

## Chapter 11. Viet Nam

*Viet Nam has undertaken impressive efforts to improve the efficiency of its administration and administrative processes, including streamlining business and investment regulatory frameworks. The government has introduced mandatory regulatory impact assessments in the development of legal documents and lawmakers are required to identify the likely distributional effects of new regulations, especially through the consultation process. Impact evaluations of existing regulations have also been conducted in the past years, although not systematically. Viet Nam has recently introduced a new small and medium-sized enterprise (SME) support law in 2017, which consolidates and overwrites all previous laws and regulations related to SMEs. A dedicated SME Development and Promotion Council is responsible for co-ordinating inputs from various ministries and agencies involved in SME development, as well as advising the Prime Minister related policies and instruments. The government is also making good progress in building its e-customs portals and National Single Window towards convergence with the Association of Southeast Asian Nations (ASEAN) Single Window.*

## Regulatory context

The regulatory context for businesses in Viet Nam has undergone a remarkable transformation over the past three decades as the country transitioned from a state-led command economy to a market-oriented economy. In 1986, Viet Nam launched a broad economic reform package called “Doi Moi”, or “renovation”, which focused on opening up Viet Nam’s economy and improving its business environment. A few years later, Viet Nam introduced the Law on Private Enterprises and Companies Law in 1990 to allow Vietnamese citizens to establish private businesses for the first time. This was an important milestone for Viet Nam, despite the fact that the requirements and procedures required by this new law were complicated and prohibitive to most entrepreneurs. Only 34 000 privately owned businesses were established between 1990 and 2000.

A subsequent Law on Enterprise in 1999 significantly reduced the administrative procedures relating to starting businesses. Many other reforms have since been made to policies and regulations related to credit, land, taxes, customs, standards and more. Large-scale reforms to reduce government control and improve the efficiency of state-owned enterprises (SOEs) through privatisation, or “equitisation”, are also underway.

Reform efforts to streamline business procedures, reduce administrative burden, increase transparency and improve access to resources and services have benefitted businesses of all sizes, including micro and SMEs, which account for 97% of all businesses registered in Viet Nam and 37% of total employment in the country (General Statistics Office, 2016<sup>[1]</sup>). As of 2016, there are around 590 000 active micro, small, and medium enterprises (MSMEs) in Viet Nam, of which 68% are micro-enterprises (Can, 2017<sup>[2]</sup>).

Most business laws and regulations in Viet Nam apply to enterprises of all sizes, although some may provide special provisions for SMEs (for example, lower rates of corporate income tax). However, given the importance of SMEs in the Viet Nam economy, the government has also introduced SME-specific development plans and regulatory policies to give SMEs preferential treatment.

The first piece of regulation explicitly targeting SMEs was introduced in 2001 and it laid the foundation for establishing a dedicated SME Agency under the Ministry of Planning and Investment (MPI) (Decree 90/2001/ND-CP). Decree No. 90 also introduced a five-year SME Development Plan, which has been renewed since. The latest SME Development Plan covers the period 2011-15 (Box 11.1). Decree No. 90 was later replaced by Decree No. 56/2009/ND-Development and Promotion and most recently by the Small and Medium Enterprise Support Law No. 04/2017/QH14 in July 2017 (hereafter “SME Support Law”).

Viet Nam has increasingly aligned its regulatory frameworks to facilitate integration into international markets. As part of the World Trade Organization (WTO) accession process, Viet Nam has significantly reformed much of its legal and regulatory frameworks to be more transparent and compliant with international standards. It has made revisions to a number of major business-related laws and regulations to improve the investment environment in Viet Nam, some of which have special provisions for SMEs. Viet Nam became a WTO member in 2007.

Considerable efforts also have been made to align or adapt national regulations with regional (ASEAN) or international standards. The introduction and adoption of regulatory impact assessments (RIA) is an example of this, as is the implementation of the standard cost model under a National Project on Administrative Reform (Project 30) (Box 11.6).

In order to benchmark the performance of Viet Nam's business regulatory environment and to continue advancing business reforms, the government refers to the World Bank's Doing Business Indicators, the Global Competitiveness Report of the World Economic Forum, the ASEAN SME Policy Index and the World Intellectual Property Organization (WIPO) indicators on intellectual property, among many international resources.

### Box 11.1. Viet Nam Government Action Plan on SME Development 2011-15

The most recent five-year Government Action Plan on SME Development was issued for the period of 2011-15 (Vietnam Law and Legal Forum, 2012<sub>[31]</sub>). This development plan aims to increase the number of SMEs by 350 000 between 2011 and 2015, and create 3.5 to 4 million associated jobs over the same period. In order to achieve these targets, the plan outlines a number of support measures:

1. Complete the legal framework for SME entry, operation and withdrawal from the market.
2. Support access to capital and credit and improve the efficiency of capital use for SMEs.
3. Support innovation and application of new technology for SMEs.
4. Develop human resources, particularly on improving administrative capacity.
5. Establish industrial co-operation between linked groups and industrial parks, as well as increase land access for SMEs.
6. Provide supportive information to facilitate market expansion for SMEs.
7. Develop an assistance system for SMEs.
8. Manage the implementation of the SME Development Plan, particularly specific measures such as establishing an SME support fund, intensifying technology application and innovation.

