

VIETNAM: A SUCCESSFUL CASE STUDY OF REGULATORY MANAGEMENT

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I. CONTEXT OF REGULATORY MANAGEMENT

After the unification of the country in 1975 until 1986, Vietnam adopted a central planning economy, in which, the need for administrative reform was not imminent. This situation changed completely after Vietnam started to transit from its central planning economy to a market economy by implementing the “Doi Moi” (Renovation) Policy, in which private sectors and public sectors are, in principle, equally protected by laws and private sectors need a more market-friendly business environment.

In 1990, the first Laws on Privately-owned Enterprises and Privately-Owned Companies were adopted but many restrictions upon private investors were imposed. In 1994, Vietnam’s Government adopted Resolution 38/CP dated 4 May 1994, recognizing the need to simplify administrative procedures in granting various licenses to citizens and private enterprises. In 1999, the Law on Enterprises (replacing the Laws on Privately-owned Enterprises and Privately-Owned Companies) was adopted, enlisting and removing hundreds of types of cumbersome business licenses or certificates, easing market entry barriers. In 2001, the first Master Plan for Administrative Reform was launched for the period of

2001-2010¹, covering 4 areas for reform, i.e. (1) administrative regulations; (2) administrative organs; (3) administrative personnel; (4) public finance. As for reform of administrative regulations, the Plan required to renovate the law-making and rule-making process; enhance the public participation in law-making and rule-making process; simplify the system of legal normative documents, making it public and accessible; enhance the rule of “laws” rather than the rule of “decrees or circulars”. In 2005, the new Law on Enterprises was adopted to further ease market entry barriers for private investors. In 2011, the second Master Plan for Administrative Reform was launched. In addition, in 2013, the new Constitution was passed to provide firm foundation for further economic and administrative reform.

Thanks to this transition, Vietnam’s economic growth rates are quite impressive throughout the past 3 decades. The Doi Moi era also witnessed a boom of business activities in Vietnam, especially the flourishing of the private sector. The number of privately-owned enterprises rose from 414 in 1991 to 15,276 in 1995, to 41,700 in 2000, to 200,000 in 2007, and to 330,000 in 2008.² In recent years, the number of private-owned enterprises even rose more sharply with about 100,000 newly registered enterprises annually.³ At present, Vietnam has about 700,000 privately-owned enterprises operating in its economy and more will join in the coming years. In addition, after 3 decades of Doi Moi era, Vietnam has

¹ Issued with the Prime Minister’s Decision No. 136/2001/QĐ-TTg dated 17 August 2001.

² Cuong Nguyen, *The Drafting of Vietnam’s Consumer Protection Law: An Analysis from Legal Transplantation Theories* (PhD Dissertation, University of Victoria, 2011) <<https://dspace.library.uvic.ca/handle/1828/3404>> at 67.

³ In 2017, there were 126,859 privately-owned enterprises newly registered with investment capital of about 50 billion USD. See, National Business Registration Portal <<https://dangkykinhdoanh.gov.vn/NewsandUpdates/tabid/91/ArticleID/3132/T%C3%8CNH-H%C3%8CNH-CHUNG-V%E1%BB%80-%C4%90%C4%82NG-K%C3%9D-DOANH-NGHI%E1%BB%86P-TH%C3%81NG-12-V%C3%80-N%C4%82M-2017.aspx>>

drawn 172.35 billion USD of foreign investment (of 24,748 projects which are currently effective with a registered investment capital of 318.72 billion USD). In 2017 alone, Vietnam received 35.88 billion USD from foreign investors⁴.

Despite global economic crisis, Vietnam's average annual economic growth rate of 2011-2015 is 5.9%.⁵ Vietnam's economic growth rate came back at a level of 6.81% in 2017, higher than any level of the past 10 years.⁶ For the first quarter of 2018, Vietnam's economic growth rate stands at 7.38%.⁷ The import and export turnover of Vietnam in 2017 is 400 billion USD, equal to about 1.8 times of its GDP showing how open its economy is.

