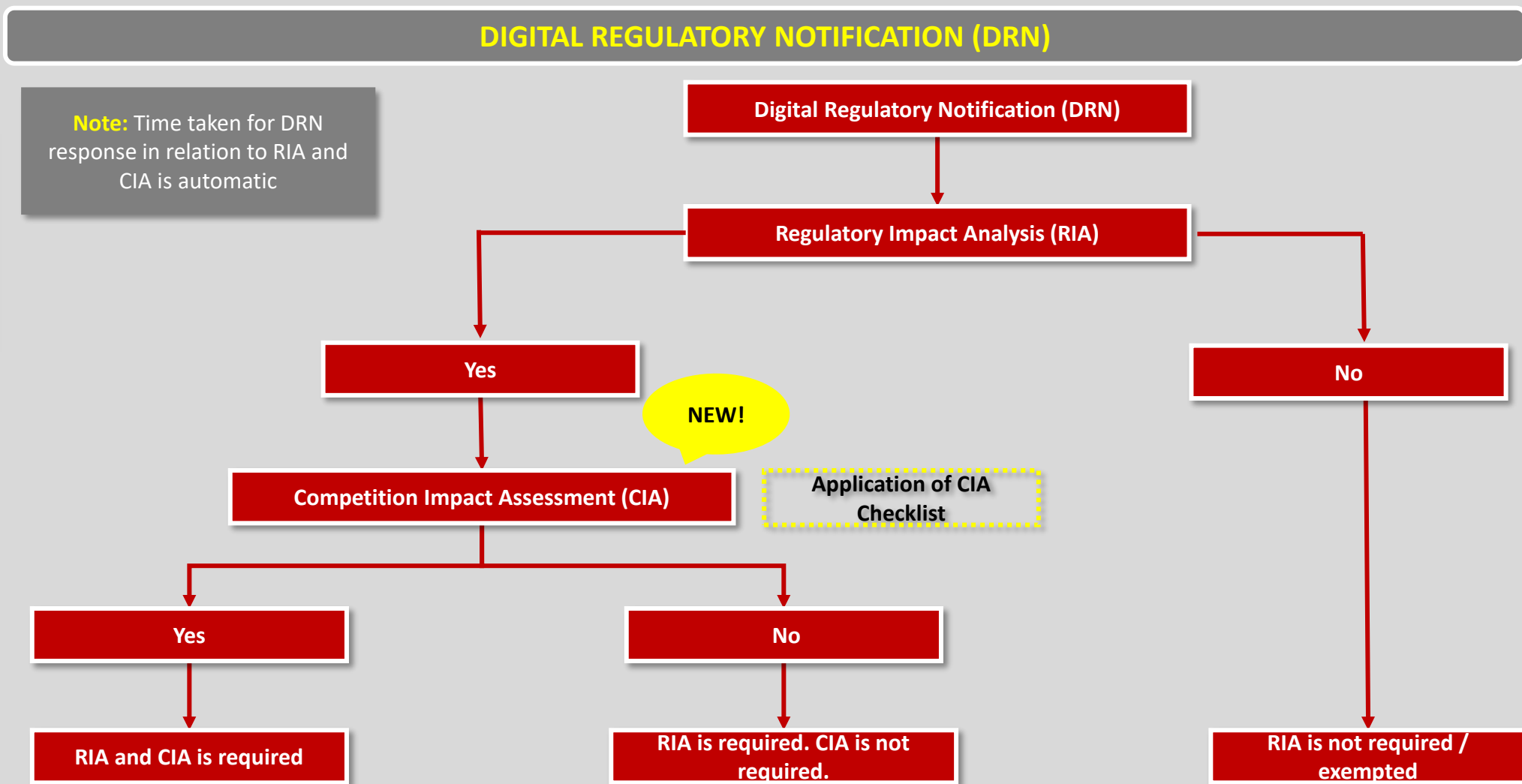


Source: Digital Regulatory Notification / Official Website of Malaysia Productivity Corporation (mpc.gov.my)

