



REGULATORY IMPACT ASSESSMENT OF UNIFIED ENTERPRISE LAW & COMMON INVESTMENT LAW

With Focus on the Replacement of the
Existing Licensing Mechanism with a Registration
System Applicable to Foreign Investors

Hanoi, 2005

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ABBREVIATIONS

CIEM	: Central Institute for Economic Management
CIL	: Common Investment Law
DONRE	: Department of Natural Resources and Environment
DPI	: Department of Planning and Investment
EPZ	: Export Processing Zone
FDI	: Foreign Direct Investment
FIE	: Foreign Invested Enterprises
GO	: Government Office
GTZ	: German Technical Cooperation
IZ	: Industrial Zone
MONRE	: Ministry of Natural Resources and Environment
MPI	: Ministry of Planning and Investment
MFN	: Most Favoured Nation
NT	: National Treatment
OECD	: Organisation for Economic Cooperation and Development
PC	: People's Committee
PMRC	: Prime Minister's Research Commission
RIA	: Regulatory Impact Assessment
SME	: Small and Medium Enterprises
SOE	: State-owned Enterprises
UNDP	: United Nations Development Programme
VIM	: Vietnam Institute of Management
UEL	: Unified Enterprise Law
USD	: United States Dollar
WTO	: World Trade Organisation

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The authors' views expressed in this report do not necessarily reflect the views of the PMRC, GTZ and UNDP.

Hanoi, July 2005
The Prime Minister's Research Commission

PART 1 - INTRODUCTION

I. CONTEXT

Vietnam has finalised the 9th round of negotiations to accede to the World Trade Organisation (WTO), and is stepping up its efforts to become a WTO member by the end of 2005. In preparation for accession, the Government of Vietnam has committed to revising or promulgating 22 laws and subordinate laws in order to comply with WTO commitments and other bilateral trade agreements, particularly with the agreed principles related to national treatment (NT) and most-favoured nation (MFN), business, tax, customs, and intellectual property.

Furthermore in the current context, the need for continued reforms and improvement of the legal framework and policies, particularly those related to business and business environment, is becoming more imperative than ever. The reforms are very much driven by internal demands and needs. Improvement in the business environment, enterprise development and investment promotion are key to enhancing the quality, efficiency and competitiveness of the national economy, especially when Vietnam will integrate more fully into the world economy in the next few years.

Presently, Vietnam has different laws to govern different types of enterprises (classified by economic sectors, ownership structure or nationality). For example, State-owned enterprises are subject to the State-owned Enterprise Law (passed in 2003 and effective from January 1, 2003), while the Enterprise Law (passed in 1999 and effective from January 1, 2000) regulates domestic enterprises which are registered and run in the form of *sole proprietorship, liability limited company, partnership or joint-stock company*. The Cooperative Law (passed in 1996 and revised in 2003) governs cooperatives. The Foreign Direct Investment Law was first introduced in 1987 and has since been revised 4 times (in 1990, 1992, 1996 and 2000). The law provides a legal framework for licensing, incorporation, operational scope, and investment incentives applicable to foreign invested enterprises (FIEs). Domestic Investment Encouragement Law (passed in 1995 and revised in 1999) provides a legal framework and incentives for domestic investments.

In addition, enterprises operating in a certain sector and industry are also regulated by sector laws or subordinate laws on Petroleum, Telecommunication, Sea Transportation, Banking, Insurance, Accounting, Auditing, Legal Service, Consulting, etc.

In reality, enterprises of different ownership are treated differently in terms of access to land, credit, trading rights, construction, etc. As a result, the business environment in Vietnam is still perceived to be inconsistent, unfair, unpredictable, and unstable with many practices inconsistent with WTO requirements. Such legal constraints are hampering the development of enterprises and jeopardizing the effectiveness and efficiency of the government's management.

During the transition to a socialist-oriented market economy, many changes and revisions to laws and legal documents are needed. However, abrupt changes (e.g. in the case of tax laws) or changes made with inadequate consultations with key stakeholders only makes the business environment more unpredictable and less attractive. The market entry conditions

and requirements vary a great deal between enterprises of different economic sectors and nationality.

According to the existing Foreign Investment Law, FIEs must complete a complicated and costly licensing process in order to be established and commence operations. To obtain an investment licence, FIEs must finalise numerous procedures and succeed in obtaining various written approvals from many sectoral government bodies. This is a major constraint to FIE market entry, which adversely affects the competitiveness of the investment climate in Vietnam.

In contrast to current business licensing arrangements, business registration is intended as a public management tool and also a vehicle for the citizens to exercise their rights and freedom to do business. The Enterprise Law passed in 1999 succeeded in introducing the business registration mechanism. The Law plays an important role in strengthening the freedom to do business in the principle that the citizens are allowed to do whatever business which is not prohibited by the law, in introducing a new way to public management and in removing the “licensing” mechanism. WTO principles, which Vietnam should respect to guarantee its membership, require that all business - regardless of their ownership and nationality - be treated equally and fairly in a transparent, stable and predictable legal environment. It is therefore important to reconsider the issue of market entry conditions for all types of enterprises.

In order to fully respect bilateral, regional and multi-lateral agreements and to improve the investment climate, the Government has initiated the *Unified Enterprise Law (UEL)* and the *Common Investment Law (CIL)* which will be applicable to all types of enterprises operating in Vietnam, regardless of their ownership and nationality. At its December 2004 session, the National Assembly agreed to include the two laws in its law-making agenda, aiming at the passage of the two laws by the end of 2005.

In July 2004, the Prime Minister already issued a *Guiding Principles of the UEL and CIL* as the basis for the drafting of the two laws. The *Guiding Principles* do not only specify the key principles of the two laws but also require improvements in the way and methods under which the laws are drafted and prepared. The *Guiding Principles* strongly emphasized on the consultation with the business community and different interest groups to ensure the high quality of the two laws.

II. REGULATORY IMPACT ASSESSMENT (RIA)¹

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 overall objectives:

¹ Please see more on " *Guidelines on Regulatory Impact Assessment - Version 1.0* " which is being co-developed by PMRC, GTZ and other institutions in order to further introduce and replicate RIA in the making of other business laws and legal documents in Vietnam.

- Improve understanding of real-world impacts of government action, including both benefits and costs of action
- Integrate multiple policy objectives
- Improve transparency and consultation
- Improve government accountability

The key aim in requiring ministries to prepare RIAs is to deliver ***better regulation***. Some core principles for achieving better regulation include:

- Only regulate when necessary;
- Consider all options, including that of “doing nothing”.
- When regulation is necessary, regulate in a way that is proportionate to the risk being addressed, and
- Deregulate and simplify wherever possible.

Governments may require RIAs, because they help policy makers to:

- Clearly define the objectives of proposed policy change.
- Consider and assess the full impact of the proposed policy change.
- Identify and assess alternative options to achieve clearly defined policy objectives.
- Assess whether the benefits of the proposed change are greater than the costs (adverse impacts) of the proposed change.
- Ensure a transparent and efficient consultation process.
- Determine whether particular groups may be disproportionately affected.
- Help ensure compliance with international agreements and treaties.

The net result of RIAs should be the development of a more competitive economy, and a more equitable society. Internationally, increasing numbers of governments are using RIAs as a tool to improve the enabling environment for business, economic competitiveness and more equitable development.

RIAs should be prepared for all policy/regulatory changes that affect businesses, non government organisations, or other interest groups. More generally, RIAs are needed whenever reform options are being considered where costs or benefits could accrue, or where the change may have adverse impacts on particular groups in society. The RIA should be proportionate to probable impacts (e.g., if the proposed change is likely to impact on only a few firms, or many firms to a very small degree, or if the costs and benefits are likely to be small, then the RIA may be quite brief). Where impacts are likely to be substantial, more in-depth analysis will be required.

