



Improving the Quality of Business Environment Reforms

- The Example of the Reform of the Enterprise Law -

Experience of German Technical Cooperation in Vietnam

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ABBREVIATIONS

BCC	Business Cooperation Contract
BIT	Business Impact Test Panel
BOT	Build, Operate and Transfer
BT	Build and Transfer
CIEM	Central Institute of Economic Management
CIL	Common Investment Law
EL	Enterprise Law
FIL	Foreign Investment Law
FDI	Foreign Direct Investment
GNI	Gross National Income
GTZ	German Technical Cooperation
IFC	International Finance Corporation
MDG	Millennium Development Goal
MDPF	Mekong Private Sector Development Facility
MOJ	Ministry of Justice
MPI	Ministry of Planning and Investment
OECD	Organisation for Economic Cooperation and Development
PMRC	Prime Minister's Research Commission
PSD	Private Sector Development
RIA	Regulatory Impact Assessment
RIS	Regulatory Impact Statement
SME	Small and Medium Enterprise
SOE	State-owned Enterprise
UEL	Unified Enterprise Law
UNDP	United Nations Development Programme
WTO	World Trade Organisation
VCCI	Vietnam Chamber of Commerce and Industry
VDG	Vietnam Development Goal

EXECUTIVE SUMMARY

THE CONTEXT

Since the mid-1980s, Vietnam has consistently pursued the reform of the business environment for private enterprises. One of the most notable successes was the introduction of the Enterprise Law (EL), which has brought increased freedom to conduct business. After the Law came into effect in 2000, the number of private companies increased by fourfold to more than 170,000 formally registered enterprises. Within only five years, 136,500 new enterprises were registered with a total combined capital of US\$14.3 billion (as of May 2005).

Nevertheless, significant obstacles to private investment (domestic as well as foreign) persist. Private enterprises, especially small to medium enterprises (SMEs) and foreign companies, operate under more restrictive conditions than state-owned enterprises (SOEs). Administrative regulations – especially at the provincial level – are cumbersome, ineffective and fail to effectively implement reforms. Enforcement of the legislation is still weak and ineffective. The cost of doing business remains high and the competitiveness of local enterprises is low. Further challenges are posed by the fact that Vietnam is determined to join the World Trade Organisation (WTO) by the end of 2005 or early 2006, and is determined to implement international and regional trade agreements.

The requirements for further reform of the business investment climate derive from the following issues and concerns: (i) In spite of recent impressive growth of the business sector, the quality of growth is still a matter of concern. (ii) The legal framework for business is inconsistent and fragmented. (iii) The level of competitiveness of the country is low while competition from outside is fierce. (iv) Imminent accession to WTO requires Vietnam to be more competitive to cope with new challenges. (v) The quality of business law construction remains poor due to a lack of systematic procedures. (vi) Implementation of business laws and regulations is not consistent. (vii) Improving the business environment is important in order for Vietnam to achieve its development goals.

The Unified Enterprise Law (UEL) and Common Investment Law (CIL) are two of the most important ongoing reforms that address these issues. They are expected to have a profound influence on the willingness of investors to play a role in Vietnam's economic development.

GTZ'S APPROACH AND INTERVENTIONS

Supporting the UEL and the CIL is currently the focus of the German Technical Cooperation's (GTZ) intervention in their efforts to improve the business environment in Vietnam.

Inputs of various types are provided to key national institutions, notably the Central Institute of Economic Management (CIEM), the Prime Minister's Research Commission (PMRC) and the Vietnam Chamber of Commerce and Industry (VCCI), and key reform actors within these organisations. Representatives of these institutions are the core members of the drafting committees of the two laws. Direct cooperation with these institutions creates an increased chance for GTZ input to be fed into or used in the making and implementation of the laws.

GTZ supports the UEL and the CIL with the following approach:

- **Improving the quality of the Laws:** This can be achieved through the application of new law-making approaches (particularly the *regulatory impact assessment [RIA]*), strengthening the participation of the public in the making of the laws, exposing drafting members to international experiences and practices, and providing inputs on specific issues, etc. Consultation with various stakeholders should make an equal contribution to increasing the quality and consistency of the laws.
- **Support to the effective implementation of the laws:** Law enforcement has always been problematic in Vietnam. The existing cooperation with the Enterprise Law Implementation Taskforce will be strengthened. The emphasis will be on monitoring and supporting implementation at provincial levels. This will be the focus of the supports after the laws are promulgated.
- **Development of tools and guidelines:** Cooperation is not limited to providing direct inputs and improving the quality of laws. A major objective is to further develop, test, customize and document these tools in order for them to be further replicated and eventually institutionalized in Vietnam. This will enhance the quality of business law-making and implementation in a sustainable manner.

These approaches were selected based on the expertise and technical capacity GTZ has acquired in the field, the short- and long-term objective of GTZ's interventions (the desired impacts to be generated), the requests of national stakeholders, and on the analysis of inputs and interventions by other donor projects active in the same field.

GTZ support is weighted to the *drafting of the UEL*. However, due to strong linkages between and integration of the two laws (one law could not be implemented without the other and vice versa), many issues addressed by GTZ are cross-cutting and related to both the UEL and CIL.

Interventions by GTZ have already brought initial results, particularly because: (i) advanced and innovative tools have been introduced and accepted by key change agents (for example, the RIA has been widely introduced and accepted by local stakeholders); (ii) there is a stronger use of innovative methods by the

Government in the designing of its laws and reform initiatives; (iii) awareness about the improvement of the reforms in the business environment has been raised considerably; and (iv) outputs produced with support from GTZ are well fed into many reforms and reform projects.

However, challenges remain. For an innovative law-making tool like RIA, a key challenge is to develop approaches to RIA that are workable in Viet Nam. Additionally, there is limited local capacity on RIA or further innovative tools to improve the quality of business laws. From the Government side, there is a limited absorption capacity due to both financial and human resource constraints and reluctance to implement new reform projects and ideas. Finally, many of the issues, if they are to be properly addressed, go beyond the existing work scope of a Private Sector Development (PSD) project.

Key lessons have been learned during the implementation process. GTZ sees the following lessons as key to the achievement of the eventual impact of its intervention, particularly in the context of Vietnam.

1. National ownership must be strengthened.
2. Donors' projects must be well-informed about the reform agenda of the Government, and must identify precisely the real needs for support.
3. The right partners must be selected for implementation of each reform initiative.
4. There should be a focus on the impacts achieved while maintaining flexibility and responsiveness to the demands of local partners.
5. The press and the mass media can be used to win public support and raise awareness about business environment reform.
6. Long-term cooperation should be the focus, not just short-term cooperation.
7. Building trust is critically important.
8. Strong cooperation with other donor projects plays an important role in improving the effectiveness, efficiency and impact of interventions.

