



Cutting Red Tape

Administrative Simplification in Viet Nam

SUPPORTING THE COMPETITIVENESS
OF THE VIETNAMESE ECONOMY



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Foreword

The OECD was invited by Nguyen Xuan Phuc, Minister and Chairman, Office of the Government of Viet Nam, to evaluate Viet Nam's programme on administrative simplification, Project 30. This evaluation is intended to help Viet Nam prepare a ten-year programme for regulatory reform. The results of this evaluation were discussed in Paris at a meeting of the OECD Regulatory Policy Committee, 28-29 October 2010, and at an ASEAN meeting in Hanoi on 25-26 November 2010. The ASEAN meeting supported policy dialogue and an exchange of good practice.

The support of Nguyen Xuan Phuc, Minister and Chairman, Office of the Government of Viet Nam, is gratefully appreciated. The OECD enjoyed close co-operation with Ngo Hai Phan, Standing Deputy Director-General of the Prime Minister's Special Task Force on administrative procedure reform. Many officials and advisers provided background information, participated in interviews and meetings, and checked the factual evidence. Assistance from the Vietnamese administrations was co-ordinated by Nguyen Viet Anh. The Ministry of Foreign Affairs supported the review through the secondment of Nguyen Phuong Ly, an official of the Ministry.

To carry out the evaluation, Josef Konvitz, Head, Regulatory Policy Division, led a study mission, 30 August-3 September 2010. The team members were Daniel Trnka and Christiane Arndt, from the OECD Secretariat, and Charles-Henri Montin, a senior official in the French Ministry of Finance on secondment to OECD. This mission was an opportunity to consult actively with stakeholders in the international community, both in the private sector and in official missions and aid programmes, and discuss methods and results with Vietnamese officials in charge of Project 30. The OECD benefitted from discussions with officials from the United States, Australia, Canada, Japan, Korea, the European Commission, Germany, the UNDP, the ADB and the World Bank. The assistance of their delegations in Viet Nam is warmly appreciated.

The review of Viet Nam was made possible through voluntary contributions from USAID, Australia AusAID and the Government of Japan. The support and co-operation of these authorities is gratefully acknowledged.

The OECD is well-equipped to carry out this review of Viet Nam, one of several non-members which benefit from OECD peer reviews and thematic studies on regulatory policy. The OECD is a forum where governments come together to share and compare policy experiences, seek answers to common problems, and co-ordinate action. Through its network of 250 specialised committees and working groups, the OECD provides a setting where governments compare policy experiences, seek answers to common problems, identify good practice, and coordinate domestic and international policies. The Organisation is progressively reinforcing its role as a global hub for dialogue and decision-making on economic and social policy issues by providing a platform for a wide range of policy experiences and the possibility to influence the shaping of the global economic agenda.

The Regulatory Policy Committee, created in 2009, is the unique forum to exchange knowledge and best practices in the area of regulatory policy among 33 member states and observers from non-member countries. The RPC contributes comparative information on trends in regulatory management and policy to *Government at a Glance*, the OECD's window into governments and their capacity to deliver on social and economic policy objectives.

OECD reviews are based on objectives and working methods articulated in the 2005 OECD Guiding Principles for Regulatory Quality and Performance. The OECD Regulatory Policy Division, part of the OECD Directorate for Public Governance and Territorial Development, has been leading work on administrative simplification since 2002. This report is part of a series of OECD reviews of national administrative simplification programmes. It follows the reviews carried out for the Netherlands (2007), Portugal (2008), and Poland (forthcoming). Since 2008, OECD staff has been helping the Government of Mexico implement administrative simplification on the basis of OECD recommendations. The Viet Nam report is also linked to a set of thematic reports of national strategies for administrative simplification, assessing progress against objectives and in the context of broader policies for regulatory quality. The most recent report in this "Cutting Red Tape" series is *Why is Administrative Simplification So Complicated?* (2010). Thematic reviews complement country reviews of regulatory reform (completed for 24 OECD countries, as well as for Russia, Brazil and China, and under way for Indonesia). Reviews of 15 OECD countries in the European Union carried out in 2009-10 contain much information about administrative simplification, setting this topic into a wider context.

Acknowledgements. The report was prepared by Charles-Henri Montin under the direction of Josef Konvitz with contributions from Daniel Trnka and Christiane Arndt. The report was approved by the OECD Regulatory Policy Committee on 28-29 October 2010, and presented at the “ASEAN-OECD Meeting on Regulatory Reform” held on 25-26 November 2010. Deputy Secretary-General Mario Amano and Director, Public Governance and Territorial Development, Rolf Alter, participated in the ASEAN-OECD meeting. The report was prepared for publication by Jennifer Stein.

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Acronyms and abbreviations

ACAPR	Advisory Council for Administrative Procedure Reform
ADB	Asian Development Bank
ACTAL	Dutch Advisory Board on Administrative Burden
AP	Administrative Procedure
APCA	Administrative Procedure Control Agency
ASEAN	Association of Southeast Asian Nations
AusAID	Australian Agency for International Development
CIDA	Canadian International Development Agency
FDI	Foreign Direct Investment
GDP	Gross Domestic Product
HCMC	Ho Chi Minh City
ICT	Information and Communication Technology
IFC	International Finance Corporation
IO	Information obligation
IT	Information Technology
JRS	Judicial Reform Strategy
LND	Legal Normative Document
LoL	Law on Laws
LSDS	Legal System Development Strategy
MOF	Ministry of Finance
MOHA	Ministry of Home Affairs
MOJ	Ministry of Justice
MPI	Ministry of Planning and Investment
NA	National Assembly

NGO	Non-Government Organisation
OOG	Office of Viet Nam Government
OSS	One-stop Shop
PAR	Public Administration Reform
PCI	Provincial Competitiveness Index
PM	Prime Minister
PPP	Public Private Partnership
RIA	Regulatory Impact Analysis
SEDP	Socio Economic Development Plan
SME	Small and Medium Enterprise
SOE	State-Owned Enterprise
STF	Prime Minister's Administrative Procedure Reform Special Task Force
UNDP	United Nations Development Program
USAID	United States Agency for International Development
VAT	Value Added Tax
VCCI	Viet Nam Chamber of Commerce and Industry
VCP	Vietnamese Communist Party
VNCI	Viet Nam National Competitiveness Initiative
VND	Vietnamese Dong (currency)
WB	World Bank
WTO	World Trade Organization

Executive summary

Administrative simplification in the Socialist Republic of Viet Nam is currently reaching a defining moment. As in many countries, administrative simplification has already done much to improve public governance and regulatory quality and stimulated competitiveness and equitable growth. It has received much attention and significant resources since 2007, principally by way of the Master Plan to Simplify Administrative Procedures in the fields of the State Governance (“Project 30”) and other initiatives. Project 30 has, between 2007 and 2010, delivered a comprehensive inventory of administrative procedures (APs) published in an online database, a review of the necessity, legality and user friendliness of the APs and two sets of simplification measures.

The reform has reached a crucial stage, where the first results are beginning to materialise and a new agency is being established to guarantee the sustainability of the changes. But it is also a time where the strategy could be questioned, with the party congress in January 2011 potentially revising high-level strategic decisions and orientations. To take stock and plan future moves, the Government of Viet Nam invited OECD to evaluate Project 30 and suggest further steps including options for a ten-year programme for regulatory reform on the basis of international best practice. Improving the regulatory framework is expected to foster a better environment for foreign direct investment, including public-private partnerships for financing infrastructure projects, and stimulate employment in domestic private firms, particularly in SMEs. The country needs such reforms to improve infrastructure, increase productivity, continue to attract investment, and maintain a high rate of growth.

Factors of success

The factors of success that have been manifest in Project 30, and that provide a basis for further progress, are:

- *Political support:* The project enjoyed sustained strong political support from the top level including the Prime Minister. This was a key factor in overcoming potential reluctance among officials and building confidence among stakeholders. The support is reflected in

the fact that the Prime Minister officially took charge of the project and announced key achievements personally and daily operations were supervised by the Minister, Chairman of the Office of Government;

- *A comprehensive approach:* For the first time, all administrative procedures (APs) in Viet Nam have been inventoried in a national database and made known to interested parties via the Internet. This entailed defining a specific national method for inventorying APs, and for assessing them against the three criteria of necessity, user-friendliness and legality. Project 30 has proved very efficient to take stock of complexity and define the content of simplification measures. A method to measure the corresponding administrative burdens has also been developed to fit specifics of the national programme and monitor the effects of the reforms.
- *A quantitative target:* By establishing a quantitative, ambitious and time-bound target (30% reduction of APs), and communicating on it widely, the Government accepted to be held accountable on a highly prioritised policy goal. The target is being monitored at ministry and province level, thus providing a strong instrument for steering and monitoring simplification efforts across the administration.
- *Strong co-ordinating unit at the centre of government:* The establishment of a co-ordinating body at the centre of government is in line with OECD good practices and recommendations. The status of the Special Task Force (STF) gives it enough power to deal with and directly instruct other ministries, agencies and provinces. This is also underlined by high professional skills and active day-to-day communications with involved institutions. The creation of dedicated task forces in each ministry/agency/province is also important for efficient co-operation and co-ordination between the centre and the participating institutions.
- *Capacities in participating bodies:* The STF had highly educated, experienced and motivated staff among its members, including civil servants from the Office of Government and line ministries, as well as private sector experts. Since inception, the project has drawn on international experience that was examined in detail by members of the STF and adapted to the Vietnamese context. The number of training sessions as well as day-to-day guidance provided by STF to other task forces is extremely helpful to assure unified application of simplification methodology.

- *Transparency and active involvement of stakeholders:* All the project forms used to collect feedback were under the scrutiny of the public through the Project 30 website and any citizen and business can comment on APs in the database with no restriction. Furthermore, business, academics and national assembly representatives could provide feedback through the Advisory Committee for Administrative Procedure Reform (ACAPR). This high level of transparency and active involvement of stakeholders was instrumental in building confidence of businesses and citizens to ensure that the effort is taken seriously. And involving the end-users of regulation was a key step towards a more user-centered regulatory environment. The business community judged the ACAPR to be “historic” in establishing a regular dialogue between the Government and business.

Beyond Project 30, the evaluation has noted the development of other instruments that have set in motion further indispensable components of an efficient and quality oriented regulatory management system, which have also been evaluated in this report:

- The introduction in the Law on Laws (2008) of the obligation to present an impact assessment during the preparation of new legislation, specifically laws, ordinances and decrees;
- The principle and modalities of mandatory consultation of stakeholders;
- The pilot projects to test new regulatory methods, such as codification for improved access to legal texts, and public-private partnerships (PPPs) to facilitate financing of infrastructure projects;
- The development of one-stop shops.

Recommendations

The Socialist Republic of Viet Nam has made impressive progress in recent years in administrative and legal reform, by introducing policies, building capacities and training civil servants to improve the quality of regulation. But “good” is not “good enough”. Though much progress has been achieved, much work remains to actually implement the simplified APs and that change cannot intervene overnight. Viet Nam should take advantage of the current momentum and the broad political support for public administration reform to complete implementation of the current programme for administrative simplification, strengthen the link to other related government programmes such as the legal development programme, and engage in a medium-term programme of regulatory reform.

Achieve the full potential of Project 30

Complete implementation of Project 30, which has reached a critical stage where the findings (in terms of proposed simplifications of administrative procedures) must be translated into realities in the field, either by the enactment of revised legislation, or the implementation of the proposed streamlined procedures. The Administrative Procedures Control Agency (APCA) set up by Decree 63/2010/ND-CP will need to guarantee the implementation of announced changes. It will need ongoing, top-level support to ensure that it can drive change across the Government.

Enhance Consultation. The role of the Advisory Council of Administrative Procedures Reform (ACAPR) needs to be more dynamic, effective and efficient, as well as empowered with a clear set of roles and remit. It should be established as a permanent advocacy body and its membership should be extended to representatives of civil society such as consumer organisations or trade unions. The user-friendliness of consultation mechanisms needs to be improved. More direct consultations between ACAPR and ministries will improve understanding of the problems associated with existing APs and related legislation and policies. It is recommended that new draft regulations for consultation are published on one central website. Finally, the ACAPR needs to be supported by a highly skilled secretariat.

Next step: To strengthen the legal basis of Project 30 results, the full cataloguing of APs now needs to be completed with a similar exercise aimed at inventorying and streamlining all the legal normative documents (not only those giving rise to APs). This exercise should, following recognised good practice, concentrate on Legal Normative Documents (LNDs) creating “information obligations” for business and citizens, as these can hinder economic performance. The measurement of administrative costs, understood as time spent by business responding to the administrations requests for information, should help focus simplification efforts on issues most relevant to sustaining the competitiveness of Vietnamese companies.

Finally, the programme should be expanded by aiming for additional reductions. Further use of ICT in administrations holds promise of delivering substantial burden reductions.

Options for regulatory reform

Regulatory reform is needed to help Viet Nam improve infrastructure, increase productivity, continue to attract investment, and maintain a high rate of growth. At this stage, on the basis of achievements of Project 30, but also avenues opened by the Legal Development Strategy, and on the basis of best practice in other countries, the review team has been able to formulate a few recommendations for further discussion:

- *Adopt an overall regulatory reform strategy:* further economic and social progress could be helped by the adoption of a single explicit published (if possible) policy promoting a government-wide regulatory policy, consolidating the policy elements and instruments already existing in Viet Nam. Support to this policy should be centrally managed by a permanent, government-wide structure, such as the new Agency for the Control of Administrative Procedures.
- *Build the appropriate capacities for Impact Assessment (IA) to become a major tool for evidence-based policy making:* in Viet Nam, IA is becoming part of the regulatory management cycle since the Law on Laws made it mandatory for all new laws, ordinances and decrees. It is now necessary to set up the appropriate capacities as an integrated process, on the foundation of the experience acquired with Project 30, rather than a separate and additional activity.
- *Continue streamlining the stock of legislation:* mechanisms to review existing regulation have recently been adapted in Chapter XI of the *Law on Laws* (2008), which prescribes a series of measures for the review, revision, and consolidation or ‘codification’ of LNDs. But these general prescriptions need to be given appropriate implementing procedures, and suitable capacities set up and empowered to deliver up-to-date and comprehensive depictions of the legal order in selected, economically relevant, sectors. A special effort needs to be made to facilitate private sector participation in infrastructure projects, through a suitable legislative framework for Public Private Partnerships (PPPs), and to upgrade the regulatory environment for higher education.

- *Develop monitoring and evaluation of results:* quantitative assessments may support continuous evaluation of the relevance, effectiveness and efficiency of the Vietnamese administrative simplification programme. Viet Nam has relied so far on the measurement of compliance costs to evaluate the success of Project 30. The advantage of this measurement is that it quantifies in a systematic way cuts in administrative burdens and compliance costs. Its limitations are that it does not assess implementation of AP reforms on the ground. It will therefore be important to complement it with a set of indicators that focuses on implementation, in order to obtain a comprehensive evaluation system.
- *Enhance dialogue with citizens and business:* the principle of consultation has recently been introduced in Vietnamese legislation and subjects on which “feedback” can be sought from citizens have been listed. More detailed guidance needs to be issued for regulators on the different types of consultation and media supports to be used for specific types of projected new legislation. This could be incorporated into a broader consultation strategy which outlines the objectives of consultation, the mechanisms available to consult with stakeholders and how the information collected is to be used. Focus of the communication strategy needs to be less on procedural aspects of the project and more on real life achievements and changing culture.
- *Improve access to the law for all citizens and businesses:* Project 30 brought the publication on line of the full list of APs and their contents, with practical indications for citizens on how to comply, and as such is an important step in the right direction. It is now necessary to envisage the posting of all legislation, in connection with the consolidation and codification efforts. But access to the raw texts is not enough, as they may be difficult to understand for the non specialist. That is why many countries have set up civic information centres, and other media such as hotlines, information websites, where regulation is explained in a client oriented way, with less emphasis on the legal implications, and more on practical help towards compliance.

Résumé

La simplification administrative en République socialiste du Vietnam est en train de franchir un cap. Comme dans nombre de pays, elle a déjà amplement contribué à améliorer la gouvernance publique et la qualité de la réglementation, et stimulé la compétitivité et l'avènement d'une croissance équitable. Depuis 2007, elle suscite un vif intérêt et bénéficie de ressources importantes, versées pour l'essentiel dans le cadre du Plan directeur pour la simplification des procédures administratives dans les domaines de la gouvernance publique (« Projet 30 ») et d'autres initiatives. Le Projet 30 a, entre 2007 et 2010, produit un inventaire complet des procédures administratives publié en ligne, un examen de la nécessité, légalité et lisibilité de chaque procédure, et deux ensembles de mesures de simplification.

La réforme a atteint un stade crucial, avec l'apparition des premiers résultats et la mise en place d'un nouvel organisme en vue d'assurer la pérennité des changements. Toutefois, le moment est également propice à une éventuelle remise en question de la stratégie, dans la mesure où les décisions et orientations stratégiques de haut niveau seront peut-être revues lors du congrès du Parti qui aura lieu en janvier 2011.

Pour faire le bilan des efforts passés et planifier les efforts à venir, le gouvernement vietnamien a invité l'OCDE à évaluer le Projet 30 et à proposer de nouvelles mesures, notamment des solutions envisageables pour le lancement d'un programme décennal de réforme de la réglementation s'inspirant des pratiques optimales au niveau international. L'amélioration du cadre réglementaire devrait favoriser celle des conditions de l'investissement direct étranger, notamment les partenariats public-privé destinés à financer des projets d'infrastructure, et stimuler l'emploi dans les entreprises privées nationales, en particulier les petites et moyennes entreprises (PME). Le pays a besoin de cette réforme de façon à améliorer les infrastructures, à accroître la productivité, à continuer d'attirer les investissements et à conserver un taux de croissance élevé.

