


## **13. Making Regulations Right and Effective: Viet Nam's Experience and Lessons**

Vo Tri Thanh

May 2019

**This chapter should be cited as**

Thanh, V. (2019), 'Making Regulations Right and Effective: Viet Nam's Experience and Lessons', in Intal, P. and M. Pangestu, *Integrated and Connected Seamless ASEAN Economic Community*, Jakarta, ERIA, pp. 255–268.



# Making Regulations Right and Effective: Viet Nam's Experience and Lessons

**Vo Tri Thanh,**

*Central Institute for Economic Management (CIEM), Viet Nam*

## Overview of Viet Nam's regulatory reforms and regulatory system

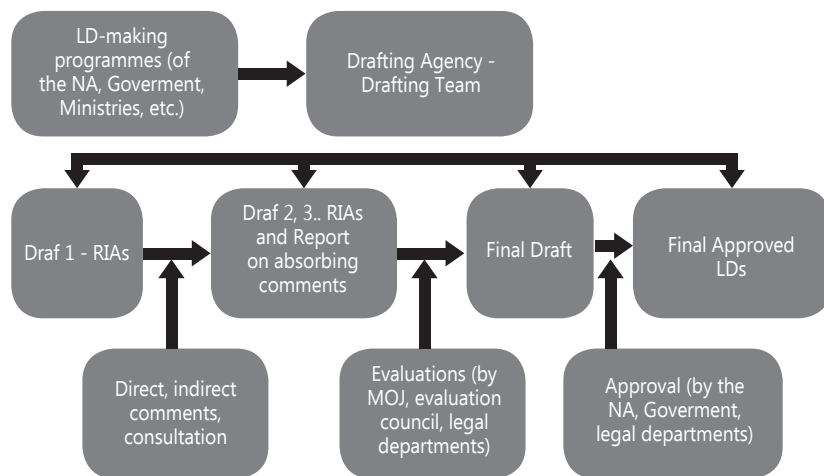
Since 1986 Viet Nam has promulgated a number of laws and regulations to regulate economic activities in line with *market-oriented reforms*. In 1996, the National Assembly issued the first Law on Legal Normative Documents (also known as the Law on Laws). This law specifies the authorities of different bodies in promulgating different types of regulations, including laws, ordinances, decisions, and circulars.

Viet Nam also embarked on *simplifying administrative procedures*. This direction of work has been initiated since the 1990s. Nonetheless, the substance of the work only materialised during the 2000s, especially from 2007, with Project 30. In 2004, the government issued Resolution No. 19 with a new and broader framework to simplify administrative procedures, acknowledging this as a core priority to support the business community and enhance competitiveness.

As another direction of work, Viet Nam has made numerous efforts to harmonise domestic laws *in line with international commitments and practices*. Such efforts had already become evident during the 2000s as Viet Nam joined the World Trade Organization (WTO) and many free trade agreements (FTAs). Various legal documents (such as Enterprise Law, Investment Law, and guiding documents) were issued and amended, with a view to creating a more level playing field for enterprises of all ownership forms. To facilitate the movement of goods and labour, Viet Nam also worked with partner countries (especially in the Association of Southeast Asian Nations [ASEAN]) to enhance mutual recognition of standards and skill qualifications.

The Law on Laws amended in 2008 and its guiding decree (Decree 24/2009/ND-CP, dated 5 March 2009) require that all draft laws (adopted by the National Assembly) and decrees (adopted by the government) have to go through a regulatory impact analysis (RIA) procedure before being officially submitted to the final decision-makers. As for drafting a law, the regulatory impact analysis report has to focus on the following aspects: (i) policy problems to be solved; (ii) goals of proposed policy; (iii) alternatives to solve policy problems, a cost–benefit analysis of each alternative, and good or bad impacts of each alternative; and (iv) the best option to solve policy problems.

**Figure 1: General Process for Legal Documents in Viet Nam**



LD = legal document; MOJ = Ministry of Justice; NA = National Assembly; RIA = regulatory impact analysis.