Source: Vietnam Law and Legal Forum (2012), *Decision No. 1231/QĐ-TTĐ: Development Plan for Small- and Medium-sized Enterprises during 2011-2015*, <http://vietnamlawmagazine.vn/decision-no-1231-qd-ttg-development-plan-for-small-and-medium-sized-enterprises-during-2011-2015-3167.html>.

## Regulatory governance

### *Institutional and regulatory setup*

**Table 11.1. Institutional and regulatory setup in Viet Nam**

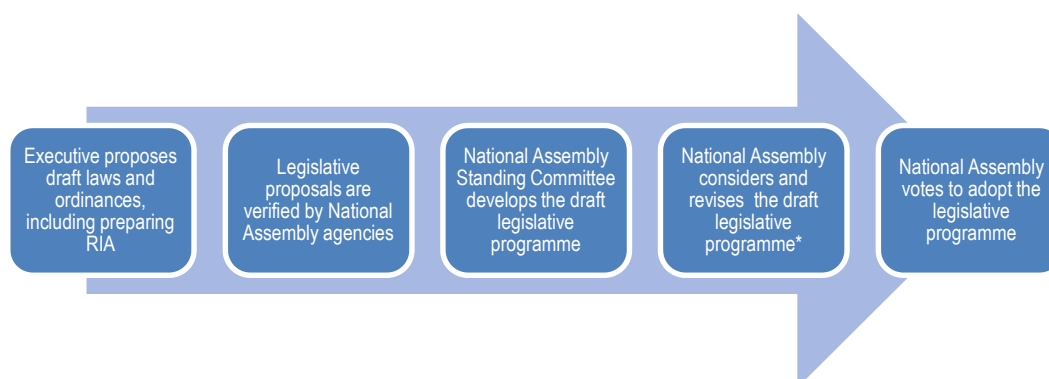
	Government
State structure	Single Party Socialist Republic
Head of state	<b>President</b>
Executive	<p>The executive power in Viet Nam is vested in the <b>President</b> and the <b>Government of Viet Nam</b>. The President is responsible for national defence and foreign relations. The President can recommend the election of the Vice President, Prime Minister, Chief Justice and Chief Prosecutor to the National Assembly. The President can directly appoint Deputy Prime Ministers, Ministers and other government members. The President also serves as the commander-in-chief of the Viet Nam People's Armed Forces, as well as the Chairman of the Council for Defence and Security.</p> <ul style="list-style-type: none"> <li>• The government is headed by the <b>Prime Minister</b>, who presides over several Deputy Prime Ministers as well as other ministers in charge of specific activities. The <b>Office of the Government</b> is responsible for co-ordinating with ministries, provincial-level People's Committees and concerned agencies and organisations in preparing draft legal documents as well as reviewing and commenting on them before they are submitted to higher level institutions.</li> </ul>

	<ul style="list-style-type: none"> <li>• <b>Line Ministries</b> are responsible for initiating and drafting law and regulation proposals. They also oversee the implementation of regulations in their fields of competence.</li> <li>• <b>Ministry of Justice</b> is responsible for quality control of all laws and regulations.</li> </ul>
Legislative	<p><b>Unicameral legislature</b></p> <p>The constitutional and legislative powers in Viet Nam are vested in the <b>National Assembly</b>. Only the National Assembly can formulate and amend the constitution as well as laws, according to the Constitution and the Law on the Organisation of the National Assembly. The National Assembly is also responsible for making decisions pertaining to national affairs and exercising supreme control over the activities of the state.</p>
Legal system	<ul style="list-style-type: none"> <li>• The <b>Supreme Court</b> is the highest judiciary power. As Viet Nam abides by a one-party political system, the judiciary including all judges and procurators are members of the Communist Party of Viet Nam. The Supreme Court is accountable to the National Assembly.</li> <li>• Three levels of <b>People's Courts</b> exist below the Supreme People's Court: 1) the superior people's courts, which are appellate courts responsible for the northern, central and southern regions of Viet Nam; 2) provincial-level people's courts which are trial and appellate courts; 3) district level people's courts which are trial courts only.</li> <li>• A <b>Central Military Tribunal</b> is subordinate to the Supreme People's Court, and it presides over a system of military tribunals at various levels of the People's Army in Viet Nam.</li> <li>• The top prosecutorial authority in Viet Nam is the <b>Supreme People's Procuracy</b>. These authorities are responsible for supervising and inspecting judicial compliance by government agencies and officials. Every people's court has its own people's procuracy.</li> </ul>
Administrative-territorial structure	5 municipalities and 58 provinces, which are further subdivided into urban districts, towns, provincial cities, and rural districts.
Ministry or agency responsible for SMEs or SME-related issues	<b>SME Development Council</b> headed by the Minister of MPI and the <b>Agency for Enterprise Development</b> under the Ministry of Planning and Investment (MPI)
Other support structures within government on regulatory policy	<ul style="list-style-type: none"> <li>• <b>SME Development and Promotion Council</b> helps to SME development initiatives and programmes, as well as advise the Prime Minister on policies and instruments that encourage SME development</li> <li>• <b>Directorate for Standards, Metrology and Quality (STAMEQ)</b> is the national standardisation agency. It issues national standards and helps develop international standards. STAMEQ is housed under the Ministry of Science and Technology.</li> <li>• <b>State Bank of Viet Nam</b> is the national banking regulator.</li> <li>• Various non-government bodies including <b>Viet Nam Chamber of Commerce and Industry (VCCI)</b> and <b>Viet Nam SME Association (VINASME)</b> are important institutions that help advocate for more enabling and favourable regulatory policy framework for SMEs</li> </ul>