6 Steps in Digital Regulatory Notification



Overall DRN Process



Stage 2: Initial Assessment

Stage 2: Initial Assessment

Regulator submits RIS that consists of first 4 elements



MPC assesses the first 4 elements then MPC will provide and submit Initial Assessment Note together with cover letter

First 4 elements of RIA

1

Problem Statement

2

Objectives

3

Options

4

Impact Analysis

Stage 2: Initial Assessment

Regulator submits RIS that consists of first 4 elements. **If the regulator is required to undertake CIA, the regulator should refer to CIA Guideline for Element 3 and 4 of RIA to ensure that competition impact information is provided.**

MPC assesses the first 4 elements and **MyCC assesses Element 3 and 4 only**. MPC will then issue **Initial Assessment Note** together with cover letter incorporating both RIA and CIA assessment. **MyCC will be notified and forwarded with the Initial Assessment Note.**

First 4 elements of RIA

1

Problem Statement

2

Objectives

TO BE AMENDED

3

Options

4

Impact Analysis

Element 3: Options

RIA Requirements

Identify a range of alternative options including, as appropriate, non-regulatory, self-regulatory and co-regulatory options.

Indicate non-regulatory options.

Link options to the defined objective(s) (i.e. explain how it will achieve its objective).

If only one option (apart from the “do-nothing” option) is considered in the RIS, sound justification should be provided to explain this.

CIA Requirements

NEW!

Identify the purpose of regulation

Identify specific elements that generate competition concerns.

Add alternative option that may not pose competition concerns

Element 4: Impact Analysis

RIA Requirements

Identify the groups in the community likely to be affected by each option.

Specify the significant economic, social and environmental impacts on them.

Analyze impacts of the do nothing option as a baseline.

Assess all options supported by evidence using status quo as baseline

Indicate if option has long-term impacts.

Assess the impact of each option on the business/industry.

Quantify other significant costs and benefits to an appropriate extent

Analyze the extent to which each option would reduce the relevant risk

Indicate whether the option is sufficient to meet the defined objective(s).

Document any relevant international standards.

Assess if the regulation maintains or restricts on competition.

CIA Requirements

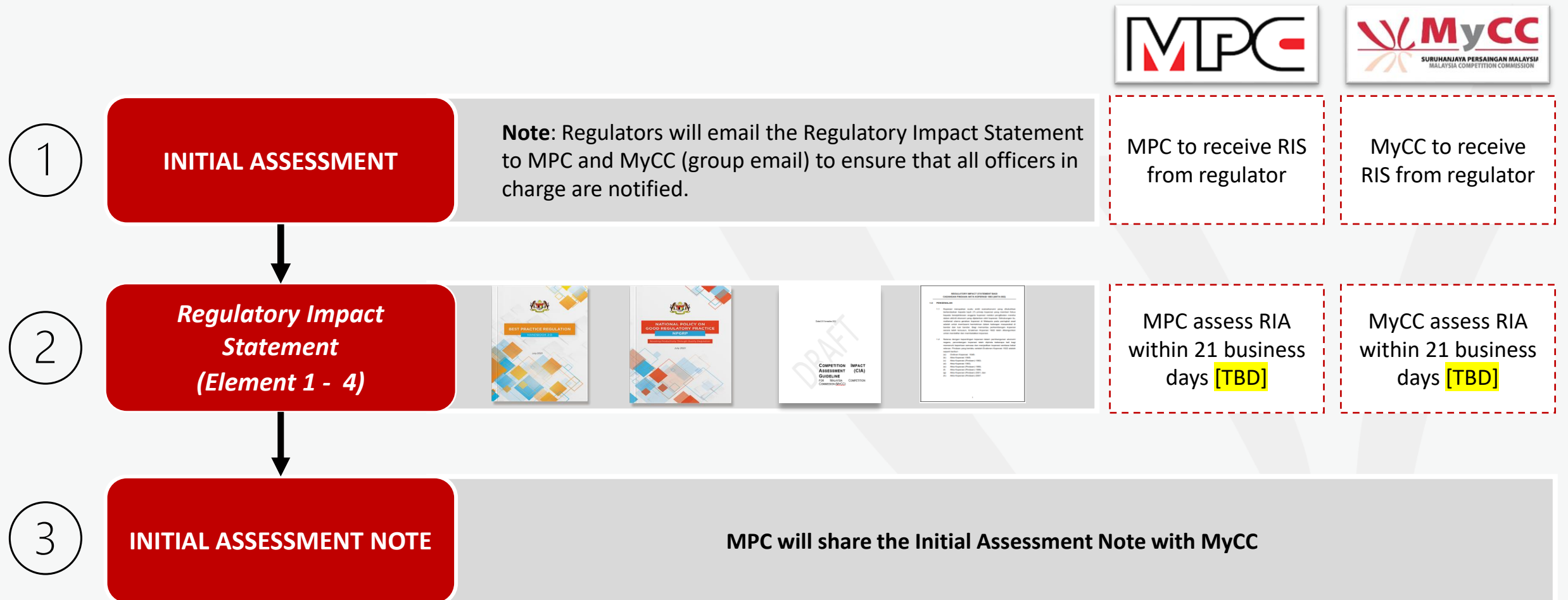
NEW!