In Vietnam, RIA has not been applied in a consistent and systemic manner. To some extent, it is implemented, but the results produced are mainly in the form of law proposal, short study or justification of the laws or legal measures. RIA has not been considered to be an integral part of formal procedures in formulating laws and legal documents in Vietnam. As

a result, except for to a few well-prepared laws which were warmly welcome by the public like the Enterprise Law in 1999, many laws like the Natural Resource Law were passed but have proven to be ineffective and inefficient. Some laws like the Land Law have been quite problematic in terms of enforcement. Worse, some legal measures or decision made like the increase of electricity rates were strongly protested by the public and the business community. These show that it is extremely important to introduce RIA and make it part of the rule-making process in Vietnam.

The *Guiding Principles of the Prime Minister on the Drafting of the UEL and CIL* require that many reforms will be introduced in order to significantly improve the legal environment for business and investment and to create a really level-playing field for all enterprises operating in Vietnam. The Ministry of Planning and Investment has been commissioned by the Prime Minister to coordinate the drafting of the two laws. The ministry has implemented important studies and researches for the purpose of the two new laws. The PMRC was also commissioned by the Prime Minister to carry out an impact assessment of the two laws and to review all existing legal documents which are related to business incorporation. In order to bring into Vietnam the best practices in law making and thanks to the cooperation and supports from GTZ and UNDP, the PMRC decides to conduct a regulatory impact assessment (RIA) on the UEL and CIL. This could be seen as a pilot exercise and the first steps in order for RIA to be replicated on a more extensive scale and eventually integrated in the rule-making process in Vietnam in the future.

III. METHODOLOGY

Due to the fact that RIA has been for the first time ever applied in Vietnam and due to the constraints in time, resources, the Prime Minister's Research Commission decided that the assessment would only focus on the ***potential impacts generated by the replacement of the existing investment licensing mechanism with the investment registration system applicable to foreign investors***. This is one of the most important *guiding principles* for the drafting of the UEL and CIL.

The following methods have been used to conduct/ implement the study: (i) desk research; (ii) expert consultation; (iii) business impact test panels; (iv) business poll; and (v) in-depth interview.

Concerning the exercised methods, the most characteristic item of the study has been the use of the *business impact test panel*. The Business Impact Test Panels have focused on consultations between regulatory authorities and businesses regarding the effects of the elimination of the licensing system for FIEs². In strong cooperation with the Prime Minister's Research Commission, different business test panels have been organised with European, American, Asian investors, as well as with joint-venture companies, domestic enterprises and some selected state-owned enterprises in the form of mini-workshops.

² At the outset of the process, GTZ and UNDP invited a renowned international expert (Mr. Cesar Cordova from Jacob & Associates Inc.) to introduce RIA to different Vietnamese institutions and to advise them on the methodologies and techniques. It was recommended by the expert that the methodologies to be used should be based on the Canadian Business Impact Test (BIT) process and practical methods used to run Danish business focus groups. The recommendation was strictly followed with creativity by the research team in the implementation process.

On the basis of the lesson learned from the implementation process, and from international best practices, methodologies and best practices will be developed into a *Regulatory Impact Assessment Manual* which is customised to the Vietnamese context for the purpose of replication of RIA and of integrating it into the law-making procedures in the future.

IV. ABOUT THE REPORT

Regulatory Impact Assessment (RIA) is new in Vietnam, both in terms of concept and implementation methods. Traditionally, in preparation for a legal measure to be issued, the issuing agency simply prepare a draft, have it commented by different agencies, and then make it official. To justify the measures, analysis may have been conducted to some extent, but rarely in a consistent and systemic manner. Often, only after a legal document becomes effective, will implementing guidelines are drafted and passed.

The assessment and other RIA-related activities have been prepared as a cooperative effort between the Prime Minister's Research Commission (PMRC), GTZ, UNDP and other Vietnamese regulatory institutions to introduce RIA and related international best practices to improve the quality of business and economic laws. The assessment is an integral part of the whole RIA process. In this context, it is being used to assess the regulatory impacts of the *Unified Enterprise Law* and the *Common Investment Law* with a focus on *shifting from the existing investment licensing mechanism to an investment registration system applicable to foreign investors in Vietnam*. As it has been applied in a consistent and systemic manner in Vietnam for the first time, this RIA report is obviously not free of undesirable errors and deficiencies. However, it is strongly believed that this will be a good start for the localisation, replication and eventually integration of RIA in the law-making procedure in Vietnam.

PART 2 – REGULATORY IMPACTS OF THE UNIFIED ENTERPRISE LAW AND THE COMMON INVESTMENT LAW

The aim of this section is to evaluate whether the major proposed reforms introduced through the UEL and CIL are in the *national interest*. This section provides indicative estimates of the major immediate benefits and costs of the proposed changes, and briefly describes important flow-on benefits. The aim is to assess the net economic impact of the change on the whole economy after taking account both private and public costs and benefits.

I. THE UNIFIED ENTERPRISE LAW AND COMMON INVESTMENT LAW WILL RESULT IN MORE BENEFITS THAN COSTS

The UEL and CIL will make an important contribution to improving the business environment and the competitiveness of the investment climate in Vietnam. The laws are applicable to the four main types of enterprises (accounting for the large majority of enterprises); including liability limited company, shareholding company, partnership and sole proprietorship without any discrimination in terms of ownership and in terms of economic sectors.

Market entry barriers will continue to be lowered. This will make particular sense from the perspective of encouraging foreign investment. The shift from the existing investment licensing mechanism towards a more effective and simple investment registration system will be a breakthrough in opening up the domestic market³ and, according to the local press⁴; it will bring about a “*new wave of investment*” in Vietnam.

1. The two laws will bring about important benefits, particularly for investors and for businesses

It is almost certain that the business community (both domestic and foreign investors) will benefit tremendously from the two laws. The most obvious qualitative benefits could be summarised as follows:

1.1. Business freedom is strengthened

If an investor has the full freedom to conduct business in any field not prohibited by laws, it would be a lot easier for them to start a new business field or invest into a new sector. It is extremely important that investors are fully autonomous and free in market entry, in seizing business opportunities and in adjusting their business scope when necessary. As a result, they can reduce their business risks and have a better chance of success. From the Government side, there will be less bureaucracy and opportunity for corruption as there will be no need for the discretion of whether a business is legal or not.

³ *The Unified Enterprise Law will only provide the principles; the scope and level of openness will depend on the Common Investment Law which is being drafted in parallel to the UEL, and on the commitments and agreements made in the negotiations to join WTO.*

⁴ *The Dau Tu (the Investment) (issue no. 34), 21 March 2005 and many other newspapers.*

1.2. The reserved list or negative list of sectors in which business are prohibited from or are allowed only under certain conditions will be announced in a transparent manner

Clear stipulations on the prohibited or restricted business sector will help to promote investment and create employment in other sectors. Additionally, they will encourage enterprises to be better prepared in order to be eligible to operate in the restricted business sectors. On the other hand, the clarity and transparency will reduce corruption and promote a more effective allocation of resources. The freedom to choose to operate in any lawful business sectors will provide enterprises much-needed flexibility in making their investment decisions.

Except for business in restricted sectors, limits on foreign ownership of domestic enterprises (currently at 30%) will be eliminated.

1.3. Fairer accessibility of investors to all type of planning information

Presently, there exist different types of development plans (regional and sectoral) which have been prepared, but rarely made public. When they are made public, accessibility to these plans is not equal at all, resulting in an information asymmetry and inequities between different investors in accessibility to information. In many cases, the sectoral or regional planning lags far behind the reality. Often, investors have no idea about key tentative development plans of local and central governments.

In some cases, the regional or sectoral plans are used by state agencies (ministries, branches or local governments, etc.) to protect the interest of enterprises which are under their umbrella. This creates many constraints for investors, particularly for private and foreign investors.⁵

When all types of planning are made public in a transparent manner and are regularly updated, investors will be better treated in terms of their accessibility to public information of critical importance to their investment decision. This will help improve the transparency of the investment climate and thus increase investment in all sectors and regions.