### *Viet Nam's legislative process*

The legislative process begins when the government proposes draft laws to the National Assembly and draft ordinances to the Standing Committee of the National Assembly. According to Article 100 of the Constitution, the executive branch is responsible for issuing, reviewing and handling legal documents, including supporting decrees and circulars, according to their duties and authorities (UNDP, 2012<sup>[4]</sup>).

The Ministry of Justice (MOJ) is in charge of quality control of all laws and regulations. It also monitors their implementation. The MOJ performs the state management on development and implementation of laws and regulations, post-review of legal normative documents, control of administrative procedures and legal dissemination and education; state management on execution of civil and administrative judgments, judicial-administrative activities, judicial affairs support, state compensation in administrative management and execution of judgments and other justice works nationwide; management of the implementation of laws and regulations on handling of administrative violations; and public services provision in the areas under the ministry's state management (Government of Viet Nam, 2013<sup>[5]</sup>).

**Figure 11.1. Viet Nam's legislative process**

*Note:* The National Assembly assigns the Law Committee, the Ministry of Justice and other relevant agencies to produce a report explaining opinions and revisions to the draft legislative programme.

*Source:* UNDP (2012), *Legislative Processes and Procedures of the National Assembly, Research Report*, Hanoi.

### ***Regulatory process for business-related laws***

The Ministry of Planning and Investment (MPI) is the relevant line ministry for putting forth draft laws and ordinances relating to business and investments. The MPI is also in charge of SME dedicated laws and regulations. The Agency for Enterprise Development (AED) under the MPI serves as the central SME Agency in Viet Nam. The agency supports the government in formulating policies and regulations related to SME and in designing and implementing SME support programmes.

The MPI is responsible for implementing the business- and investment-related laws and regulations that have been approved by the National Assembly. In addition, an SME Development and Promotion Council have been set up to help implement Decree No. 56 and multiple initiatives and programme on SME development. Since Decree No. 56 has been replaced by the SME Support Law in 2017, it is expected that the council will continue to help implement the new law. The council also advises the Prime Minister on policies and instruments that encourage the development of SMEs. Members of this council include:

- Minister of Planning and Investment (Chairman).
- Director General of the Enterprise Development Agency (Standing Secretary).
- Leaders of the Ministry of Planning and Investment, Industry and Trade, Finance, Justice, Agriculture and Rural Development, Construction, Transport, Science and Technology, Natural Resources and Environment, Education and Training, Labour - War Invalids and Social Affairs, and Steering Committee for Enterprise Development and Reform.
- Leaders of provincial People's Committee of Hanoi, Ho Chi Minh City, Hai Phong, Da Nang and Can Tho.
- Leaders of the Chamber of Commerce and Industry (VCCI), the Viet Nam Co-operative Alliance (VCA), the Viet Nam Association of Small and Medium Enterprises (VINASME), and of some business associations in Viet Nam.
- Selected experts in the fields of economics, science and technology upon request from relevant ministries.

The Ministry of Justice (MOJ) is responsible for monitoring the implementation of laws by the relevant ministries. The People's Procuracy is responsible for supervising and inspecting judicial compliance by government agencies and officials.

### *Laws and regulations relevant for SMEs*

In Viet Nam, most business regulations and regulatory policies are designed and formulated for all businesses irrespective of their size. These general regulations and regulatory policies cover many areas of business operations including incorporation, corporate governance, credit, customs, labour, land and technology. Key business-related laws include:

- Labour Law
- Land Law
- Civil Code (includes provisions for intellectual property rights)
- Law on Corporate Income Tax
- Law on Competition
- Law on Securities
- Law on Competition (2004)
- Law on Enterprise (1999)
- Investment Law.

Some general business laws and regulations also include special provisions for SMEs. Such regulations relate to simplified accounting standards, reduced corporate income tax rate and reduced frequency of financial as well as tax report submissions. For example, according to the Law on Corporate Income Tax, SMEs are entitled to a lower corporate tax rate of 20% compared to 22% for larger companies.

To benefit from special state support for SMEs, Vietnamese businesses must fall under the categories outlined in Table 11.2. Micro, small and medium enterprises are categorised according to employment numbers and total capital in various sectors, depending on the nature of the relevant sector. For example, trade and services tend to use less labour and capital than the other sectors but yield higher sales and revenue. The categorisation of MSMEs in Table 11.2 is consistent with the categories used by the General Statistical Office (GSO), which collects and compiles data and statistics for policy analyses, policymaking and policy advocacy purposes.