Identify the regulatory option and provide alternative option that may not pose competition concerns

Justify that the benefits outweigh the costs of the regulatory option that may pose competition concerns

Identify the consequences of opting for the regulatory option that may pose competition concerns

Overall Initial Assessment Process



Stage 3: Final Assessment

Stage 3: Final Assessment

Regulator provides all 7 elements and submit to MPC

MPC assesses the adequacy of all 7 elements and provide final assessment together with cover letter



Source: <https://grp.miti.gov.my/index.php/pages/view/2?mid=654>

Stage 3: Final Assessment

No change on the final assessment process, but...

When submitting the final RIS, the regulator must acknowledge that it had **considered the advice by MyCC** in the Initial Assessment in its conclusion and recommendation and include a disclaimer that it **will not hold MyCC liable** for its decision.

I have read the Regulatory Impact Statement and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits, and impact of the policy, (b) that the benefits justify the costs, and (c) we have considered the opinion of MyCC.

Signature

Name:

Designation:

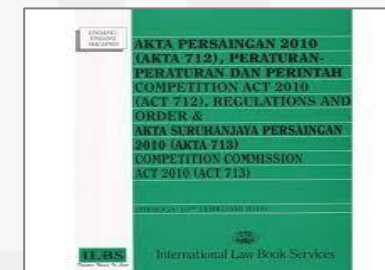
Date:

The acknowledgement for consideration of the MyCC advice and disclaimer for MyCC liability should be included at the **RIS Sign Off**. Hence, item 5.4 of the Best Practice Regulation Handbook 2.0 may be required to be amended to reflect the same.