1.4. Framework conditions on corporate governance will be better defined and consistently applied to all type of enterprises

Under the UEL and CIL, enterprises will operate in one of the following forms: liability limited company, shareholding company, partnership or sole proprietorship. Foreign investors will have the full right to select the appropriate legal form for their business. In other words, they are free to choose among the four possible legal forms, rather than being restricted to the form of a liability limited company as currently stipulated. Foreign invested enterprises will have greater autonomy in making decision about business operations, restructuring, and business expansion or diversification; many more foreign invested enterprises are likely to be engaged in multiple projects rather than a single project.

⁵ It has been reported that some government agencies use sectoral plans to thwart the investment project proposals which compete directly with enterprises operating under the umbrella of such government agencies.

A consistent corporate governance framework will be applied to both domestic and foreign enterprises and even SOEs to ensure that all enterprises, regardless of their ownership, are subject to the same corporate governance principles and requirements.

1.5. Excessive interventions into the operation and business of foreign invested enterprises will be reduced

The removal of the requirement related to the consensus in decision making by the Board of Directors will facilitate normal business decision making in FIE. This will enable FIEs to respond more effectively and promptly to changes in the market and in the business environment. This will help foster innovation and creativity in these enterprises. It will guarantee a fairer treatment to the party which contributes more capital in the enterprise.

The stipulation requiring that the Director General or First Deputy Director General in a joint venture should be from the Vietnamese party to the joint venture will also be abolished. Such a move will allow the recruitment of most competent people to fill senior management posts (including those in the Board of Directors) in all companies.

Limits on the number of foreign workers in a company will be abolished, making it easier for companies to recruit highly competent workers.

The removal of time limits on the operational life of FIE will encourage investment in different sectors like infrastructure – a sector which requires a long period to get the payback from the investment. FIE owners will not take the risk of having their assets devalued sharply when the license nears its expiration. It will also enable FIE owners to diversify their capital base or equity at the end of the project cycle.

The limit on foreign ownership in domestic enterprises will be abolished; enabling domestic enterprises to mobilise capital from investors that they consider to offer the greatest benefit to their business. Share values should increase due to increased demand for shares by foreign investors.

The application of post-registration inspection will reduce excessive interventions in the internal business of an enterprise. As a result, there will be less opportunity for corruption.

The requirement asking enterprise to register their annual import and export plans will be removed, enabling enterprises to respond more effectively to new business opportunities. They will therefore be able to improve their competitiveness, profit and investment.

Relations between government, regulatory bodies and the enterprises will be made more transparent and sound, thus reducing the risk of corruption.

1.6. The principle of “non-discriminatory treatment towards investment” will allow domestic enterprises to gain an easier access to foreign capital and technology

The UEL and CIL will guarantee the principle of “*non-discriminatory treatment towards investment*”. As a result, domestic enterprises will have a better access to foreign capital and technology and benefit more from the value added which will be brought to them by foreign investors in terms of technology, managerial skills, market access and integration into the international value chain, etc. The removal of the limit on foreign ownership in

domestic companies will enable domestic enterprises to mobilise capital from investors that offer maximum benefit to their business.

2. The Government will also reap significant benefits from the replacement of the investment licensing mechanism with an investment registration system

The replacement of the existing investment licensing mechanism by a nation-wide online business registration system which is applied consistently, in a unified manner, to all types of enterprises will help to reduce administrative and implementation costs, lower the risks, improve the service of public agencies and improve the image of a business friendly government. Such a change will represent an important contribution by the Government to improving the business environment.

Current Cost in terms of Human Resources by Government Agencies in Appraising Investment Projects

In the case of Group A Investment Project: The appraisal of a *Group A Investment Project* requires the involvement of 8-10 ministries which each contributes 7 experts in providing comments and judgments. In total, around 50-70 person are involved in appraising the project. If the experts and senior managers, leaders from MPI and the Government Office are included, the figure will well reach 100.

In the case of Group B Investment Project: The appraisal of a *Group B Investment Project* is less complicated but still requires approximately 60 experts from MPI and other ministries and agencies to be involved. Among them, it is estimated that 10 are from the Foreign Investment Agency (under MPI), 5 from provincial People's Committees, and the rest from other relevant ministries and agencies with each contributing 7 experts.

Through the business registration system, the Government will be well-informed about the enterprise community by number, types, investment capital, their financial status, performance, locations, the intensity and allocation of investment by sector and by region, and any restructuring, reorganisation, etc., of enterprises. Such a unified business registration system will be an important tool for Government to formulate macro economic policies. Moreover, the Government can provide such information as public goods to all potential investors or entrepreneurs who plan to start-up their business in the country. This will help them to make the right business and investment decisions, and reduce the cost of market entry.

3. However, the proposed will require some additional investments

Operationalising a business registration system that can be consistently applied to all types of enterprises will require some additional investments, particularly to establish new procedures and to improve the national business registration system. Such investments will include:

- Training operational staff in relevant fields and on how to implement the new system.
- Expenses related to the adjustment of related strategies and to the revision of sectoral strategies.

- Public investment to monitor implementation and enforcement of the new system.
- Considerable expenses to build the capacity needed to implement the new laws.

Nevertheless, replacing the investment licensing mechanism with a unified business registration system will obviously reduce costs related to licensing investment projects, that are now unnecessarily incurred by (i) investors; and (ii) government agencies involved in licensing.

II. RESULTS OBTAINED FROM BUSINESS SURVEY AND BUSINESS TEST PANELS STRONGLY CONFIRM THESE REMARKS

1. Overview about the business poll

In the framework of business test panels organised in Hanoi, Da Nang and Ho Chi Minh City, a business poll was conducted to get the perception of the business community on the impacts of the UEL and CIL. The poll targeted enterprises in key economic hubs like Hanoi, Da Nang and Ho Chi Minh City. The questions were clustered into (i) general information about the enterprise; (ii) perceptions of the enterprise on some general issues; and (iii) perceptions of the enterprise on the proposed UEL and CIL⁶.

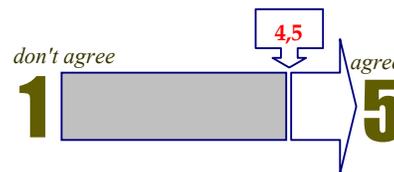
Private entrepreneurs and foreign investors showed a high level of interest in these proposed changes in the legal environment. Among those who responded to the poll, joint-venture companies account for the large part. Limited liability companies, joint-stock companies account for most of the rest and only a few SOEs responded to the poll. This is understandable, because the private sector is much more interested in improving the legal framework for business and in achieving a fairer business environment. It is widely agreed among respondents that a fair business environment is important not only in improving the efficiency, competitiveness and sustainability of investment but also in strengthening the linkage and cooperation between domestic and foreign enterprises.

2. How the business community perceives the UEL and CIL?

2.1. The support for the guiding principles and the reform introduced by the two laws are very high

The agreement in favour of the UEL and CIL were measured in a scale from 1 (don't agree) to 5 (strongly agree).

Overall, the poll shows a high level of support for the introduction of the two laws (with an average score of 4.5).