INTRODUCTION

Stimulating and supporting policy reforms and achieving tangible results in terms of an improved investment climate and an increase in generated employment – these are the core concerns of private sector reform projects.

This paper focuses on reform of the Enterprise Law (EL) in Vietnam, a law which has constituted one of the most important business reforms in Vietnam to date. The introduction of the law in 2000 has led to a boom in private sector development by significantly simplifying the way a private enterprise is set up. The EL will shortly be replaced by the Unified Enterprise Law (UEL), which will also include laws on foreign direct investment (FDI) and other legal forms, and will significantly facilitate FDI in all but a few restricted areas.

The paper examines the approach followed by German Technical Cooperation (GTZ) in Vietnam in supporting key institutions and actors in implementing this reform process. It analyses how inputs to improve the quality of the law, as well as a more effective implementation of the law, leads to higher-quality and a much more systematic approach to lawmaking. Essential to GTZ's approach has been cooperation with the key players and support to them through backing up the reform process via research, consultation and increasing public awareness.

The results of the RIA and the recommendations from policy dialogues and consultation processes, as well as other inputs by GTZ, have made significant contributions to the drafts of the Law. Several of the piloted tools will be used for other law-making processes, thus enhancing the quality of business environment reforms in Vietnam.

PART A

UNIFIED ENTERPRISE LAW, COMMON INVESTMENT LAW AND THE IMPROVEMENT OF THE BUSINESS ENVIRONMENT

I. A NEED FOR FURTHER REFORM OF THE BUSINESS ENVIRONMENT

Since the mid-1980s, Vietnam has been consistently pursuing the reform of the business environment for private enterprises. One of the most notable successes was the introduction of the EL which has brought about an increased freedom to conduct business. After the Law came into effect in 2000, the number of private companies increased by fourfold to more than 170,000 formally registered enterprises. Within only five years, 136,500 new enterprises were registered with a total combined capital of US\$14.3 billion (as of May 2005).

Statistics indicate that the private sector in Vietnam is contributing about 42% to overall GDP (as compared with a contribution of 39% by state-owned enterprises [SOEs]). Private enterprises provide 56.3% of the country's regular job supply, and absorb the major share of the 1.2 million people entering the labour market each year.¹

Another success is the growing number of FDIs that have been attracted to Vietnam. Private foreign investment has recently been flowing into the country at an accelerating rate (possibly reaching USD 5 billion in 2005), largely thanks to the improved business environment of the country.

Nevertheless, significant obstacles to private investments (domestic as well as foreign) persist. Private enterprises, especially small to medium enterprises (SMEs) and foreign companies, operate under more restrictive conditions than state-owned enterprises (SOEs). Administrative regulations – especially at the provincial level – are cumbersome, ineffective and fail to effectively implement reforms. Enforcement of the legislation is still weak and ineffective. The cost of doing business remains high and the competitiveness of local enterprises is low. Further challenges are posed by the fact that Vietnam is determined to join the World Trade Organisation (WTO) by the end of 2005 or early 2006 and is serious about implementing other international and regional trade agreements.

Requirements for further reform of the business investment climate derive from the following issues and concerns:

¹ Source: Central Institute of Economic Management and Ministry of Planning and Investment (www.business.gov.vn).

1. In Spite of the Recent Impressive Growth of the Business Sector, the Quality of Growth is Still a Matter of Concern

Despite encouraging progress in terms of enterprise development in the last few years, the number of enterprises remains at the low level of one enterprise per 1,000 population (2004). Most of these businesses are small in size (in terms of labour and capital). An entrepreneurial culture has yet to take root in the country. The social environment is still far from enabling for private enterprise development, resulting in biased and unfair treatment towards private enterprises.

A recent survey by the Mekong Private Sector Development Facility (MPDF) of the International Finance Corporation (IFC) found that, of the enterprises formally registered, only 73.7% were definitely or probably operational, 13.7% were definitely or most probably closed or non-operational, and 15.7% have an unclear operational status.² This emphasized the alarming difference between the number of enterprises registered in the formal registry (approximately 170,000) and the number of private enterprises included in the database of the tax authorities that are really paying tax (around 110,000).

Most of the enterprises established as a result of business reforms in the last five years are concentrated in growth poles like Ho Chi Minh City, Ha Noi, Da Nang and Hai Phong, and in more urban provinces. As a consequence, there is an increasing disparity in terms of enterprise development and thus investment between provinces.

Various local government agencies have repeatedly raised these issues, regarding them as a serious matter for concern in terms of the “real” picture of economic growth and the quality of the impressive figures on business sector growth reported in the last few years.

2. The Legal Framework for Business is Inconsistent and Fragmented

The playing field for domestic private, state-owned and foreign-invested enterprises is still far from level, with enterprises of different economic sectors being subject to different laws and regulations. SOEs are subject to State-owned Enterprise Law, while private domestic enterprises are subject to the EL and foreign invested enterprises to the Foreign Investment Law (FIL) (not to mention that cooperative and household enterprises are governed by still further laws and regulations).

The management of these various laws results in differences to the conditions and procedures for the differently-owned enterprises to enter and exit the market, and to access the necessary production inputs (e.g. land, credit, labour or technology). Overall, the often-seen discrimination and biased treatment by lo-

² IFC/MPDF, *Beyond the Headline Numbers: Business Registration and Start-up in Vietnam*, 2005

cal authorities towards enterprises of different ownership is, to a large extent, due to the existence of this inconsistent and fragmented legal framework on business.

3. Competitiveness in the Country is Low While Competition from Outside is Fierce

According to the *Doing Business* report of the World Bank, starting a business in Vietnam remains a challenge compared with many regional countries. In all four measures (procedures required for establishing a business, the associated time, the associated costs and the minimum capital requirement), Vietnam is not doing as well as other countries in the same region. Entrepreneurs can expect to go through 11 steps to launch a business over 56 days on average, at a cost equal to 28.6% of gross national income (GNI) per capita.

Worse, a study recently conducted by the Government think-tank, the Central Institute of Economic Management (CIEM), found that on average it takes an enterprise around 260 days to go through 13 administrative procedures, taking these entrepreneurs years to launch a business activity.³ The total cost associated with this is high and extra costs substantially outweigh statutory fees.

In terms of national competitiveness, the 2004-2005 Global Competitiveness Report by the World Economic Forum ranked Vietnam at only 77 among 104 countries in the Growth Competitiveness Index, down from 60 out of 101 countries in 2003. Also according to this report, Vietnam was ranked only 73 out of 103 countries in the Business Competitiveness Index. The ranking sent off an alarm among Government and policymakers in Vietnam, prompting many leading economists to warn that the country should not become complacent about the economic success it has achieved in the recent past.

The impacts of the reforms in the mid- and late 1990s have been very obvious in terms of economic growth and poverty reduction. The boom of private business and foreign investment in the last decade can be largely attributable to these reforms. However, business environment reforms introduced in the late 1990s are gradually losing their impact, triggering the need for Vietnam to embark on bolder reforms in order to become more attractive and competitive.

