
CASE STUDY 7 – VIETNAM

Public Private Dialogue in the making of the Unified Enterprise Law and the Common Investment Law in Vietnam

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Context – despite a growing private sector, serious investment climate problems remain

Since the mid-1980s Vietnam has been consistently pursuing the reform of the business climate for private enterprises. One of the most notable successes was the introduction of the Enterprise Law which has brought about the freedom to do business. After the Law came into effect in 2000, the number of formally registered private enterprises increased fourfold to more than 170,000 – by May 2005, a total of 136,500 new enterprises had been registered with total capital of US\$ 14.3 billion.

Nevertheless, significant obstacles to private investments – both domestic and foreign – persist. Private enterprises, especially SME and foreign companies, operate under more difficult conditions than state-owned enterprises. Administrative regulations, especially at the provincial level, are cumbersome and ineffective.

The legal framework for business is inconsistent and fragmented. The quality of business law-making is still poor due to a lack of systematic procedures. Reforms have not been implemented purposefully, and implementation of business laws is weak, ineffective and inconsistent.

The cost of doing business remains high and the competitiveness of local enterprises is low. Further challenges are posed by the fact that Vietnam's determination to join the WTO means it is serious in implementing international and regional trade agreements, which further increases competitive pressure on locally operating companies.

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

Public consultation is mandatory in lawmaking, but inadequately and inconsistently applied

Vietnam is increasingly recognizing the value of public consultation in giving citizens and businesses the opportunity to provide active input in regulatory decisions and thus contribute to increase the quality of laws and regulations. The Law-Making Law makes public consultation mandatory, and a Prime Ministerial decree in 1999 stressed the obligation to consult with the international business communities.

However, in most cases so far, "consultation" has involved circulating a draft legal text to an association or chamber of commerce and asking for written comments under a tight deadline. Almost no experience exists with more participatory consultation mechanisms such as expert consultative groups, focus groups or target groups. 'Notice and Comment' mechanisms - an international best practice - are rarely used.

Sometimes consultation involves very narrow and unrepresentative interests. Sometimes too brief a time frame is given – for example, two days to assess a hundred pages of text – or consultation is organized too late in the drafting process when changes would be costly and impractical. Additionally, most subordinate regulations – in particular important circulars, guidelines and forms – are not subject to consultation before being enacted.

The wide consultation process organized when preparing the Competition Law and the Enterprise Law was considered an important contributor to its success, and gave drafting committees some experience of using the internet and media for consultation. The quality of consultation varies enormously in Vietnam, but is generally inadequate to meet international norms of good practice.

The Enterprise Law (EL) and Investment Law (IL)

GTZ's efforts to improve the business environment in Vietnam are currently centred on supporting the drafting and ratification of the Enterprise Law and the Investment Law. In this effort, the Vietnam has merged different laws which used to govern enterprises (classified by types of ownership) into ones which treat all enterprise the same (regardless of their ownership). The two laws were passed by the National Assembly in November 2005. GTZ has been working with key national institutions involved in drafting the laws and subordinate regulations which guide the implementation of the laws – the Central Institute of Economic Management (CIEM), the Prime Minister Research Commission (PMRC), and the Vietnam Chamber of Commerce and Industry (VCCI).

The aim is to improve the quality of the laws and develop tools and guidelines to ensure that they are effectively implemented.

Public Private Dialogue in improving the EL and IL

Public-private dialogue is an important tool used by GTZ to improve the quality of the laws and to support their effective and efficient implementation. Interventions to improve PPD include:

- Direct support to the organization of policy dialogue meetings between government agencies, the drafting committee of the EL, and the private sector – for instance with foreign business associations such as Eurocham and with local business associations under the umbrella of VCCI. However, most of these meetings are often ad hoc in nature. They are mostly organized on the basis of the requests of either the Government agencies or of interested business associations. GTZ as well as other donors still have to play a role in stimulating and pushing these dialogues to make it happen. However despite a lot of recent improvements, neither the business community nor the Government has taken a systematic and continuous approach to taking advantage of the meetings as a tool to monitor and evaluate either particular issues being raised throughout the country. There is a risk now that while the laws are well-consulted with the public but their subordinate regulations might not be, resulting in a limited impacts of the reforms introduced by the laws. This therefore requires further efforts by GTZ as well as by other donors in this effort.
- Technical advice on how to implement policy dialogues – exposing local business associations, government agencies and government advisory bodies to techniques in moderation, group discussion and use of the internet for policy dialogue.
- Help with Regulatory Impact Assessment (RIA) process. The major benefits of RIA derive from the systematic processes of stakeholder consultations and analysis of all regulatory impacts. RIA helps increase the transparency of policy making processes and in the end the quality of the laws and regulations.