Figure 1 illustrates the general process for legal documents in Viet Nam. Transparency is one of the most important aspects of an effective regulation process. To increase consultation, legislative proposals (programmes), including their pre-RIA are required to be posted on government websites to get comments from the public for 30 days and will be posted on the Internet as soon as the legislative agenda is finalised and submitted to the National Assembly for consideration. A draft legal document is to be posted for comments online by the drafting agency for at least 60 days in parallel with the consultation with relevant entities (both from the private and government sector). Any changes to that draft as well as related comments and reports on incorporating comments will also be posted. The final draft then will be under the appraisal by the Ministry of Justice or in-charge legal departments, depending on levels of the legal documents. At the drafting stage, the in-charge agency is required to prepare an RIA, which examines likely impacts of proposed legal documents, as well as any proposals for compliance. The lead agency may utilise research institutes, academics, professionals, scientists, and other experts to conduct research and assist its preparation process.

The implementation of an RIA, however, still poses a challenge in Viet Nam. The quality of an RIA normally fails to meet expectations, while the capacity to review and access RIAs is also limited. In particular, the lack of data and rigorous approach are often the major weaknesses in RIAs. In this context, Viet Nam has exerted various efforts to promote regulatory reform with the support from international donors (namely, the United Nations Development Programme, German Technical Cooperation Agency [GTZ], and United States Agency for International Development/ Viet Nam Competitiveness Initiative [USAID/VNCI], as well as domestic agencies (the Ministry of Justice, the Viet Nam Chamber of Commerce and Industry [VCCI], and the Central Institute for Economic Management). A RIA task force was established in the Ministry of Justice to act as a central body to coordinate the implementation of Decree 24/2009/ND-CP at the beginning stage. Many workshops on capacity building for ministries and non-government stakeholders have been conducted, the majority of which were on a regular basis, to improve the quality of RIAs, as well as the capacity to review RIAs.

All laws in Viet Nam are under the authority of the National Assembly, while ordinances are issued by the National Assembly Standing Committee. However, the implementation and guidance of laws relies heavily on the government agencies. In Viet Nam, about 90% of draft laws originated from the government (executive branch). Other types of sub-law documents such as decisions, decrees, and circulars are mostly issued by the government or members of the government.

In principle, the relevant commissions of the National Assembly are responsible for reviewing regulations. For important laws (such as the Enterprise Law), the dedicated task forces will have to monitor the actual implementation and produce (both periodic and ad hoc) review reports. For sub-law documents, government agencies have to assume the role of producing reviews. The framework for such reviews has been established with the Law on Laws in 2008, the follow-up Decrees No. 2009/ND-CP in 2009, and No. 16/2013/ND-CP in 2013.

The government agencies have been also involved in various dialogues and consultations amongst themselves as well as with business associations and the people about practical issues in implementing regulations. The involvement of the business sector and social organisations in the law-making process is also made compulsory. Within 20 working days from the day of receiving the drafts, VCCI has to organise the forum to solicit opinions or comments from enterprises and reports these opinions or comments to the Ministry of Justice, the Government's Office, and the sponsor ministry. In fact, the online database of VCCI also include all draft laws, draft decrees, and draft circulars. At the same time, this database allows for direct submission of comments on the related documents.

The enforcement of laws and policies depends heavily on circulars and guiding policy documents issued by ministries and other authorities. However, the number of circulars and other policy documents is large related to the numbers of laws and decrees each year. The large number of guiding documents may imply: (i) lack of details in the laws; (ii) uncertainty in implementation of the laws and impacts on the stakeholders; and (iii) material compliance costs.

## Case Studies of Regulatory Management in Viet Nam

### 1. Enterprise Law in 1999

The slowdown in economic growth in late 1990s put more pressure on reform. The reform process was then powered by promulgating Enterprise Law in 1999, which has been recognised as one of the most fundamental reforms in business law of Viet Nam.

- The Law officially acknowledges the right of doing business of people: 'Citizens are free to do business in all business areas not prohibited by laws'.
- The Law has brought about a fundamental shift in the approach with which the government regulate the economy. Prior 1999, it was believed that 'the freedom to do business should only be broadened along with and within the expansion in governance and monitoring capacity of authorities'. This view has receded and has been replaced by a new principle: 'management and governance capacity of the Government authorities should be strengthened and developed to the point that it can promote and manage development process'. Such view is impetus for accelerating administrative reforms and enhancing the capacity of public authorities to be in line with market economy requirements.