4. Imminent Accession to WTO Requires Vietnam to be more Competitive to Cope with New Challenges

The Vietnamese Government aims to become a member of the WTO by the end of 2005 or early 2006. While WTO membership promises a better chance for the Vietnamese economy to develop, it also poses many challenges.

³ The study, conducted with the support of GTZ, looks at the whole process, from the moment an entrepreneur works on the business idea until the business is fully operational (including post-registration procedures and steps); see CIEM/GTZ, *From Business Idea to Reality. Still a Long and Costly Journey*, 2005. The survey conducted by the World Bank for its *Doing Business* study only looks at the process until the business is successfully registered.

Adherence to WTO and the implementation of different bilateral trade agreements have been an excellent push for bolder reforms. Important legal reforms have been initiated to improve the investment climate and to encourage investment into the country (by both domestic and foreign investors). Most important among these legal reforms are the UEL and the CIL, both currently under preparation (see Part A, Section II, below).

5. The Quality of Business Law-Making is Still Poor due to a Lack of Systematic Procedures

Vietnam has already made significant efforts to improve the quality of its regulatory environment, introducing a workable legal and regulatory framework, increasingly sophisticated administrative and institutional arrangements and more efficient, transparent and accountable regulatory practices (based on the “Law-Making Law”). Many of its initiatives parallel good international practices. Evidence of the results has been provided by academics, domestic and foreign businesses, and the donor community.

However, serious gaps and problems still exist, as expected in a multi-year reform programme of the scale needed in Vietnam. Implementation of current policy directions has not yet produced the concrete benefits expected. The reforms still exist mainly on paper and have not yet been transformed into upgraded skills and cultural change to the way ministries and drafting committees function. Vietnam’s regulatory quality is still below that of competing countries. The regulatory environment for doing business has not significantly improved and is still a major constraint on growth. Significant efforts are required if Vietnam is to create an investment-friendly regulatory environment that is compatible with the WTO.

The challenges ahead lie in improving policy coherence, quality and coordination across a multi-layered governance system. In the next few years, new efforts and investments will be required in order to allow the country to continue its outstanding economic success. They could pay off substantially if reform efforts proceed steadily; if more attention is paid to implementation, enforcement and accountability for results; and if politicians are able to sustain support in the face of continued opposition from conservative bureaucracies at all levels.⁴

6. The Implementation of Business Laws and Regulations is not Consistent

Against this background, the implementation of laws is an even more problematic issue. In many cases, laws are only loosely stipulated or are written in a generic manner that is open to interpretation. Regulations to instruct the implementation of laws are slow to be issued. Inconsistency between laws and regu-

⁴ For a more detailed analysis see GTZ/PMRC/UNDP: *Improving the Quality of Business Laws – A Quick Scan of Vietnam’s Capacities & Introduction of Best Practices*, 2005.

lations is common. As a result, the implementing agencies often misinterpret the laws and regulations either unknowingly or purposely. In addition, many stipulations do not fit with the reality of actual conditions due to the lack of public consultation when they are designed, and they are therefore not applicable in some provinces.

The fact that different laws govern enterprises of different ownership structures results in inconsistent definitions and concepts about the same terms (e.g. the board of directors or share capital). Implementation of business-related laws is therefore even more difficult.

Many new laws incorporate a new way of thinking that requires a real shift in the mindset of the people who implement them. This shift in thinking is the only way to ensure that the intended objectives are achieved and it is much-needed. However, many regulatory authorities are often slow and limited in their scope for change. Particularly many provincial Governments are slow to catch up with the reforms that are being introduced.

New business laws and regulations aim to introduce changes to make the business environment more enabling for enterprises and hence try to deprive administrative authorities of their “vested interests”. Resistance to change can be seen in the way laws and regulations are implemented, particularly if the law implies that authorities will become less powerful and more responsible towards enterprises. For example, recent efforts to remove business licenses in order to strengthen the freedom to do business have been obstructed or even thwarted by some ministries and local governments.

Constraints in the resources that are available for implementation are also a matter of concern. The Government often lacks the resources (financial and human) to implement, evaluate and monitor the implementation of the promulgated laws and regulations. Often there is no allocated budget for the implementation of the law. Therefore, many laws and regulations are passed but not fully communicated to the appropriate implementing agencies at the provincial and district level.

7. Improving the Business Environment is Important for Vietnam to Achieve its Development Goals

Lifting Vietnam out of poverty and doubling its per capita GDP in order to reach the same level as middle-income developing countries before 2010 is really a tall order. However, it is not at all a “mission impossible”.

To achieve this objective, Vietnam has to at least maintain its currently high growth rate and create enough jobs for more than 1.2 million people entering the labour market each year. While there is a dwindling capacity in the State sector for job creation and increasing productivity, growth can be expected to be derived in the main from private enterprises (both domestic and foreign).

9. There is a Strong Political Back-up and a National Consensus for Economic and Business Environment Reforms

Vietnam has a strong ambition and seriousness to achieve the Millennium Development Goals (MDGs).⁵ There is a strong political will from the top leaders of the country in support of economic growth, social development and improvements to living conditions. There is broad and firm consensus among the country's leaders that systematic reforms are needed to sustain the currently high growth rate – an important contributor to the achievement of the Vietnam Development Goals (VDGs) and MDGs.

II. THE UNIFIED ENTERPRISE LAW AND THE COMMON INVESTMENT LAW ARE TWO OF THE MOST IMPORTANT ONGOING REFORMS TO ADDRESS THESE ISSUES

Important reforms are being initiated and introduced to address these issues.⁶ Most important of all is the introduction of the UEL and CIL. The two laws have been drafted and widely discussed in the last year and are expected to be passed by the National Assembly by the end of 2005. The following are the major proposed reforms that will be introduced by the two laws:

- A business registration system will be created and applicable to all investors,⁷ be they domestic or foreign, resulting in a more level playing field for investors.
- Foreign investors will have the same rights as local investors in terms of choosing the legal form of their business (sole proprietorship, limited liability, shareholding and partnership).⁸
- The business environment will be more transparent to investors (domestic and foreign) with the introduction of a negative list (list of business lines where investors are not allowed to do business). A restricted list

⁵ Based on the Millennium Development Goals, the Vietnam Government has developed Vietnam Development Goals (VDGs). The VDGs address a wide range of issues, from economic growth to social development, and have been integrated into different strategies and policies of the Government and its agencies.

⁶ To meet the conditions to join WTO and to make its business environment more competitive, Vietnam has to draft and pass 25 laws within a timeframe of two years. The Chairman of the National Assembly said that the Assembly would work day and night to meet this target.