- A technique called business impact test panels (BIT). These were conducted in all major cities in Vietnam, involving nearly two hundred participants and the press. This technique encourages the drafting committee to proactively approach businessmen of different economic sectors to comments on important issues of the laws. 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. Consultation workshops make the RIA process more meaningful – it's not just about producing the RIA report, it helps to increase the transparency in the making of the laws. This has partially helped to address the challenges of bringing people together, mostly caused by the unwillingness of many businessmen to make their comments in public for fearing of antagonizing the governments or simply by their ignorance of the benefits if they get involved in policy dialogue.
- GTZ strongly emphasizes the participation of the press and media in the whole process. Participation from the press helped to bring the issues discussed in policy dialogue forums to the public to win their support for reforms. Among thousands of articles about the UEL in the last two years, no less than 100 of them have been supported directly or indirectly by GTZ. The participation of the mass media has strengthened the “public ownership” of the laws.
- In strong cooperation with VCCI, GTZ implemented a study and a strategy to improve the role of business associations in legal consultation and policy dialogue. Results of the study will be fed into the draft Law on Associations which will be passed in 2006.
- Support to VCCI to set up a strategic alliance with local business association in order to have a stronger voice in policy dialogue with the Government, particularly on the issues which are related to the business community.
- Development of manual on policy dialogue to make them more suitable to the Vietnamese context and international best practices in legal consultation and policy dialogue.

Initial results and impacts

- Domestic business associations have become more professional in raising their concerns and in organizing policy dialogues with the Governments on the UEL.
- Results of policy dialogues with support from GTZ were documented into a formal appeal from the business community, in the form of a the joint letter from GTZ and Eurocham to the Drafting Committee of the UEL on the draft law. Many of its recommendations and suggestions have been reflected in the final draft of the Law which is now being debated by the National Assembly's deputies.
- Many critical issues of the UEL and CIL were discussed widely by the public with the support of the local press, to which GTZ contributed significantly.
- Though initially skeptical, Eurocham members are now fully convinced about the benefits of the dialogue with the Government on the UEL. They are now a very proactive organization in advocating for the proposed reforms under the law.
- The UEL and CIL have been the two laws debated most widely so far and have set an example for the wide participation of the private sector in Vietnam in law making. GTZ's inputs and approach to Public-Private Dialogue have significantly contributed to this success.
- Introduction of new tools and mechanisms in order to improve the law making and enforcement in a sustainable manner.

Key Factors for Success

1. It is important to emphasize the ownership of national stakeholders, which have been the main drivers of the process.
2. Make the local stakeholders fully aware of the benefits of involving in the policy dialogues with the Government, and that their participation will make sense for them.
3. Keep the participants informed about how their proposals and requests have been addressed by the Government. Making sure that the Government listens to the voices of the public.
4. In policy dialogues, don't just complain but suggest solutions and options also. This is where agencies such as GTZ can give support with technical advice and inputs to identify the key problems and constraints, prioritize them and work out a number of possible policy options.
5. Collective voices are important. Private sector business associations, at least in Vietnam, are not well organized and teamed up. It is important to rally them and make a consistent request to the government on a business issues.
6. Good advice and requests are important. However, more important is how they are given. Capacity building and technical advice to the whole process is important in order for the private sector to actively participate.
7. Identify the right dialogue partners – both from the public and the private sector side.
8. Use the press and media. They are an indispensable partner in any public and private initiative in the field of policy dialogue, in order to create an atmosphere that is favorable to market reforms.
9. Build trust between the private and the public sector. There is a higher chance of success if the dialogue is carried out in an atmosphere of trust.

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After graduating in Business Administration from the University of Frankfurt, Germany in 1995, Thomas Finkel started his career working in Small and Medium Enterprise (SME) development projects in Argentina. Following these two years he worked as a freelance consultant focusing on organizational development and continuous improvement processes in institutions and companies in Argentina and the region.

In 1999 he changed continents and worked for GTZ's new Public Private Partnership (PPP) office in Germany. Over the following four years he planned and implemented development partnerships with the business community in South East Asia. These projects were jointly developed, financed and implemented between GTZ and mostly German companies doing business in or with Asia.

In 2003 he changed continents again, moving to Hanoi as senior technical advisor within a SME development program of GTZ in Vietnam and still working as project manager for GTZ's PPP program in the region. Since December 2005, he has been in charge of GTZ's SME Development Program in Vietnam in the capacity of Chief Technical Advisor.

Further information about GTZ activities in PPD could be found at www.sme-gtz.org.vn and www.sme.com.vn;