The Law has resulted in a business boom and hence contributed a great deal to Viet Nam's economic recovery and growth, to job creation and poverty reduction. 160,672 private enterprises were registered during the 2000–2005 period, 3.2 times more than the total number of private enterprises registered during 1991–1999. Based on the widely recognised successes of Enterprise Law 1999, the (unified) Enterprise Law was approved by National Assembly in 2005. The new Law governs not only private enterprises, but also joint-stock company, limited liability company, limited-liability company with one- person member, and partnership company regardless of the ownership. A revised Enterprise Law was issued in 2014.

The establishment of the Enforcement Taskforce was a momentum for implementation of the Enterprise Law. Unfortunately, the operation of the Taskforce was not sustainable for a variety of reasons (see Box 1).

**Box 1: Success and the lack of sustainability of the Enterprise Law Enforcement Taskforce**

This Taskforce was established in December 1999 when the implementation of the Enterprise Law 1999 was at risk of lagging significantly behind schedule. The Taskforce had played an essential role in enforcing the Enterprise Law and in removing unnecessary business licenses. It has been regarded as a good example in law implementation and highly appreciated by the business community and a number of stakeholders. The operation of the Taskforce, however, was not sustainable.

The success of the Taskforce can be attributed to both external and internal factors. External factors include, first, strong political commitment of the Party and Government to legal reform and to business environment improvement. In fact, the Taskforce is an advisory body to the Prime Ministry and hence, benefited a great deal from direct support of the Prime Minister. Second is wide support amongst economists, researchers, the media, and the business community. Internal factors include, first, the Taskforce is a team of members who are market reform minded, fully committed to economic reforms, and professionally independent (though they are still part of the administrative system). Second, it has a reasonable working mode and does not refrain from tackling sensitive issues. The concrete conditions and actual context of all involved stakeholders are always taken fully into account in any of its proposals.

The reasons the operation of the Taskforce cannot be sustained are as follows:

- At the beginning it is stated that the Taskforce's operation is short-term and ad-hoc in nature
- As time goes by, the external enabling factors have declined. Many reasonable proposals by the Taskforce were not considered and accepted. Many measures taken were against the Enterprise Law. These factors have dampened and depleted the energy of the Taskforce.
- As most members have to devote only part of the working time to the Taskforce, they tend to spend more and more time on the work at their organisation
- The work 'not included in the Taskforce meeting' was not clarified. There is no mechanism to protect the Taskforce members when they performed the tasks that were not identified or assigned in the Taskforce meetings, despite the fact that such tasks are part of the task list of the Taskforce. This fact gradually decreased the independence of members, particularly of standing members. Since then, the work of the Taskforce has become more 'administrative'.

Source: CIEM and GTZ (2006).

## **2. Project 30**

With Project 30 (under Decision 30/QD-TTg, dated 10 January 2007) launched in 2007, the regulatory guillotine was introduced into Viet Nam's current regulatory management system. This project set out several key goals for 2007–2010: (i) to simplify at least 30% of administrative procedures and reduce administrative costs by at least 30%; (ii) to reduce the implementation gaps in the domestic regulatory system with international commitments (especially the WTO); (iii) to set up the first unified national database for administrative procedures; and (iv) to improve Viet Nam's competitiveness, boosting investment and increasing productivity.

Project 30 also conducted a comprehensive review of all administrative procedures. Accordingly, all administrative procedures including forms



and related dossiers had to be inventoried and reviewed in terms of: (i) necessity, (ii) legality, and (iii) user friendliness (3-questions test). Based on this review, the competent authorities made proposals for simplification (for administrative procedures failing the 3-questions test). Reasonable administrative procedures were then standardised and published through the National Database for administrative procedures. The review was undertaken in four phases:

1. Inventory: All ministries and provincial local governments prepared lists of administrative procedures under their authority and published them for public comments.
2. Self-review based on the 3-questions test.
3. Follow-up review by Special Task Force and the Advisory Council (a group of independent experts, business community, etc.)
4. Recommendations.

Note that the Special Task Force, a coordinating body with competent staff, was set up at the centre of government. The Special Task Force was assigned sufficient power to deal with and directly instruct other ministries and local governments. The Taskforce could directly report to the Prime Minister. Ultimately, the strong political determination has been a key factor in overcoming potential reluctance amongst ministerial and local officials, whilst strengthening confidence amongst stakeholders.

To sustain the results of Project 30, the government adopted Decree 63/2010/ND-CP (dated 8 June 2010) on the control of administrative procedures, which was later amended by Decree 48/2013/ND-CP (dated 14 May 2013).