**Table 11.2. Definition of micro and SMEs in Viet Nam**

Sector	Micro-enterprises		Small-sized enterprises		Medium-sized enterprises	
	No. of labourers	Total capital (VND)	No. of labourers	Total capital (VND)	No. of labourers	Total capital (VND)
1. Agriculture, forestry and fishery	10 or fewer	20 billion or less	10 to 200	20 to 100 billion	200 to 300	200 to 300
2. Industry and construction	10 or fewer	20 billion or less	10 to 200	20 to 100 billion	200 to 300	200 to 300
3. Trade and service	10 or fewer	10 billion or less	10 to 50	10 to 50 billion	50 to 100	50 to 100

*Source:* Decree No. 56/2009/ND-CP on SME Support and Promotion.

There have also been several laws dedicated to supporting SMEs enacted since 2001, all of which have been overwritten by the latest Small and Medium Enterprise Support Law

No. 04/2017/QH14 in July 2017 (hereafter “SME Support Law”) since January 2018. The SME Support Law aims to support SME growth, make Vietnamese businesses globally competitive, and reduce the administrative burden for investors and entrepreneurs (Box 11.2) concurrent with other ongoing economy-wide reforms. Three implementation decrees to guide the implementation of the law are currently being drafted and are expected to be adopted by the early of 2018.

### **Box 11.2. Priorities of the Viet Nam SME Support Law 2017 and its prevailing regulatory policies**

#### **General priorities:**

- Increase the number of active SMEs to 1 million by 2020.\*
- Improve the legal environment and policy framework for SMEs in all regulatory areas including business registration, permit and licences, taxes, customs, access to finance.
- Improve SME access to credit and different types of funds and capital.
- Support business start-ups and innovation.
- Support SMEs in accessing land and office space, particularly in industrial zones and high-tech parks.
- Support market access and linkages with domestic as well as international supply chains.
- Support formal business registration for household businesses and micro-enterprises according to the Enterprise Law.
- Improve the quality of support programmes and policies for SMEs.

#### **Key provisions:**

- SMEs are eligible for a lower corporate income tax (CIT) rate for a finite period.\*
- Companies investing in distribution chains in which at least 80% of supplied goods are produced by SMEs in Viet Nam are eligible for CIT exemption and reduction.
- SMEs can opt for a simplified accounting system as stipulated in the relevant accounting regulations.
- Provincial People’s Committees could support local SMEs located in industrial or high-tech zones with land leases.
- Ministries and provincial People’s Committees are obligated to support and/or co-operate with SMEs in research and development, technology development including technology training and transfer, intellectual protection and in establishing common technology clusters.
- SME start-ups and SMEs participating in value chains may be eligible for additional incentives.

\* The law does not specify the rate of reduction of CIT, although an earlier draft in May proposed a rate reduced by 5% for a maximum duration of five years. It is expected that the rate and eligibility period will be specified in a forthcoming guiding regulation (PwC, 2017<sub>[6]</sub>).

Source: PwC (2017), *PWC Vietnam News Brief: Lower Corporate Income Tax Rates and Other Incentives for Small and Medium Enterprises*, <http://www.pwc.com/vn/en/publications/2017/170721-pwc-vietnam-newsbrief-law-sme-en.pdf>.

## Highlights of regulatory opportunities and challenges to support SMEs

### *Regulatory clarity*

Viet Nam has set out clear principles for the development of regulatory policy, legal and normative documents. Such rules and processes applicable to the making of laws and regulations are stipulated in the Law on the Making of Laws and Legal Normative Documents (“Law on Laws”), introduced in 2008 and amended in 2015 (Box 11.3). The process outlined in the Law on Laws applies to all policies, laws and regulations including those pertaining to SMEs.

#### **Box 11.3. Law on the Making of Laws and Legal Normative Documents (Law on laws)**

The main principles of the regulatory policy, legal and normative documents in Viet Nam are stipulated at the Law No. 80/2015/QH13 regarding the Promulgation of Legal and Normative Documents dated 22 June 2015 (often known as the Law on Laws) (Government of Viet Nam, 2015<sub>[7]</sub>). According to Article 5 of the law, key principles of regulatory policies, legal and normative documents in Viet Nam include the following:

- Ensure the constitutionality, legitimacy, and uniformity of legal normative documents in the legal system.
- Comply with regulations of law on authority, manner and procedures for formulating and promulgating legal normative documents.
- Ensure transparency of legal normative documents.
- Ensure the feasibility, frugality, effectiveness, promptness, accessibility and practicality of legal normative documents;
- Integrate gender equality issues in legal normative documents; ensure simplification of administrative procedures.
- Ensure national defence and security, environmental protection without obstruction of implementation of the international agreements to which the Socialist Republic of Viet Nam is a signatory.
- Ensure publicity and democracy in receipt of and response to opinions, complaints from agencies, organisations and individuals during the process of formulating and promulgating legal normative documents.

*Source:* Government of Viet Nam (2015), *Law No. 80/2015/QH13 regarding Promulgation of Legal and Normative Documents*.

Some specific policy targets are set out in both Viet Nam’s SME Development Plan and SME Support Law, along with some provisions to support their achievement. The SME Development Plan aims to register 80% of SMEs by 2020 (20 years after the passing of the law) and ensure that 50% of small companies have financial accounts by 2025. The SME Support Law aims to reach 1 million active SMEs by 2020 (Box 11.2). However, there are no accompanying indicators with which to measure or track progress towards achieving these targets.