However, Vietnam remains a country of low middle income with GDP per capital standing at about 2,400 USD (at official exchange rate), much lower than several of its ASEAN partners.⁸ Vietnam's recent successes are far from corresponding to its huge potentials in terms of hard-working and highly educated people, natural resources endowments and special geo-political position. Vietnamese enterprises are currently facing unprecedented level of competition in global and regional markets that good governance in public sectors can be an important supporting element. Vietnam is also in a high demand for capital from

⁴ Vietnam Finance, "Report on foreign investment of 2017" ("Báo cáo kết quả thu hút đầu tư nước ngoài năm 2017") <<http://vietnamfinance.vn/bao-cao-ket-qua-thu-hut-dau-tu-nuoc-ngoai-nam-2017-20171226150915957.htm>> dated 26 December 2017.

⁵ Economic growth rate of 2011 is 6.24%, that of 2012 is 5.25%. Economic growth rate of 2013 is 5.42%, that of 2014 and 2015 is 5.98% and 6.68% respectively <http://baochinhphu.vn/Uploaded/buianhtho/2016_03_24/BAO%20CAO%20KT-XH.doc>.

⁶ VietnamNet, "The year of 2017's economic growth rate" <<http://vietnamnet.vn/vn/kinh-doanh/dau-tu/tang-truong-kinh-te-2017-kien-tao-nen-ky-tich-420341.html>>

⁷ PetroTimes, "The first quarter's economic growth rate stands at a record" <<http://petrotimes.vn/gdp-quy-i-nam-2018-tang-truong-ky-luc-dat-738-503079.html>>

⁸ World Bank states that Vietnam's GDP of 2016 is 205.276 Billion USD (at official exchange rate) <<https://data.worldbank.org/country/vietnam>>

foreign investors as well from domestic investors to boost its economy. Therefore, speeding up reform to improve its economy and governance system is a consistent determination of our leaders and people. In addition, because a sound market economy and rule of law always goes hand in hand, it is fair to predict that improving the legal system, strengthening rule of law and simplifying administrative procedures to make a better business environment in Vietnam shall continue standing at a high priority in its reform and development agenda.

II. MEASURES AND STEPS TAKEN

1. RIA and stakeholder engagement

Regulatory impact assessment became mandatory for the development of all laws and decrees since 2009 when the Law on Promulgation of Legal Normative Documents (i.e. Law on Laws) of 2008 and its guiding Decree (Decree 24/2009/ND-CP dated 5 March 2009) took effect. As for drafting a Law, the regulatory impact analysis report has to focus on the following aspects: (1) *Policy problems to be solved*; (2) *Goals of proposed policy*; (3) *Alternatives to solve policy problems; cost/benefit analysis of each alternative; good or bad impacts of each alternative*; (4) *the best option to solve policy problems*. The draft of RIA report has to be published on the Government's website and the sponsor ministry's website for at least 30 days to solicit public comments.

The Law on Laws of 2008 and its guiding Decree also require the sponsor ministry of laws and decrees prepares the regulatory impact analysis report after 3 years of implementation of laws and decrees. This report has to focus on the following aspects: (1) *Actual cost/benefit and other impacts of the law or decree*; (2) *Observers' level of compliance*; (3) *Recommendations for amending, supplementing or repealing the law or decree*. The draft of this report has also to

be published on the Government's website and the sponsor ministry's website for at least 30 days to solicit public comments. The final report has to be sent to the Ministry of Justice to report to the Government.

The quality of regulatory impact analysis reports (during the period of 2009 to 2015) was a problem. Many officials working for ministries said that the application of regulatory impact analysis was a good idea but they were not well prepared for such changes due to lack of necessary skills. In addition, the shortage of financial resources for conducting the regulatory impact analysis was also widely noted by officials working for ministries.

This shortcoming was found during the process of reviewing the Law on Laws of 2008 in the period of 2013-2014. In 2015, the new Law on Laws was adopted. This new Law on Laws even is stricter for requiring that all legal normative documents issued by ministries, governments or even some by local government have to conduct certain versions of RIA before being adopted. In addition, this new Law on Laws separates the period of policy analysis from period of legal drafting. Impact assessments (including cost/benefit analysis) shall be conducted in an early stage of development of a law so that more resources are invested in the development of laws and stakeholder engagement is more comprehensively conducted (most draft legal documents shall be made public for at least 60 days for public comments). In accordance with the new Law on Laws, all draft legal documents relevant to business community shall be public for consultation with the public and specifically with the Vietnam's Chamber of Commerce and Industry (an umbrella association for all business sectors).