Project 30 brought about remarkable results. First, for the first time in Viet Nam's governance history, an electronic database consisting of more than 5,000 existing administrative procedures was created and made available to all interested parties. This made Viet Nam's regulatory environment much more transparent and more favourable for entrepreneurship.

Second, Project 30 contributed to the reduction of administrative burdens on businesses and citizens, especially regarding invoicing procedures (saving US\$20 million a year), tax declarations and collections (cutting costs by US\$50 million a year), and customs procedures (saving US\$30 million a year). The USAID/VNCI claimed that the savings in compliance costs for business and citizens could amount to as much as US\$1.5 billion per year if all of the recommended measures are implemented by the government of Viet Nam.

Third, the implementation of Project 30 enhanced investors' confidence in the reform process. During 2007–2010, the business communities, including both domestic and foreign enterprises, were widely consulted by the government to solicit their suggestions for improving the regulatory environment. The voices from business communities fed important inputs to the government's decision to simplify existing administrative procedures.

### **3. Resolution 19**

On 18 March 2014, the government adopted Resolution 19/ND-CP on main tasks and key measures to improve the business environment and competitiveness of the nation, which was initiated based on an analysis of the actual weaknesses and shortcomings of the economy in the context of deeper integration. In 2014–2015, the main focuses of the resolution include: (i) improve competitiveness, (ii) promote administrative reform, and (iii) enhance transparency and accountability. Specifically, measures under the resolution are expected to: (i) simplify business registration procedures and shorten the process to 6 days or less; (ii) reform the tax payment procedures, in which the target is to reduce the time needed to pay tax to the average level of the ASEAN-6 countries (171 hours each year); (iii) improve regulations on ownership and protecting investors in compliance with international standards; (iv) increase the ease, equality, and transparency in accessing capital; (v) simplify import–export and customs requirements and procedures, trying to reach the average level of ASEAN-6 (14 days to export, 13 days to import); (vi) speed up bankruptcy process to the maximum of 30 days; and (vii) implement information on operations and financial situation of enterprises in comply

with legal regulations and international practices as well as promote transparency.

Depending on mandates and functions, line-ministries, local governments, and authorities, relevant government ministries, provincial people's committees, VCCI, and associations should consider, initiate, and implement appropriate actions to fulfil the stated objectives of the Resolution.

Resolution 19 reflects important changes in regulatory reforms in Viet Nam, marking the first time that specific targets are designated to ensure the improvement of the business environment. Such specific targets include the areas that need improvement and the minimum requirement of improvement. Besides, Resolution 19 officially internalises the specific areas of the business environment that are consistent with the World Bank's Doing Business survey in 2014 and 2015. This internalisation rests on a fundamental change in perception, as the survey results on Doing Business were not considered seriously in the years before 2014. This is also the difference between Resolution 19 and Project 30 (as per the first case study), since the latter did not rely on specific indicators for monitoring compliance. Finally, Resolution 19 sets out various reference targets in line with the average level of ASEAN-6, which may also imply bolder and more serious attempts by Viet Nam to get itself closer to the standard of ASEAN before the regional economic community comes into play.

On the basis of the above review, Resolution 19 also incorporated a substance of self-assessment of administrative procedures' legitimacy. Nonetheless, the self-assessment here focused more on how the administrative procedures affect Viet Nam's performance in terms of various competitiveness indicators. In doing so, Viet Nam dedicated intensive efforts to understanding the methodology of computing the Doing Business indicators, and sought potential areas of changes that can quickly improve the indicators.

Resolution 19 focuses explicitly on inducing changes of the regulations and/or administrative procedures related to doing business in Viet Nam. The ministries are requested to simplify regulations and administrative procedures, which may even require proposals for amendment at the law level. In this regard, therefore, Resolution 19 is more action-oriented than Project 30. In total, Resolution 19 sets out seven broad measures and 49 specific measures for different ministries, agencies, and localities.

There are some gaps in implementing Resolution 19. In particular, regarding the review of administrative measures, especially those related to indicators of competitiveness, only four agencies (the Ministry of Planning and Investment, the Ministry of Finance, the Ministry of Industry and Trade, and Viet Nam Social Insurance) made efforts for such reviews. Meanwhile, almost all action plans of line ministries, agencies, and the localities fail to closely follow international standards; many action plans did not specify the timing and methodology of implementing the assigned tasks.