Facteurs de succès

Les facteurs manifestes de succès du Projet 30, qui offrent un point de départ pour la réalisation de progrès supplémentaires, sont les suivants :

- *Le soutien politique* : le projet a reçu un soutien politique fort et durable de la part des hauts dirigeants, y compris le Premier Ministre. Ce facteur a joué un rôle essentiel pour ce qui est de surmonter les réticences éventuelles des fonctionnaires et de susciter la confiance des parties prenantes. Le soutien s'est traduit par le fait que le Premier Ministre a officiellement endossé la responsabilité du projet, dont il a personnellement annoncé les principales réalisations, et que les opérations courantes ont été supervisées par le Ministre-Directeur du Bureau du gouvernement ;
- *L'adoption d'une approche globale* : pour la première fois, toutes les procédures administratives en vigueur au Vietnam ont été recensées dans une base de données nationale et portées à la connaissance des parties intéressées au moyen d'Internet. Pour ce faire, il a fallu définir une méthode nationale spécifique pour recenser les procédures administratives et les évaluer à l'aune des trois critères de nécessité, de facilité d'utilisation et de légalité. Le Projet 30 s'est révélé très efficace pour ce qui est d'apprécier la complexité des mesures de simplification et d'en définir la teneur. Une méthode de mesure des charges administratives correspondantes a par ailleurs été élaborée en fonction des particularités du programme national de manière à assurer le suivi des retombées de la réforme ;
- *L'instauration d'un objectif chiffré* : en fixant un objectif chiffré, ambitieux et lié à des échéances précises (réduction de 30 % des procédures administratives), et en communiquant largement sur celui-ci, le gouvernement a accepté de devoir rendre des comptes sur la base d'un objectif d'action hautement prioritaire. La réalisation de cet objectif faisant l'objet d'un suivi au niveau ministériel et provincial, le Vietnam dispose là d'un solide instrument d'orientation et de suivi des efforts de simplification déployés à l'échelle de l'administration ;
- *L'existence d'un puissant organe de coordination au cœur de l'administration centrale* : la mise en place d'un organe de coordination au cœur de l'administration centrale est conforme aux bonnes pratiques et recommandations de l'OCDE. En vertu de son statut, l'Équipe spéciale du Premier Ministre chargée de mettre en œuvre la réforme des procédures administratives est habilitée à

traiter avec les autres ministères, organismes et provinces et à leur donner directement des instructions. Ce pouvoir est renforcé par la présence de spécialistes hautement qualifiés au sein de l'Équipe et par l'entretien de contacts réguliers avec les institutions concernées. La création d'équipes spéciales dans chaque ministère/organisme/province est également importante pour une coopération et une coordination efficaces entre l'administration centrale et les institutions partenaires ;

- *Les capacités des organes participants* : l'Équipe spéciale dispose de personnel très instruit, expérimenté et motivé parmi ses membres, y compris des fonctionnaires du Bureau du gouvernement et des ministères d'exécution, ainsi que des experts du secteur privé. Depuis le début, le Projet s'est appuyé sur les données d'expérience tirées au niveau international, que les membres de l'Équipe spéciale ont examinées en détail et adaptées au contexte vietnamien. Les nombreuses sessions de formation ainsi que les nombreux conseils sur les activités courantes fournis par l'Équipe spéciale à ses homologues sont extrêmement utiles en vue de garantir une application uniforme des méthodes de simplification ;
- *La transparence et la participation active des parties prenantes* : tous les formulaires utilisés pour recueillir des commentaires sur le Projet 30 ont été soumis à l'examen du public sur le site Web du Projet, où chaque particulier ou entreprise a le loisir de formuler librement des observations sur les procédures administratives recensées dans la base de données. En outre, les représentants des entreprises, des universités et de l'Assemblée nationale ont pu faire des commentaires par l'intermédiaire du Conseil consultatif sur la réforme des procédures administratives. Ce degré élevé de transparence et cette participation active des parties prenantes ont été déterminants pour susciter la confiance des entreprises et des particuliers et veiller ainsi à ce que les efforts déployés soient pris au sérieux. De plus, l'implication des bénéficiaires de la réglementation a représenté un grand pas vers un cadre réglementaire davantage centré sur les utilisateurs. Les milieux d'affaires ont qualifié d'« historique » la mise en place par le Conseil consultatif sur la réforme des procédures administratives d'un dialogue régulier entre les pouvoirs publics et les entreprises.

Outre le Projet 30, l'évaluation a mis en lumière un certain nombre d'instruments ayant contribué à mettre en œuvre d'autres composantes indispensables d'un système de gestion de la réglementation efficace et axé sur la qualité. Ces instruments, qui ont eux aussi été évalués dans le présent rapport, sont les suivants :

- L'introduction dans la loi sur la législation (2008) d'une obligation de présentation d'une analyse d'impact au cours de la préparation d'un nouveau texte législatif, en l'occurrence une loi, une ordonnance ou un décret ;
- Le principe et les modalités de la consultation obligatoire des parties prenantes ;
- Les projets pilotes ayant pour objet de tester de nouvelles méthodes de réglementation, telles que la codification en vue d'améliorer l'accès aux textes juridiques et les partenariats public-privé (PPP) destinés à faciliter le financement des projets d'infrastructure ;
- La mise en place de guichets uniques.

Recommandations

La République socialiste du Vietnam a accompli ces dernières années des progrès spectaculaires en matière de réforme administrative et juridique, grâce à la mise en œuvre de politiques, au renforcement des capacités et à la formation des fonctionnaires en vue d'améliorer la qualité de la réglementation. Aussi importants soient-ils, néanmoins, ces progrès sont insuffisants et il reste beaucoup à faire pour que les procédures administratives simplifiées deviennent réalité, un tel changement ne pouvant intervenir du jour au lendemain. Le Vietnam devrait profiter de la dynamique actuelle et du vaste soutien politique en faveur de la réforme de l'administration publique pour achever la mise en œuvre de l'actuel programme de simplification administrative, resserrer les liens avec d'autres programmes publics connexes comme la stratégie d'élaboration de lois, et se lancer dans un programme à moyen terme de réforme de la réglementation.

Donner tout son effet au Projet 30

Achever la mise en œuvre du Projet 30, lequel a atteint un stade critique où les résultats qui ont été obtenus (en termes de propositions de simplification des procédures administratives) doivent se concrétiser sur le terrain, grâce à l'adoption d'une législation révisée ou à l'entrée en vigueur des procédures simplifiées proposées. L'Agence de contrôle des procédures administratives créée aux termes du décret 63/2010/ND-CP devra garantir la mise en œuvre des changements annoncés. Elle aura besoin du soutien sans faille des hauts dirigeants pour pouvoir faire évoluer les choses à tous les niveaux de l'administration.

Renforcer la consultation : le Conseil consultatif sur la réforme des procédures administratives doit se montrer plus dynamique, efficace et efficient et se voir confier un ensemble clairement défini de responsabilités et de missions. Il devrait être élevé au rang d'organe permanent chargé de la sensibilisation, et sa composition élargie aux représentants des organisations de la société civile telles que les associations de consommateurs ou les syndicats. Il faut faciliter encore l'utilisation des mécanismes de consultation. Un dialogue plus direct entre le Conseil consultatif et les ministères améliorera la compréhension des problèmes liés aux procédures administratives en vigueur ainsi qu'à la législation et aux politiques connexes. Il est recommandé de centraliser la publication des nouveaux projets de réglementation en matière de consultation sur un unique site Web. Enfin, le Conseil consultatif doit être appuyé par un secrétariat hautement qualifié.

Étape suivante : pour consolider l'assise juridique des résultats du Projet 30, il convient désormais de compléter le recensement intégral des procédures administratives par un exercice semblable visant à recenser et simplifier tous les documents juridiques normatifs (et pas seulement ceux qui sous-tendent les procédures administratives). Conformément aux bonnes pratiques avérées, cet exercice devrait porter avant tout sur les documents juridiques normatifs à l'origine d'« obligations d'information » pour les entreprises et les particuliers, car ils peuvent nuire à la performance économique. La mesure des coûts administratifs, sur la base du temps consacré par les entreprises à répondre aux demandes de renseignements émanant des administrations, devrait aider à axer les efforts de simplification sur les questions les plus importantes pour le maintien de la compétitivité des entreprises vietnamiennes.

Enfin, le programme devrait être développé dans l'optique de réductions supplémentaires de la charge administrative. Un recours plus poussé aux technologies de l'information et des communications (TIC) dans les administrations laisse entrevoir la promesse de réductions importantes.

Options en matière de réforme de la réglementation

Une réforme de la réglementation est nécessaire pour aider le Vietnam à améliorer ses infrastructures, à accroître sa productivité, à continuer d'attirer les investissements et à conserver un taux de croissance élevé. À ce stade, eu égard aux réalisations associées au Projet 30, mais aussi aux pistes d'exploration ouvertes par la stratégie d'élaboration de lois, et compte tenu des pratiques optimales dans d'autres pays, l'équipe chargée de l'examen a pu formuler quelques recommandations pour discussion plus approfondie :

- *Adopter une stratégie globale de réforme de la réglementation* : l'obtention de nouvelles avancées économiques et sociales pourrait être facilitée par l'adoption d'une stratégie unique et formelle, faisant l'objet si possible d'une publication, destinée à promouvoir une politique de la réglementation à l'échelle de l'administration de manière à intégrer les éléments de stratégie et les instruments d'action qui existent déjà au Vietnam. La gestion de l'appui à cette stratégie devrait être centralisée auprès d'une structure permanente présente à tous les niveaux de l'administration, telle la nouvelle Agence de contrôle des procédures administratives ;
- *Renforcer les capacités nécessaires en matière d'analyse d'impact* pour que celle-ci devienne un instrument prépondérant dans les processus de décision fondés sur des observations factuelles. Au Vietnam, l'analyse d'impact est progressivement intégrée au cycle de gestion de la réglementation dans la mesure où la loi sur la législation l'a rendue obligatoire pour tous les nouveaux textes de loi, d'ordonnance et de décret. Il faut désormais mettre en place les capacités nécessaires, en s'appuyant sur l'expérience acquise dans le cadre du Projet 30, sous une forme intégrée et non comme une initiative distincte de plus ;
- *Poursuivre la simplification de l'arsenal réglementaire* : les mécanismes de modification de la réglementation en vigueur ont été adaptés il y a peu au chapitre XI de la loi sur la législation (2008), qui comporte une série de dispositions relatives au réexamen, à la révision et à l'intégration ou à la « codification » des documents juridiques normatifs. Néanmoins, ces dispositions générales doivent être complétées par les procédures d'application appropriées, et il convient de mettre en place les capacités adéquates et de faire en sorte qu'elles puissent dresser un tableau actuel et complet de l'ordre juridique dans certains secteurs présentant un intérêt sur le plan économique. Il faut s'efforcer en particulier de faciliter, grâce à un cadre législatif adapté aux partenariats public-privé (PPP), la participation du secteur privé aux projets d'infrastructure, et de moderniser le cadre réglementaire au titre de l'enseignement supérieur ;
- *Développer le suivi et l'évaluation des résultats* : la réalisation d'évaluations quantitatives peut favoriser l'appréciation permanente de la pertinence, de l'efficacité et de l'efficience du programme vietnamien de simplification administrative. Jusqu'à présent, le Vietnam a eu recours à la mesure des coûts de mise en conformité pour évaluer le succès du Projet 30. Si cette mesure

présente l'avantage de chiffrer de manière systématique les réductions de la charge administrative et des coûts de mise en conformité, elle pêche en ne prenant pas en compte la mise en œuvre sur le terrain de la réforme des procédures administratives. Il importera donc de lui adjoindre une panoplie d'indicateurs axés sur cette mise en œuvre afin de disposer d'un système d'évaluation exhaustif ;

- *Renforcer le dialogue avec les particuliers et les entreprises* : le principe de la consultation vient d'être introduit dans la législation vietnamienne et les sujets sur lesquels des commentaires peuvent être recueillis auprès des particuliers ont été répertoriés. Des consignes plus précises doivent être émises à l'intention des responsables de la réglementation sur les différents types de consultation et de supports médiatiques à utiliser selon la nature de la nouvelle législation envisagée. Ces consignes pourraient être incorporées dans une stratégie de consultation plus large définissant les objectifs de la consultation, les mécanismes disponibles de consultation des parties prenantes et les modalités d'exploitation des informations recueillies. La stratégie de communication doit être moins axée sur la dimension procédurale du projet et porter davantage sur les réalisations concrètes et l'évolution des comportements ;
- *Améliorer l'accès au droit pour l'ensemble des particuliers et des entreprises* : le Projet 30 a abouti à la publication en ligne de la liste complète des procédures administratives et de leur teneur, des indications pratiques étant données aux particuliers sur la façon de s'y conformer. En l'état, il s'agit d'une avancée importante dans la bonne direction. Il est maintenant nécessaire d'envisager la mise en ligne de l'intégralité de la législation, dans le cadre des efforts d'intégration et de codification. Mais il ne suffit pas de permettre l'accès aux textes bruts, que le profane peinera peut-être à comprendre. Aussi de nombreux pays ont-ils mis en place des centres d'information civique et d'autres vecteurs d'information tels que des permanences téléphoniques ou des sites Web informatifs, dans le cadre desquels la réglementation est expliquée en fonction des besoins des utilisateurs, les aspects juridiques étant délaissés au profit d'une aide concrète à la mise en conformité.

Introduction

Countries around the world face similar problems that call for better regulatory tools, institutions and policies:

- To create jobs and conditions for sustainable employment, and to promote productivity-enhancing innovation and its diffusion;
- To build and maintain essential infrastructure for transport, water, energy and the environment, and
- To improve the way government works, pursuing evidence-based decision-making, enhancing transparency, and planning strategically for the future.

In the aftermath of the global crisis of 2008, governments recognize as never before that good regulations for markets are both a domestic and a multi-national responsibility. Better regulatory systems are not tomorrow's agenda, to be tackled when the economy is improving better. Development works the other way around. In a competitive global economy, the regulatory environment of a country helps create the conditions for job creation, entrepreneurship, higher productivity and good governance.

The lessons of experience tell us that there is no ideal starting point. Each country starts to build a better regulatory framework where it happens to be. Because everything does not get done at once, this is a dynamic process. And Viet Nam, like many other countries, is starting with administrative simplification. Business and citizens have to deal with regulatory complexity derived from multiple layers of regulations and procedures which are often outdated, and cost too much. Simplification does not mean de-regulation, but instead the effective use of regulation to serve economic and social policy objectives, easier for people to understand and comply with. Regulatory certainty is not a luxury, but a necessity. To keep pace with rapidly changing social needs, markets and technologies, however, governments are constantly issuing new regulations. The challenge in the policy cycle is to preserve many of the benefits of administrative burden reductions over time by looking more carefully at the costs of new regulations when they are adopted, and by revising the stock of regulations periodically. Cutting red tape, and ensuring that unnecessary or unreasonable burdens and procedures are not imposed in the first place, are

two parts of what should be a single operation. Seen from this perspective, a programme for administrative simplification opens the way toward regulatory reforms supported by an array of tools and by well-functioning institutions. This agenda calls for political leadership, a system-wide approach, continuous assessment, and an active communications strategy.

A range of regulatory reform tools and instruments has been developed and implemented by OECD countries over the last three decades to help them improve the effectiveness, efficiency and transparency of regulatory systems. This was well documented during the *Regulatory Policy at the Crossroads* conference organised by OECD 28-29 October 2010 (www.oecd.org/regreform/policyconference). Many of these regulatory policy tools and approaches are spreading to developing countries.

This report describes the structures set up by the Government of Viet Nam and the methodologies it developed to make it possible to reach the target of reducing administrative procedures by 30%. It demonstrates how a regulatory reform programme including institutional development will help Viet Nam improve infrastructure, increase productivity and employment, continue to attract investment, and maintain a high rate of growth, and offers options on how to sustain the necessary reforms. This change in administrative culture, away from a formalistic and legalistic approach and toward putting the user first, should be part of the modernization and reform of the public sector, bringing in better trained and better paid officials who will devote more efforts to Viet Nam's strategic needs.

The review is part of the OECD strategy for global outreach, including on regulatory policy. According to Angel Gurría, Secretary General of the OECD, "Southeast Asia is a region of strategic importance to the OECD. Southeast Asia can benefit from the OECD but the Organisation needs Southeast Asia as well. This is even more the case in the context of the current economic crisis" (OECD, 2010g). Following a Ministerial mandate in 2007 to strengthen relations with the region, the Organisation is pursuing a dual-track approach combining regional initiatives with country-specific work, in close co-operation with regional organizations including the ASEAN (Association of Southeast Asian Nations) and the Asian Development Bank.

One of the goals of ASEAN countries is to achieve “a single market and production base” by 2015. Regulatory reform and international regulatory co-operation can help to achieve this target by promoting a favorable economic environment in these countries. The high rate of growth anticipated in South East Asia should make the introduction of structural and regulatory reforms easier, reducing the costs of adjustment. South East Asia’s growing influence on the world economy, its strategic importance for many OECD members and emerging market partners, and the common concerns shared with OECD countries provide the basis for deeper co-operation with regional initiatives and, as this report illustrates, through country studies. The OECD and ASEAN will co-operate to promote administrative simplification and a broader regulatory reform agenda in South East Asia. Regular meetings of senior officials in charge of regulatory matters are among the co-operation mechanisms that may be envisaged.

This review also complements the co-operation between the OECD and APEC on regulatory reform which dates from 2000, and has also included a focus on administrative simplification. In 2005, APEC Leaders and the OECD approved the APEC-OECD Integrated Checklist on Regulatory Reform, a self-assessment tool to help governments assess what they need to do to improve a whole-of-government approach and regulatory management, as well as competition and market openness policies. In 2008, OECD Secretary-General Angel Gurría participated in the first APEC Ministerial Meeting on Structural Reform and Regulatory Reform, making clear how important this agenda is to the search for new sources of growth.

The lessons learnt from the Vietnamese experience for major administrative simplification will be useful to many countries, especially in the developing world, aiming at improving the regulatory framework and reducing administrative burdens.

Chapter 1. Context of the review

Objectives of the review

A regulatory reform programme including institutional development will help Viet Nam improve infrastructure, increase productivity and employment, continue to attract investment, and maintain a high rate of growth.

Box 1.1. The rationale for administrative simplification

Programmes for administrative simplification combine qualitative and quantitative methods, and often use targets to mobilise co-operation among ministries. Building capacity to sustain reform, communicating results and earning stakeholder support are ongoing challenges, even in well performing countries. The right institutional structure to carry out this work is also an issue, not only at the level of the central government, but also between levels of government, to achieve results at the local level where problems are often the most acute.

To put this in a larger perspective, administrative simplification reflects the growing use of regulations by governments due to:

- The shift from “command and control” modes of direct service provision to market frameworks;
- Attention to competitiveness;
- Public advocacy;
- Pressures to manage risks, either in reaction to events, or pro-actively; and
- Technological and social change that creates new regulatory demands.

If not checked through the use of robust regulatory policy tools, new regulations will, over time, lead to red tape becoming an unmanageable problem again. In the final analysis, administrative simplification must be part of a broader regulatory reform agenda.

Viet Nam’s well-developed programme for administrative simplification includes valuable experience in screening administrative procedures, good use of information and computer technology, consultation, and, unusually multi-level co-ordination. These elements appear in other successful programmes. Issues for the future include: how to deepen and broaden simplification; how regulatory oversight functions can be embedded institutionally; and communication of results domestically and internationally. This is a dynamic field; countries are competing to improve. This review seeks to help Viet Nam get the full benefit of the important investment already made in administrative simplification.

Viet Nam’s programme on administrative simplification, important in its own terms, could be a step toward a broader strategy for regulatory reform. In OECD and many non-member countries, the crisis of 2008 and the recovery highlight regulation as a factor in competitiveness. Viet Nam is no exception.

Its rapid growth and the scale of foreign direct investment call for continual improvements in regulatory policy. This study, consistent with the OECD’s conceptual framework for regulatory quality, sets out options for how Viet Nam can make further progress, building on what it has accomplished through administrative simplification. A full OECD regulatory reform review could be undertaken at a later date.

Box 1.2. Definition of regulatory policy

Regulatory policy may be defined broadly as an explicit, dynamic, and consistent “whole-of-government” policy to pursue high-quality regulation. A key part of the OECD’s 2005 *Guiding Principles for Regulatory Quality and Performance* is that countries adopt at the highest political level broad programmes on regulatory reform that establish principles of “good regulation”, as well as a framework for implementation. Regulatory policy should contain explicit and measurable regulatory quality standards, and provide for continued regulatory management capacity. It also requires adequate resources and regular monitoring of progress achieved. Measures need to be built in to ensure compliance with regulatory quality processes and tools, including sanctions.