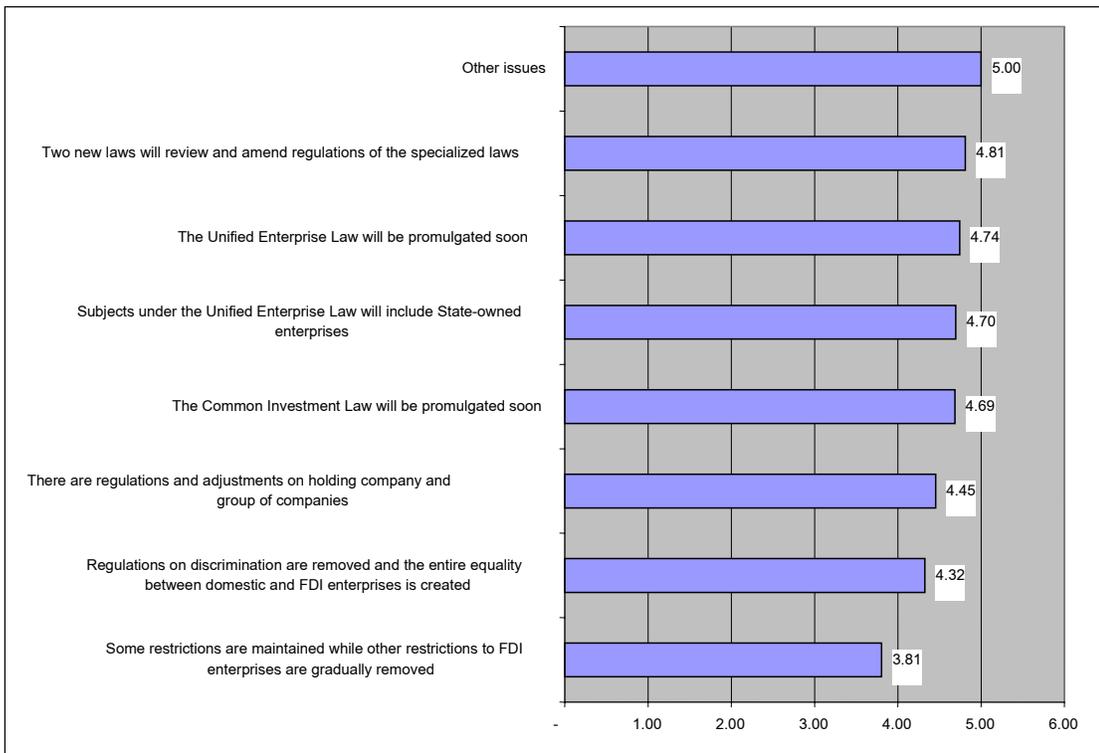


⁶ Among 60 questionnaires sent to participants for the business test panels, 37 were completed and returned, of which 17 were from Ho Chi Minh City (46%), 12 from Da Nang (32%) and 8 from Hanoi (22%). Among the respondents, 6 were limited liability companies, 5 were joint stock companies, 1 was a SOE, 12 were joint-venture, 2 were 100% FIEs, 9 were enterprises of other types and 2 were classified as other institutions.

Among the many issues polled, the enterprises highly appreciated the proposed reforms introduced under the UEL and CIL. They also strongly emphasise the need of reviewing all sectoral laws and regulations to make them consistent with the UEL and CIL. The idea of bringing SOEs under the governance of the two laws also received strong support.

Polled enterprises also support strongly (at the scale of 4 to 4.5 points) the objective of revising the stipulations related to holding companies, which stresses the approval that domestic and foreign invested enterprises are treated equally in this regard.

Figure 1: Opinion of the Polled Enterprises on the two Laws

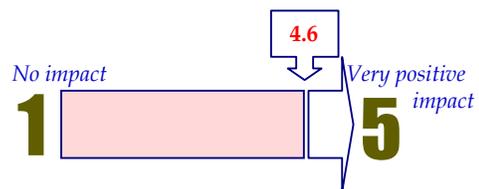


2.2. The majority agree that they expect the impacts of the UEL will be very positive

The expected impacts of the UEL are measured in the scale from 1 (no impact or insignificant impact) to 5 (very positive impact).

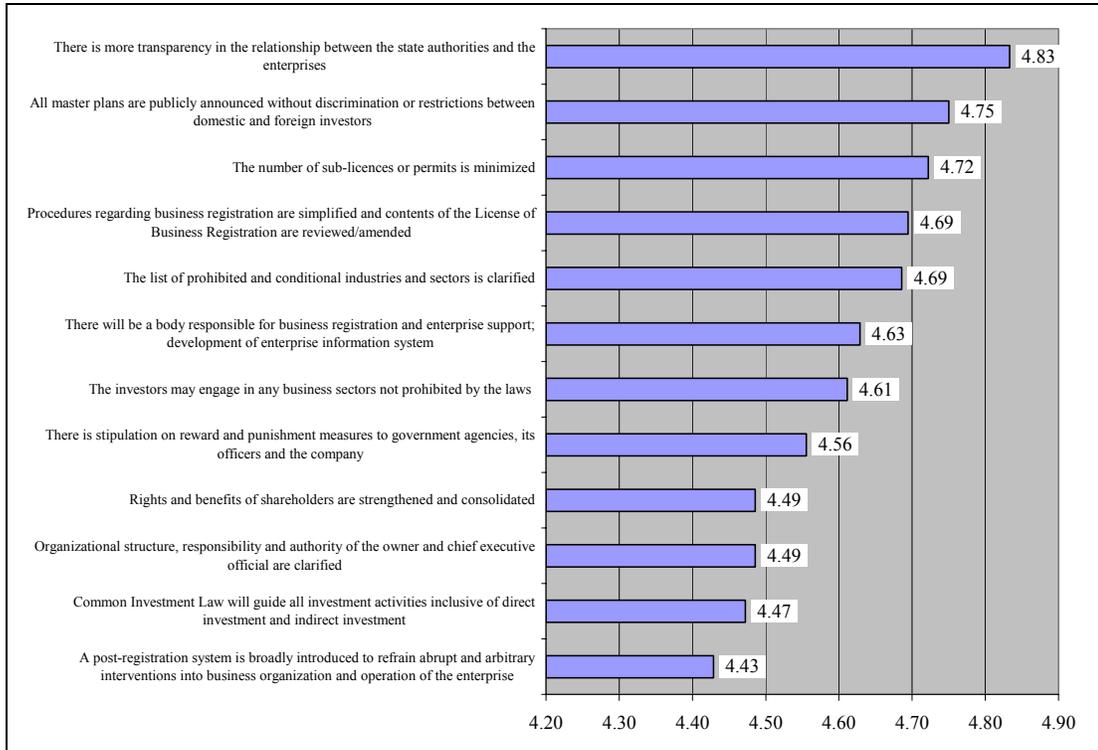
According to the scale, most of the respondents give a high mark to the UEL in terms of positive impacts (4.61 points on average).

The perception of the polled business on respective impacts by the UEL is indicated in



the Figure below:

Figure 2 – Perception of Respondents on UEL

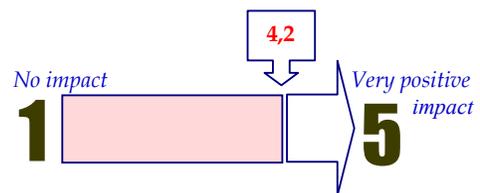


Most notable was the support and belief of respondents of the need for improved transparency in the relation between regulatory bodies and businesses. They all appreciate the need to announce all kinds of planning in a transparent manner, to make the information available to all investors (regardless of their nationality) and, to eliminate all sub business licenses.

The respondents rated highly the need for further simplification of business registration procedures and for greater transparency about exactly what business sectors are restricted or prohibited. Strengthening the capacity of business registration bodies, and business promotion programmes, were also rated highly by the polled enterprises. They also want the UEL to provide adequate regulation on rewards and penalties applied to government official to ensure effective in their implementation of the law and on provisions related to corporate governance.

While still strongly supported, businesses attached somewhat less priority for proposals that the CIL governs all types of investment, to make more widespread use of post registration inspections, and to reduce excessive interventions in the internal business affairs of enterprise.