⁷ For the time being, business registration is only applicable to domestic private enterprises. Foreign investors need to go through complicated and costly "licensing procedures" in order to set up shop in Vietnam. In addition, they are required to submit an investment project which needs to be approved by the Government in order to establish a company in the country. Worse, if they wanted to have a second investment project, they have to go through the whole licensing process again.

⁸ Foreign investments can now only be established in the form of a limited liability company or a joint venture or a type of business contract like a Business Cooperation Contract (BCC), Build and Transfer (BT) or Build Operate and Transfer (BOT).

(areas where investors are allowed to do business under certain conditions) will replace the existing positive list system (which states those sectors where investment is permitted). This will be an important step by the Government in opening its market to foreign investors.

- All major issues related to national treatment and most favoured nation status will be addressed. For example, the removal of the cap on foreign ownership in most business sectors (except for some selected sectors) and full participation of foreign investors in the retail, banking and telecom industries. As a result, the country will be better prepared for WTO membership.
- There is a timeframe for SOEs to be converted into limited liability companies and thus be subject to the new law, especially on the issue of corporate governance. As a result, SOEs will be subject to the same rules that apply to private and foreign investors.
- Corporate governance that takes place inside enterprises will be strengthened and raised to international standards.

In parallel with other reforms in the field of customs, tax, property rights, etc., the reforms introduced by the two laws are expected to boost investors' confidence and create a new wave of investment within and into Vietnam.

The 2000 EL has so far been the most important reform of the business environment, bringing about a significant boost in investment. It also constitutes one of the most consistently designed laws, developed in consultation with different stakeholders.

The challenge now is to move ahead in the reform process, to unify the investment climate for companies of different ownership (in line with WTO requirements) and to come up with even better new laws. These issues are even more challenging to address as they relate to the future role of FDI in the country. Dealing with these issues will require a constant struggle with those who fear their vested interests will be potentially violated.

The two laws, if properly debated and passed, will be another important breakthrough in the investment climate in Vietnam. Many economists believe that if the reforms introduced through the two laws are adopted by the National Assembly and are well-implemented by the Government, they will create a new "wave of investment" into Vietnam in the next decade. This will enable Vietnam to sustain its currently high economic growth rate and to make its economy more competitive compared with other economies in the region.

PART B

GTZ'S APPROACH IN SUPPORT OF THE UNIFIED ENTERPRISE LAW AND THE COMMON INVESTMENT LAW

I. OVERALL APPROACH

Supporting the Unified Enterprise Law (UEL) and the Common Investment Law (CIL) is currently at the centre of the intervention by GTZ in its efforts to improve the business environment in Vietnam.

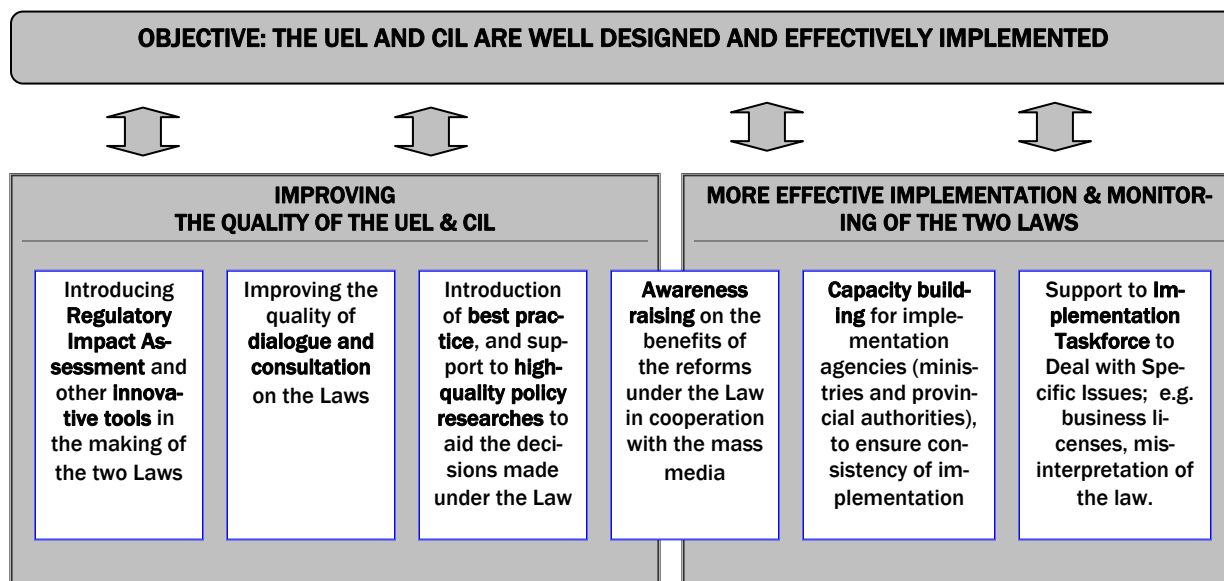
Inputs of various kinds continue to be provided to key national institutions, notably the Central Institute of Economic Management (CIEM), the Prime Minister's Research Commission (PMRC) and the Vietnam Chamber of Commerce and Industry (VCCI). Representatives of these institutions are the core members of the drafting committees of the two laws. Direct cooperation with these institutions gives a higher chance for the inputs to be fed into or made use of in the making and implementation of the laws.



GTZ supports the UEL and the CIL with the following approach:

- **Improving the quality of the Laws:** This can be achieved through the application of new law-making approaches, particularly the *regulatory impact assessment (RIA)*, strengthening the participation of the public in the making of the laws, exposing drafting members to international experiences and practices, and providing inputs on specific issues, etc. Consultation with various stakeholders should equally contribute to increasing the quality and consistency of the laws.
- **Support to Effective Implementation of the Laws:** Law enforcement has always been problematic in Vietnam. The existing cooperation with the Enterprise Law Implementation Taskforce will be strengthened. The emphasis will be on monitoring and supporting implementation at provincial levels. This will be the focus of the supports after the laws are promulgated.
- **Development of Tools and Guidelines:** Cooperation is not limited to providing direct inputs and improving the quality of laws. A major objective is to further develop, test, customize and document these tools in order for these tools to be replicated and eventually institutionalized in Vietnam. This will enhance the quality of business law-making and implementation in a sustainable manner.

These approaches were selected based on the expertise and technical capacity GTZ has acquired in the field, the short- and long-term objectives of GTZ's interventions (the desired impacts to be generated), the requests of national stakeholders, and on the analysis of other supports and interventions by other donor projects active in the same field.



The emphasis of the support by GTZ is on the *drafting of the Unified Enterprise Law*. Due to the strong linkages between and integration of the two laws (one law could not be implemented without the other and vice versa), many issues addressed by GTZ are, however, cross-cutting and related to both the UEL and CIL.