Scope of this report

The OECD review will: *i)* establish an empirical record of what was done, how and with what results, including measurement of the benefits of reforms; *ii)* engage officials in policy dialogue and support capacity-building; *iii)* evaluate progress in the light of what may be possible in the future, and provide a baseline for monitoring; and *iv)* support wider communication efforts on results. This report also draws from the on-line information or documentation received by 30 September 2010.

National regulatory reform and administrative simplification programmes

Fifteen years of experience of the OECD dealing with regulatory reform shows that the interest of both member and non-member countries given to this issue has been constantly growing. OECD's Regulatory Reform Programme is aimed at helping governments improve regulatory quality – that is, reforming regulations that raise unnecessary obstacles to competition, innovation and growth, while ensuring that regulations efficiently serve important social objectives.

A good regulatory system combines respect for quality law-drafting, and concern for social and economic impacts. A well-written law that still unnecessarily limits competition, erects behind-the-border tariffs, or imposes too many administrative procedures, fees and licenses does not achieve good regulatory objectives. A poorly written regulation that tries to open markets and promote entrepreneurship will also fail, leading as it must to confusion among ministries, uneven enforcement at the local level, and confusion in the mind of the public.

The use of regulation as an instrument to reach economic and social policy objectives has become a fundamental tool of government in managing more complex and diverse societies and for allowing competing interests to be balanced. It is both a political and a technical exercise. But the effects on the economy and society when there is no regulatory policy, when regulations are decided in back-room deals, when the public is poorly informed about regulation and has no chance to be consulted, are even greater. Over-regulation, under-regulation, poorly designed regulation and implementation, create confusion, limit consumer choice, discourage investment, and protect vested interests.

Administrative simplification has been central to regulatory reform policies in many OECD countries during the last decade. Its importance is even more obvious now that the countries are trying to find their ways to re-boost the economic growth. Cutting red tape helps to free up resources that are being spent by businesses on compliance that can be invested into

creating jobs and support economic recovery and growth. Reducing regulatory burdens support businesses' flexibility and resilience, which is needed to overcome the current slowdown.

Box 1.3. Administrative simplification in developing countries and emerging economies

The quantity and complexity of government formalities can impose significant costs on the economy as a whole and represent a key barrier for economic development. Administrative burdens are considered internationally as indicators of the degree of competitiveness and transparency within countries. Many developing countries are launching administrative simplification strategies to improve service delivery and interaction between government and citizens, as well as to respond to the demand for burden reduction on business, and improved conditions for market competition, trade, and investment. Administrative simplification can be important in developing countries that are traditionally characterised by heavy but inefficient bureaucratic systems and high regulatory complexity, or that have only recently started programmes for regulatory quality within a broader context of improved governance including transparency, accountability and efficiency of government. Despite different starting points in administrative reforms, as well as differences in institutional mechanisms and political priorities, relevant similarities exist among OECD member countries and non-member countries in the practices and tools that are adopted, in order to avoid administrative delays, improve the government information management and effect a positive change in the relations between the administration and citizens. A strong foundation has been created for policy dialogue and capacity building on administrative simplification strategic issues.

The sequencing and pacing of administrative simplification reform are essential for the success of the efforts to be undertaken, and to this end a number of conditions, priorities and challenges are shared by OECD members and developing countries:

- Leadership and commitment to administrative reform;
- The establishment of a national strategy, and appropriate structure and co-ordination mechanisms;
- A framework for administrative simplification, and introduction of administrative procedure acts or other instruments of administrative justice to frame the administrative decision-making process and its judicial review;
- *Ex ante* policies (e.g. RIA) to avoid the introduction of new administrative burdens, and consultation mechanisms for the identification of priorities. Efforts to assure effective implementation and compliance, and accountable results call for a deep change in traditional administrative culture, most notably through appropriate resources, capacity building actions, and creation of networks for exchange of practices and policy dialogue among developed and developing countries (OECD, 2006a).

Wider regulatory reform reviews contain many insights and examples of good practice that can be useful when designing a national simplification programme. The diversity of OECD work on such a high number of countries with different socio economic contexts and governance structures ensure that lessons learnt from successful reforms, and good practice in other countries can be transposed and adapted to fit with conditions prevailing in Viet Nam, and, in the formulation of recommendations, take into account the specific objectives of the Vietnamese Government.

Political and economic background to Project 30

The need for regulatory reform in Viet Nam¹

In the past two decades, Viet Nam has experienced remarkable economic performance. The Doi Moi reforms have helped to modernise Viet Nam's economy and greatly increased its attractiveness for foreign investors. Growth continued at an impressive 5.32% in 2009, and 5.8% for the first quarter of 2010.² The stock markets have recovered from the historical lows recorded in 2009, and Viet Nam has increased its international visibility by assuming the rotating chair of ASEAN for the year 2010.

Viet Nam is however reaching the limits of economic performance within existing structures, and bureaucratic obstacles, if unattended, will begin to seriously compromise future growth. The energy displayed by private economic initiative has in recent years been able to overcome administrative barriers, risks and costs, but as the economy becomes more complex and developed, such informal arrangements need to be replaced by robust administrative procedures, full use of ICT tools including e-government, and clear and accessible legislation. The issue is all the more critical with the need to welcome some one million young people every year into the workforce.

The costs of a rising tide of administrative procedures in developed countries are enormous, with estimates ranging from 3% to 7% of GDP. Using figures from other highly regulated countries, the cost-savings to Viet Nam from a national programme on simplification could range from USD 820 million to USD 1.9 billion per year if 40% of the costs of administrative procedures can be eliminated. Other countries that have organised national reforms using the regulatory guillotine method have produced rapid results by cutting and simplifying thousands of unneeded regulations and greatly reducing regulatory costs and risks for businesses and citizens. The regulatory guillotine³ is the process of inventorying and reviewing a large number of regulations against clear criteria, and eliminating those that are no longer needed. Extensive stakeholder participation helps to ensure that the reviews are realistic and factual.

During the mission, the OECD review team recorded the support given by international and domestic business leaders in Viet Nam to the recent public administration reform, but also their assessment that the investment environment not only remains challenging and restrictive, but is also becoming increasingly cumbersome. The business community message is: if Viet Nam wants to become a mature, internationally competitive economy, the Government needs to bring the business environment in line with international benchmarks.⁴ This requires changing the administrative culture of regulators and public service delivery agencies, with an emphasis on introducing, at all levels, a client-oriented, or user-centered approach throughout the regulatory cycle.

Building on the progress achieved so far, and speeding up the administrative procedures reform in Viet Nam are necessary to reach national development targets. The improvement of the regulatory environment will help Viet Nam to sustain its planned high levels of market growth, and stay competitive in the post-WTO environment. This reform will also contribute to poverty reduction and ensure inclusive development. Improving the regulatory framework will foster a better environment for foreign direct investment, including public-private partnerships for financing infrastructure projects. It must be part of the wider development agenda and co-ordinated with other regulatory/institutional reform processes (civil service reform, enterprise and investment law and licensing/registration reforms, price reforms, trade reforms, customs simplification, land reforms, etc.) that together are seeking optimal impacts on business development.

The benefits of regulatory reform in Viet Nam

Regulatory reform in the following areas might prove especially fruitful:

- *Reducing bureaucracy.* Regulatory procedures in Viet Nam are often lengthy and complicated. For example, investors trying to acquire land use rights have to go through time-consuming formalities. Investment registration and certification procedures are equally difficult. Administrative simplification would reduce time and costs necessary to invest in Viet Nam.⁵
- *Increasing access and transparency of regulation.* Regulation in Viet Nam has suffered from being neither easily accessible nor fully transparent. Especially the entry and approval procedures relating to domestic and foreign investors and their investment undertakings would benefit from improved access and increased transparency. The real estate market would also profit from increased transparency.
- *Fighting corruption.* More transparency in regulation in general and in legislation in particular would also decrease opportunities for corruption in Viet Nam. Considering the repercussions for the economy as well as the extent of the issue (according to the 2010 World Bank, Viet Nam Development Report)⁶ 42% of Vietnamese consider corruption to be a serious or even very serious problem. Fighting corruption might well be one of the best reasons for regulatory reform.

Both government and Vietnamese communist party (VCP) policies emphasise their opposition to public sector corruption, and the Government has issued new regulations on corruption and on the elimination of wasteful practices in the public sector.⁷

The VCP launched an anticorruption campaign in 2000. Promulgation of the civil code in 1995 provided the public with avenues for redressing complaints and for mediation in disputes with government administrators. Additional measures are needed, for example, minimising red tape and arbitrary discretion, increasing the amount of information in the public domain, harnessing citizens' groups to fight corruption, and developing an appropriate legal framework. The Government's efforts to turn state enterprises into shareholding companies could help to reduce corruption, but the process has been slow. Of 5 991 state enterprises which remain, only 1 360 have been "equitised". By comparison, over 1997-99, China had cut state enterprise employment by nearly half. The same applies to civil service numbers: while Viet Nam targets a 15% drop in the number of posts, China is on track to achieve a 50% drop (Wescott, 2003).

From public administration reform to Project 30

Faced with the need to adapt administrations to make them into an instrument contributing fully to the national socioeconomic development strategy, the Vietnamese authorities have been very active. Several reform plans have been underway over the last quarter of a century, but progress has been slowed by the need to reform the administration from within, and bring about the necessary cultural changes.

A comprehensive public administration reform programme started in Viet Nam in 1995 in accordance with the Central Resolution 8 (VII Session) and always has been considered as a core part of the socioeconomic development strategy of Viet Nam. The main objectives of the programme were to rationalise the legal and regulatory framework of the public administration; to reform the administrative machinery at all levels; and to “renovate” the civil service with a focus on training. A “*master plan for public administration reform from 2001-10*” was launched by the Prime Minister (Decision 136/2001/QD-TTg, 17 September 2001). This reform focused on four areas: the institutional system, the organisation structure, capacity-building for civil servants and public finance. Administrative procedures were reviewed, adjusted and eliminated to make life easier for businesses and citizens alike. Ministries, ministerial-level agencies and provinces all contributed to the administrative procedures reform in the areas under their control with a view to improving the relationship between the state administrative agencies and citizens and business.

A National Steering Committee for PAR headed by the Prime Minister was set up in the central government, and a Steering Board was set up in every ministry and province in the country. In principle, PAR was linked to related reforms of public enterprises, the organisation and operation of the National Assembly, and of the legal and judicial system (Minogue *et al.*, 2004). The first phase of the public administration reform was completed in 2005 and delivered improvements that have provided the basis for the current reform programme.

To support the successful implementation of the 5-year economic plan (2006-10), and facilitate adaptations required by Viet Nam’s participation in the WTO, and to continue modernising the administrative system, in 2006 the Government of Viet Nam adopted a new plan of public administrative reform for the period 2006-10. One of the main components of the reform is the Master Plan to Simplify Administrative Procedures in the fields of the State Governance (“Project 30”) approved by the Prime Minister in Decision 30/QD-TTg dated January 10, 2007. Project 30 has, between 2007 and 2010, consisted in a comprehensive inventory of administrative procedures (APs), a publication of findings in an online database, a review of the necessity,

legality and user friendliness of the APs and the formulation of two sets of simplification measures. The Office of the Government (“OOG”) was designated to lead the implementation of the project, in co-ordination with the national ministries, 63 provinces and centrally-managed cities.

The justification for Project 30 was based on the fact that in spite of the many recent positive reforms, Viet Nam’s citizens and businesses are still facing obstacles caused by administrative procedures in their daily lives and operations. High administrative costs and risks reduce the benefits of market reforms, promoting corruption and informality, and reducing productivity, growth and market opportunities outside Viet Nam. Red tape and cumbersome public administrative procedures also impose burdens on the poor which prevented them from benefitting from improved standards of living and employment opportunities. Moreover, complicated and troublesome administrative procedures were continuing to affect the relationship between the Government and society.

The APR must also be viewed in the context of another government programme, the *Strategy for the Development and Improvement of the Legal System* or “Legal System Development Strategy” (LSDS).⁸ Resolution 48NQ/TW 24 May 2005 of the Politburo on the LSDS takes stock in critical terms: [...] in general, our legal system still has many shortcomings. The system is still not comprehensive and consistent; its viability is still low, and its implementation in practice remains slow. The mechanism for making and amending laws has many deficiencies and is still not properly observed. The speed of law-making activities is slow. The quality of the laws is not high.”

In its submission for the Universal Period Review (UPR) early in 2009,⁹ the Government reaffirmed its commitment to the LSDS, with a view to building a uniform, consistent, enforceable, open and transparent legal system and a rule-of-law state of the people, by the people and for the people. The draft Socio-Economic Development Plan (SEDP) 2011-15 has also recently indicated the Government’s stated commitment to sustain efforts to improve the regulatory environment for business,¹⁰ including further progress on RIA: “Keeping close control on the promulgation and modification of current regulations by implementing strictly the requirements for impact assessment according to the regulations mentioned in the Law on Laws, before promulgating the document and policy”.

Notes

1. All examples are taken from OECD (2009), Chapter 1 unless otherwise stated.
2. Figures published in a EUROCHAM position paper at the Viet Nam Business Forum, 25 May 2010.
3. www.regulatoryreform.com/pdfs/FAQ%20Sheet%20Regulatory%20Guillotine%20Nov%202008.pdf
4. www.brookings.edu/papers/2010/09_Viet_Nam_schwarz.aspx
5. Information for investors can be accessed at http://Viet_Nam.e-regulations.org.
6. <http://siteresources.worldbank.org/INTVIETNAM/Resources/tomt.pdf> (p. XIII of executive summary).
7. www.business-anti-corruption.com/country-profiles/east-asia-the-pacific/vietnam/initiatives/public-anti-corruption-initiatives/
8. See Resolution 48-NQ/TW 24 May 2005 of the Politburo on the Strategy for the Development and Improvement of Vietnam's Legal System to the Year 2010 and Direction for the Period up to 2020, and Resolution 900/UBTVQH11, dated 21 March 2007 of the Standing Committee of the National Assembly for the Action Plan to Implementation of Politburo Resolution N° 48-NQ/TW.
9. www.vietnamembassy-usa.org/news/story.php?d=20090424174141
10. <http://vietnamnews.vnagency.com.vn/Opinion/200435/Fruits-of-progress-%E2%80%98havent-been-shared-out-equally-.html>

Chapter 2. Administrative simplification in Viet Nam

This chapter first takes stock of Project 30, its methodology and its results, as this project is the flagship initiative of the Government of Viet Nam to improve the regulatory environment. Because these projects also have greatly contributed to cutting red tape in Viet Nam, this chapter examines the one-stop shop policy and the measurement of administrative burdens. The next chapter will address other related dimensions of regulatory reform, including the improvement of the legal system under the aegis of the Law on Laws (2008).

Project 30

Overview and goals

In Viet Nam, the main instrument by which administrative simplification has been pursued has been “administrative procedure reform”.

The Proposal to simplify the administrative procedures in the fields of state governance over 2007-10, drawn up after an analysis of other countries’ experience, was approved by the Prime Minister in accordance with Decision 30/QD-TTg dated January 10, 2007. Before being formulated and officially announced, the simplification policy had carefully taken stock of the national situation and examined several foreign experiences to gather expertise relevant for setting the goals of the policy and managing implementation. Execution of the project was partially co-financed by international donors, most of the costs having been covered by the Vietnamese Government itself.¹ USAID/VNCI² worked closely with OOG from April 2007 to design and support the implementation of Project 30 through study missions, technical support, design and support of the National Database, donor co-ordination, training programs, and an innovative secondment of private sector experts working in STF and the ACAPR. IFC (IFC, n. d.) also directly supported Project 30, especially in measuring administrative burdens. Other major long-term donors supporting business regulation/administrative reforms have been UNDP, ADB, GTZ, the European Union, and most other bilateral agencies such as CIDA (CIDA, n. d.). (See World Bank June 2010 Partnership Report).³

The Government set the following goals for the Project:

- 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 WTO and international trade agreements through the establishment of a modern, and better regulatory system;
- Greater systemic transparency in compliance with WTO principles;
- The first unified database of all regulations at the central level in Viet Nam with quality control and consultation mechanisms for simplifying administrative procedures;
- Stimulating investment and productivity gains across the economy by reducing costs and risks for large and small businesses;
- Improving Viet Nam's competitive position among WTO economies;
- Helping to meet the economic commitments of the five-year plan for job creation.

Methodology

The project relied on a comprehensive review of administrative procedures⁴ (APs). All administrative procedures including forms enclosed with administrative procedure dossiers had to be inventoried and reviewed to check their necessity, legality and user friendliness. Proposals for their simplification were then developed as a result of this assessment. All administrative procedures including processes for their settlement had to be standardised and published through the National Database of administrative procedures. It was also decided to produce an effective legal mechanism for state administrative agencies to receive, handle feedback and petitions from individuals, organisations and enterprises with respect to mechanisms, policies and administrative procedures that were no longer suitable.

Simplification of administrative procedures has been carried out throughout the whole administration, at all 4 levels of government including sub-national levels (10 000 communes, about 700 district level units, 1 300 provincial departmental units and 400 units of ministries or ministerial level agencies).

The method of the “regulatory guillotine” was chosen for reviewing the administrative procedures (APs) combined with the quantification of compliance costs using a modified version of the Standard Cost Model. The APs were assessed against the following three questions:

- Is it needed?
- Is it suitable/rational for citizens and businesses?
- Is it legal?

The review was conducted by the responsible institutions (ministries, agencies, provinces). There were four main phases in the review:

1. Inventory – All national-level agencies and provinces were obliged to prepare lists of administrative procedures in their competence including their description based on a standardised form. The inventory was published and revised based on public comments. The inventory was then turned into a central electronic register of administrative procedures accessible via Internet. In addition, the ACAPR checked the inventory and actually found that over 1 000 APs were missing or incorrect.
2. Review by responsible agencies – Based on a form issued by the STF, the state-level agencies and provinces had to review each administrative procedure by answering the three questions on legality, necessity and user-friendliness. These forms were then submitted to the co-ordinating body.
3. Review by Special Task Force and the Advisory Council – The co-ordinating body (STF) together with the Advisory Council reviewed the forms and proposed their modifications.
4. Recommendations – Based on the input provided by responsible agencies and provinces and based on consultations with ACAPR the STF developed recommendations for each administrative procedure. Recommendations could either suggest maintaining the AP or simplify or abolish the AP completely. These recommendations were discussed with responsible agencies and prepared for decision of the Government.

Quantification of compliance costs was used to further justify the necessity of individual administrative procedures (or lack of necessity) as well as to express the benefits simplification proposals would bring to businesses and citizens. A modification of the Standard Cost Model was used for quantification. (For more detailed information on quantification see section on “methodology” p. 60.)