## *Regulatory delivery*

### *Regulatory compliance*

Regulatory compliance is acknowledged to be a particular challenge for SMEs in terms of time and cost. In a given year, production factories are subject to many inspections by various government agencies to check compliance with regulations in environmental standards, workplace health and safety, taxation and reporting, labour standards and working conditions. Inspections often take place individually, according to the administering agency and, as such, are not systematically considered or grouped together to limit possible duplication.

Regulatory requirements relating to importing input products can also be especially challenging for SMEs to understand. Some key customs procedures – such as Harmonised System (HS) codes - are not yet consistently applied. This can sometimes result in the charging of different tariffs for the same product. Customs procedures and regulations, including import-export tax procedures, remain highly challenging for SMEs.

As part of the WTO accession process, Viet Nam has significantly reformed a number of regulatory and trade facilitation measures to comply with international standards. Efforts have been made to implement agreements on intellectual property, investment measures, customs valuation, sanitary and phytosanitary measures, import licensing provisions, anti-dumping and countervailing measures, and rules of origin.

The Directorate for Standards, Metrology and Quality (STAMEQ) is the national standardisation agency. It issues national standards and helps develop international standards. STAMEQ is housed under the Ministry of Science and Technology. Considerable efforts also have been made to align or adapt national regulations with regional (ASEAN) or international standards. However, there are no current plans or programmes to harmonise or streamline sanitary and phytosanitary requirements (i.e. requirements certification, licensing/product certification, labelling requirements, inspections and testing, etc.) at the national or regional levels.

### *Enforcement and inspection*

Viet Nam has adopted a rewards and sanction approach to regulatory enforcement. Many regulations feature a separate section which stipulates that rewards and sanctions are subject to the prevailing regulations, leaving their implementation vague. Rewards and sanctions may be implemented at the ministry, government, President or National Assembly level.

Vietnamese customs authorities apply the principle of risk management, which aims to help facilitate export and import activities while reducing costs and shortening clearance time (Box 11.4). For example, according to Resolution 19/2016/ NQ-CP, the government has requested ministries to change management methods, specialised inspections and other management principles on the basis of risk assessment, international practices and a substantial change to the post-clearance audits; apply electronic management of procedures; and share information among functional agencies, organisations, specialised inspections agencies and customs agencies. However, while many ministries have issued legal documents to apply risk management principles in customs supervision and management, full implementation is still in progress (Government of Viet Nam, 2014<sup>[8]</sup>).

**Box 11.4. Principles of risk management in customs operations in Viet Nam**

- Customs authorities shall apply the principle of risk management in deciding on customs inspection and supervision of goods and vehicle, and shall support the tackling of smuggling and illegal cross-border trafficking of goods.
- Risk management in customs operations shall include the collection and processing of customs information; establishment of criteria for and evaluation of customs declarants' adherence to the law, and classification of risks; and implementation of appropriate measures for customs management.
- For the purposes of serving the application of risk management to customs operations, customs authorities shall manage and apply a communication system that automatically integrates and processes data.
- The Minister of Finance shall establish criteria for evaluation of customs declarants' adherence to the regulations of law, classify risks and apply risk management to customs operations.

*Source:* Government of Viet Nam (2014), *Law on Customs, National Assembly No. 54/2014/QH13*, [www.wipo.int/edocs/lexdocs/laws/en/vn/vn081en.pdf](http://www.wipo.int/edocs/lexdocs/laws/en/vn/vn081en.pdf).

Regulatory delivery – including compliance, enforcement and inspection - is regularly reviewed by the Ministry of Justice (MOJ) and the National Assembly, although there are no official statistics on compliance rates.

***Administrative simplification***

Administrative simplification is a priority for the Viet Nam government. Since its first administrative simplification policy in 1994 (Resolution 38/CP), the government has continued to implement various policies and plans aimed at improving Viet Nam's business environment and making the administrative system simpler, more transparent, efficient and easily understood. Between 2001 and 2010, Viet Nam implemented a Public Administration Reform Master Programme, which included many measures to streamline government procedures and reduce administrative burden. As part of this Master Programme, Viet Nam gradually introduced one-stop shops across the country (Box 11.5).

Between 2007 and 2010, Viet Nam implemented a Master Plan to Simplify Administrative Procedures, also known as Project 30 (Box 11.6). Project 30 draws its name from its target to simplify at least 30% of administrative procedures as well as reduce administrative costs by 30%. It also aimed to modernise the domestic regulatory system and bring it closer in line with WTO and international trade agreements. The project benefitted from strong government support and co-ordination, successfully delivering a comprehensive inventory of administrative procedures on an online database along with reviews of the necessity, legality and user-friendliness of these procedures. Project 30 also proposed 2 sets of simplification measures. In 2011, the OECD reviewed the progress of Project 30 and proposed recommendations on implementing its findings.

### Box 11.5. One-stop shops in Viet Nam

The first one-stop shop in Viet Nam was piloted in Ho Chi Minh City in 1995. Since then, Viet Nam has introduced one-stop shops all over the country to consolidate the delivery of government services to support business start-ups, including information about regulations and their requirements, licensing and permit issuance.