GTZ has also committed itself to *supporting the implementation of recently introduced business environment reforms*, e.g. the UEL and the CIL. In the last few years, it has built strong cooperation with the Enterprise Law Taskforce and other domestic stakeholders. This is doubtlessly a good foundation for its ongoing and future interventions in this area. Some of the preparatory works are being implemented in order to fully deliver commitments when these two reform projects are passed by the National Assembly.

However, within the framework of this paper, the following sections in Part B will mainly address the *issue of improving the quality of the two laws*, especially within the context that the two laws are currently being drafted and debated.

II. REGULATORY IMPACT ASSESSMENT AND THE IMPROVEMENT OF THE QUALITY OF THE LAWS

1. RIA was Introduced as an Innovative Tool in the Preparation of the UEL and CIL

Understanding the future impacts of regulatory decisions on the private and social sectors is perhaps the most crucial dimension for creating and sustaining a high-quality regulatory environment.

In most Organisation for Economic Cooperation and Development (OECD) countries, the tool employed to examine the costs and benefits of decisions is Regulatory Impact Assessment (RIA). RIA is a method of systematically and consistently examining selected potential impacts arising from government action or non-action, and of communicating the information to decision-makers and the public. In essence, RIA attempts to widen and clarify the relevant factors for decision-making. It implicitly broadens the mission of regulators from highly focused problem-solving to balanced decisions that trade-off problems against wider economic and distributional goals. RIA has several internal and external objectives. They are to:

- improve understanding of the real-world impacts of government action, including both the benefits and costs of action;
- integrate multiple policy objectives;
- improve transparency and consultation; and
- improve government accountability.

Initially, GTZ provided an input on the nature and the importance of regulatory reform and RIA to key national stakeholders. Additionally, a *Quick Scan on the Capacities of Vietnam in Improving the Quality of Business Laws* was conducted. In cooperation with local stakeholders, a plan for the implementation of the first RIA in Vietnam was prepared. Inputs on methodology and techniques, and documents and hints on the implementation, were provided to a group of local consultants. This has helped to initially build up the national capacity on RIA, even though it is still at a very modest level.

2. Application of RIA under UEL and CIL

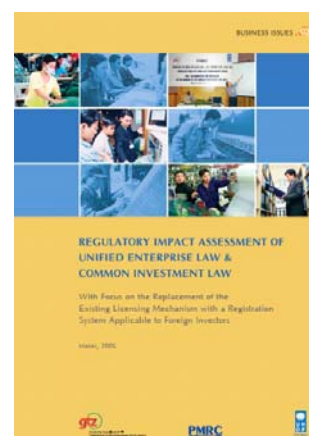
2.1. An Assessment on Regulatory Impacts of the UEL and CIL was Conducted and Used

The PMRC has been the key initiator and has requested support from GTZ and the United Nations Development Programme (UNDP) in assessing the likely benefits of the reforms under the new laws. Research has focused on: (i) attitudes and expected impacts of the proposed reforms under the UEL and CIL; (ii) assessing the impact of the proposed shift from a system of licensing foreign

investment to registering foreign investments that comply with national regulations; and (iii) suggested guidelines for assessing regulatory impacts. The PMRC has played a key role in raising awareness of the potential benefits of undertaking RIA.

The centrepiece of the process has been the study on *attitudes and expected impacts of the proposed reforms under the Unified Enterprise Law and Common Investment Law*. The move from a licensing to a registration system for FDI, which has been analyzed under RIA, is one of the major crosscutting reforms of both the UEL and CIL. Specifically, the study tried to answer some of the following questions:

- What are the potential impacts (positive and negative, direct and indirect) of the proposed reform to different groups, e.g. foreign investors, local investors, state-owned enterprises, consumers, regulators, governments?
- Is the reform in the national interest? Are there real benefits of the reforms for the national economy (e.g. an increase in investment inflow, enhanced competitiveness and more compliance with WTO requirements)?
- How sizeable are the impacts (quantify the impacts to the extent possible)?
- What are the options for decision-makers in relation to the proposed reform?⁹



The study and the whole RIA process was discussed and shared with key stakeholders, including members of the National Assembly. In cooperation with other donors, RIA was also promoted and used. The focus of the method has been on local capacity building and on introducing RIA to different national bodies with a view to facilitating its use in future policy-making.

On the basis of the report, the PMRC is preparing a *Regulatory Impact Statement* (RIS) on the proposed key reforms for submission to the Prime Minister. In a standardized format, and a more succinct and focused manner, the statement aims to provide answers and arguments to the questions raised above. One aim of the RIS is to present the major costs and benefits in an easily understandable form so that estimates can be subject to public scrutiny and adjusted as necessary. The estimates of costs and benefits in the RIS could certainly benefit from additional scrutiny by key stakeholders, including the National Assembly when it is debating the law in November 2005.

⁹ For the results of the study, please visit www.sme-gtz.org.vn or www.sme.com.vn.

2.2. RIA Methods are being Localized and Developed into a Guideline

As a basis for stronger use of RIA, there needs to be a guideline on the method that includes instructions and hints for implementation. Creating a guideline was an aim right from the onset of the process.

Implementation of the RIA on UEL and CIL provided many inputs in the development of this guideline. Version 1.0 of the Guideline has been produced and made available to all relevant institutions. Further implementation of RIA on other proposed reforms by local stakeholders will provide valuable inputs for further improvement of the Guideline in the near future.

Additionally, the *OECD Guiding Principles for Regulatory Quality and Performance*,¹⁰ which highlights the importance of RIA, was also translated and distributed to the National Assembly and different Government agencies.