Special forms for each phase of the process were developed by STF and adopted by the Government:

Form 1 was developed to catalogue all APs in the register. Each administrative procedure had to be precisely identified as to the enforcing institution and the instrument itself. A unique inventory number was assigned to each administrative procedure by the STF after receiving the form. Each administrative procedure had to have some basic descriptive information about the nature of the procedure, such as whether it involves a licence, or has forms attached, or requires fees. A contact point or a responsible individual had to be named for each administrative procedure in order to facilitate quality control and the collection of further information.

Forms 2 and 3 were developed to review each administrative procedure in a standardised way. The administration fills in form 2 for every administrative procedure in the inventory, whereas business can submit their review with form 3. The forms included standardised criteria for evaluation, presented in the form of a checklist that had to be answered for every administrative procedure under review. The review criteria are organised in thematic sections:

1. On the necessity of the AP – in this part, objectives of a given AP are described and whether these objectives have been met by the implementation of a given AP. Alternative options to the AP that would meet the objectives were also described. This is the most subjective of the questions as it is not easy to define criteria for necessity.
2. On the reasonableness/appropriateness of the AP – consistency with other APs, clarity, provision for specific deadlines for government agencies, reasonableness of number of information requirements, etc. are described here.

3. On the legality of the AP - Viet Nam's experience in reviewing business licences suggests that at least half of the administrative procedures currently being implemented by governments of all levels in Viet Nam need to be reviewed with respect to their legality, because they have no authorisation in law and are issued by different competent agencies. Therefore, this part of the form responds to the questions of the AP being governed by a legal normative document, in contradiction with other regulations, etc.

Form 2 was filled out by each ministry/agency/province for each administrative procedure. Form 3 was to be filled out by civil society such as businesses and citizens who wanted to submit specific comments on a particular administrative procedure. Form 3 was slightly shorter than Form 2 but basically contained identical questions.

Specific "sub forms" were also developed and adopted for reviewing the form attached to each AP (forms 2a, 3a) and for reviewing requirements for implementation of the AP (forms 2b, 3b).

Specialised software was used to make the inventory and the electronic register of APs.

Institutional set-up

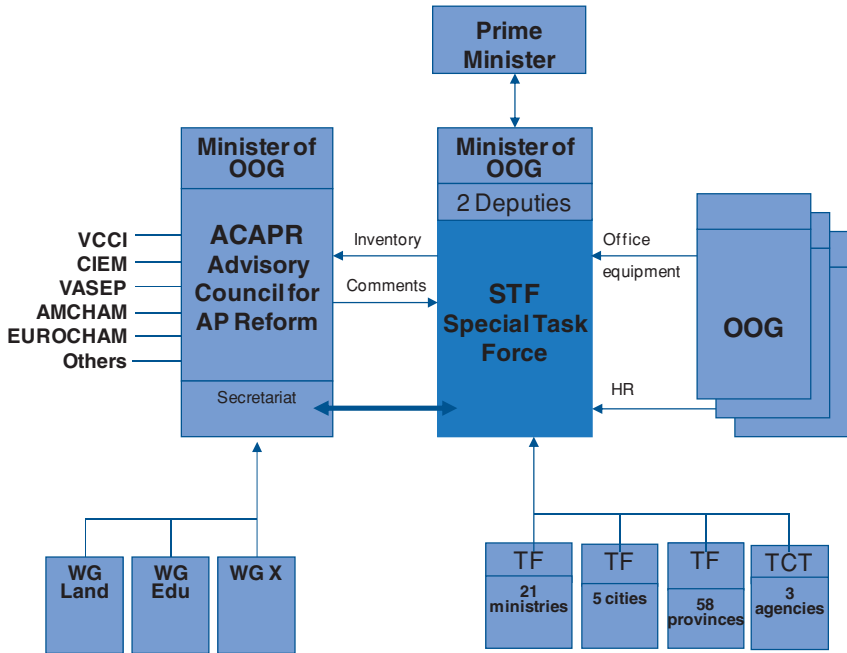
The Prime Minister's Special Task Force (STF) was established as part of the Office of the Prime Minister (OOG) as the main co-ordinating body of Project 30. STF reports directly to the Prime Minister and its responsibilities are to:

- Make the inventory of APs:
 - Compile an inventory of all administrative procedures, forms, requirements or conditions for implementing administrative procedures by completing Forms 1 on the basis of inventory results conducted by ministries and provinces;
 - Prepare and create a comprehensive electronic database of administrative procedures, forms, requirements or conditions for implementing administrative procedures;
 - Enter and manage data in the e-Guillotine software;
 - Publish regulations and information on the Internet.

- Review APs:
 - Make an independent review of administrative procedures, forms, requirements or conditions for implementing administrative procedures reform after ministries, agencies and provinces' review;
 - Recommend to the Government administrative procedures, forms, requirements or conditions for implementing administrative procedures which ministries, agencies and provinces cannot prove legal, necessary and reasonable to the people and businesses to be amended, annulled, or simplified;
 - Develop recommendations on the simplification of administrative procedures to submit to the Government.
- Co-ordinate and co-operate with other ministries/agencies and sub-national governments:
 - Develop forms and guidelines to ministries, provinces, individuals, and organisations on inventory, review of administrative procedures, forms, requirements or conditions for implementing administrative procedures;
 - Instruct ministries, agencies and provinces on how to implement AP reform, provide guidelines for ministries, agencies and provinces and assist them in compliance to the Project 30 implementation plan;
 - Take the lead and collaborate with ministries, agencies and provinces in reviewing groups of closely related administrative procedures;
 - Provide training for ACAPR staff and task forces of ministries, agencies and provinces on the organisation of the Project 30 implementation;
 - Collect information needed for the administrative procedure reform from ministries, agencies and provinces, cities, business community, and citizens;
 - Report to the Prime Minister and Government on progress according to the approved plan.

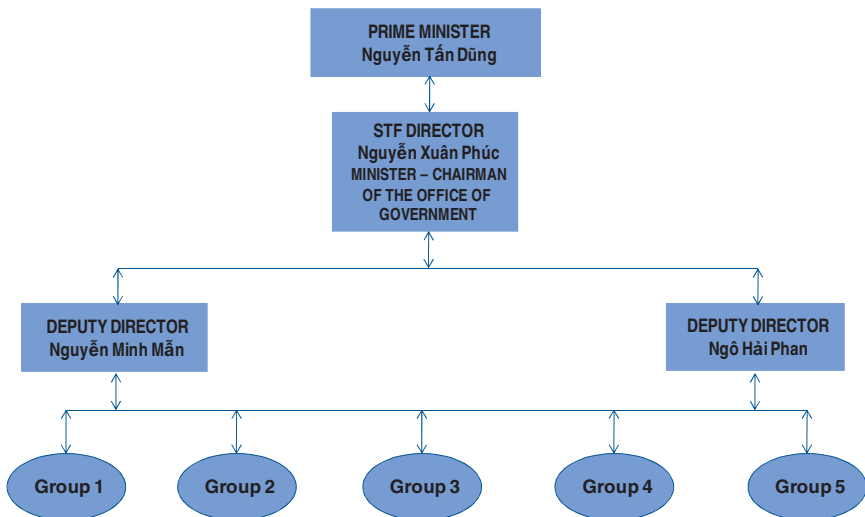
- Consult and co-operate with stakeholders:
 - Consult with professional associations and ensure transparency of the inventory and review of administrative procedures, forms, requirements or conditions for implementing administrative procedures;
 - Engage active participation from enterprises, associations and individuals in the Project 30 implementation process;
 - Inform individuals, organisations and encourage them to participate in the administrative procedures reform process;
 - Organise workshops, presentations, meetings, etc. for consultation;
 - Collect citizens, organisations and enterprises' opinions on administrative procedures;
 - Establish and maintain a website for the administrative procedures reform.
- Other:
 - Organise donor support.

Figure 2.1. Co-ordination structure of Project 30



Source: www.thutuchanhchinh.vn/.

Figure 2.2. Structure of STF



Source: www.thutuchanhchinh.vn/.

- The Minister, Chairman of OOG – who has overall responsibility for STF operations;
- The Director of OOG Department of State Administrative Organisation and Civil Service who serves as a Deputy Director of STF;
- The Deputy Director of OOG, Department of State Administrative Organisation and Civil Service, who serves as the Standing Deputy Director responsible for directly managing, organising STF work;
- Permanent staff of 50 officials, including experts in law, economics seconded from the Office of the Government, ministries, and ministerial-level agencies;
- Support and administrative staff;
- Other experts from business associations, enterprises, donors, etc.

As part of the project, the STF has organised many training sessions for 87 task forces in 24 ministries, agencies and 63 localities; coached thousands of key officials in ministries, agencies and localities on the method of inventorying and reviewing administrative procedures. The training did not only focus on Project 30, but also helped to promote awareness on simple and user-friendly ways of implementing regulations in general, to change the culture across administration and to promote co-operation in the area of regulatory quality.

Ministerial and provincial task forces

Project 30 Task Forces have been established in all ministries and government agencies as well as in provinces as part of the Provincial People's Committees to implement Project 30 at the operational level of their ministry/agency/province. The task forces are co-ordinated by the STF. The head of the task force should be Chief of Secretariat of a ministry/agency/Provincial People's Committee's office, designated by a minister, a Head of Ministerial-level Agency or a Chairman of a Provincial People's Committee to represent and take responsibility for TF operations.

The task forces:

- Create an inventory of all administrative procedures, forms, requirements or conditions for implementing administrative procedures within their respective areas of competence to provide STF with completed Forms 1;

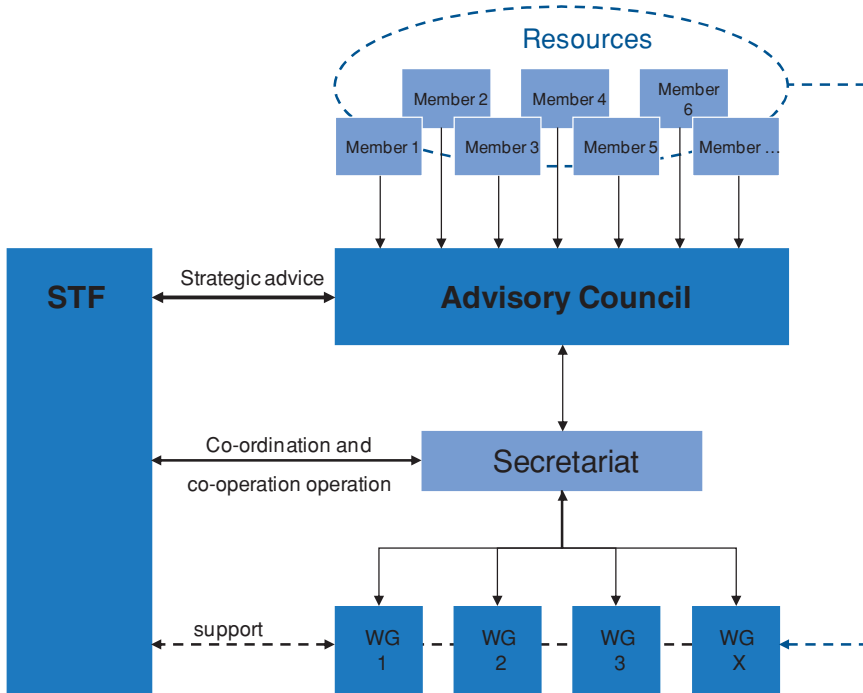
- Review all administrative procedures, forms, requirements or conditions for implementing administrative procedures within their respective area of competence to provide STF with completed Forms 2;
- Recommend to STF which administrative procedures, forms, requirements or conditions for implementing administrative procedures should be cancelled, amended, simplified or maintained.

The Advisory Council of Administrative Procedures Reform

The Advisory Council of Administrative Procedures Reform (ACAPR) is a representative body for the business sector, academic institutions and associations providing advice to the STF in implementing objectives of Project 30. It is chaired by the minister and Head of the OOG. It has 15 members representing Vietnamese businesses, Eurocham, Amcham, KOTRA (Korean Trade Promotion Agency) as well as the academic sector. Fifteen working groups were created to discuss particular areas of regulation such as education, pharmaceuticals, taxes, customs, minerals, investments, telecoms (see Figure 2.3).

The responsibilities of the ACAPR are multiple. According to the official government website, it:

- Represents the business sector, academic institutions and citizens in consultation with STF, to ensure effective implementation of objectives and tasks as set by the administrative procedure reform;
- Engages in mobilising resources in support of the ACAPR and STF operation;
- Collects factual evidence on individual procedures causing difficulties for businesses and citizens;
- Identifies missing administrative procedures in the inventory stage;
- Provides information on inappropriate administrative procedures that need to be adjusted and simplified by reviewing forms;
- Identifies priority areas for review and study, and proposes solutions to simplify administrative procedures;
- Communicates goals and missions of the Project and the Council to strengthen support and promote engagement from the business community and citizens.

Figure 2.3. ACAPR organisational structure chart

Source: National Assembly, Viet Nam.

The parliament, while not involved directly in the project, plays an important role. It is represented in the ACAPR but is also controlling the process through on-demand reporting. This involvement is not institutionalised, though, as the OECD team was assured, very important both for the STF as well as the Assembly. The National Assembly will be responsible for adopting the omnibus laws that will implement simplification proposals into legislative documents (see below). Therefore, informing the Assembly and having it “on board” during the whole process is crucial for the success of the Project.

Communication and involvement of stakeholders

It is the first project of such scope where the Vietnamese Government to a large extent relies on the involvement of stakeholders. This is in line with the experience of OECD countries which proves that no successful review of existing regulation can be undertaken without co-operation with those who should benefit the most from such reform – businesses and citizens.

First, the Vietnamese Government created an institutional structure for involvement of stakeholders, the Advisory Council of Administrative Procedures Reform by setting up 15 thematic working groups. In Viet Nam, over 300 Vietnamese and international businesses are represented as well as academics. No consumer association, trade unions or other organisations directly represent citizens.

Businesses and Vietnamese citizens were also given other channels to communicate with government agencies and the special task force. The Government put in place mechanisms that allow business and citizens to provide feedback and comments through telephone calls, in writing or through opinion polls. Their comments may deal with specific problems in implementing administrative procedures (delayed or improper implementation, failure to implement, etc.), impracticality, inconsistency, unlawfulness of APs, or their non-conformity with international agreements. The Government adopted Decree 20/2008/ND-CP which describes in detail the procedures for dealing with such comments.

The APR portal is another important channel where businesses and citizens have the possibility to comment both on individual APs as well as participate directly in the review process by commenting on forms and simplification proposals.

Implementation and results

The inventory phase of all APs was successfully completed in October 2009. The National Database of Administrative Procedures at all four levels of government was published on the Internet with over 5 700 administrative procedures, over 9 000 regulating documents, and over 100 000 administrative procedure inventory forms. This searchable database is however only accessible to the public in Vietnamese. This is the first complex register of all APs in the history of Viet Nam. Even if this was the only result of Project 30, the project would already be considered a great accomplishment. Having access to this information makes the regulatory environment more transparent and therefore creates more favourable conditions for entrepreneurship.

10 000 sets of APs at communal level and 700 sets at district level were standardised and simplified into 63 sets at communal level and 63 sets at district level. While this makes the implementation of APs more transparent and homogeneous, it may be advisable to continue standardisation with a plan to create one set of APs applicable throughout the country (see p. 80).

The first bulk of proposals on the simplification of APs was submitted to the Government in June 2010 with a slight delay to the original plan. On 2 June 2010, the Prime Minister issued Resolution 25/NQ-CP on the simplification of 258 APs. These APs fall into areas identified as priority by ACAPR, such as taxes, customs, construction, real estate, etc.

To implement the simplification of these 258 APs, 14 laws, 3 ordinances, 44 decrees, 8 Prime Minister's decisions, 67 circulars and 33 ministerial decisions have to be amended. For simplification that does not require the changing of laws and ordinances, ministries and agencies were held responsible for issuing the amended documents. However, amendments to laws and ordinances are needed to simplify most of the APs, which is a longer procedure. Ministries and agencies were asked to develop by 30 November 2010 draft laws and ordinances to amend, supplement, replace or abolish relevant regulations. These drafts were to be sent to the Ministry of Justice where they would be compiled into (an) omnibus law(s) and then submitted to the Government for consideration and decision, before being approved by the National Assembly.

Box 2.1. Examples of key simplification proposals

**(From "highlights", official document, to
"Key reforms in the simplification plan")**

Taxes

Regulation now enables businesses to print their own invoices. Businesses no longer need to receive approval from the Tax Authority for self-printed invoices when issuing and using them - they just need to inform the Tax Authority. The purchase of VAT invoices issued by the MoF is only applicable to newly established businesses and to small enterprises which do not have printing means.

VAT declarations. Small and medium enterprises will declare their VAT every three months while large enterprises will do it on a monthly basis instead. All firms currently declare their VAT on a monthly basis. More banks (including joint stock commercial banks) will be allowed to engage in the tax information system and tax collection.

VAT refund procedures. Business risk criteria will be published so that businesses can define what VAT refund category they belong to, making the VAT refund process easier and more transparent. The period for the VAT refund procedure in the category of “getting VAT refund before examination of tax refund applications” was shortened from 15 to 6 working days. The time for the VAT refund procedure for the category of “examination of the tax refund applications before getting VAT refund” was shortened from 60 to 40 working days according to the Ministry of Finance.

Customs

The procedures for issuing customs priority cards to businesses, and customs agent cards has been eliminated. Examples of APs to be simplified include *i)* the procedure for registering, adjusting and checking the norms of outsourced goods; *ii)* the procedures for registering, adjusting and checking the material norms and registration of export products; *iii)* the procedure for e-customs for registering, adjusting and checking the norms; and *iv)* the procedure for e-customs clearance registration which allows registration by email.

Construction

Regulation on construction fees will be abolished. Regulation on the “valid period for a construction start-up” in the construction licence will be removed, thereby eliminating the procedure for extending construction licences.

Real estate

The requirement for a mandatory notarisation of land use rights related to contracts (*e.g.* for mortgage, leases, and capital contribution) will be abolished as well as the requirement for a mandatory notarisation of contracts relating to mortgage on property or mortgage related to land use rights.

Labour and social affairs

The intervention of regulators in business operations has been reduced through the elimination of the salary scale registration procedure for non-state enterprises, and the implementation of a collective labour agreement. Work permits will be abolished for the representative Heads of Office of foreign companies, the Project Office Head, the Heads of NGOs in Viet Nam, and for business expatriates in the service areas subject to the WTO commitment.

Banking

The requirement to submit “all other related documents as required by the State Bank of Viet Nam” will be abolished. The procedure allowing credit institutions to perform payment coverage services and the procedure for certifying applications for foreign investors when opening a VND bank account in a commercial bank for capital contribution and purchase of stock will be abolished.

Telecommunications

The procedures for reporting to the Department of Information and Communication on the provision of Internet services were simplified as well as those for checking and examining base transmission stations.

Natural resources and the environment

The procedure for an environmental protection commitment at district level will be revised, so that it will only apply to appropriate areas. The procedures for prospecting and processing mineral were eliminated both at central and provincial levels).

Culture, sports and tourism

The procedure for granting a licence to foreign travel businesses to establish representative offices will be simplified.