Notwithstanding the failure to accomplish all assigned tasks, the early results of Resolution 19 were remarkable. According to the World Bank's Doing Business ranking, the amended Enterprise Law in November 2014 abolished five procedures (before there were 10 procedures) and the time for business registration was shortened from 34 days to 6 days. These improvements may be equivalent to an increase of 60 ranks in terms of Starting-A-Business indicator compared to 2013 (ranking 109th). Together with abolishing the need to list all business activities in business licences, all previous requirements, procedures, and costs for supplementing or adjusting business activities would be nullified.

Besides, the amended Investment Law in November 2014 abolishes requirements for investment certificates for all domestic investment projects irrespective of the scale and area of business. It also narrows the scope of foreign-invested projects that require investment certificates. The new regulations aim at better and more effectively protecting investors' rights in line with the core features of a modern market economy.

More achievements are also observed in the prescribed indicators of competitiveness. By the end of 2014, the time required to pay taxes and insurance was reduced from 872 hours per year to 170 hours per year. Enterprises will now be able to pay taxes on a quarterly basis, rather than on a monthly basis as had been the practice previously. Tax declaration documents have been simplified considerably, to reduce compliance costs and limit the risks of errors. The maximum time for accessing electricity from medium voltage stations is to be reduced to only 18 days, a reduction of 42 days.

Although such outcomes were positive, they were not quite as positive as had been expected, and the Resolution was being repeated and strengthened with follow-up Resolution 19 (*the same name*) in 2015, 2016, 2017, and 2018.

## Lessons and Challenges

Viet Nam's regulatory reforms have contributed to the enhancement of the quality and effectiveness of laws, decrees, and circulars, and the simplification of administrative procedures. The reform agenda has not yet been completed, however, and lessons that can be learned so far will help to improve the regulatory system.

First, domestic reforms and international economic integration can reinforce each other. Market-oriented reform is Viet Nam's own goal and also a key for Viet Nam to be more confident in joining the regional and global economy. In turn, integration commitments are significant catalysts for domestic reforms in Viet Nam.

Second, empirical evidence, perception of the business community and people, and reality (economic and social life) are major tests for the rightness and effectiveness of regulatory reforms. The following factors seem to be necessary conditions for successful regulatory reforms:

- Political commitment is critical (Commitment by leader(s) is needed)
- Simple goals and adherence to international standards/best practices are essential (Self-assessment in regulatory management is simply not enough)
- Building awareness for officials responsible for handling administrative procedures is key
- Active involvement of stakeholders should be welcomed; sharing of information (comments, feedback, and transparency) and effective communication are highly complementary
- Reforms need a sound institutional structure with sufficient capacity (and thus, they are an ongoing process)
- Regulatory reforms are not resource-demanding (Even at the hand of developing countries like Viet Nam)

The achievements of Viet Nam in regulatory reforms are considerable, but largely limited to reducing barriers to market entry and transaction costs thanks to simplification of various administrative procedures. Regulatory reform in Viet Nam now faces two other major challenges.

Many studies show that in Viet Nam, MSMEs find it hard to grow their businesses. As a result, most local firms are small or very small, and Viet Nam lacks medium-sized firms (the 'missing middle' problem). Reasons for this include problems associated with property rights protection, competition, and access to factors of production. Having effective institutions and appropriate regulations to tackle such problems is still very much of a challenge.

Another challenge is to have good regulations for supporting and facilitating technology and innovation. That is really crucial for Viet Nam now, to sustain economic growth, which relies more and more on productivity improvement and innovation. In the context of the Fourth Industrial Revolution and digital transformation, it is easier to agree on key principles for the right regulations; they need to ensure:

- The enhancement of innovation;
- Efficiency based on fair competition
- A broad view of cost–benefit of all stakeholders, especially customers

However, many questions remain about how to design appropriate regulations and how to enforce them. Establishing a digital infrastructure that ensures hyper-connectivity with an open and secure database is challenging. How to create good regulations in coping with fast changing markets and various new business models and platforms is still a process of learning, and there is no reference to best practices. Quantitative assessments of the social-economic impacts of such new business models and platforms are difficult, not to mention the adjustment costs involved. We need to learn more from experience, for example through the creation of so-called regulatory 'sand-boxes'. In-depth studies of the digital economy and the economics of data are also needed to create good regulations.