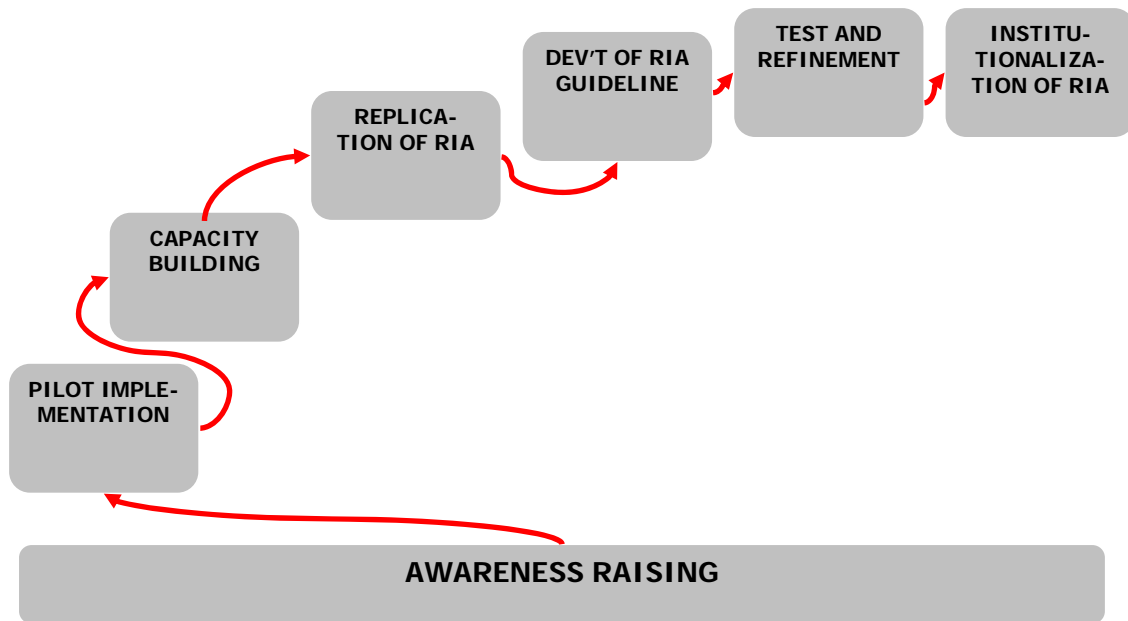
2.3. Next Steps

An alliance with local partners to further introduce, replicate and eventually institutionalize RIA has been set up. The alliance includes major reform-oriented institutions in Vietnam like PMRC, CIEM, VCCI and the Ministry of Justice (MOJ). In particular, the participation and strong interest of the MOJ promises a very high chance that RIA will be institutionalized in the regulation-making process. The alliance has developed a roadmap in order for RIA to be formalized (see *diagram below*).

It is also agreed by the alliance that the next steps should focus on:

- effective use of the study of RIA and RIS on the proposed reforms of UEL and CIL, particularly for discussions on the two laws by the public and by the National Assembly deputies;
- implementation of two to three additional RIA on selected reforms;
- further improvement of the RIA guideline with inputs and lessons generated out of the implementation of additional RIA exercises; and
- developing a strategy for institutionalizing RIA techniques in law and decision-making in Vietnam.

¹⁰ <http://www.oecd.org/dataoecd/24/6/34976533.pdf>



There are further needs for improving law making. As a result, coordination with other national stakeholders and donors – particularly those who deal more directly with the issue of law-making in the country – will be important to ensuring the eventual impact of this initiative by GTZ and its partners.

III. POLICY DIALOGUES AND CONSULTATION ON THE LAWS ARE STRENGTHENED

3.1. Consultation on the Laws is Strengthened

Policy dialogues and public consultation are essential for improving the behaviour of the Government and its policies towards the business community. They help the Government to be more responsive to the problems faced by enterprises. In this respect, Vietnam has recently taken important steps forward, increasingly recognizing that public consultation gives citizens and businesses the opportunity to provide active inputs into regulatory decisions and thus contribute to the quality of laws and regulations.

Nevertheless, the quality of policy dialogue and public consultation still falls short of expectations. Policy dialogues and public consultation on business issues are implemented in different manners at different depths by Government agencies and business associations. The results are not consistent. There has not been a standardized mechanism or a set of procedures on policy dialogue and public consultation.

In policy dialogue, the major partners are Government agencies, business associations, the enterprises and other semi-public organisations. Supports by GTZ are mostly in two forms: direct inputs to the organisation of specific policy

dialogues on selected issues; and developing a manual on policy dialogue or public consultation which will be shared more widely with related institutions. Additionally, best international practices on policy dialogue and public consultation are also to be collected, compiled and shared with relevant stakeholders.

3.2. Consultations Were Used Widely in the Implementation of the RIA

The major benefits of RIA derive from the systematic processes of stakeholder consultations and analysis of all regulatory impacts. Therefore, RIA helps increase the transparency of policy-making processes.

For this reason, the major reforms of the UEL and the CIL, which are also the main subject of the first RIA, have been widely discussed through different consultation workshops using a technique called *business impact test panels (BITs)*. The BITs were conducted in all major cities in Vietnam, involving nearly two hundred participants and the press. Results of the consultation workshops were not only used for the purpose of the RIA report but also for the making of the laws by members of the drafting committee.

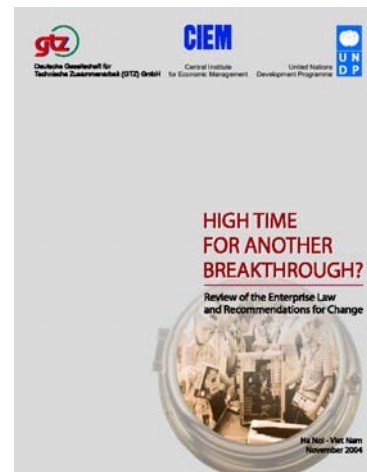
The significant use of the consultation workshops by key stakeholders has made the RIA process much more meaningful. The whole RIA process becomes a product, not just simply end deliverables (the manual and the RIA report). In reality, the whole process, particularly the use of the consultation technique, helps to increase transparency in the making of the two laws.

IV. HIGH QUALITY POLICY AND BUSINESS ISSUE RESEARCH AS INPUTS TO THE MAKING OF THE LAWS

High-quality policy research is important for decision-making. Decisions made by policy-makers would have a better foundation and be of higher quality if they are supported by good quality studies, advice and practices that are based on the reality of the situation in Vietnam.

GTZ is trying to address this issue by supporting studies on policy and business issues that have been highlighted by the public as important to be dealt with in order to create a favourable business environment in Vietnam.

The study *High Time for Another Breakthrough: Review of the Enterprise Law and Recommendation for Change* has been a major input in this context. The study reviews the entire 2000 EL from a legal perspective and makes important recommendations that can be considered in the drafting of the UEL. Many recom-



mendations have been included in the latest draft of the UEL. The study was also shared widely with different national stakeholders.

The study *From Business Idea to Reality: Still a Long and Costly Journey* assesses the entire process for setting up a company, i.e. the steps required for registration, obtaining a stamp, a tax code, etc. This report prepared by CIEM with support from GTZ is being used as a reference by the UEL drafting committee. Some of the recommendations, e.g. on the reduction of business registration procedures and the use of the same code for tax and customs, are being seriously pursued by the UEL drafting committee in the preparation of the law and its subordinate regulations. In the long-term, the report will be a foundation for building a comprehensive reform programme for the enhancement of the business environment in Vietnam.

On the basis of these achievements, another business licensing study, *Business Licensing: The Real Story Behind and a Strategy to Business Licensing*, is on-going with the PMRC. The aim is to support the removal of unnecessary licenses and to initiate a consistent system for the screening of new licenses. Together with the *Review on Six Years of Implementing the Enterprise Law*, to be implemented by CIEM and GTZ, the study will also provide important inputs for an emerging field of intervention by GTZ: business licensing in Vietnam.

V. AWARENESS RAISING IN SUPPORT OF REFORMS INTRODUCED BY THE LAWS

Awareness of reform has emerged as a cross-cutting theme for supporting business environment reforms. It is often said that: “winning the support of the public for the reform is the battle half won”. The public is always the best judge of the quality and orientation of any proposed reforms or laws. Therefore, the press has been proactively involved in supporting proposed reform projects or laws.