Health/pharmaceuticals

The validity for food certificates and food additive standards will be extended to five years. The procedure for issuing a licence to foreign drug companies operating in Viet Nam will be simplified.

There was a second larger batch of simplification proposals end September 2010 when STF submitted simplification measures to the Government for the remaining 5 421 APs. Their implementation into legislative documents should take place in 2011 using a similar procedure as for the first bulk. STF has examined and recommended to revise and supplement 4 146 APs, repeal 480 APs and replace 192 APs out of 5 421 APs. This should deliver an 88% simplification rate, higher than the 81% average simplification rate proposed by ministries and agencies.

Assessment of Project 30

Project 30 has raised expectations among stakeholders including domestic and foreign businesses. The general assessment is positive while underlining how much remains to be achieved: “Through Project 30, Prime Minister Dung has created conditions that can allow a modern regulatory system to emerge and replace the one predicated on factional rivalries and ideological dogmatism. It will take years to see whether such a system materialises, but if Viet Nam maintains the progress-oriented attitude that has characterised the post-doi moi era, it may be able to emerge from its self-constructed jungle of corruption and administrative procedures to provide a welcoming and world-class environment for trade and investment” (Brookings Institute, 2010).

Much remains to be done, provided the political support is on-going. A number of position papers can be used to document the expectations of private companies. Among them, EuroCham has published on line its position on APR, which had first been expressed at the Viet Nam business forum (VBF) on 26 May 2010. A summary of the discussion in VBF was published online by the VN Chamber of Commerce and Industry and provides a useful insight: “As regards administrative reform, Viet Nam has not witnessed much progress. According to EuroCham, the process of ratifying investment procedures and business establishment in Viet Nam remains difficult and time-consuming. For many foreign companies, complex administrative procedures, especially in implementation, sometimes result in a successful business in Viet Nam. Investors have to wait 5-6 months to obtain investment licences in Viet Nam while it takes 5-6 weeks in other countries in the region. Time-consuming and cumbersome administrative procedures may cost the competitiveness of Viet Nam in the eyes of foreign investors.” In other words, the results of Project 30 will only be assessed definitively once the simplification measures will be implemented.

The factors of success that have been manifest in Project 30, and that provide a basis for further progress, are:

- *Political support.* The project has enjoyed sustained political support from the top level including the Prime Minister. This is key to deal with potential reluctance among officials as well as to build confidence among stakeholders. The support is reflected in the fact that the Prime Minister officially endorses the project and has announced key achievements personally. Furthermore, the STF is chaired by the Minister and Chairman of the OOG which signals the high-level political support given to the project;
- *Sound institutional structure.* The establishment of a co-ordinating body at the centre of government is in line with OECD good practices and recommendations. The status of the STF gives it enough powers to deal with and directly instruct other ministries, agencies and provinces. This is also underlined by high professional skills and active day-to-day communications with involved institutions. The creation of a dedicated task force in each ministry/agency/province is also important for efficient co-operation between the centre and the participating institutions. Last but not least, the creation of an institutionalised advisory body consisting of stakeholders is important for transparency and smooth collaboration with stakeholders;

- *Capacities in all participating bodies.* The STF has highly educated, experienced and motivated staff among its members. The project has drawn on international experience that was examined in detail by members of the STF and adapted to the Vietnamese context. The number of training sessions as well as day-to-day guidance provided by STF to other task forces is extremely helpful to assure unified application of simplification methodology;
- *Commitment of all participating institutions.* This is partially a result of visible political support and effective inter-ministerial and inter-governmental co-operation. Raising awareness on the necessity of simplifying administration especially in the beginning of the project through intensive, sometimes personal communication between STF and ministries and provinces paid off;
- *Transparency and active involvement of stakeholders.* All the forms were under the scrutiny of the public through the APR website and any citizen and business can comment on APs in the database with no restriction. Furthermore, business, academics and national assembly representatives could provide feedback through the ACAPR working groups. This high level of transparency and active involvement of stakeholders was instrumental in building the confidence of businesses and citizens to ensure that the effort is taken seriously. And involving the end-users of regulation was a key step towards a more user-centred regulatory environment. The business environment judged the ACAPR to be “historic” in establishing a regular dialogue between government and business;
- *Historical achievement: the inventory of APs.* For the first time, all administrative procedures have been inventoried and transparently made available to all interested parties via the Internet.

One-stop shops

One of the key tools for improving information and service delivery on business start-ups include the creation of business portals and enterprise service counters – so-called one-stop shops. These institutions supply a high variety of services ranging from information about regulations and their requirements, licensing, to issuing permits to enter specific business activities. One-stop shops can also provide other services on behalf of citizens or entrepreneurs from other public authorities. In a perfect situation, there is only a “single window” to contact in order to access all services they might apply for.

Governmental business portals and one-stop shops are widely used to simplify the Government's interaction with citizens and businesses across OECD countries. One-stop shops can be operated by the national, regional or local authorities. In some cases one-stop shops are run by chambers of commerce or any forms of co-operation between public bodies and private entities. Delivery mechanisms have expanded from traditional methods, such as face-to-face interviews to telephone and mail, to the use of ICT-based tools, most importantly web portals. Today, OECD countries are focusing on developing "multi-channel" delivery services to improve and facilitate a user's access to public services. Channels involved can range from traditional channels, such as the counter and telephone, to electronically enabled channels: Internet, e-mail, SMS, digital television.

In Viet Nam, the implementation of OSS was stipulated in the Public Administration Reform Master programme 2001-10 "to be applied widely by public administrative institutions at all levels in delivering services for the people and businesses". The first one-stop shop was piloted in 1996 in Ho Chi Minh City, covering a range of services: business registration, construction permits, land use right and house ownership certificates, cultural activity licences, notarisisation, legal counselling and advice, citizens complaints and denunciations, and social affairs. In the late 1990s and early 2000s, additional pilots were established in Quang Binh, Quang Tri, and Ninh Binh provinces.

In 2003, the Prime Minister issued a decision to make one-stop shops compulsory in all 11 000 districts and communes of Viet Nam, covering four departments at the province level, six procedures at the district level and four procedures at the commune level. Later in 2007, the one-stop shop initiative was scaled-up to all departments and procedures at local levels and was made mandatory for the central-level too. By 2006, two out of three departments at the province level had established their one-stop shops, and by October 2009 this had risen to 84%. At the lowest administrative levels the implementation of the one-stop shop is nearly complete. As of October 2009, nearly 99% of departments at the district level and 96% of departments at the commune level had applied the one-stop shop model (World Bank, 2009).

As far as business registration is concerned, the OSS involves three business start-up procedures: the business registration certificate issued by DPI, the tax code issued by the Tax Authority and the chop (red seal) granted by the local police department.

However, there are a number of variations in interpretation and implementation of OSS across provinces. One of the most important issues is the inter-linkage of various one-stop shops so they can deal with as many administrative procedures as possible regardless of which department/level of government is responsible for their implementation.

One example of an inter-linkage one-stop shop, laid out in Circular 02/2007/TTLT/BKH-BTC, is for undertaking related administrative procedures — business registration, tax registration and seal registration — under the responsibility of different departments: planning and investment, finance, and public security. In Binh Thuan and Kien Giang provinces, for example, these initiatives helped businesses with registration. Several other localities have also deployed the inter-linkage one-stop shop model in other fields: Ho Chi Minh City, Ha Noi, Da Nang city, Hai Phong city, Dong Thap province, and Phu Tho province implemented the inter-linkage one-stop shop for granting certificates of land use rights and construction permits; Quang Ninh province organised an inter-linkage one-stop shop in resolving files, administrative procedures with investors in the province, etc.

Currently, there are multiple one-stop shops at each level of government. Even inside ministries, departments usually created their own one-stop shops. One-stop shops created by provinces can only deal with APs implemented at the provincial and subordinate levels, however they cannot provide assistance with APs implemented at the central level. This goes against the idea of a “joint government”.

As the analysis of the VNCI on the implementation of one-stop shops in Ha Noi and Vinh Phuc province shows, the creation of one-stop shops “have not simplified the seemingly straightforward process of registering a business” (VNCI, 2006). The process of obtaining a general registration licence still requires a prospective business to visit no less than three separate “single doors” at the provincial level.

Box 2.2. One-stop shop in Mexico

The Mexican Government, with the support of the OECD, and under the framework of the Programme for Strengthening of Economic Competition and Regulatory Improvement for Competitiveness in Mexico, has instrumented a one-stop shop for business start-ups. The portal *tuempresa.gob.mx* was launched by the President of Mexico Felipe Calderon on 4 August 2009.

The portal *tuempresa.gob.mx* is an on-line site that allows entrepreneurs to comply with the five federal formalities needed to legally constitute a commercial entity in a simplified and streamlined manner. Prior to the instrumentation of the portal, entrepreneurs needed to visit different government offices, fill out several forms and questionnaires providing the same information several times, wait in line to submit information, and wait several hours or days to receive an official response. With the portal *tuempresa.gob.mx*, entrepreneurs just fill out one single form on line, and after visiting a notary or an authorised commercial broker, they receive and can download official responses from the website.

The portal makes intensive use of e-government tools. By interconnecting several government databases, making possible the sharing of information between different ministries, and by eliminating the need to submit several times the same information, the portal makes life easier for businesses by lowering opportunity costs. OECD estimates show that administrative burdens for the entrepreneur are reduced by 65% with the instrumentation of the portal, decreasing from an equivalent of 16% of the GDP per capita of Mexico of 2007 to just 6% (OECD and Secretaria de Economía, 2009). It is expected that the portal will decrease the barriers that promote the informal economy, and will help to boost the number of new start-ups.

Progress has been made recently with the creation of a unique registration number – the “Enterprise Code Number” (ECN) (Viet Nam Business News). This is a positive step towards simplifying the procedure for starting up a business (Decree 43/2010/ND-CP) and so will be the introduction of an on-line system of business registration (*ibid*). However, once established and functional, the services offered by the portal should be continuously expanded to provide assistance throughout the whole lifecycle of the business.

Measurement of administrative burdens

The reduction of administrative burdens was an objective of Project 30 right from the outset, as well as a technical tool to focus simplification efforts, and a support to communication and keeping motivation for change high by measuring and publishing results.

According to an assessment published on the IFC website (IFC, n. d.), Vietnamese enterprises consider that the current complicated administrative procedures are not only time consuming but also costly. According to Mr. Diep Thanh Kiet, Chairman of Viet Nam Leather Footwear Association, which exports over 100 000 containers of all kinds of products every year, a one-day delay in customs clearance procedures will cost from VND 1 500 to 1 800 billion per year for the Association.

Mr. Nguyen Xuan Phuc, Minister, Chairman of Office of Government of Viet Nam, presents Project 30 as an initiative to reduce regulatory costs and risks for businesses and citizens through a comprehensive reform of administrative procedures. He was quoted saying “We need to quantify how much a 30% reduction of administrative procedures should cost, thus to present the economic benefit of the project to the whole society and business community.”

The use of a quantitative method for assessing the benefits of removing or simplifying administrative procedures in monetary terms was planned at the outset, and following research into available methodologies, the Standard Cost Model (SCM) was adopted by the Government of Viet Nam and widely applied to measure the administrative compliance costs at the central level.

Project management and timeline

The SCM was introduced to the Project 30 Task Force officials in all ministries and at all administrative levels, to calculate the administrative costs associated with the current procedures and to support the decision on where simplification was needed.

As well as a methodology, the Prime Minister adopted a national target, defined in a PM instruction of 23 Dec 2009 (ref. 9109/VPCP/TCCV) as “The target of reducing at least 30% of existing AP regulations should be met to cut 30% of AP compliance costs with respect to APs within the control of each ministries and agencies”.

The timeline for the exercise was brief:

- 31 January 2010: completion of the measurement of 253 simplification measures, including their detailed calculations of economic benefits;
- 28 February 2010: decision by the Prime Minister on the simplifications proposed by STF;
- by 30 April 2010, implementation of the 253 measures.

Methodology

Guidance on how to calculate “compliance costs” was provided by the STF on 15 January 2010.⁵ The guidance shows how to “quantify the social compliance costs with administrative procedures, and based on which, calculate the benefits of AP simplification options and propose solutions to cut down AP compliance costs”.

Administrative procedure compliance costs are defined as the cost to individuals and organisations of complying with administrative procedures issued by regulations. Within the Project 30’s framework, AP compliance costs are defined as the sum of three elements *i*) administrative cost, *ii*) indirect financial cost, and *iii*) direct financial cost; specifically:

- Administrative costs: include staff wages, management and overhead costs (for enterprises) for collecting information, preparing documents to complete the dossiers to be submitted to state administrative agencies in order to get administrative procedures handled;
- Indirect Financial Costs: costs for adjusting the product design, production process, providing services, supplementing equipment to comply with the requirements of the procedure (*e.g.* in order to be granted with a karaoke business licence, apart from preparing dossiers in compliance with regulation, the administrative procedure implementing subject needs to design, construct and equip the karaoke rooms in order to meet the sound-proof, light, safety, security requirements). Indirect financial costs are often generated by the need to meet technical requirements and other administrative procedures such as notarisisation, certification and purchase of forms;
- Direct Financial Costs: the fee to comply with the administrative procedure.

Calculation of AP compliance cost under the Project 30’s framework is conducted in 4 steps: *i*) analyse and break up the administrative procedure into measurable activities; *ii*) collect necessary data for doing calculation; *iii*) analyse data and calculate AP compliance costs according to current regulation; and *iv*) calculate post-simplification costs and draw a diagram to compare current costs and post-simplification costs.”

Box 2.3. Cutting Red Tape: The example of the Netherlands

When governments require businesses to ask for permits, to fill out forms and to report and notify activities, they impose administrative compliance costs on the business sector. If not well justified, these administrative burdens establish unnecessary and costly barriers to entry, trade and investment, and generally hamper economic efficiency. This red tape is especially burdensome to smaller businesses and may act as a disincentive to new business start-ups.

Cutting red tape and improving business conditions have become a priority for a growing number of OECD countries in the last decade (OECD, 2006a). In Europe, it has been part of the Lisbon agenda to stimulate economic growth and boost competitiveness. The Netherlands has been one of the front runners in this field, showing strong political will and many innovative initiatives. This position as the most advanced, well-developed and far reaching programme for reduction of administrative burdens on companies and citizens and with significant achievements makes the Dutch experience highly interesting for other countries facing similar problems of regulatory overstretch.

Source: OECD (2007a).

Management of the SCM operation

Both the target reduction percentage (30%) and the scope of the measurement (encompassing all levels of government with a wide notion of compliance costs) are ambitious by international standards, where the reduction target is usually 25%, and measurement limited to administrative burdens.

The operation was boosted by the high support and important resources devoted to Project 30. It has had the positive impact of making officials familiar with the notion of administrative burdens, which contributes to a more user-friendly administration.

Results of the SCM operation

The total compliance cost savings of the reform packages was communicated in a report that Cabinet submitted to National Assembly on 23 September 2010 (Ref 123/BC-CP) showing a cost saving of VND 26 thousand billion per year, about USD 1.4 billion. Figures concerning the total cost of all APs (VND 71 thousand billion per year) provide a baseline against which progress in reducing compliance costs and APs can be monitored.

Conclusion

This chapter examined the various components of the administration simplification strategy in Viet Nam, centered on Project 30. Few countries in the world have developed such an array of reforms intended to introduce change into the public administrations. This performance can already be presented as exemplary for other countries with similar levels of per capita income, from a methodological perspective. But efforts must continue, political support must be sustained for results to bring about lasting improvements to the economy and the social conditions in Viet Nam.

Notes

1. Expenses for Project 30's offices, meetings, stationary and travel costs.
2. www.vnci.org/our-work/project-30.
3. <http://siteresources.worldbank.org/INTVIETNAM/Resources/PartnershipReportMYCG10Engsmallest.pdf>.
4. Official definition of the “Administrative procedure” is “the formalities, mode of implementation, dossiers and requirements, conditions stipulated by State agencies or competent persons to deal with a specific matter relating to individuals, organisations”. – see Government Decree 63/2008/NĐ-CP on Controlling APs.
5. Official Document 28/CCTTHC.

Chapter 3. Regulatory Reform in Viet Nam

The preceding chapter examined Project 30, and other initiatives contributing directly to simplifying the regulatory environment. The experience and the results achieved during the past three years should become the stepping stone for discussing a ten-year regulatory reform programme, integrating state-of-the-art expertise from other countries.

In view of formulating options for regulatory reform suitable for Viet Nam, the review team has examined various initiatives that in Viet Nam are considered to be within the perimeter of the Legal System Development Strategy (LSDS) and the Judicial Reform Strategy to 2010 (JRS). The following analysis does not, however, have the ambition of evaluating these strategies, but only to examine those aspects that are relevant to regulatory reform.

Box 3.1. Regulatory reform according to OECD

OECD's Regulatory Reform Programme is aimed at helping governments improve regulatory quality—that is, reforming regulations that raise unnecessary obstacles to competition, innovation and growth, while ensuring that regulations efficiently serve important social objectives.

In conducting this analysis, the review team has been considerably aided by the recent consolidated reformulation of Viet Nam's policy on these issues in the 2008 revised "Law on Promulgation of legal normative documents" also known as the Law on Laws (LoL).

Overall regulatory efficiency in Viet Nam

Since the early 1990s, the quality of laws and regulations and the judicial system in Viet Nam has often been described in international publications (Wescott, 2003). They generally pointed out a number of weaknesses: the different levels of regulations are often inconsistent, and sometimes provisions contradict each other; the resulting uncertainty is aggravated by the practice in new texts of not precisely specifying what provisions of previously issued legal documents are to be abrogated when a new legal document takes effect. Provisions in superior regulations are

sometimes too general, leaving too much discretion to lower-level regulations. In other cases superior regulations may be too detailed and cause difficulties in implementation and require a lengthy process to revise inappropriate provisions.

The process of preparing legal documents sometimes fails to encourage active participation by relevant state bodies and entities with legal expertise, and stakeholder input is not systematically sought. Preparation tends to be done without proper policy studies and research, which means that legal documents often have to be revised shortly after their promulgation. In addition, subordinate regulations are often not prepared together with superior regulations, causing implementation delays and uncertainties.

Finally, several observers have noted the rapid growth in the number of regulations.¹ The annual production of legal documents has risen from about 1 000 in the late 1990s to about 4 000 in recent years. STAR Viet Nam comments: “While the increase in legal documents issued in the last four years reflects the need to develop the legal system to administer a more open and developed market economy, it is undeniable that the jungle has become more overgrown, impenetrable and difficult to navigate.”

Box 3.2. Terminology: regulation vs legal normative documents (LNDs)

Specific to the Vietnamese legal system is the concept of “legal normative document” (LND) to describe any law enacted by the National Assembly (NA), as well as any piece of subordinate legislation issued by an authorised individual or body. A distinction is made between an LND and a “legal document”, as the latter is, in theory, not norm-creating; for example, a letter or an academic treatise would be a legal document but would not (necessarily) create legal rights or obligations.

In this report, the concept of “regulation” is used in the meaning of the OECD and other international publications to define any instrument by which governments set requirements on enterprises and citizens. It therefore includes all laws (primary and secondary), formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. Subordinate regulations may be mandated in the primary laws, or established directly by lower levels of government (state, region etc). For linguistic simplicity, the process of making new regulations is referred throughout as “rule making”, and the enforcement of regulations as “rule enforcement”.