The implementation of one-stop shops was first stipulated by law in the Public Administration Reform Master Programme 2001-10. Roll out of this model began in 2003. By 2007, the one-stop shop initiative was scaled up to all departments and procedures at local levels as well as made mandatory at the central level. By the end of 2015, 88% of departments at the provincial level, 99% of departments at the district level and 97% of departments at the commune, ward and township level had introduced nearly 13 000 one-stop shops across Viet Nam (Blunt et al., 2017<sup>[9]</sup>).

However, services provided by one-stop shops do not necessarily span different ministries or across levels of government. As a result, businesses may still have to visit multiple one-stop shops in order to complete all necessary administrative procedures (Blunt et al., 2017<sup>[9]</sup>).

Source: Blunt, M. et al (2017), *One-stop Shops in Vietnam: Changing the Face of Public Administration for Citizens and Businesses through a Single Door to Multiple Services*, <http://documents.worldbank.org/curated/en/509861498753741062/One-stop-shops-in-Vietnam-changing-the-face-of-public-administration-for-citizens-and-businesses-through-a-single-door-to-multiple-services>.

### Box 11.6. Regulatory simplification process and outcomes from Project 30

Project 30 catalogued more than 5 000 administrative procedures and more than 9 000 legal normative documents in a database. Reviews of these procedures and documents were undertaken by ministries, local and foreign businesses, according to the administrative simplification process as follows:

1. Prepare an inventory of administrative procedures.
2. Conduct a self-review of the necessity of the administrative procedure, including from the community's perspective.
3. Expert review of difficult administrative procedures by special task force.
4. Recommendations on whether to keep, simplify or abolish procedure.

By the end of Project 30 in late 2010, the government had issued 25 special resolutions requesting ministries to simplify 4 723 administrative procedures. This significantly reduced administrative burden for citizens and businesses and was estimated to save some USD 20 million a year in invoicing procedures and some USD 50 million in tax declaration and collection (Vo and Nguyen, 2016<sup>[10]</sup>).

Source: Vo, T. and C. Nguyen (2016), *Towards Responsive Regulatory Management Systems: Country Report for Viet Nam*, <http://www.eria.org/ERIA-DP-2016-22.pdf>.

The government has continued its commitment to reduce administrative burden in Viet Nam. In January 2018, the Ministry of Industry and Trade issued Decree No. 08/2018/ND-CP to remove 55% of all business and investment criteria for 8 sectors under its management: petroleum, tobacco, franchise, e-commerce, electricity, chemicals, industrial explosive materials and food trade (675 out of 1 216 business criteria) in a sweeping reform of Viet Nam's business sector. The ministry also announced a plan to remove some 58% of goods codes (420 out of 720) subject to pre-clearance inspection. This followed from a Resolution No. 01/NQ-CP issued in late 2017 which set out the government's aim to reduce business criteria in various ministries by 50%. As of the end of 2017, five ministries had put forth plans to remove more business criteria under its scrutiny (Vietnam News, 2017<sup>[11]</sup>).

### ***Regulatory quality management***

Lawmakers are required to identify the likely distributional effects of the regulation, especially through the consultation process (with the public and with other line ministries, agencies and the business community). In some cases, public consultations of draft regulations with business associations have been useful in identifying the likely distributional effect of regulations. For example, a recent consultation on the draft decree on conditional business lines and business conditions helped regulators realise that proportionally, it costs much more for a small business to obtain a food safety certificate or a permit to trade in liquefied gas than for a large business.

### ***Ex post evaluation***

The government has also conducted *ex post* assessment of the impacts of several SME regulatory policies, including Decrees No. 90 and No. 56, which helped to formulate the SME Support Law. However, more than 80% of SME support policies and programmes have not had their progress monitored and evaluated, as noted by the Report on the Implementation of Policies and Programmes to assist SMEs in the framework of Decree 56/2009/ND-CP on SME support.

### ***Regulatory impact assessment***

The Law on Laws introduced the obligation to conduct regulatory impact assessments (RIA) in the development of legal documents of almost all levels including: laws, ordinances, resolutions of the National Assembly, decrees of the government, decisions of the Prime Minister, ministry circulars and also resolutions by the People's Council at the provincial level (Box 11.7). The Law on Promulgation also stipulates that the National Assembly and all of its commissions, the government, all ministries and provincial People's Committees are responsible of the implementation of RIA when they draft the regulations that are in their authority.

RIA has been used extensively in the making of the SME Support Law between 2015 and 2017, helping to improve the quality of the law. For example, RIA helped quantify the costs and benefits of different proposed policy measures, such as the reduction of corporate income taxes applicable to SMEs, household support for registration, support to SMEs to innovate and to become part of industry clusters or global value chains. RIA has also helped to enrich debates and consultations on the draft law at provincial, ministry and National Assembly level.