For example, in its efforts to support the design of the UEL, no less than 70 articles have been published on the different proposed reforms of the law with direct or indirect support from GTZ.

The initiative is strongly supported by national partners. However, it is important to provide good and high-quality inputs to the press.

VI. SOME INITIAL RESULTS AND IMPACTS

1. Advanced and Innovative Tools Introduced and Accepted by Key Change Agents

In close cooperation with key change agents in the country – notably CIEM, PMRC and the Ministry of Planning and Investment (MPI) – RIA has been introduced into Vietnam. With the help of the local press, RIA is now being widely discussed among Government agencies and regulatory bodies.



The first RIA report was conducted on one of the most important proposed changes under the UEL and CIL – the proposal to shift from an investment licensing system to investment registration mechanism which is applicable to foreign investors. The results and the process were shared with Government bodies and particularly with the National Assembly.

The whole RIA process, which was imbedded with a great deal of consultation effort, has helped to improve transparency and the participation of the public in the making of the UEL and CIL.

The Government is considering integrating RIA into its draft Decree on Business Licensing, requiring that a RIA must be conducted before any agency can work out a requirement for a business license.

2. Stronger Use of Innovative Methods by the Government in the Designing of its Laws and Reform Initiatives

Additionally, advanced regulation-making methods which are new to Vietnam, such as consultation methods (e.g. notice and comment mechanisms), are being introduced and increasingly adopted by the Government.

The Government has used many types of consultation workshops in the preparation of the UEL and CIL. Results from the workshops have been communicated to members of the law drafting committees and shared with the public through the press.

Guiding principles of the UEL and CIL, as well as their first drafts, were widely disseminated to business and other stakeholders (both domestic and foreign). As a result, the laws should better reflect the interests and concerns of business and investors in the country.

The improved process of designing new key reforms for the business environment promises a higher quality and feasibility of these reforms.

3. Awareness about the Improvement of the Business Environment Reforms Raised

With support from GTZ, a stronger participation by the press and the public in the making of the two laws has taken place. Ensuring that there is wide consultation about the laws before they are passed, with those parties who are most affected by them, helps to create best practice in Vietnam.



In addition, promoting *awareness for reform* is being systematically used as an intervention approach and is receiving a positive reaction from local partners. For example, CIEM, PMRC and VCCI have recently used the press in a more skilful manner in order to win public support on sensitive reform proposals. It has been agreed with local partners that more resources will be spent to push for additional reforms and the implementation of this reform. A strong alliance with the press has been established.

4. Key Recommendations Fed into the Reform Process

No less than 25 recommendations and best practices introduced in the report that reviewed the successful 2000 EL (*High Time for Another Breakthrough*) were reflected in the draft UEL.

Comments made by the business community in the context of the consultation process were reflected first in the guiding principles of the UEL and the CIL and in the draft of the UEL (e.g. many of the documentations from different consultation workshops, including 40-pages of written comments by EuroCham).

RIA is being considered for inclusion as a requirement in the Decree on Business Licensing under the UEL. On the basis of the first RIA study, the PMRC is currently finalizing a RIS on the proposed reform under the UEL and CIL that will be formally submitted to the Prime Minister and shared with other Government agencies.

Recommendations on reducing the procedures in order for an enterprise to successfully operationalise a business activity are being seriously considered and could be reflected in the upcoming Decree on Business Registration under the UEL.

VII. CHALLENGES

1. Develop Approaches to RIA that can be Implemented in Viet Nam

It is important to recognize that most OECD countries have adopted relatively simple (but credible) methodologies to assess regulatory impacts. Hopefully, materials currently being prepared will be a good start for local stakeholders to develop credible and workable approaches that can be readily understood by policy makers and informed readers.

A workable approach is critically important in maintaining the interest of national stakeholders in using it, avoiding the risk that RIA is just a new burden for them which brings about little impact on the regulations and decisions being made.

2. Limited Local Capacity on Regulatory Impact Assessment and Innovative Tools to Improve the Quality of Business Laws

Regulatory impact assessment, advanced consultation techniques, reduction of compliance costs, etc., are all new to many policy makers and regulators in Vietnam, particularly at the provincial level. Undoubtedly, there is very limited capacity among government agencies, consultants, business associations and even donors in some cases. This is one of the major hurdles in expanding the use of these advanced methods.

The prolonged implementation of the first RIA in Vietnam was largely due to this problem.

3. Limited Absorption Capacity from the Government Side

Improvements to the business environment and investment climate are attracting increasing support from the donor community, which is trying to work with the same “national champions” in this field. Leading national institutions are exposed to a wide range of different methods, experiences and good practices. There have been reported cases that Government agencies have become confused because of different advice and the presentations of varied methodologies.

Due to limited Government resources, both human and financial, follow-up activities of the initiatives with some initial success like RIA are slow and ineffective, thus threatening the sustainability and eventual impact of the initiative.

This again raises the issue of cooperation and coordination between donor projects in working with national stakeholders on the same issues.

4. Many of the Issues Go beyond the Work Scope of a PSD Project

In order to institutionalize new and transparent law-making methods like RIA and public consultation actions are needed which are partly outside the scope of work of the existing GTZ Private Sector Development (PSD) Programme. For

example, improvements to the law-making process (which will also benefit the laws and regulation on business environment) seem to be too broad an issue and therefore beyond the mandate of a PSD programme. Coordination is required to cope with this challenge, and to make sure that complementary activities are initiated and implemented in this field to support the changes that are needed.

VIII. LESSONS LEARNT

Some of the experiences below are drawn out from the interventions conducted by GTZ in its efforts to improve reforms to the business environment in Vietnam. Despite the fact that some of them might not be applicable in other countries, GTZ see them as critically important to ensuring the success of its interventions in Vietnam.

1. Strengthening the National Ownership

National ownership is essential to making reform happen in Vietnam. A ready-made-solution proposed by a donor would rarely work. While strongly respecting advice provided from outside, the Government has always insisted on finding its own solution to the problem. The conversion of MDGs into VDGs is an example of the aspiration of the Government in strengthening its ownership.

Therefore it is important to build on national ownership in order to propose and introduce necessary reforms. This will ensure a more sustained interest from the partner side and guarantee a better chance of success.

2. Being Well-informed about the Reform Agenda of the Government and Precise Screening of Requests for Support

Often the Government also has a reform agenda and road-map. Being well-informed of the reform agenda of the Government is the basis for providing the right support to Government and improving the quality of any such reforms.

Less active Government agencies have less chance of receiving supports from donors. However, many less active agencies are charged with the design and implementation of important reforms. Being proactive in approaching these agencies, and offering the most-needed supports, can considerably enhance the use of limited resources of both donors' projects and government agencies.