Overview of the Law on Laws

Many improvements were introduced by the revised “Law on the Promulgation of Legal Normative Documents (commonly referred to as “the Law on Laws”, or LoL), first adopted in 1996 and later modified in 2002 and 2008. The goals of the reform were to strengthen the rule of law, enhance the quality of legal normative documents, ensure transparency, efficiency, and accountability in the preparation of regulation, and improve transparency of policies and regulation. The LoL also increased the capacities of the National Assembly to make policies and for ministries to implement them.

The adoption of the LoL was preceded by a large scale consultation² and the preparation of a RIA³ on the draft itself, which helped identify and compare options on the basis of their positive and negative impacts.

For the purpose of this review, and to develop options for future regulatory reform, the most relevant innovations introduced by the LoL were:

- The official endorsement of regulatory impact assessments as the key tool to improve the quality of new regulation;
- Providing for updated legal techniques such as codification, omnibus laws, etc.; making regulators responsible for ensuring the consistency of new regulations with existing provisions and providing a strong legal basis for codified texts;
- Reducing the number of the categories of legal normative documents;
- Expanding mandatory public consultation to all new regulation and requiring publication of new texts on a specified website within 60 days.

Naturally, some of these innovations are still being developed and require guidance and training before they can fully contribute to better quality regulation.

A legal order still characterised by complexity

The LoL, which entered into force on 1 January 2009, is an impressive document, containing a great amount of good principles on issues related to law making, but it portrays a legal system which, with its 12 categories of “legal texts”, is comparatively complex, and therefore less well-suited for the production of consistently high-quality regulation. The concern of the LoL is mainly procedural, as it spans planning, drafting, discussing, adopting and promulgating laws and regulations by the National Assembly and the Government, but it does not constitute *per se* a better regulation strategy as can be found in other countries. It also contains many clauses of a formal nature that could be reserved for a lower-level normative document. Many articles address principles that do not seem directly actionable, such as the right of citizens to introduce comments on draft regulation.

Judging by the high number of regulation “categories”, without a clear hierarchy between them, it is not clear how conflicts between regulators can be settled. This maze of legal instruments has produced an overly complex regulatory system that is nontransparent, overlapping, confusing, and difficult to control for quality. It is not always easy to distinguish documents containing regulation from policy or guidance texts. Law enforcers, citizens, lawyers, academia, all complain about the complexity of the legal system. Foreign investors in particular complain that they face a regulatory maze where they cannot identify differences between legal normative documents. In addition, the fact that agencies issue many different kinds of documents leads to late implementation.

With its emphasis on “texts”, including decisions and circulars, there may be an insufficient distinction between clauses of a regulatory nature (creating rights and obligations for third parties) and practical instructions, management issues, or the publication of policies or other intended actions, which do not exercise regulatory powers.

“Interpretation” of regulation is primarily reserved to the National Assembly, not the judicial system. There is a provision for “resolutions on the interpretation of laws” an additional category of legal text that could well further obscure the issues by multiplying the number of norms applicable.

In contrast to the 40 pages on the production of legislation, the section on reviewing legislation is only a few lines (Paragraph 93) which gives a legal basis for codification, though the implementation rules are still to be defined by the Standing Committee of the NA.

Reform is however under way; the 2008 *Law on Laws* has reduced the number of types of LNDs from 23 to 18 and introduced the principle that, with some exceptions, each office or body may only issue one type of LND, thereby streamlining the system and clarifying (somewhat) the hierarchy of legislation.

The need for codification

Transparency of a regulatory system is essential to establish a stable and accessible regulatory environment that promotes competition, trade, and investment. Access to law has improved significantly in Viet Nam in recent years with enhancement of the Official Gazette. But there is no secure, reliable reference source for the stock of laws and other legal normative documents. Laws and other legal normative documents are revised rapidly, with little clarity about which requirements are invalidated by later revisions. Businesses face high search costs, without dispelling uncertainty and regulatory risk due to lack of security in ascertaining legal obligations. Public administrations, including enforcement staff, also experience difficulties in determining which legal normative documents are valid at any one point in time.

“Systemisation”. The currently applied systemisation, which is a type of legal consolidation, does not offer a legally secure and reliable description of the legal situation. To become legally binding, legal normative documents must have been published in the Official Gazette. But it is difficult to compile from this publication a full list of texts applicable to any given subject. Furthermore, the regular collection, review and systemisation of legal normative documents every 10, 20 or 30 years do not provide the constantly updated documentation which is necessary to fully understand the legal situation.

In this context, codification becomes a necessity. Both the Government and the National Assembly have started tackling the issue. Article 93 of the LoL 2008 stated that “legal and regulatory norms must be reviewed, collected and codified into thematic volumes of codes”. The Ministry of Justice is currently preparing an ordinance specifying the methods and technique of codification in Viet Nam, to be submitted to the National Assembly in December 2010.

Pilot projects. So far, two codification pilot projects have been carried out on *i*) the organisation and operation of National Assembly (“NA Code”) and *ii*) the code on intellectual property, with support from STAR Viet Nam. The NA code employs the formal codification technique while the code on intellectual property is a collection of rules related to intellectual property in current legislation. In the NA code, some clauses have been revised

technically to ensure overall consistency. A Report on Codification, carried out by ISP (EC's Institutional Support Program for Viet Nam) and the office of the National Assembly, is a 75-page document (available online in Vietnamese) specifying the aims, methods and initial results of the NA code, which drew inspiration from a similar experience in France, with the necessary adjustments due to specific conditions. According to this report, the principles that were followed are:

- Both formal and substantive codification are conducted in Viet Nam;
- The scope of codification does not include the legal prescriptions contained in the Constitution;
- Codes include articles of differing legal value, belonging to different types of LNDs.

Box 3.3. The Belgian practice of codification

Belgian governments have engaged significant efforts to consolidate or simplify the regulatory stock. Simplification of the stock of regulations is a key part of Better Regulation programmes. For example, since the early 1980s the legal information technology service of the Ministry of Justice is responsible for feeding and managing the Belgium-wide “Justel” database. Belgian legislation includes a number of codes (e.g. federal penal code, Walloon housing code and Flanders’ territorial development code). In the area of economic regulations, the Federal Ministry of Economy has launched a major codification project to assess and modernise economic law. Significant efforts have been made to develop a social security code, which have led to major improvements in the legal base for this sector.

Codification, however, seems to take place *ad hoc*, with some difficulties in co-ordination when a chosen sector cuts across different ministries, and without adequate long-term vision and backing from the political class.

The introduction of regulatory impact analysis (RIA)

Ex ante impact assessment of new regulations is one of the most important regulatory tools available to governments. Its aim is to assist policy makers in adopting the most efficient and effective regulatory options (including the “no regulation” option), using evidence-based techniques to justify the best option and identify the trade-offs involved when pursuing different policy objectives. The costs of regulations should not exceed their benefits, and alternatives should also be examined. However the deployment

of impact assessment is often resisted or poorly applied, for a variety of reasons, ranging from a political concern that it may substitute for policy making (in fact impact assessment is a tool that helps to ensure a policy which has already been identified and agreed and is supported by effective regulations, if they are needed), to the demands that it makes on already hard pressed officials. There is no single remedy to these issues. However, experience around the OECD shows that a strong and coherent focal point with adequate resourcing helps to ensure that impact assessment finds an appropriate and timely place in the policy and rule-making process, and helps to raise the quality of assessments.

The legal basis for RIA in Viet Nam

One of the major regulatory reform steps forward in recent years in Viet Nam was the introduction of the obligation to conduct RIAs into the law-making procedure revised by the LoL, applicable from 1 January 2009. Implementation is still underway and will only progressively yield results, as officials have little tradition of assessing economic and social impacts of legal normative documents under preparation.

Decree 24/2009 of 5 March 2009 (Article 37) gives details as to practical implementation of the new articles on RIA. These include the need to submit a detailed justification of the “necessity of the law” “based on the results of theoretical and practical study and summary” with any legislative proposal, as well as a “preliminary impact assessment” or “pre-RIA”. This brings the Vietnamese system closer to “evidence-based policy making” in force in many European countries. The decree lists the types of impacts that should be studied as “economic, social, environmental and legal” and requires options to be proposed in view of determining the optimal one to fulfill the objectives of the policy.

To increase consultation, Vietnamese legislative proposals, including their pre-RIAs, are now to be placed on government websites for 20 days to solicit comments. The draft legislative agenda, once finalised and submitted to the NA for consideration, is to be posted on the Internet. A draft LND is to be posted for comment online for at least 60 days and any changes to that draft, incorporated pursuant to its appraisal by the MoJ, are similarly to be posted. The lead agency should collect comments from the concerned agencies and those who would be directly affected by the legislation. For LNDs affecting business, the drafting agency must also send the draft to the VCCI to collect comments. Comments are to be consolidated, analysed, and incorporated into the draft. A consolidation of the comments, and a report on their incorporation, then accompanies the draft to the MoJ for appraisal, as well as being posted on the relevant website.

At the drafting stage, the LoL has introduced the requirement for another RIA. The drafting agency must complete this RIA before drafting the LND, examining the likely economic, social, and environmental impacts of the proposed LND, as well as any implications for the legal system or civil rights and obligations, and the potential for compliance. The drafting agency may utilise research institutes, academics, professionals, scientists, and other experts to conduct research and assist in its preparation. The RIA maybe “simple” or “full”, if the LND is expected to impose significant costs or other burdens on society. There are less detailed NA requirements for LNDs issued by offices or agencies other than the NA or its Standing Committee.

Planned management of RIA

Methodology

The ministry of Justice will soon publish “a compliance manual” (methodology), currently in draft form. Prepared with the assistance of USAID/VNCI, this document conforms to international standards but is also tailored to the Vietnamese legal framework and procedures, and will provide an excellent basis for future training of officials at the two levels of analysis which seem most important to introduce rapidly (preliminary and simple RIA).

Resources

As with the pre-RIA and preparatory research, official capacity for conducting RIA is very limited. The Ministry of Justice is mandated to establish a working group to support and strengthen the capacity of agencies to conduct RIA, including representatives from the OOG, MoF, MoHA, and MPI. Resources are extremely limited, although the under-funding of legislative development is to be addressed through a proposed revision of the MoF Circular 100. Each full RIA is estimated to cost approximately USD 500, but the introduction of RIA is expected to save the private sector 100 000 times that amount through a reduced or a more efficient regulatory regime. Pre-RIA would cost the Government over USD 10 000 annually, but likely to save around USD 300 000 in terms of less (unnecessary) legislation to draft and a reduction in time for drafting.

Box 3.4. How the UK views the key features of a RIA system

Impact assessments should be developed for all policy proposals with potential policy or regulatory impacts, including formal legislation, codes of practice or information campaigns.

- Monetisation of the costs and benefits is central to the process. Economists are increasingly involved, from the earliest stages of policy making. Departmental chief economists should sign-off impact assessments that go to ministers, as validation that quantification has been effectively conducted. A new standard form summarises essential information on a one page and draws attention to the monetised results.
- Promotion of strengthened political engagement and accountability via a ministerial declaration both for “consultation” and final impact assessments (sign off on the front page of the new form).
- Increased emphasis on post implementation review of proposals. Departments must set a date when the policy will be reviewed, to assess whether it has been effective in delivering the expected policy goals.

The practice of RIA

The team was not able to collect information about the implementation of the provisions on RIA that would establish that the practice is current. The Ministry of Justice is responsible for assessing RIAs but no report has yet been published on this activity.

Recent improvements in public consultation on new regulation

Transparency is one of the central pillars of effective regulation, sustaining confidence in the legal environment, making regulations more secure and accessible, less influenced by special interests, and therefore more open to competition, trade and investment. It involves a range of actions including standardised processes for making and changing regulations, consultation with stakeholders, effective communication of regulations and plain language drafting, publication and codification to make them accessible, controls on administrative discretion, and effective implementation and appeals processes. It can involve a mix of formal and informal processes.

Public consultation before a new regulation is adopted provides advance notice to affected parties and helps regulators to collect relevant data and validate assumptions about the need and design of the regulation.

Until recently, Viet Nam had no systematic approach to consultation or to ensuring that state agencies are responsive to the information collected in consultation. Recent reforms have significantly improved the possibilities for effective stakeholder consultation.

Three articles of the *Law on Laws* (2008) introduce a general obligation to consult during the regulation drafting process:

- Article 61 of the LoL has partly filled that gap, as it obliges the agency taking the lead in drafting new regulation to consult;
- Article 33 lists the responsibilities of the lead drafting agency to include: “Organising consultations, studies, adoptions, revisions and improvements for the draft decree; preparing submissions and reports on explanations for adoption of comments on the draft decree, reports on assessment of impacts of the draft decree, and posting those documents on the website of the Government or that of the lead drafting agency”;
- Article 34 specifies this responsibility: “Collection of comments and ideas as inputs for the development of the draft decree can be undertaken in the form of direct comments and suggestions, circulation of the draft decree for comments and suggestions, organising consultation workshops, making use of websites of the Government and the lead drafting agency or mass media.”

Decree 20/2008 on receipt and handling individuals’ and organisations’ feedback and proposals on administrative regulations specifically targets new regulations concerning business activity and people’s lives.

Notes

1. For instance “Codification: a new approach to reforming Viet Nam’s legal system”: [www.starvietnam.org/data/document/Codification%20\(ENG-FINAL\).pdf](http://www.starvietnam.org/data/document/Codification%20(ENG-FINAL).pdf).
2. See brochure on “Improving the quality of business laws” funded by the Vietnamese government, UNDP and GTZ.
3. VNCI article on the website: www.vnci.org/content/more-rigorous-policy-making-through-regulatory-impact-assessment-ria-improves-responsiveness.

Chapter 4. Assessment and recommendations

Viet Nam has made impressive progress in recent years in administrative and legal reform, by introducing policies, building capacities and training civil servants to improve the quality of regulation. But “good” is not “good enough”. The original impetus for reform was to assist the transition to a market economy by streamlining and making more user-friendly the regulatory environment for business to prosper. There remains much to be done to fully implement policies that have been initiated or announced, and to further develop the instruments of regulatory quality. The reforms are still new and so have not yet become part of the regulatory culture, particularly at the lower levels of the administration. In addition, policy makers and civil servants need to develop skills and expertise in the use of regulatory policy tools (such as RIA) in order to use them to their fullest potential. This chapter, therefore, also highlights some of the challenges ahead and suggests policy options for future reforms.

Options to capitalise on the success of Project 30

Project 30 has been welcomed by stakeholders including domestic and foreign businesses as a first step in the right direction. It has reached the critical stage where the findings (in terms of necessary simplifications of administrative procedures) must be translated into realities in the field, either by the enactment of revised legislation, or the implementation of the proposed streamlined procedures. Project 30 could be considered as the pilot for future governance of regulatory reform.

The implementation of simplification proposals, as shown by the experience of other OECD countries, is a crucial stage in delivering reform. Following the review of over 5 000 APs, a number of simplification proposals were approved by the Government end of October 2010. Visible benefits for citizens and businesses will only appear once these proposals are implemented into legislation in force. Stakeholders are usually impatient in seeing results. This may be even more significant in Viet Nam as expectations are high and businesses have invested many resources in co-operating with the Government. If implementation takes too long, the connection with Project 30 will be lost and stakeholders may feel that their effort was worthless. The same may happen if during the preparation of

respective legal documents consensus among actors is not achieved. Controversy and changes/amendments that may in the end not lead to real simplification could potentially undermine stakeholders' confidence in the Governments' administrative simplification efforts. The following recommendations are formulated to help consolidate the sustainability of the reform under way, and address both institutional and working method aspects of the change.

Institutionalising simplification: the future AP Agency

Decree 63/2010/ND-CP approved on 8 June 2010 on the control of new APs is paving the way to consolidate improvements brought about by Project 30. It establishes (Article 5) the Administrative Procedures Control Agency (APCA) under the OOG, and defines its roles and responsibilities. Establishing such an Agency sends a clear message that Project 30 is not a "one-off initiative" but rather the beginning of long-term reform for better economic performance to be achieved by way of sustained efforts to improve the business environment.

The Agency will need ongoing, top-level support to ensure that it has a clear mandate to drive change across the Government. As the implementation of simplification proposals progresses, there will be, inevitably, resistance from some regulators, particularly as they realise that there will be demands for ongoing reform. The Agency will need to be in a position to challenge the regulatory mindset across the whole-of-government to improve the overall regulatory quality and to monitor the wider economic impacts of existing and new regulations.

In addition to significant issues that need referral to such a body, the Agency would also take a *strategic overview of the regulatory reform agenda* from time to time, taking evidence and advice from the Agency, private sector representatives and other experts as appropriate.

The Agency should have a holistic perspective of regulatory impacts in the economy and society, and conduct reviews of key sectors and issues of strategic significance and impact, following the "bundle" reviews approach in Korea and sectoral reviews by OECD member countries. Specific topics for regulatory review in Viet Nam can be mandated by the Government to study in greater depth the regulatory and economic impacts on key sectors of the economy.

Box 4.1. The Belgian Simplification Agency

The Administrative Simplification Agency (ASA) started operation in Belgium in June 1999 with the mission to drive the policy for administrative complexity imposed on businesses. ASA's role is to encourage and co-ordinate simplification initiatives across administrations. ASA is an agency in the Chancellery of the Prime Minister with a substantial autonomy. ASA has no powers to direct or constrain other administrations. It essentially relies on consultation and co-operation with administrations. ASA's tasks are formally defined as:

- making proposals for simplification, stimulating and co-ordinating initiatives, carrying out studies;
- elaborating and implementing a methodology for measuring administrative costs imposed by regulations on businesses and SMEs;
- organising co-operation between the different federal administrations;
- elaborating an administrative impact note; and
- organising dialogue on administrative simplification with all levels of authority, representative partners among self-employed and SMEs as well as with European institutions and international organisations.

ASA has also taken on the following tasks:

- providing legal guidance and co-ordination for several e-government projects;
- managing the Kafka contact point (which collects suggestions for administrative simplification);
- establishing a dialogue with administrations over simplification projects for citizens.

In Viet Nam, the competencies of such a central body could include:

- Promoting regulatory policy as well as monitoring and reporting on regulatory reform and regulatory quality in the national administration, from a whole-of-government perspective (see Box 4.2);

- Organising and supervising training courses on regulatory quality programmes and tools, for example on administrative simplification and regulatory impact analysis;
- If the APCA becomes the body responsible for RIA, it may review the quality of RIAs undertaken in individual ministries with the possibility of amending the proposed new regulation (see section on RIA). Viet Nam may consider giving further authority to the APCA to block regulatory proposals where RIA is not of sufficient quality. This might be limited to regulatory proposals which passed a threshold test to have a significant economic or social impact. The APCA may also prepare reports on the level of compliance with the requirements for RIA and make them publicly available over the Internet.