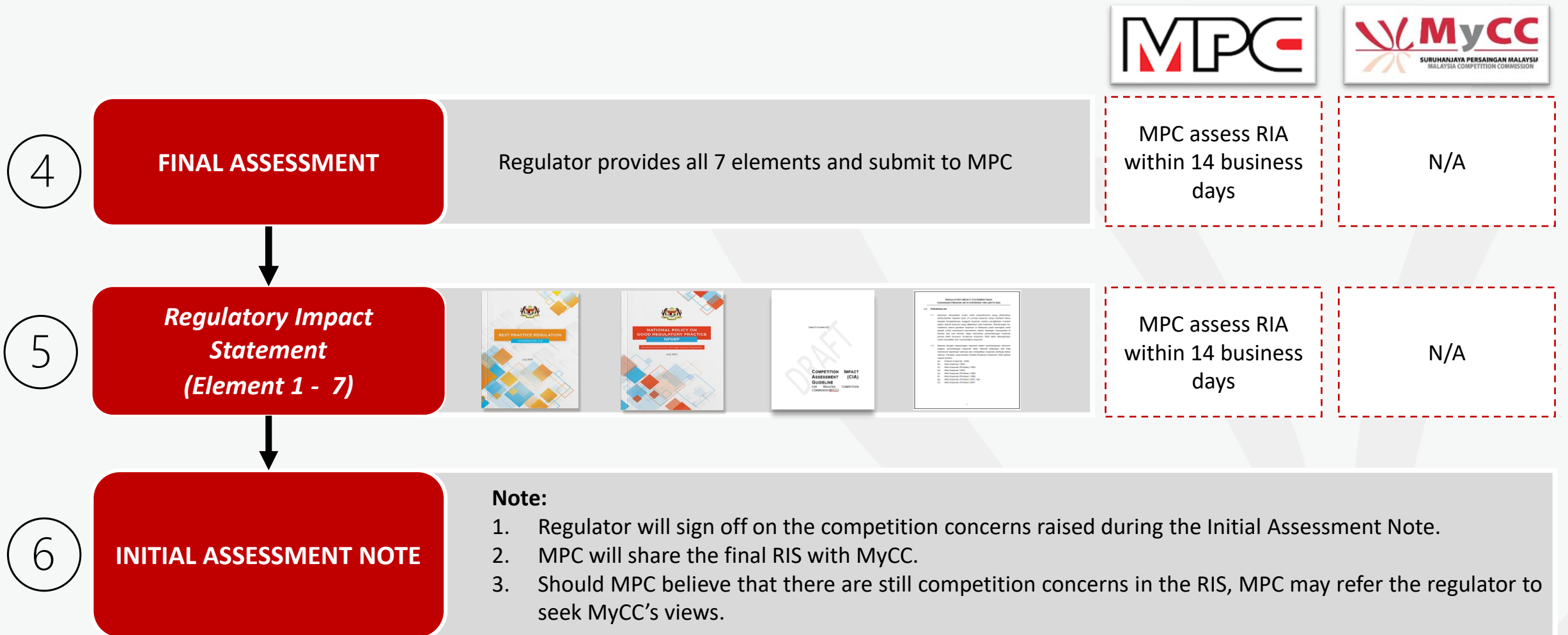
5.4 RIS Process Sign-Off

RIS must be certified by the Secretary-General of a Ministry or the Director General of an Agency or the Chief Executive of an Organisation prior to its submission to MPC for final assessment.

When CIA Checklist is triggered in the DRN system, **MPC will also share the final RIS to MyCC**. In the event that the recommendation in the RIS by the regulator has not addressed the competition concerns, MyCC may take action under **Competition Act 2010 (Act 712) and Competition Commission Act 2010 (Act 713)** upon receiving complaints.



Overall Final Assessment Process



Part III

Competition Impact Assessment (CIA) Checklist

CIA Checklist is a set of **four (4) main questions** each with **sub-questions** to assist regulators in identifying potential competition issues early in the policy development process. In the event that the CIA Checklist is triggered, further investigation of competitive restrictions would be required.

**Q1: Limits the
number or
range of
suppliers**

**Q2: Limits the
ability of
suppliers to
compete**

**Q3: Reduces
the incentive
of suppliers to
compete**

**Q4: Limits the
choices and
information
available to
customers**

Q1: Limits the number or range of suppliers

Award exclusive rights to supply

Purchase, franchise or license from a single supplier

Place a fixed limit on the number of suppliers

Licensing scheme that controls quality

Raise the costs of new/current suppliers

Q2: Limits the ability of suppliers to compete

Influence the price a supplier may charge

Substantially influence the characteristics of the products

Limit the sales channels a supplier can use

Sharing of information

Restrict the ability to advertise their products

Restriction on production processes

Q3: Reduces the incentive of suppliers to compete

Incentivize suppliers to coordinate activities over which they would ordinarily compete