2.3. CIL also receives positive feedback



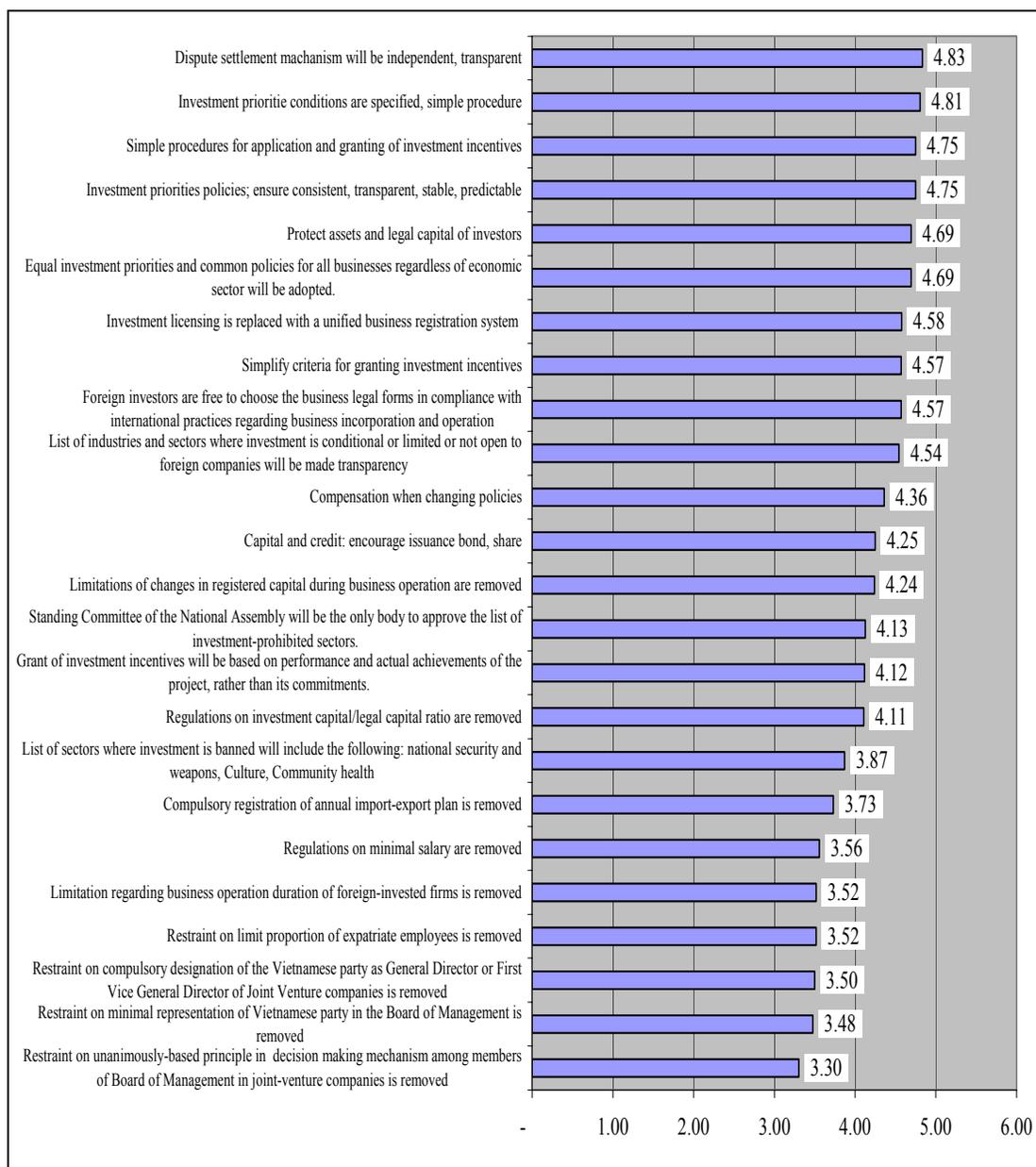
The expected impacts of the CIL were also measured on the same scale. Business rated highly the guiding principles of the CIL. However, the expected impact of the CIL (approximately 4.2 points) was rated a little lower than that of the UEL.

The respondents were mostly interested in the need for an independent, unbiased and transparent dispute settlement mechanism, a clear definition of terms, and towards more simple and non-discriminatory procedures in the CIL.

Ranked next were procedural issues related to incentives, encouragement policies, protection of investors' assets, and equitable access to investment incentives.

Details about the perception of the respondents on different issues of the CIL are presented in the figure below.

Figure 3: Viewpoint of the Respondents on the Common Investment Law



2.4. However, many concerns were raised

Three business test panels were organised in Hanoi, Ho Chi Minh City and Da Nang. Participating in the business test panels were mostly representatives from enterprises (domestic and foreign), business associations, the PMRC, MPI, CIEM and VIM.

Overall, the test panels were welcome by the participants. Key comments of the participants are noted below:

- The procedures applicable to foreign investors remain complicated with many restrictions on capital. This is particularly true for those operating in industries like software, intellectual property and consultancy;
- Investment licensing system is not organised in a focused manner, e.g. Ho Chi Minh City has 4 investment licensing agencies;
- Enterprise inspections do not follow any clear requirement or procedures. Any government agency (e.g., economic police, regional police or market police) may inspect the enterprise.
- Investment incentives: the procedures and processes involved in applying for investment incentives are complicated and time consuming. The criteria to obtain investment incentives are not focused and many of them are not relevant.
- The appraisal process does not result in accurate assessments of project viability;
- Business sector: the definition on investment or business sector is loosely defined. Too many activities in the “culture” sector are restricted.
- Too much unnecessary interventions in the business activities of enterprises;
- Government planning is not consistent and sectoral planning is unclear. The coordination between different government bodies in this respect is weak, resulting in inconsistency between different plans.

2.5. A high consensus on how the constraints could be overcome by the two laws

Given commitments made by Vietnam in preparation for full integration into the world economy, many stipulations and regulations under the existing Enterprise Law and Investment Laws are no longer relevant and the modernisation of the laws are therefore of critical importance.

Businesses agree that the guiding principles on the UEL and CIL are clear and relevant. The guidelines particularly emphasise the freedom and the right to do business, the equality between all types of enterprise, the transparent relations between the government and SOEs, and the readiness to comply with international commitments.

Enterprises at the business impact test panels also highlighted that the UEL and CIL should focus on the following issues:

Non-discrimination: The equality between domestic and foreign enterprises should be ensured. Business should be allowed to do whatever not prohibited by laws and the list of restricted or prohibited business sectors should respect the reality and follow the bilateral and multi-lateral agreements to which Vietnam is a party.

- Foreign investors should be allowed to register their business according to the overall business registration system. However, some discussants noted that there might be some special requirements related to minimal capital, legal status, Vietnamese partner, etc.
- The two laws should remove province to province “economic borders”.

Appraisal for licensing: The appraisal council should consist of experts and government officials. Government officials should only raise issue; the appraisal and other professional works should be carried out by experts.

Investment registration and licensing:

- The licensing mechanism should be replaced with a registration system. The terms “registration” and “licensing” should be clearly defined.
- On the basis of the UEL, a unified and efficient registration system from the central to local levels should be established.
- Registration procedures should be further simplified and shortened. Procedures which enterprises must finalize to obtain official seals, tax code, custom code should be combined into one and further streamlined.
- The model and good practices on business registration in other countries should be studied; the possibility of transferring the business registration function from DPI/MPI to business associations or independent bodies should be tabled and discussed. In that case, business associations or an independent body will appraise and issue business registration certificates and the DPI and MPI will retain only the inspection and monitoring functions.

Investment incentive and encouragement:

- The objectives in attracting FDI should be clearly defined and on that basis, proper incentives could be developed. Presently, Vietnam has an oversupply of manual workers but a shortage of highly professional experts to meet the need of business investors. As such, there should be more incentives to encourage investment into training of professional workers with high expertise.
- The incentives granted should not be based on the justification in the project proposals, but rather on the actual performance of the investment projects (investment incentives should be granted or offered only on the basis of the fulfilment of the commitments made by the investors rather than on the commitments made by them in their project proposals in order to have the project licensed or registered).