Box 4.2. Central oversight bodies for regulatory reform

The establishment of central oversight bodies, supported by ministers with whole-of-government responsibilities, is one of the most visible signs of the integration of regulatory reform into government management systems. Regulatory oversight bodies can also be supported by other reform-oriented groups, such as ministries of finance and competition and trade authorities. Private-sector engines of reform, such as advisory bodies or private initiatives, can also be helpful in identifying priorities, proposing specific reforms and providing advocacy for reform in general.

A principal role of oversight bodies is to review regulations and improvements in regulatory quality. A central pillar of regulatory policy is the concept of an independent body that can assess the substantive quality of new regulation and work to ensure that ministries achieve the goals embodied in the assessment criteria. RIA is the most important mechanism for this role. To be effective, the oversight body must be able to question the quality of RIA and regulatory proposals. This is sometimes referred to as a “challenge function”. An oversight body needs the technical capacity to verify the impact analysis and the political power to ensure that its view prevails in most cases.

OECD (2008a).

Conflicts may occur where there is disagreement between the new agency and other regulatory bodies. One option to solve this is to establish a panel to act as an approval mechanism for major regulatory decisions and policies in instances where resolution cannot be reached. This panel could be chaired by the Prime Minister, supported by the relevant OOG Minister and a small number of other key ministers, such as the Finance Minister. Such a panel has been established for example in the UK.

Enhance effectiveness of stakeholder input through ACAPR

The role of the current ACAPR needs to be reviewed and its future role ensured to give the private sector an active and genuine voice. It should be established as a permanent advocacy body and its membership should be extended to representatives of civil society such as consumer organisations or trade unions.

It is critical that this body meets on a regular basis and discusses both strategic regulatory issues and specific areas of regulation, which may need further consideration by relevant experts over time. The ACAPR should review both new draft regulation and existing regulation. In the Netherlands, for example, the independent regulatory review body ACTAL advises the Government and the Parliament on administrative burdens for businesses as a result of proposed regulation, and on programmes and measures regarding the reduction of administrative burdens for stakeholders as a result of existing regulation (OECD, 2010b).

Practical improvements must be introduced to facilitate feedback from stakeholders: the current mechanism for submitting comments on APs in the database is not user-friendly enough. It requires a significant amount of resources in the form of time and legal skills, and a culture of interacting with the Government in this way. These requirements are too high, which translates into a low number of comments received over the website, in particular by Vietnamese business and citizens.

The ACAPR should also adopt a more user-friendly mode of operating. Filling in “Form 3”, the review form of APs for businesses, is judged to be too resource intensive by businesses. While working groups were judged to be useful by stakeholders, plenary meetings might be too formal to lead to concrete suggestions for improvement. Furthermore, some business representatives found direct interaction with ministries more efficient than through the ACAPR.

Therefore, Viet Nam could consider that the Chair of the ACAPR should be the OOG Minister who has responsibility for the new Agency. Two Deputy Chairs could be appointed, one being the Head of the new AP Agency and second from the private sector to manage the day-to-day business of the Council with the support of a Secretariat of the new Agency. This structure would enable regular meetings and discussions to take place when the Minister is not able to attend in person. All sectors of the economy, citizens’ and consumer organisations and trade unions should be represented in the ACAPR. Regular semi-annual reporting and updating on progress could be undertaken in the Viet Nam Business Forum by ACAPR and APCA to fully utilise these complementary consultative bodies.

Guarantee financial sustainability of the project

So far, Project 30 has been co-financed by the Government and by donors. Such an important programme, applying across the whole-of-government must now be allocated the right level of resources. For the new Agency to be able to function, these resources must be funded by the Government for core operating costs and incentives for government officials working in the new Agency. In addition, the new Agency should have the ability to be more flexible and creative in its operations, such as hiring private sector staff and creating public private initiatives, but within the integrity of the Government. Donor agencies can continue to support the new Agency with programme support for special regulatory reviews on strategic topics, capacity building and training, and specialised technical assistance and skills to supplement and complement the core staff of the Government.

The additional investment in a highly competent new Agency is more than offset by the benefits derived from minimising bad regulations that increase costs and burdens on the private sector and citizens. Better regulation supports investment and job creation, greater economic efficiency and improved services delivery.

Inventory LNDs and the underlying “information obligations”

Project 30 has produced impressive results with the inventory of a great number of administrative procedures applied throughout the country. Decree 63/2010/ND-CP approved on 8 June 2010¹ on control of new APs, applicable from October 2010, already provides (Article 26.4c) that LNDs stipulating administrative procedure are registered of the national database. To strengthen the legal basis of Project 30 results, the full cataloguing of APs now needs to be completed with a similar exercise aimed at inventorying and streamlining all the legal normative documents, not only those listed in the APs database. This exercise should, following recognised good practice, concentrate on Legal Normative Documents (LNDs) creating “information obligations” for business and citizens, as these can hinder economic performance. The measurement of administrative costs caused by the corresponding APs should help focus simplification efforts on issues most relevant to sustaining the competitiveness of Vietnamese companies.

What is an information obligation?

Information obligations are obligations to provide data to the public sector or third parties. Examples are reports about labour conditions or labelling reports (OECD, 2006a). An information obligation (IO) does not necessarily mean that the information obligation has to be transferred to the public authority or private persons, but may include a duty to have information available for inspection or supply on request. A regulation may contain many information obligations.²

How do information obligations differ from LNDs?

An LND is a formal normative text, while an IO may be one or several articles in an LND, creating a legal obligation. Listing IOs is a way of identifying the legal clauses that have a practical effect, and can create burdens. It is a first step towards focussing simplification efforts on what really matters to businesses and citizens. There can be several IOs in one LND, if each article applies different obligations to different populations.

Expand the measurement of administrative burdens

As indicated p. 58, Viet Nam incorporated an SCM dimension into Project 30 right from the outset. Extensive training for civil servants at all levels of administrations have disseminated useful concepts and the published results show how effective the first batch of 258 simplification measures are expected to be, once they are applied (a reduction of USD 300 million in compliance costs for companies).

The following options for the future development of administrative burden reductions should be considered by the Government of Viet Nam:

- The Standard Cost Model recommends that the most important figures, corresponding to the most burdensome APs, which seem to have frequently been determined by ministry officials on the basis of their knowledge of the legislation, be validated by collecting testimonies from businesses themselves on the basis of standard questionnaires;
- Further measurement work should focus on the cost of paperwork for businesses, and the collection of qualitative data expressing business views on APs, in order to ascertain which APs are viewed as most unnecessary or over cumbersome. Figures collected up to now already include “administrative costs”, and this component needs to be further developed, with qualitative data, as often the cost of paperwork can be significantly reduced without endangering the substantive benefits of regulation (such as social, environmental

or security advantages) ; action on this type of cost is more effective economically than on the other components of compliance costs as understood in Viet Nam;

- Now that the full set of costs has been quantified, it would be useful to ascertain for each AP that the cost is minimal and that implementing services have not added any specific requirements for local applications. This is common practice in many countries that measure administrative burdens. To do this, it may be useful to compare the compliance costs of a given set of APs across provinces, in order to facilitate identifying the most efficient local implementation rules, and also explain or justify why some local regimes are more costly. Thus, the responsibilities of each level of administration in creating paperwork may be established and addressed in the simplification measures that are formulated as a result of the policy.

Enhance the consistency of simplified APs across the territory

Businesses often see local disparities as a severe hindrance to operations cutting across province borders and an obstacle to investment. The diversity of administrative procedures across the country is unusually high in international comparison.

Project 30 has improved the uniformity of APs across the country. It is understood that 10 000 sets of APs at communal level and 700 sets at district level have been standardised and curtailed into 63 sets at communal level and 63 sets at district level, to be consistently applied in 63 provinces and cities under central management. This makes implementation of APs more transparent and homogeneous.

It is advisable to continue standardisation in order to create one set of APs applicable throughout the country. There are two ways to achieve a uniform set of APs. The first relies on a central control of forms, but this may not be required in Viet Nam, whereby only central ministries may issue official administrative forms. The second strategy is to improve multi-level dialogue. For instance, provincial AP bodies can recommend items to be reviewed at a national level. Improved dialogue among regions may also help to spread good practices across regions. For example, Ho-Chi-Minh-City has established a platform of on-line dialogues between the local government and businesses. This innovative way of moving towards more user-centered policies may also strengthen the credibility of the simplification process to other provinces and cities.

Box 4.3. Standardisation of official forms in France (CERFA)

The quality and user-friendliness of administrative services has been a concern of the French Government since the late 1960's. Considering that the official forms (in French "formulaire") are at the heart of the relationship between citizens and the administration, special care has been taken to guarantee the legal quality and practicality for each form. This was first sought by the prior approval ("homologation") of each form before it could be used by services. This approval was only granted by an Administrative Forms Registration Centre (CERFA), responsible for compiling a register and controlling the publication of forms by government departments once the language, accuracy and user-friendliness had been checked.

However, over time, the number of forms has increased too much, in spite of the control. This is why in 2000, the Government launched a major operation to review systematically all existing forms for simplicity. A special effort was made to use clear language, and various software applications were developed to assist officials in doing so. From 2005, efforts to make all existing forms available on line were stepped up, prior to offering teleprocedures (administrative procedures conducted from A to Z online) for all common services such as birth certificates, vehicle registration, tax declarations, etc. For details see www.service-public.fr.

The OECD *2005 Guiding Principles for Regulatory Quality and Performance* encourage "better regulation at all levels of government", calling on governments to "improve co-ordination and avoid overlapping responsibilities among regulatory authorities and levels of government." The OECD has undertaken country reviews on multi-level regulatory governance (Box 4.4).

Box 4.4. OECD reviews of multi-level regulatory governance: Italy

The OECD reviewed the institutional set-up for multi-level regulation, the specifics of power sharing between the state and the regions, the horizontal and vertical co-ordination mechanisms in place in Italy, and the use of policy instruments and regulatory tools in specific regions.

Italy has moved towards greater devolution of regulatory powers at regional level. Capacities for quality regulation tend to differ across regions, with different statutes and provisions, as well as an uneven recourse to regulatory impact analysis, or administrative simplification. Italy has established several conferences that facilitate dialogue with the central state. However, co-ordination remains loose, with insufficient identification of respective responsibilities. For the years to come, it will be important to implement a structured approach to harmonise regulatory policies among the various regions and at both regional and national levels.

OECD (2010e; 2007b).

Enhance ICTs, set up one-stop shops and business portals

A review of existing one-stop shops should be conducted and central policy on the creation of one-stop shops should be developed. One-stop shops should allow to address multiple agendas across governments. Guidance and training should be provided at the central level.

Current plans to create an electronic portal for business registration should be put into practice as soon as possible. Services offered by the portal should then be continuously expanded to cover all stages of the life of a business. The electronic government portal should not only provide all the information necessary for starting-up and running a business but also offer a communication channel to interact with the Government, *e.g.* submit information and receive necessary licences and permits electronically. This has to go hand in hand with a careful streamlining and simplification of business registration processes and obtaining licences and permits including the reduction in the number of procedures necessary to start-up a company. An inter-institutional exchange of data must be ensured and the principle that businesses submit data only once must be implemented. Electronic one-stop shops are increasingly complementing/supplementing the traditional physical one-stop shop concept in OECD countries. The capacity to deal with large amounts of data can improve government responsiveness to external demands, and time and space limits can be effectively eliminated through “24 hours 7 days a week” access to services through access to a computer.

Box 4.5. Launching of the e-VEM project in 2005, Slovenia

Since 2005 one virtual and 231 physical entry points have been set up. The system interfaces all levels of public authorities and 14 other institutions. E-Vem provides over 30 procedures for business start-ups. More than 40 of the physical branches of e-VEM are operated by private entities such as the district units of the Chamber of Craft of Slovenia and Chamber of Commerce and Industry of Slovenia.

Source: <http://evem.gov.si/sp/>; www.epractice.eu/cases/eVEMslovenia.

The final aim should be the creation of an electronic one-stop shop that not only provides information on APs, (the existing electronic register of APs already offers that), but which also allows Internet-based regulatory transactions. The Australian portal Business Entry Point (BEP) (see www.business.gov.au) provides major information, transaction and services required to start and run a business. This could be used as an example.

Options for developing regulatory reform in Viet Nam

In parallel with the evaluation of Project 30, the OECD team collected information and views on how Viet Nam had been addressing related regulatory reform issues, especially in the wake of the Law on Laws (2008) which has introduced a number of fundamental changes of great relevance. Discussions with the Vietnamese officials and the international community will continue in coming months, assembling the material for a regulatory reform programme including institutional developments that will help Viet Nam improve infrastructure, increase productivity, continue to help Viet Nam attract investment, and maintain a high rate of growth. At this stage, and on the basis of best practice in other countries, the review team has been able to formulate a few recommendations.

Adopt an overall regulatory reform strategy

The OECD *Guiding Principles for Regulatory Policy and Performance* (2005) suggest, based on experience in many countries, that progress can be enhanced with the adoption of a single explicit, if possible published policy promoting a government-wide regulatory policy. In Viet Nam, many regulatory policy elements are applied *ad hoc*, depending on the political strength of individual ministers, without a permanent, government-wide and institutionalised management structure to support it. It is helpful for policy makers and civil servants to have such official guidance to pursue a consistent and coherent application of the regulatory policy. An explicit government-wide policy on the quality of regulation, using international examples but also tailored to national circumstances and objectives, would therefore boost the benefits of reform in Viet Nam. The policy should be promoted and its implementation monitored by the Administrative Procedures Control Agency (see p. 74) or any other central body set up for this purpose.

Box 4.6. Korea's commitment to regulatory reform

In 2003, President Roh issued a report on regulatory reform processes, emphasising that “regulatory reform should not be a reckless regulation termination (or deregulation) but should be about rationalising regulations with a qualitative rather than quantitative approach”. This presidential statement shows a shift in focus from a quantitative to a new qualitative approach. This is consistent with the direction of regulatory reform in most other OECD countries. The statement also demonstrates the high-level political support and commitment to the reform process.

Improve co-ordination of public policy development

Institutions are central to a successful and ongoing programme to ensure regulatory quality. The OECD *Guiding Principles for Regulatory Policy and Performance* (2005) state that responsibility for the various aspects of regulatory quality should be clearly allocated to institutions across the government administration, which should in turn be sufficiently resourced to fulfill their responsibilities. The appropriate institutional structure is also important in ensuring that the reform process is transparent and that those making the decisions are accountable for their actions.

To carry out the necessary reforms, and sustain the government-wide policy, it is best to empower a centrally located office to co-ordinate delivery of government policies.

New public policy should be submitted for comments to stakeholders to enhance accountability. The ACAPR, if established as a permanent advocacy body, would be in a position to take the lead in collecting the views of business and citizen representatives (see p. 77).

Develop RIA as a major tool for evidence-based policy making

The OECD *Guiding Principles for Regulatory Policy and Performance* (2005) state that RIA should be integrated into the development, review and revision of significant regulations. In Viet Nam, RIA is becoming part of the regulatory management cycle. All the legal prerequisites seem to have been settled; the question remains to build the appropriate capacities, founded on the experience acquired with Project 30.

The new Law on Laws regime, supplemented by Decree 24, has introduced the necessary changes to move toward evidence-based policy making, including an explicit reference to a required “preliminary impact assessment” – or “pre-RIA” which replaces the old “forecast socio-economic effect.” The scope and content of this assessment could however be further developed.

Attention should now focus on training the responsible officials in Viet Nam to conduct such background research, prepare adequate RIAs, and, especially, develop the skills to translate policy into clear options. In part, the resource side of the issue is being addressed through the proposed revision of the Ministry of Finance Circular 100.

The demands made on resources within public sector bodies and the time it takes to embed genuine change should not be underestimated. It is therefore recommended that an impact assessment should be implemented in Viet Nam in a way that builds on the AP work. In particular, it should become an integrated process rather than a separate and additional activity.

Institutional support and capacity for RIA is crucial to ensure its successful implementation. A body close to the centre of government with the necessary capacities is needed to ensure that RIAs are conducted in time and are of sufficient quality. An option would be for the new Agency APCA (see p. 74) to expand its mandate to the *quality control of impact assessments* on policies and regulations that guide and generate APs. This role should include co-ordinating RIA across state agencies, building capacity for RIA in a network of units across state agencies, and to support RIAs conducted for selected high impact regulations in co-ordination with relevant state agencies, as identified by the new Agency. This role and function should be fully complementary and co-ordinated with the Ministry of Justice, responsible for the Law on Laws.

Continue streamlining the stock of legislation

Regulations that are efficient today may become obsolete tomorrow due to social, economic, or technological change. Most OECD countries have large stocks of laws, regulations and administrative formalities that have accumulated over years or decades without adequate review and revision. The *OECD Report on Regulatory Reform* recommends that governments “review regulations systematically to ensure that they continue to meet their intended objectives efficiently and effectively.” Together with a well-functioning RIA system, *ex post* review improves the quality of regulations.

Viet Nam’s approach to the review of existing regulation has recently been adapted in Chapter XI of the *Law on Laws* (2008), which prescribes a series of measures for the review, revision, and consolidation or “codification” of LNDs. Each agency is responsible for reviewing its own LNDs, in case errors or inconsistencies are revealed or the contents are found to be no longer relevant, so that the provisions or LNDs so identified might be suspended, pending amendment, replacement, or repeal. The MoJ is tasked to review LNDs issued by ministries or ministry-equivalent agencies, as well as having overall responsibility for state management of the review of all LNDs.

The process of review is accelerating and, according to the MoJ’s Department for Examination of Legal Normative Documents,³ becoming more rigorous.

While these provisions show a commitment to update the legal corpus, they may not fully correspond to what is required to significantly improve the regulatory environment for business and to sustain growth and job creation:

- however, texts point to consistency and legality, rather than on relevance to new market-oriented government economic policies;
- there may be a lack of prioritisation of the review work, which is intended to address the full legal corpus: an overall review strategy planned in consultation with stakeholders seems missing in order to tackle first areas of greater economic importance;
- existing mechanisms give most of the initiative and quality control authority to the Ministry of Justice. The connection with Project 30 and the new impact assessments on APs, to be conducted by APCA under Decree 63, needs to be clarified to avoid any confusion or duplication.

Thus, the following options seem useful to explore:

- include the review of existing legislation in the work programme of the new Administrative Procedures Control Agency (APCA, see p. 74) in co-operation with the LND Review Department;
- update the working rules of the LND Review Department (Circular 135) to ensure optimal co-ordination with government policies and the APCA initiatives.

Box 4.7. Sweden's practice of managing the stock of legislation

Sweden has a good track record of deploying processes to clean up the regulatory stock. Over time, Sweden has been active in the use of different processes aimed directly at ensuring that the regulatory stock remains clean and clear, including codification, the enactment of a guillotine rule in the 1980s, through the work of Committees of Inquiry, and most recently, via some of the work which is being taken forward under the Action Plan for Better Regulation (OECD, 2010a).

Address the content of regulation in selected priority areas

Infrastructure PPPs

Sustainable economic growth greatly depends on keeping investment levels high (up to 10% of GDP), particularly for infrastructure development. Currently, most infrastructure projects in Viet Nam are financed from central government budget or ODA, but their funding capacities fall short of what would be the necessary level of investment. There is therefore a major

part to play for the private sector. Analysts agree⁴ that there are direct links between infrastructure, economic growth, and poverty reduction and that for various reasons, private investment has not been as important as it could be, if the right regulatory investment was set up, and the appropriate financial, technical and managerial skills were to be developed.