**Box 11.7. RIA of proposed regulatory policies as stipulated in Article 35 of the Law on the Promulgation of Legal Normative Documents, 2015**

- Agencies and organisations which are responsible for drafting regulatory policy shall assess the impact of each proposed policy. Deputies of the National Assembly shall assess the impact of each proposed policy or request a competent authority to do so.
- During the process of drafting, appraising, inspecting, considering and commenting on law/ordinance proposals and draft regulations, if new policy issues are proposed to be included in the draft, the submitting agency must assess the impact of such draft regulations and proposals.
- The assessment of each proposed policy in must articulate the following: issues to be addressed; objective of the policy; solutions to the issues to be included in the policy; positive and negative impacts, cost and benefit of the policy actions and solutions; comparative analysis of costs and benefits of the proposed solutions; selected solution and reason for such selection; impact assessment of administrative procedure which might arise due to the policy; impact assessment on gender-related issues (if any).
- When assessing the impact of proposed policies, agencies, organisations and deputies of the National Assembly must carry out impact analysis and draft the report on impact assessment; seek opinions and feedback about the draft report and revise the draft report.

*Source: Government of Viet Nam (2015), Law No. 80/2015/QH13 regarding Promulgation of Legal and Normative Documents.*

A Technical Guide on Regulatory Impact Assessment has been developed by MOJ with support from USAID. Benchmarks against regional or international practices were frequently referred to in the development of the technical guide.

International good practices, such as the *OECD Guiding Principles on RIA* and examples from Australia, South Korea and the United Kingdom are increasingly referred to in formal assessments of the impacts of SME regulatory policies as well as in public communications on their costs and benefits.

***E-government***

Several online databases for regulations have been introduced in Viet Nam (Box 11.8).

**Box 11.8. Online databases for regulations in Viet Nam**

The official regulation database in Viet Nam is the E-Gazette. The E-Gazette is run by the government and financed by the state budget. It covers regulations by sector. The E-Gazette is the most comprehensive regulation database in the country and is regularly updated at <http://congbao.chinhphu.vn/>.

The Ministry of Justice also provides a comprehensive database of laws and regulations at the national as well as provincial level. The laws and regulations are classified by the issuing agencies (National Assembly, government, ministries, etc.)

<http://vbpl.vn/Pages/portal.aspx>.

Some law databases have also been set up by companies for commercial purposes, for example, the Online Law Library by Lawsoft. This database is regularly updated and can provide many types of regulations for payment. The library is at the following address:

<https://thuvienphapluat.vn/>.

Some ministries and provinces also feature regulation databases on their websites, usually for regulations under their authority. For example the law database of the Ministry of Finance: <http://vbpq.mof.gov.vn/> or that of Ho Chi Minh City:

<http://vbpl.vn/thanhphohochiminh/Pages/Home.aspx>

The Ministry of Planning and Investment runs an e-regulations website that presents step-by-step user guides on investment procedures in seven provinces in Viet Nam: Binh Dinh, Da Nang, Hai Duong, Hanoi, Ho Chi Minh City, Phyu Yen and Vinh Phuc

<https://vietnam.eregulations.org/>.

### *E-customs*

E-customs has been introduced in Viet Nam, starting from pilots in selected units. The implementation of e-customs procedures in Viet Nam will help shorten clearance time and reducing the requirements for declarations. Viet Nam is also building Viet Nam's National Single Window (NSW) to facilitate trade. Under the Customs' Reform Strategy of Modernisation through 2020, Viet Nam's National Automated Cargo and Port Consolidated System (NACCS) and Viet Nam's Customs Intelligence Information System (CIS) have been applied to all customs departments and sub-departments nationwide. The use of NACCS and CIS has also motivated the use of information technologies in other related areas including electronic tax payment (e-payment), electronic manifest (e-manifest), electronic invoice (e-invoice) and electronic permit (e-c/o and e-permit).

Through e-customs, Viet Nam is currently working to simplify its system of licences and certificates, including those concerning exports and imports, certificates of origin (c/o), quarantine and food safety. These efforts are demonstrated through the eCoSys (online c/o system) as well as through automatic import licensing.

Regulations on e-commerce and e-payments are not yet well understood by general businesses.

### *Stakeholder engagement*

Article 34 of the Law on Laws (2008) introduced a general obligation to conduct public consultations during the regulatory drafting process. Public feedback may be collected 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 leading drafting agency or mass media” (Government of Viet Nam, 2008<sub>[12]</sub>).

Public consultations of draft regulations are frequently discussed with business associations including the Viet Nam Association of Small and Medium Enterprises

(VINASME), Viet Nam Chamber of Commerce and Industry (VCCI) and the Young Business Association, among others.

In 2016, the Prime Minister personally chaired a meeting with the business sector focused on improving government management, business rights and obligations, advancing administrative reform and applying global standards in accounting (Dao, 2016<sup>[13]</sup>). The government also participated in a Viet Nam Private Sector Forum organised by the Viet Nam Young Entrepreneurs' Association (VYEA) and Mekong Business Initiative (Customs News, 2017<sup>[14]</sup>).

The government works closely with international partners to support the development of SME regulatory policy and regulations. Support activities including studies, workshops, and training and capacity building programmes to address the substantive contents of regulatory policy as well as legal and regulatory processes. An SME Partnership Group (SMEPG) supports donor-government collaboration and consultation in the formulation of SME policies and regulations.

### *Appeals*

Formal appeals against a regulatory decision by an individual business – SME or otherwise – is highly unusual. It is possible to make an appeal through the commercial court system, although this is also uncommon (Government of Viet Nam, 2011<sup>[15]</sup>).