3. Select the Right Partners for Implementation of Respective Reform Initiative

The commitment of local partners would be stronger and more sustainable if they are made to understand that donor projects are providing supports in order for the local partners to better fulfil their responsibilities and their mission.

It is important to make the partner organisation understand that, if the cooperation is well designed and implemented, it will help to raise the credibility of the partner organisation itself. Since all partner organisations have their own obligations to fulfil, the closer the cooperation activity is to a partner organisation mission and objectives, the higher the chance of success for that activity.

4. Focus on Impacts Achieved While Maintaining Flexibility and Responsiveness to Demands of Local Partners

In a fast-changing environment, it is important to have enough flexibility to react to demands from local partners. Capability (both technical and financial) to react to demands from partners from the donor's project will make a substantial difference in terms of the impact and quality of the intervention. A mechanism should be established in a donor project to ensure that support is provided when it is most needed by local partners.

However, requests should be selected on the basis of the implication of such demands and considering the limited available resources. In any case, the request from partners should be appraised in relation to the outputs which would be produced and the use of such outputs, and, to the extent possible, the potential impacts of the intervention if the request is addressed.

5. Use the Press to Win Public Support

The Press must be considered a strong ally in any reform process. Business issues should be shared with the wider public to win their support. The general public will be the best judge of the design and implementation of a reform initiative.

6. Look to Long-Term Cooperation, Not Just Short-Term

The fruits from business environment reform might take years to harvest. Persistence and patience are therefore important for a donor project. Additionally, in order for a reform to be introduced, it might take a longer time than a conventional intervention. It is therefore necessary that a business environment reform project is designed for a sufficiently long timeframe.

7. Building Trust is Critically Important

In a context where national ownership is seen to be a high priority, building trust is critically important. Particularly in the area of policy advice – an area long regarded as sensitive in Vietnam – the trust between Government agency partners and donor projects plays a very important role in making the cooperation effective. As trust cannot be built overnight, long term cooperation, sincerity and neutrality are the key ingredients to building trust between local partner agencies and a donor project.

8. Cooperation Makes Power

Strong cooperation between key national change agents is important. They should have the same vision of a proposed reform. Well-concerted efforts by donors can help to build such a shared vision.

Cooperation and coordination between donor projects are also important. While the Government wants to hear advice from different perspectives on the same subject, cooperation and coordination in providing supports to the design and implementation of Government initiatives in business environment reform are critically important to the incorporation of the advice from the Government side.

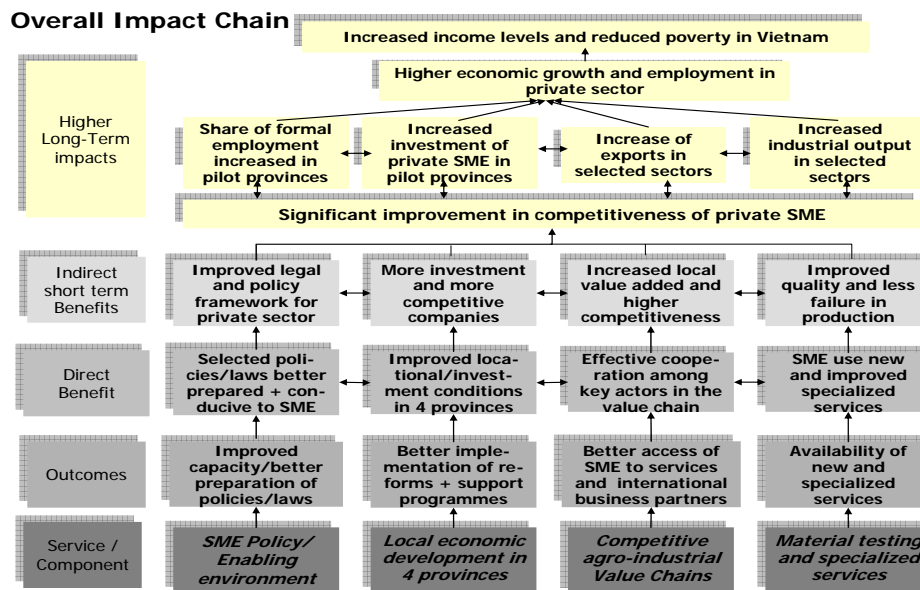
Cooperation is also the best way to use limited resources effectively. Many of the activities implemented by GTZ would not have been possible without strong cooperation with other donor projects.

PART C

THE GERMAN CONTRIBUTION: MPI-GTZ SME DEVELOPMENT PROGRAMME

<i>Programme Name</i>	Small and Medium Enterprises Development Programme
<i>Overall Project Objective</i>	To significantly improve the competitiveness of private small and medium enterprises in Vietnam
<i>Project Sites</i>	National level and selected provinces: An Giang, Dak Lak, Hung Yen and Quang Nam
<i>Overall Project Partner</i>	Ministry of Planning and Investment (MPI), represented by the Agency for SME Development (ASMED), is the official government partner for the Programme.
<i>Core Coordination Partners</i>	<ul style="list-style-type: none">▪ Ministry of Planning and Investment (MPI)▪ Vietnam Chamber of Commerce and Industry (VCCI)▪ Vietnam Academy of Science and Technology-Institute of Materials Science (VAST-IMS)▪ Local Coordination Boards (under DPI Management) of the four selected pilot provinces
<i>Main Working Areas</i>	<ol style="list-style-type: none">(1) SME Policy/Business Investment Climate(2) Local Economic Development(3) Competitiveness of Selected Sub-Sectors(4) Material Testing and other advanced technical services
<i>Programme Duration</i>	Phase I: 01 May 2005 – 30 April 2009 The Programme is expected to have two further four-year phases
<i>German Contribution for Phase I</i>	8,311,000 EUR
<i>Programme office</i>	97 Tran Quoc Toan Ha Noi, Viet Nam Tel: 0084-4-822 4901; Fax: 0084-4-822 4889 Emails: binh.sme@gtz-vietnam.com.vn ; office.sme@gtz-vietnam.com.vn ; corinna.kuesel@gtz.de ; thomas.finkel@gtz.de URL: www.sme-gtz.org.vn

The long-term goal of the SME Development Programme is to enhance the competitiveness of private small and medium enterprises in Vietnam. To achieve this objective, the Programme places a strong emphasis on improving the environment for SME development with a specific focus on provinces outside the major growth centres of the country. This will contribute to the creation of new employment and income opportunities. The Programme concept emphasises the complementary design of the four areas of intervention (components), including: (i) *SME Policy/ Business Investment Climate*; (ii) *Local Economic Development*; (iii) *Competitiveness of Selected Sub-sectors*; and (iv) *Material Testing and Advanced Technical Services*.



Creating an Enabling Business Environment is not only addressed by the SME Policy component. Rather, it is also integrated in the components on local economic development and, to some extent, the competitiveness of selected sub-sectors. The overall impact chain of the Programme is described in the diagram above.

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