Business and investment sectors:

- The restricted and prohibited business sectors and investment list should be limited to those related to national security and defence.
- Business and investment sectors should be opened to the widest extent possible to private and foreign investors. For example, there should be a separation between *media* and *culture*, and a clearer definition of the business in relations to culture, community health in order for them not to be a “forbidden forest” for private enterprises.

The role of the UEL: The UEL should become a “*proclamation*”, or a public statement, for the business sector. It should help to remove the practice that line ministries exercising

ownership rights over enterprises. Enterprises, regardless of their ownership and nationality, should be governed by laws rather than by any line ministries. In addition, the UEL should establish the basis for a consistent and unified business registration system.

SOE Law: The UEL should aim to replace or narrow the governance scope of the SOE Law. The UEL should govern all types of enterprises with the aim of achieving a level playing field between SOEs and enterprises of other economic sectors.

Role of the Government: There should be a clear and concrete mechanism or regulation on the roles of the Government:

- The Government should provide better protection for the legitimate rights of doing business. The Government should apply strict penalties on enterprises which violate the laws.
- Government and business relations: the Government agencies should become “enterprise friendly”.
- There should be also a clear and concrete regulation on the penalty applied to government officials and government agencies in cases where they obstruct the enforcement of the laws or abuse their power when enforcing the law.

3. Short conclusion about the poll

The poll shows a very high level of support for the UEL and CIL. This confirms that the proposed two laws are moving in the right direction, and that they can meet the overall expectation of the business community.

Among the principles guiding the drafting of the two laws, the following receive the strongest supports from the respondents:

Unified Enterprise Law:

- Transparent relations between the Government and businesses
- Public announcement of all kind of plans; the removal of all discrimination against, and restrictions on, foreign investors and domestic private investors;
- Removal, to the maximum extent possible, sub-business licenses.

Common Investment Law:

- A transparent, unbiased and independent dispute settlement mechanism;
- Clarification and simplification of investment incentive conditions to make them fair and equal to all.
- Investment incentive procedures should be further simplified.

The poll and the business test panels also reveal the constraints in the existing *investment licensing mechanism* and strengthen the need to replace it with a *business registration system*. Such an action will bring about many important benefits:

- Less costs (in terms of time, money, and opportunity) for investors;
- A business registration system which is up to international standards will be put into operation.
- Investment (foreign and domestic) will be more effectively promoted.

PART 3 – IMPACTS AS A RESULT OF REPLACING THE INVESTMENT LICENSING MECHANISM WITH A BUSINESS REGISTRATION SYSTEM

The aim of this section is to evaluate whether the replacement of the existing investment licensing mechanism with an investment registration system applicable on foreign investors will result in net economic benefits or not and whether the replacement is in the *national interest*. This section provides indicative estimates of the major immediate benefits and costs of the proposed changes, and briefly describes important flow-on benefits. The aim is to assess the net economic impact of the change on the whole economy after taking account both private and public costs and benefits.

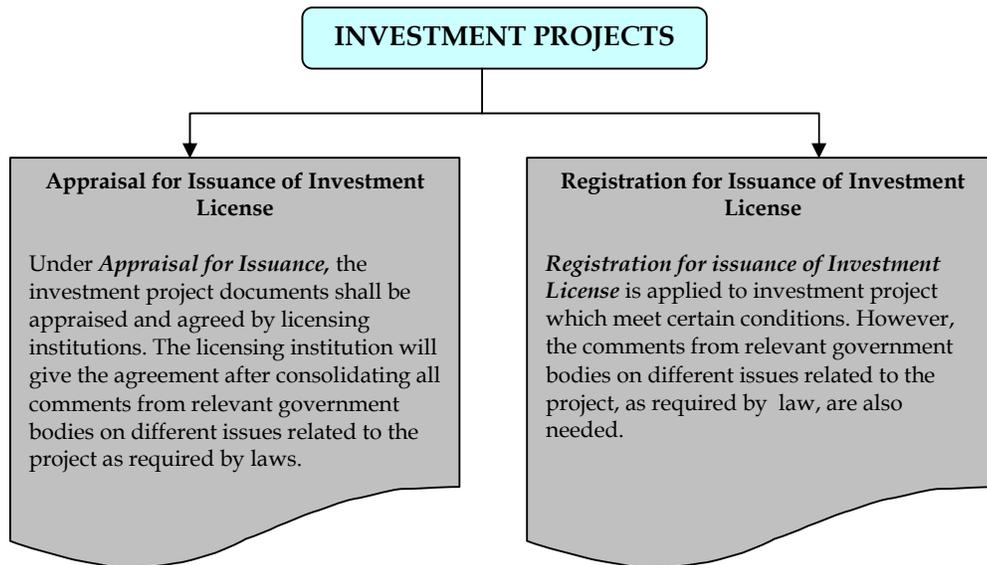
I. THE EXISTING INVESTMENT LICENSING MECHANISM

1. Types of projects and investment licensing decentralisation

1.1. Appraisal and registration

The issuance of *investment license* should follow one of the following processes: (i) appraisal for issuance; and (ii) registration for issuance.

Figure 4- Classification of Investment Projects



To be eligible to *Register for Issuance of Investment License*, a prospective investment project should meet 4 conditions. Three of these conditions are mandatory, and one can be selected out of several conditions depending on the nature of specific project. The three obligatory conditions include the following:

- Not being listed in the list of Group A Projects;

- Being relevant to an approved product development or sectoral development plan. In case such a plan is yet to be approved, the project should be approved by the relevant line ministry; and
- Not being listed in the list of Project Requiring Environment Impact Assessment.

In addition, it should meet one of the three conditions below:

- Exporting more than 80% of its production;
- Being located in an industrial zone; not being included in *Group A Project List*, but in *Especially Encouraged Investment Project List* or *Encouraged Investment Project List*; or
- Being in the manufacturing sector with investment capital of up to USD 5 million.

All projects which fail to meet the conditions applicable for the *registration for issuance of investment license* should be appraised to obtain an investment license.

1.2. Decentralisation in Appraisal and Licensing of Investment Project

According to Foreign Investment Law, FDI projects are classified into three categories: (i) projects licensed by MPI (projects approved by the Prime Minister and projects exceeding USD 40 million in capital); (ii) projects licensed by IZ Management Board (projects which are less than USD 40 million and are under the licensing authority delegated by MPI to an IZ Management Board) and; (iii) projects licensed the provincial People's Committees (project of less than USD 10 million in the case of Ho Chi Minh City and Hanoi, and of less than USD 5 million in the case of other provinces and cities).

2. Investment License Application Document

2.1. Projects which only need to be registered for issuance of investment license

In this case, prospect investors should prepare 5 copies of application documents, of which one is original. Each set of document should include the following items:

- Application for investment license;
- Joint venture contract and charter of the prospect joint venture enterprise, or charter of the prospect 100% FIE or of the business cooperation contract; and
- Documents certifying the legal status and financial health of the related parties.

As for foreign investors, the it is required by laws that they have to submit the following documents to demonstrate their legal and financial status:

- Legal documents testifying the establishment of their enterprise (in cases where the investor is an enterprise) or testifying their legal status (in cases of individual investors); and
- The audited financial reports of the latest two years (when the investor is an operational enterprise), certification by a bank of the prospect investor's account (in

the case of individual investors), or any evidence on the financial support by the holding company (if there is one).

As for the Vietnamese party, it is only required by law that it is legally established and has the lawful ownership on the assets contributed in the new enterprise.

2.2. Projects which need to be appraised to be granted with investment license

Investors should prepare 12 copies of application documents in the case of Group A Project, and 8 copies for projects of other categories (one of these is the original). Each of the copies should include papers as required in the document to *register for issuance of investment license*. Additionally, the investor must submit:

- A feasibility study;
- Other documents related to technology transfer (if there is one).

All these documents and other supporting documents submitted to the relevant Government agencies should be prepared either in Vietnamese, or in Vietnamese and a popular foreign language. Investors should be fully responsible for the legality of certifications about their legal and financial status.