### *SME linkage policies*

Viet Nam has significant linkages into the global value chain, with among the highest number of foreign companies and highest foreign direct investment (FDI) in ASEAN. Viet Nam has 283 industrial and export processing zones that have attracted over 4 100 FDI projects with investment capital amounting to nearly USD 60 billion (Ernst and Young, 2014, p. 20<sup>[16]</sup>). Traditionally, FDI has primarily gone to low-productivity sectors, such as clothing, and vertical linkages between local suppliers and foreign firms have been limited, in part due to the weak absorptive capacity of local firms (OECD, forthcoming<sup>[17]</sup>). However, Viet Nam is increasingly prioritising high-productivity tech and clean sectors.

There are three high-tech zones in Da Nang, Hao Lac (Hanoi) and Ho Chi Minh focusing on microelectronics, biotech, IT, nanotech, robotics and new energy.

Viet Nam has 18 economic zones that offer incentives such as free tariffs for selected items, lower personal income tax, reduced rents and fees. As of May 2017, Viet Nam plans to establish three new economic zones with special status in North Van Phong (Khanh Hoa province), Phu Quoc (Kien Giang province) and Van Don (Quang Ninh province). These three SEZs will have their own Law on Special Administrative-Economic Zones which might supersede local regulation without being contrary to the Constitution and Viet Nam's international commitments. A draft of the law submitted by the Ministry of Planning and Investment has proposed simplified administrative structures for the new SEZs, as well as guaranteed level playing field between domestic and foreign investors in the SEZ. Additionally, parties engaging in foreign civil, commercial or business contracts will have the option to apply foreign laws or international practices rather than Vietnamese law. The draft law also reduces the number of conditional business lines for investors from the 243 in the Investment Law to 108 in the SEZs, among other procedural simplifications. The draft law is awaiting approval by the National Assembly as of January 2018 (Vietnam Law and Legal Forum, 2018<sup>[18]</sup>).

### Box 11.9. Appeal process for regulatory decisions in Viet Nam

According to Article 7 of the Law No. 02/2011/QH13 dated 11 November 2011 on Appeals, the appeal processes for regulatory enforcement decisions, administrative or judicial are as below:

1. Where there are grounds to believe that administrative decisions or administrative acts are unlawful or directly infringe upon their legitimate rights and interests, the complainants shall make first-time complaints to the persons who have issued the administrative decisions on the decisions, or initiate the initiates an administrative lawsuit in court according to the provisions of the Law on Administrative Proceedings.

Where the complainants disagree with the first settlement decision, or the complaint is not resolved after the prescribed time limit, the complainant may file a second complaint to the immediate superior head of the person competent to handle the first-time complaints or may initiate the administrative lawsuits at courts according to the provisions of the Administrative Laws Law.

Where the complainants disagree with the second complaint settlement decision or if at the expiration of the prescribed time limit, the complaint remains unresolved, the complainant may initiate an administrative lawsuit in court according to the provisions of the Law on Administrative Proceedings.

2. For administrative decisions or administrative acts of ministers, heads of ministerial-level agencies or heads of government-attached agencies (hereinafter collectively referred to as ministers), the complainants shall file complaints to the ministers or the heads of the agencies under the Government, or shall initiate administrative lawsuits at courts according to the provisions of the Administrative Proceedings Law.

Where the complainants disagree with the complaint settlement decision of the Minister or the complaint is not settled within the prescribed time limit, the complainant may initiate an administrative lawsuit at the Court according to the provisions of the Law on Administrative Proceedings.

3. For administrative decisions or administrative acts of presidents of provincial/municipal People's Committees (hereinafter collectively referred to as provincial-level People's Committees), the complainants shall make first-time complaints to the People's Committee Chairpersons Provincial people or initiate an administrative lawsuit in court according to the provisions of the Law on Administrative Proceedings.

Where the complainants disagree with the decision on the first-time settlement of the complaint by the provincial-level People's Committee president or the complaint is not settled within the prescribed time limit, he/she may file a second complaint to the minister in charge of the sector/industry or initiate an administrative lawsuit in court according to the provisions of the Law on Administrative Procedure.

4. If the complainant disagrees with the second resolution of the Minister or the complaint is not resolved by the end of the prescribed time limit, he/she may initiate an administrative lawsuit in court according to the provisions of the Law on Administrative Proceedings.

*Source:* Government of Viet Nam (2011), *Law on Appeals, National Assembly No. 02/2011/QH13.*



## Recommendations

- **Consider methods to better quantify or complement existing review structures**, such as regulatory impact assessments (RIA), to standardise practices across ministries when conducting evaluation or assessments.
- **Consider strengthening linkages across existing online platforms into one portal.** Existing platforms like LicenceOne, TradeNet and others could be streamlined further to allow even greater ease for businesses to interface with the government. More agencies could also be inducted into these platforms, towards digitising government to business transactions for greater ease of compliance.
- **Consider best practice sharing and implementation of new and innovative approaches to improving enforcement and compliance or when regulating new and emerging industries**, such as through the use of behavioural insights. Agencies that have already implemented or tried such approaches should share them across the government so that the public service can collectively reduce compliance costs for businesses.

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