2. Simplification of administrative procedures

From 2007, with the Project 30 (PM's Decision 30/QD-TTg dated 10 January 2007), **the regulatory guillotine** was introduced into Vietnam's current regulatory management system. This Project set the key goals for 2007-2010 as follows:

- *Simplify at least 30% of administrative procedures and reduce administrative costs by at least 30%;*
- *Reduce the implementation gaps in the domestic regulatory system with international commitments (especially WTO);*
- *Setting up the first unified national database for administrative procedures.*
- *Improving Vietnam's competitiveness, boosting investment and increasing productivity.*

This Project conducted a comprehensive review of all administrative procedures. Accordingly, all administrative procedures including forms enclosed with administrative procedure dossiers had to be inventoried and reviewed to check their (1) necessity; (2) legality; and (3) user friendliness (3-question test) (public comments were welcomed). Based on this review, the competent authorities made proposals for simplification (for administrative procedures failing the 3-questions test). Reasonable administrative procedures were standardized and published through the National Database for Administrative Procedures. The review was conducted by going through 4 phases:

1. Inventory: All ministries and provincial local governments prepared lists of administrative procedures in their competence, published for public comments.

2. Self-review based on 3-question test.

3. Review by Special Task Force and the Advisory Council.

4. Recommendations.

The Project 30 brought about numerous positive results:

October 2009: *The National Database for administrative procedures was launched (with 5700 administrative procedures with 9000 regulating documents reviewed). All administrative procedures have been inventoried and made available to all interested parties via the Internet - <http://csdl.thutuchanhchinh.vn/>.*

About 11,000 sets *of administrative procedures at communal level and 700 sets at district level were standardized and simplified into 63 sets at communal level and 63 sets at district level. This makes administrative procedures more transparent and homogenous.*

Results of recommendations: *Government's Resolution 25/NQ-CP dated 2 June 2010 to simplify 258 administrative procedures (especially for taxes, customs, construction, real estate, etc.). Accordingly, 14 laws, 3 ordinances, 44 decrees, 8 Prime Minister's decisions, 67 circulars and 33 ministerial decisions to be amended.*

A cost saving of about 1.3 billion USD per year (Ref 123/BC-CP dated 23 September 2010).

To sustain the results of the Project 30, the Government adopted Decree 63/2010/ND-CP dated 8 June 2010 on control of administrative procedures (as amended by Decree 48/2013/ND-CP dated 14 May 2013). The Decree sets up the Agency for Administrative Procedure Control at the central level; offices for administrative procedure control in ministries and provincial offices for administrative procedure control. The Decree also requires (Art. 8) that (1) District

and Communal Local Governments do not have authority to issue administrative procedures; (2) An administrative procedure must have: (1) name; (2) order to proceed; (3) manner to proceed; (4) dossiers; (5) time limit for handling; (6) parties to proceed; (7) authorities; (8) outcomes. The Decree also requires the sponsor organs of draft laws, decrees or circulars to conduct impact analysis of administrative procedures stipulated in these laws, decrees or circulars. The impact analysis focuses on the following aspects: (1) the necessity of administrative procedures; (2) the reasonableness of administrative procedures; (3) legality of administrative procedures; and (4) compliance costs of administrative procedures.

Since the end of 2012 when the Agency for Administrative Procedure Control was transferred from the Government's Office to the Ministry of Justice, the burden of ensuring the quality of the regulatory system is further placed upon the shoulder of the Ministry of Justice. However, in 2017, this Agency was moved back to the Government's Office.

At present, the Ministry of Justice is responsible for checking the quality of draft laws, draft decree and draft of the Prime Minister's decisions in terms of their necessity, legality and enforceability. The Ministry of Justice is also responsible for checking the necessity, legality, reasonability, and compliance costs of administrative procedures in draft laws, draft decrees and draft of the Prime Minister's decisions. The Ministry of Justice is also responsible for checking the legality of circulars issued by other ministries and legal normative documents issued by provincial local governments.

The Ministry of Justice is also in charge of giving guidance to ministerial departments of legal affairs and provincial department of legal affairs regarding the

skills and capacity of formulating and drafting legal normative documents as well as administrative procedures.

In addition, on 6 February 2013, the Government of Vietnam issued Decree No. 16/2013/ND-CP on reviewing and systematizing legal normative documents. The review system is applied to find out and remove illegal provisions, conflicting or overlapping legal provisions to ensure the legality and coherence of legal normative documents. The systematization of legal normative document is conducted to improve the transparency and accessibility of legal normative documents. The review and systematization is firstly conducted for all legal normative documents issued before 31 December 2013. The Ministry of Justice's most recently disclosed report revealed that of all legal normative documents issued by the central government, there are 7,981 legal normative documents which are still in effect, 5,996 legal normative documents which already expire their effect and 1,313 legal normative documents which are in need of amendment or supplements.⁹

Regarding other “stock” tools, the current regulatory management system in Vietnam does not have “sunset provisions”.