However, in reality investment licensing institutions may, depending on different cases, request investors to provide additional documents like:

- Environment impact assessment (if the project falls into the *list of projects requiring an environment impact assessment* announced by MONRE);
- Documents related to the land use (as for projects which need land for their operation);
- Other agreements/ contracts which are related to the investment project (e.g. the rental of office or building for the implementation of the project, supply of materials, etc.).
- Preliminary architecture design of the construction works as part of the *feasibility study*.

In reality, the licensing process has revealed several constraints including the following:

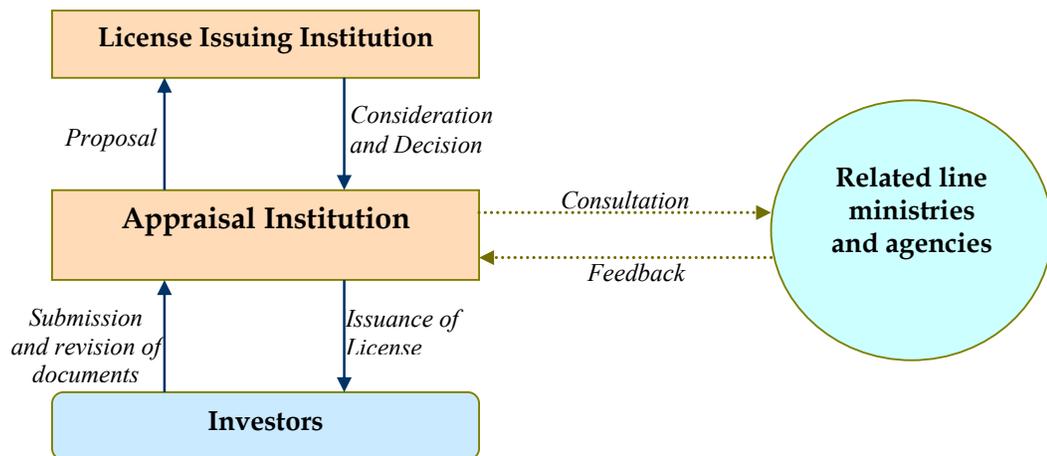
- Many requirements are seen to be far from international best practice, (e.g. the required document certifying the financial status). Commercial banks are often very hesitant to issue such documents.
- The preparation of feasibility studies is simply a formality in most cases. Investors often hide their real calculations related to market, technology, and project management. Meanwhile, appraisal bodies lack the expertise to appraise the document properly. *Due to a lack of concrete stipulations on the feasibility study, most investors are subject to the discretion of the appraisal bodies, and they are often requested to provide additions or revisions to the feasibility study, without any well-founded justification for such a request.*

- Additional papers or supporting documents that are sometimes requested -- like those related to location, land, agreement of the provincial people’s committees, etc. -- are actually *sub-license* in nature. Investors are extremely concerned about issues related to land and planning.

3. Investment Licensing Process

Overall, there is not too much difference between registration for *investment license* and *appraisal for investment licensing*. The issuance of the investment license is conducted through one institution which is also the one who receive the investment license application document. *Investment license issuing institutions* will be either MPI, or the provincial People’s Committee or the Management Board of IZ/ EPZ depending on the particular case. After receiving the document, the issuing institution will appraise the eligibility of the project. They can then request investors to submit additional papers or revise the document (if necessary). The issuing institution will then send official letters requesting comments from other relevant line ministries, MPI, or provincial People’s Committee, on issues under the scope of these agencies. For example, the issuing institution may request Vietnamese institutions, which represent the country abroad on international relations, trade, or investment issues, to provide information on the legal status, financial capacity of the investors in the country where the investor is based. After consulting with relevant institutions, the issuing institution will consolidate all comments into a proposal. Leaders of the issuing institution will then consider whether to issue the investment license to the prospective investor or not.

Figure 5 – Investment License Issuance Process



4. Practice shows that there is no difference between “appraisal” and “registration”

There is no difference between “appraisal for investment license” and “registration for investment license”. There is no standardised procedure for requesting “comments” from other line ministries and agencies. Neither are there any procedures on how line ministries should reply and provide feedback. According to prevailing laws, line ministries and

agencies should comment on issues under their management scope. On that basis, they can either suggest MPI to request the prospective investor to provide additions or revisions to the *investment license application document*, or suggest MPI to grant or decline to grant investment license. However, in reality line ministries tend to provide comments on issues beyond their management scope.

As a consequence, the comments from different line ministries often contradict each other on the same issue. In some cases, comments by line ministries are simply formalistic and very superficial in content.

It has been reported that in the appraisal process, some government agencies use *sectoral plans* to foil the investment project proposals which compete directly with enterprises operating under the umbrella of such government agencies.

II. DIFFICULTIES AND CONSTRAINTS RESULTING FROM THE EXISTING APPRAISAL AND LICENSING SYSTEM

1. Meetings with institutions involved in appraisal and licensing of the investment project is indispensable

Even though the “*one stop shop*” practice has been recognised in the Foreign Investment Law and many provinces and cities have applied the practice, the meetings with relevant central and local government bodies to present and justify the project is still indispensable for an investor to obtain his investment license.

The business poll shows that it is most likely that investors have to meet at least 11 different institutions to present or justify a project. In most of the case, investors have to meet at least 4 to 5 institutions when applying for an investment license.

The institutions which the polled investors had to meet the most were those specialising on foreign investment (MPI, DPI), and those related to land, construction, land clearance (Departments of Construction, Urban Planning and Architecture, District People’s Committees). Investors met these institutions at least twice during their application for an investment license.

Other institutions which the polled investors also must meet were the line ministries in charge of sectoral issues or line bodies, which manage the Vietnamese party (in the case of joint-venture in which capital contributed by the Vietnamese party is owned by the State), and the Department of Finance and Pricing. Investors met these institutions at least three times during their application for an investment license.

Table 1 - Administrative Bodies which Investors have to Meet in their Application for Investment License

Administrative bodies which investors meet in their application of investment license	% of respondent who did meet the institution	Minimal number of meeting	Maximum number of meeting	Average # of meetings
▪ MPI	46%	2	4	2.21

Administrative bodies which investors meet in their application of investment license	% of respondent who did meet the institution	Minimal number of meeting	Maximum number of meeting	Average # of meetings
▪ Sectoral (line) ministries	29%	1	3	2.25
▪ Provincial People's Committees or the Government Office to obtain the <i>approval in principle</i> for the project	49%	1	3	2.10
▪ Line ministry/agency managing the Vietnamese party	29%	1	3	2.25
▪ Management board of IZ/ EPZ	29%	1	3	2.20
▪ DPI	46%	2	3	2.32
▪ District people's committees	44%	2	3	2.33
▪ Department of Construction, or Department of Architecture	46%	2	3	2.28
▪ Land Management Department/ DONRE	29%	2	3	2.33
▪ Department of Finance and Pricing	49%	1	3	2.06
▪ Others	29%	2	3	2.30

2. Supplementary justification is common and often very complicated

Besides documents and forms required under the Foreign Investment Law and its implementing guidelines, prospective investors are often asked to provide additional documentation to justify the decisions of relevant agencies (the decision is often in the form of an official document in support of or in rejection of the project). The poll shows that around 10% of investors have to submit additional documentation in order to obtain support for the project.

The institutions to which those investors had to supply additional information the most often were as follows:

- Planning and architecture, construction: 4.17 times on average;
- Location, land border and acreage: 4.25 times on average.

In exceptional cases, investors have to make 10 justification reports or presentations on the plan of the project site and architecture design of the building on the site.