In recent years, progress has been made with a number of important reforms,⁵ but legislation seems to lack overall consistency, with no clear definition of PPPs, no single law governing its use, nor a clear set of sector-specific laws.⁶

Officials need to develop an understanding of the benefits and challenges of greater private sector participation in, and financing of, infrastructure projects; priority policy actions required to strengthen the national enabling environment and legislative frameworks for PPPs need to be designed if a steady stream of PPP infrastructure projects is to contribute to raising the economic performance of Viet Nam.

A number of limiting factors need to be lifted in priority, in areas where better regulation can be effective:

- State-owned enterprises (SOEs) need to incorporate private investment into their planning and budgeting for major projects, and their governance structures prepared for monitoring and controlling PPP operations;
- Access to domestic capital markets needs to be made easier for (foreign) investors to finance PPP projects through debt, such as municipal or revenue bonds, and equity investments;
- Government support needs to be more easily guaranteed, in view of the long term benefit for the country, once the project has been approved.

Building proper institutional capacity to create, manage and evaluate PPPs is a critical element in supporting efficient PPP schemes. This institutional capacity can be seen in the large number of countries that either have PPP units or are in the process of establishing such unit. A PPP unit is usually located within the finance ministry or treasury (OECD, 2008b). A dedicated PPP unit that serves as a centre of expertise also increases the confidence of potential private sector partners. It can also supervise departments through its regulatory approval mechanism to ensure that PPP deals fulfill all the legal and technical requirements involved in the creation of public-private partnerships.

OECD stands ready to supply expertise developed on the basis of international best practice (OECD, 2010c).

Box 4.8. Good practices in the public-private partnership process

1. *Affordability and value for money* are the benchmarks for PPP viability. In principle, affordability is about whether or not a project falls within the intertemporal budget constraint of the Government. If it does not, then the project is unaffordable.
2. *Value for money* must be the primary objective in PPP design. Value for money is the optimal combination of quality, features and price, calculated over the whole of the project's life. A PPP project yields higher value for money compared to traditional procurement or government in-house production if it provides better features, higher quality or lower whole-of-life cost. Higher value for money is mainly obtained through risk transfer, competition and the use of private sector management skills.
3. *Fiscal rules and expenditure limits*. The issue of affordability – and hence the necessity for the Government to operate within the boundaries of its intertemporal budget constraint – should not be confused with fiscal rules, medium-term expenditure frameworks or budgetary limits imposed either legally or as political commitments. Getting a PPP project off the books is not a valid argument for taking the PPP route.
4. *Risk sharing* plays a fundamental role in whether or not a PPP will yield value for money. Risk sharing is a key feature for a successful PPP. In general, risk must be carried by the party best suited to carry it, *i.e.* the party that can carry the risk at least cost. The way risk is shared between the Government and the private partner is also the key feature when classifying a project as a PPP or as traditional procurement.

OECD (2008b).

Higher education

The Government of the Socialist Republic of Viet Nam has long recognised the importance of high standards of education as a pre-requisite for building a competitive economy. Viet Nam must have a higher quality, more diversified, flexible and responsive higher education system to meet the future needs of the nation.

To bring about such improvements on a long term, sustainable, basis, it is necessary to introduce the appropriate regulatory reforms. To support countries engaged in this type of policy, OECD has developed a framework to assess the adequacy of their regulatory policies and practices intended to ensure that tertiary education serves public purposes in the changing policy environment (OECD, 2006b). OECD can also assist countries in applying the principles contained in the framework.

**Box 4.9. Extract from the conclusion of the review of
Korea's tertiary education system**

The Republic of Korea has embarked upon an impressive, ambitious agenda to improve the global competitiveness of the country's tertiary education system. This agenda includes important steps to improve regulatory quality. Korea has made significant progress in simplifying and clarifying regulations, eliminating out-dated and redundant regulations, and improving co-ordination across regulatory entities within the Ministry of Education and across ministries. The Government is taking additional actions that will be essential to improve the competitiveness and public accountability of the system.

OECD (2007c).

Monitoring and evaluation

Quantitative assessments may support continuous evaluation of the relevance, effectiveness and efficiency of the Vietnamese administrative simplification programme. Viet Nam has relied so far on the measurement of compliance costs to evaluate the success of Project 30. The advantage of this measurement is that it quantifies in a systematic way cuts in administrative burdens and compliance costs. Its limitations are that it does not assess the implementation of AP reforms on the ground. It will therefore be important to complement it with a set of indicators that focuses on implementation, in order to obtain a comprehensive evaluation system.

For example, perception surveys that assess the experiences of businesses, citizens, civil servants and experts separately can point to discrepancies between burden reductions on paper and reductions on the ground, and show the impact of Project 30 for different groups and in different regions. Implementation may differ considerably across regions, and small businesses might be affected differently than larger businesses.

The OECD has shared experiences among its members on the use of perception surveys for the evaluation of regulatory reform programmes (see www.oecd.org/regreform/perceptions). One of the key lessons learnt in OECD countries is that “irritation costs” might be more important to businesses than reductions in administrative burdens calculated according to the SCM model. This may include bad front-desk services in the administration and regulation that does not make sense to businesses. Another key lesson learnt was that the design and methodology of surveys heavily influences the results – and that it is therefore worthwhile to invest resources into a good questionnaire design to obtain valid results. One option for the Vietnamese Government to obtain useful perception data would be to add some more detailed questions to the Provincial Competitiveness Index survey.

The Government may use the indicators more for informative purposes than for automatic allocation of resources, because of the limitations inherent in each indicator. For example, perceptions are influenced by many factors besides actual changes in government policies such as the general economic situation or trust in government and reasons for changes over time in survey results may therefore vary. Viet Nam may hence decide to build a comprehensive evaluation system for its reform programme. A number of indicators – both facts-based and based on perceptions, can provide the Government with a good overview of the success of its programmes and provide the basis for more in-depth analysis to adjust policies.

A comprehensive approach should also address the issue that burden reduction measures may create additional sources of costs for businesses or can increase costs for other agents, such as consumers or public authorities. For example, reducing labeling obligation for products may increase information costs borne by consumers, who would need to collect their information from other sources in order to make an informed choice of what products are most likely to fit their preferences (Allio and Renda, 2010).

The Government may also discuss the results with stakeholders, to understand the reasons for the results and the reasons for discrepancies between the results on different indicators. Indicators might be complemented by in-depth qualitative studies which study in detail the experience of end-users of regulations, such as the life-cycle method or the Danish Burden Hunter method. Such a comprehensive and user-centered evaluation approach would ensure that the evaluation feeds into concrete suggestions for improvement in the future.

Enhance dialogue with citizens and businesses

Effective public consultation on draft legal instruments still needs to be improved in Viet Nam. It should be organised at an early stage, when views expressed by stakeholders can still be taken into consideration in the formulation of the policy, not when the drafting has already started, or has been completed. Response time needs to be set according to the importance of the reform, the medium used to collect feedback, the number of social interests at stake, and other considerations specific to each case.

Though they represent a significant improvement, the new clauses on consultation (Law on Laws, Decree 20/2008 and Directive 1788/CT-TTg dated 17 September 2010) may not yet be sufficiently precise to guarantee effective consultation as it is needed for quality regulation making. The Law on Laws introduces the principles in a general wording which does not sufficiently commit regulators, and Decree 20/2008 on receipt and handling feedback and proposals on administrative regulations envisages “feedback” in a rather formal and binding manner, as though the citizen would be engaging his personal responsibility in formulating his “opinion”. Restrictions also seem to be introduced by listing possible topics in a legal categorising rather than a practical, subject-based manner, and be more suited to an appeals procedure than to a consultation.

Complete the legal framework of consultation

Ways of consultation can be adapted to different national, institutional and cultural settings. Overall, the degree of consultation and the ability of stakeholders and the public to express opinions and provide input into the policy-making process is rising in Viet Nam. The Law on Laws (2008) recognises the principle of consultation and Decree 20/2008 has listed subjects on which “feedback” would be sought from citizens at the stage of drafting new legislation.

However, there remains a great deal of discretion about how the consultation process is undertaken. This can be an advantage to the extent that the ministry is free to find the best way to contact and hear the views of relevant stakeholders. But the lack of precision can also be a disadvantage by allowing ministries to conduct a less detailed consultation programme if that is in their interest.

Currently the text for new draft regulations and RIAs are published separately on ministries’ websites, and stakeholders are not always aware of new drafts. It is recommended to publish new draft regulations for consultation on one central website.

The time limits allowed for consultation may also be a problem in some cases. Currently, a 20-day minimum period is allowed for consultation on RIAs (60 days for LNDs) – although ministries are free to allow a longer period, at their discretion. The specification of a minimum consultation period is consistent with OECD best practice, but 20 days may be too short. In the United States, for example, the standard period is often 60 days. The 20-day period is especially likely to be insufficient where the draft law under consideration is complex or community and civil society groups need to consult their members to gather their views on the possible impacts and implications of the legislation. Strict enforcement of the 20-day limit may in some circumstances be a barrier to consultation and transparency.

Additional direction on the form of consultation to be undertaken in particular cases could be a useful next step. This could be incorporated into a broader consultation strategy which outlines the objectives of consultation, the mechanisms available to consult with stakeholder and how the information collected is to be used.

Need for a communication plan about the reforms

It would be useful to develop a communications plan for all relevant stakeholders that will provide regular updates to stakeholders on the progress of the recommendations of Project 30 and maintain as well as capitalise on the momentum for reform that has been achieved so far. This has been a key success ingredient in other similar reform efforts in other countries, and is critical for Viet Nam's stage of reform. This approach will also establish a precedent for not only the first package, but also the larger second package and the continuous reform process in the future to minimise burdens on business and citizens through better regulation.

The communications plan should be developed in connection with the ACAPR which can be very influential in being champions of the reform outside of government. Sometimes success of such reforms is as much about perception and involvement, as it is about delivery of results. The review team gathered that the ACAPR may not have been optimally associated, and monitoring and reporting on the results of the implementation of Project 30 and communications is a clear role they can fulfill that will increase transparency and support the accountability of implementing state agencies.

Focus of the communications strategy needs to be less on procedural aspects of the project and more on real life achievements and changing culture such as in Singapore for example. The latter approach will be crucial for long-term success and sustained support from businesses and citizens.

Reduce bureaucratic discretion in favour of a more client-oriented approach

Widespread use of bureaucratic discretion is unlikely to be consistent with a transparent and predictable policy process. Regulators such as ministries need to be more attuned to the needs of the “end-users” of regulation, those who are going to have to comply with the new rules. For a business to thrive, it needs a transparent and predictable legal environment. This is not the case when new rules suddenly appear, with no prior consultation, undoing legitimate business plans. During the review, the team was presented with a number of recent cases to illustrate this point. The regulations in question are listed in Annex A.

In the recent review of APs conducted within Project 30, the extent of discretionary power delegated to implementation services was included with Decree 63, but currently it does not seem to have been checked in the course of the assessment of the quality of the APs.

Beyond the modification of individual APs found to include excessive bureaucratic discretion, it is necessary to instill a more client-oriented frame of mind among regulators and service providers; this is a necessity if Viet Nam is to sustain its economic performance and attract new investors.

Box 4.10. Korea limits discretionary power of administrations

When reviewing draft regulations, the Regulatory Reform Agency checks the text for new instructions or announcements that would have the effect of limiting the rights and freedom of citizens, without having been stipulated in a binding law.

In 2005, the Ministry of Government Legislation (MOLEG) published a guideline, the “Discretionary Action Transparent Guideline,” which is aimed at improving legislation which appears vague and opens the opportunity for guidance. In addition, MOLEG reviewed all laws including discretionary administrative powers between 2005 and 2007. The aim of this review was to identify and minimise the degree of discretion available in the interpretation of regulation. Concurrently with the review, MOLEG has prepared a more detailed manual on regulation interpretation for regulators and civil servants.

Improve access to the law for all citizens and businesses

Easy access for citizens to the list of regulations currently in force and to their content in a reliable, searchable and manageable format, is a key requirement of an effective and transparent regulatory system. Citizens and businesses must be aware of and understand their obligations under the regulations in force. This involves ensuring that businesses and citizens have

access to the text of the regulation in force, but also that the regulations are written in “plain” language so that they can be understood by the non-specialist.

In Viet Nam, the publication on line of the full list of administrative procedures is an important step in the right direction. It is now necessary to envisage the posting of all legislation, in connection with the consolidation and codification efforts.

Progress also seems to have been made with the provision of much information about legislation in English, for use by foreign investors. For instance, Haiphong People’s Committee manages a website with all procedures applicable to foreigners (see <http://thutuchanhchinh.haiphongcity.vn/home.e.asp>). The team also noted that most legislation important for business operations is available in English (but many lower subordinate regulations remain available only in Vietnamese).

Access to raw texts is however not enough, as they may be difficult to understand for the non specialist. This is why many countries have set up civic information centres, and other media such as hotlines, information websites, where regulation is explained in a client-oriented way, with less emphasis on the legal implications, and more on practical help towards compliance.

Box 4.11. Client-oriented administration in Germany

There is a single phone number (115) for all citizens seeking information about administrative procedures. The idea originates from the difficulties faced by citizens to understand who is who in the public administration and find out the responsible office for a given procedure or service. Because of the country’s federal structure, the German public is confronted with a variety of public authorities across the territory. The goal is to answer 75% of the calls within 30 seconds, and reply to at least 55% (later up to 80%) of the questions on the first call. As the service develops, a database will be continuously updated to include information on all levels of government.

OECD (2010f).

Concluding remarks

This section has, on the basis of an assessment of the results of Project 30 and other initiatives, highlighted some of the challenges ahead and suggested a number of policy options for future reforms to capitalise on the strengths and the results of Project 30 and usher in, over time, the full range of regulatory reform instruments, starting with RIA.

Overall, the evaluation has shown that the objectives of Project 30 (see p. 39) are on the way to being fulfilled. Further implementation work is needed before the goal of reducing the APs by at least 30% can be reached: according to current estimates, this target will have been met and even exceeded once all the planned simplification measures will have been implemented. The objective of publishing a full database of all regulation has already been met. This report has not, however, evaluated the contribution of Project 30 to the overall economic performance (stimulating investment and productivity, fostering job creation) which can only be assessed once the project has been completed. Monitoring economic progress should be part of the follow-up activities to Project 30.

The Government of Viet Nam is at a crucial stage of its public administration reform: owing to the high profile of Project 30, with its ambitious target of reducing APs by 30%, stakeholders have come to expect rapid and tangible results; on the other hand, many officials have started to incorporate new concepts and tools in their working methods, and results are starting to appear. This is a defining moment, when the political momentum must be maintained and efforts intensified. There remains much to be done to fully implement policies that have already started to produce results, and to further develop the instruments of regulatory quality; the reforms are still new and have not yet become part of the regulatory culture, particularly at the lower levels of the administration.

In devising the future course of action, including some or all of the options, the Government of Viet Nam will need to address the issue of sequencing the various components of the reform. Both the order in which they are developed and the timing of each must be set in such a manner as to obtain the best outcome over time. Sequencing also helps make best use of available resources by focusing on the most relevant issues and allows for existing constraints. This development could be further discussed with the OECD.

The options recommended in this report have been formulated in the hope of assisting the Government of Viet Nam in reaching its ambitious goals of modernising and enhancing the quality of regulation, to support national economic performance and competitiveness.

Notes

1. Including enhancements introduced by Directive 1788 dated 17 September 2010.
2. www.administrative-burdens.com/default.asp?page=14.
3. The MOJ website provides the full text in English of the decision creating the Department for examination of LNDs (Decision 808-QD-BTP of 16 April 2009) http://moj.gov.vn/en/Pages/Cocautc_QLNN_CucKTVBQPPL.aspx
4. For this topic, see the proceedings of the workshop “Strengthening Public-Private Partnership (PPP) for Infrastructure Investment in Viet Nam” organised from 3-7 November 2008 by the Asian Development Bank in close collaboration with the Ministry of Planning and Investment. www.adbi.org/event/2676.ppp.infrastructure.viet.nam/.
5. In particular Decree 78/2007/CP issued in May 2007.
6. For a more detailed analysis of the simplification of investment APs, including differences between provinces, see OECD (2009), pp. 40-41, www.oecd.org/document/42/0,3343,en_2649_34893_44903658_1_1_1_1,00.html.

Annex A. Trade restrictive measures: examples of recent administrative decisions in Viet Nam

Price controls implemented from 1 October 2010 on a range of products including infant milk powder:

- all wholesalers and retailers of listed products must register prices;
- conditions that could prompt state intervention are broad and ill-defined.

Ban on trade in frozen animal and poultry offals effective from 14 July 2010:

- No consultation on the ban nor notification to trading partners unable to advise exporters against shipping affected product.

“Automatic” import licensing (Circular 24) extended with broad coverage, including key export items *e.g.* meat, seafood, wine:

- difficulties in submitting documentation (only through mail); processing (*e.g.* applications rejected due to typos); backlogs at ports (delays extending beyond prescribed seven-day period).

List of “non-essential import items and consumer goods” issued by MOT on 16 April 2010:

- includes 1 500 tariff lines; some also subject to Circular 24;
- has the effect of preventing importers accessing foreign exchange through official channels.

Changes to regulations on food hygiene and safety control for meat products introduced by Circular 25 (which had been notified to the WTO but not for comment):

- most major trading partners face difficulties complying; require information from individual producers in exporting countries; approval by their quarantine agency and then approval by Vietnamese authorities.

Similarly burdensome regulations are being drafted for products of plant origin such as fruits, vegetables (the drafting is being notified to WTO – however no English text has been distributed for comments by trade partners).

Certificate of Free Sale to accompany certain imported goods, notably food:

- guidelines to assist authorities in implementation have yet to be issued despite entry into force on 1 May 2010;
- required information can be found in existing import documentation.

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Cutting Red Tape

Administrative Simplification in Viet Nam

SUPPORTING THE COMPETITIVENESS OF THE VIETNAMESE ECONOMY

Administrative simplification in Viet Nam has reached a defining moment. In 2007, the government launched “Project 30”, the goal of which was to reduce administrative procedures by 30% as part of ambitious reforms to modernise the public service and simplify the regulatory environment for businesses. These reforms support the development of infrastructure, increased productivity, greater foreign direct investment and a high rate of growth. Administrative simplification efforts, once fully implemented, will enhance regulatory quality and stimulate competitiveness and equitable growth. It was within this context that Viet Nam invited OECD to evaluate achievements so far and suggest future directions, including options for a ten-year programme for regulatory reform grounded in international best practice.

This report details Project 30 and related initiatives. Using international comparisons and incorporating experience from similar reforms in other countries, it explores how Viet Nam can rapidly bring about the full potential of Project 30 and introduce a complete range of regulatory reform instruments in the near future. The lessons learnt from the management of a major administrative simplification initiative in Viet Nam will be useful to other countries seeking to improve their regulatory framework and to reduce administrative burdens, especially in the developing world and in transition countries.

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