Q4: Limits the choices and information available to customers

Limits the ability of consumers to decide from whom they purchase

Change the information available to consumers but not improve their ability to make informed decisions

Increase the cost of changing supplier

EXAMPLE: The CIA Checklist questions below will appear after the RIA impacts questions:

4 MAIN Q:

DOES YOUR PROPOSAL: (PLEASE CHOOSE ONE)

- ☐ Limits the number or range of suppliers?
- ☐ Limits the ability of suppliers to compete?
- ☐ Reduces the incentive of suppliers to compete?
- ☐ Limits the choices and information available to customers?
- ☐ None of the above

SUB-Q:

PLEASE CHOOSE THE MOST RELEVANT IMPACT OF YOUR PROPOSAL

- ✓ If directly limit, will it...
 - ☐ Award exclusive rights to supply?
 - ☐ Purchase, franchise or license from a single supplier or a restricted group of suppliers?
 - ☐ Introduce licensing scheme that places a fixed limit on the number of suppliers?
 - ☐ Introduce licensing scheme that controls quality?
- ✓ If indirectly limit, will it...
 - ☐ Significantly raise the costs of current suppliers, causing them to leave market?
 - ☐ Significantly raise the costs of new suppliers relative to existing or current suppliers?

Part IV

Competition Impact Assessment (CIA) Guideline

WHAT IS CIA GUIDELINE?

- A detailed technical document on competition assessment which contains key questions to be considered when performing competition assessment/CIA.
- Includes requirements that need to be fulfilled by regulators when CIA Checklist is triggered, specifically for Element 3 and Element 4 of RIA.

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2. CIA Checklist

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1. Introduction
2. Steps to Identify Options

Chapter 4 Comparison of Options

1. Introduction
2. Background Concepts
3. Qualitative Analysis
4. Quantitative Analysis
5. Measuring costs and Benefits

Chapter 5 Recommendations

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3. Presenting the Recommendation
4. Drafting the New Regulation
5. Final Approval
6. Implementation

Chapter 6 Ex Post Evaluation

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CHAPTER 1

INTRODUCTION TO COMPETITION IMPACT ASSESSMENT

1. Executive Summary

- 1.1. Competition Impact Assessment ("CIA") is the process of examining the competition effects of laws and regulations to ensure that they are pro-competitive and this Guideline intends to show the regulators the methodology that can be adopted to examine the laws and regulations.
- 1.2. CIA is important to ensure that the laws and regulation do not bring unnecessary restraints to competition and helps to find alternatives that could still achieve the same objectives the regulators had intended to gain.
- 1.3. Regulators are required to conduct CIA when they receive notification from the Malaysia Productivity Corporation ("MPC") requiring a CIA in the Regulatory Impact Analysis ("RIA") during the submission of the Digital Regulatory Notification¹ ("DRN").
- 1.4. RIA is a process required under the National Policy on Good Regulatory Practice² ("NPGRP") launched in July 2021 pursuant to the General Circular No.1/2021. The objectives of the NPGRP are to among others promote an effective, efficient and accountable regulatory system and rule-making process that support efforts to realize the nation's economic development goals³.
- 1.5. Generally, RIA is a process of systematically analyzing the impacts of a new or proposed regulations. The essential characteristic of RIA is its informed and evidence-based decision-making for regulatory intervention through analysis of problems and options, stakeholder consultation, cost-benefit analysis, and implementation strategy. Below are the seven (7) elements of RIA⁴ that needs to be fulfilled by regulators:



¹ <http://inet-tmsolutions.com/eRIA/>

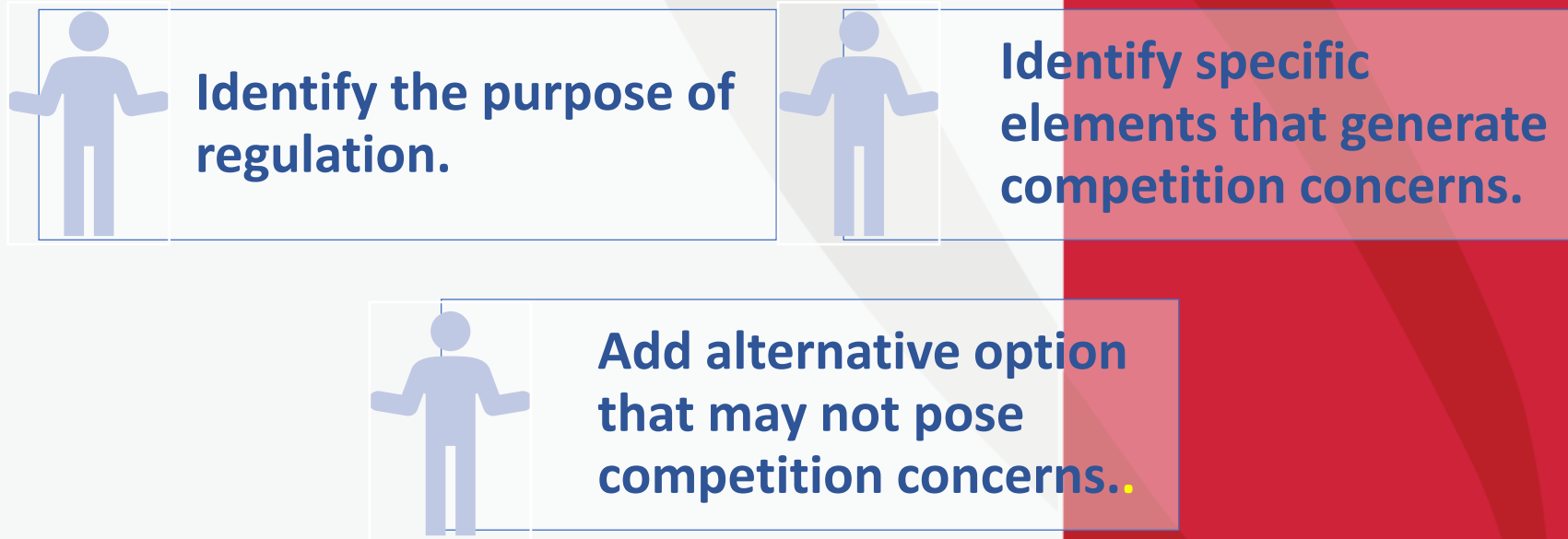
² https://www.mpc.gov.my/npgpr/newfiles/policy_BI.pdf

³ National Policy on Good Regulatory Practice, page 4

⁴ For more information regarding RIA, please refer to the Best Practice Regulation Handbook 2.0

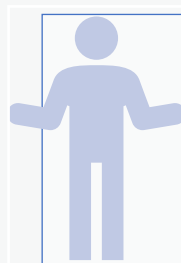
ADD NEW! ELEMENT 3 OF RIA: OPTIONS

CIA REQUIREMENTS

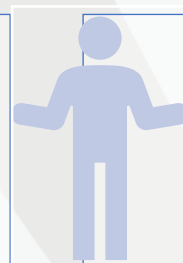


ADD NEW! ELEMENT 4 OF RIA: IMPACT OF ANALYSIS

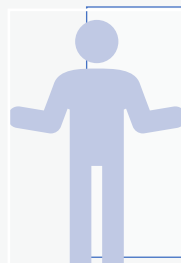
CIA REQUIREMENTS



Identify the regulatory option and provide alternative option that may not pose competition concerns.



Justify that the benefits outweigh the effects of the regulatory option that may pose competition concerns.




Identify the consequences of opting for the regulatory option that may pose competition concerns.

Thank You

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