3. Resolution 19

The Constitution of 2013 provides a new foundation for further reform in Vietnam, especially for expansion of freedom of enterprise. Article 14(2) of this Constitution requires that limits to human rights (including right to freedom of enterprise) are justified only on the basis of statutory provisions for “the necessary reasons of national defense, national security, social order and safety, social

⁹ <<http://www.moj.gov.vn/ct/tintuc/Pages/quan-ly-chi-dao-dieu-hanh.aspx?ItemID=5826>>

morality and community well-being”. In reality, proportionality test is usually conducted to determine the rationales for provisions on “business conditions” or business permits or administrative procedures relevant for business activities. The new Law on Enterprises of 2014 and the new Law on Investment of 2014 (as amended in 2016) follows this approach.

Within this new legal framework, the Resolution 19/NQ-CP dated 18 March 2014 on major tasks and measures to improve business environment and enhance national competitiveness capacity was first adopted by Vietnam’s Government. This Resolution 19 of 2014 set an ambitious but specific target: By the end of 2015, certain indicators of Vietnam’s business environment should stand at the average level of ASEAN-6 (for example, the time for business registration should be shortened to 6 days; the time for tax procedure should be shortened to 171 hours per year; the time to access to electricity should be shortened to 70 days, etc.).

On 12 March 2015, the second Resolution 19 was adopted by Vietnam’s Government. On 28 April 2016, the third Resolution 19 was adopted by Vietnam’s Government. The third Resolution 19 set targets for the year of 2020, several indicators of Vietnam’s business environment shall be comparable to ASEAN-4, even ASEAN-3 (such as indicator for business registration, construction permits¹⁰, access to electricity¹¹, registration of property¹², protection of investor, tax payment¹³, etc.). On 6 February 2017, the fourth Resolution 19 was adopted by Vietnam’s Government. This fourth Resolution 19 continued to request relevant

¹⁰ Less than 70 days.

¹¹ Less than 33 days.

¹² Less than 10 days.

¹³ Less than 110 hours per year.

ministries to adopt reform measures to shorten the time of handling administrative procedures by the end of 2017 such as procedures for tax payment¹⁴, construction permits¹⁵, access to water¹⁶, registration of property¹⁷, access to electricity¹⁸... The fifth Resolution 19 (of 2018) will be adopted soon.

III. RESULTS AND PROSPECTS

In 2016, as World Bank's Doing Business Index reported that Vietnam's index moved forward from the position of 91/189 to 82/190 (the best improvement among ASEAN countries for one year). This was also a best improvement compared to the past 10 years.

In 2017, as World Bank's Doing Business Index reported that Vietnam's index moved forward from the position of 82/190 (in 2016) to 68/190.

In 2012, Vietnam's Global Competitiveness Index (by World Economic Forum) stood at 75/144 (with the score at 4.1/7). In 2017, Vietnam's Global Competitiveness Index stood at 55/137 (with the score at 4.4/7). The indicator for institutions moved slightly from the position of 89/144 (with the score at 3.6/7) to 79/137 (with the score at 3.8/7).¹⁹

Recently, Vietnam's Government adopted Resolution 01 (dated 1 January 2018) explicitly stating that within 2018, about 50% of the current business

¹⁴ Less than 119 hours per year.

¹⁵ Less than 120 days.

¹⁶ From 14 days to less than 7 days.

¹⁷ From 30 days to less than 20 days.

¹⁸ Less than 35 days.

¹⁹ The World Economic Forum, *The Global Competitiveness Report 2012-2013* at 366; *The Global Competitiveness Report 2017-2018* at 308.

conditions or permits or administrative procedures (about 4,284 business conditions) shall be simplified or removed. This Resolution also states that Vietnam aims for standing within ASEAN-4 regarding indicators for competitiveness and business environment.

However, Vietnam's Global Competitiveness Index are still much lower than its top ASEAN partners. As a result, it is quite certain that pushing up reform for business environment, especially legal and administrative environment to make them more favorable to investors shall be a high priority in Vietnam's reform and development agenda for the coming years.