Table 2 – Number of supplementary justifications

	% of respondent who had to make supplementary justification	Minimum no. of suppl. justification	Maximum no. of suppl. justification	Average No.
▪ Number of supplementary justification to obtain the approval in principle from the Government Office or the provincial People's Committee	15%	2	3	2.67
▪ Number of supplementary justification to obtain the approval on the land clearance	10%	3	5	3.75

	% of respondent who had to make supplementary justification	Minimum no. of suppl. justification	Maximum no. of suppl. justification	Average No.
plan from the district People’s Committee				
▪ Number of supplementary justification to obtain the recommendation on the project location by the Department of Planning and Architecture	10%	2	3	2.50
▪ Number of supplementary justification to obtain the certification from the Department of Finance on the land rental rates	7%	2	5	3.33
▪ Number of supplementary justification to obtain the approval on the project site planning and architecture design	15%	1	10	4.17
▪ Number of supplementary justification to obtain DONRE approval on the area of project land	10%	2	5	4.25

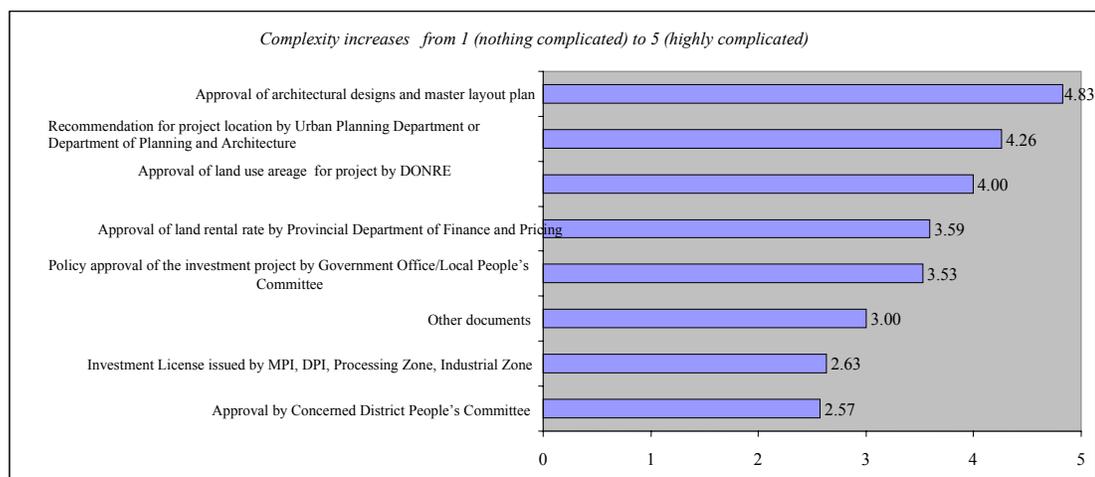
3. High level of “complexity” to obtain relevant written approvals in applying for investment license

During the poll, respondents were also asked on how they perceived the “complexity” of the procedures needed to obtain written approval from the 11 institutions mentioned in the previous section (including the license issuing institution). The perceived complexity level is measured on the scale from 1 to 5, in which 4-5 mean extremely complicated, 1-2 mean somewhat complicated and 3-4 mean relatively complicated.

Statistics from the poll show that:

- **The written approvals which were perceived as “extremely complicated”** (with an average ranking of 4 and above) were the *recommendation on project location* by the Department of Planning and Architecture, *documents approving the architecture design and project site planning*, and *documents approving the project land area and location* by DONRE.
- **The written approvals which were perceived as “relatively complicated”** include *documents approving the project in principle* by the provincial people’s committees, *document approving the project* by relevant line ministries, *document approving land clearance plan* by the district people’s committee, and the *certification on the land rental rates* from the Department of Finance.
- **There is no written approval requirement which respondents perceive to be “somewhat complicated”** or easy to get.

Figure 6 – Complexity to Obtain Different Approval in Writing



4. Time needed to obtain various written approvals from relevant institutions and the investment license

Table 3 – Time needed to obtain approval in writing from different relevant institutions

Type of paper/ document	% of respondent who replied	Minimum Time (day)	Maximum Time (day)	Average
Written approval from the district PC on land clearance plan	66%	6	300	84
Document recommending project location from the Department of Planning and Architecture	26%	2	130	65
Document certifying the land rental rates from the Department of Finance and Pricing	85%	2	200	49
Document approving the architecture design	68%	10	200	49
Document approving the acreage of project land from DONRE	39%	3	200	63
Investment license granted by MPI, provincial PC, Management Board of IZ or of EPZ	100%	1	365	60
Documents of other types	6%	20	21	21

4.1. Time needed to obtain investment license

According to the business survey, on average, it takes investors 60 days from the moment the *investment license application document* is submitted until the investors is granted with an investment license. The process seems to be faster in the East Southern Region (Binh Duong, Dong Nai), where in some cases investors obtain their license in within one day.

Among the polled enterprises, the longest time needed to obtain an investment license is 365 days⁷.

4.2. Investors have to spend a lot of time on paper works in the Investment License Application Document

In practice, investors have to spend a great amount of time on other administrative paper works which are mostly related to location, land and construction to make their investment license application document complete.

The papers which need to be included in the complete set of document and their corresponding time cost are described below:

- Written approval from the district PC on land clearance plan: 84 days
- Document recommending project location from the Department of Planning and Architecture (or Department of Construction): 65 days
- Document certifying the land rental rates from the Department of Finance and Pricing: 49 days
- Document approving the acreage of project land from DONRE: 63 days

III. COSTS AND BENEFITS ANALYSIS

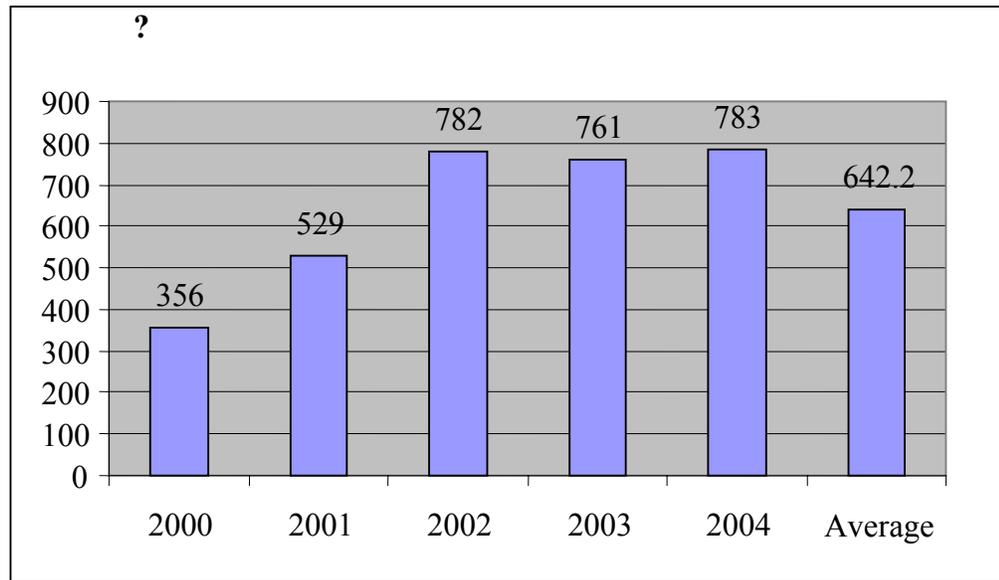
1. Assumption on FDI Inflow in 2006-2015

1.1. On number of projects

Historical data concerning the number of FDI projects in 2000-2004 (see the Figure below) shows that the number of the FDI projects has stabilised since 2000, reaching an average of 700 – 800 projects/year since 2002. It is estimated that in 2005, the number of FDI project will further increase, or at least will not be lower than this average figure.

⁷ Fastest: 1 day in the case of an investment project by Hiep Sinh Company, Thuan An, Binh Duong; Longest: 365 days in the case of the Vietnam – Korea Garment Company in An Duong, Hai Phong.

Figure 7 – Number of FDI Projects Licensed in 2000 - 2004

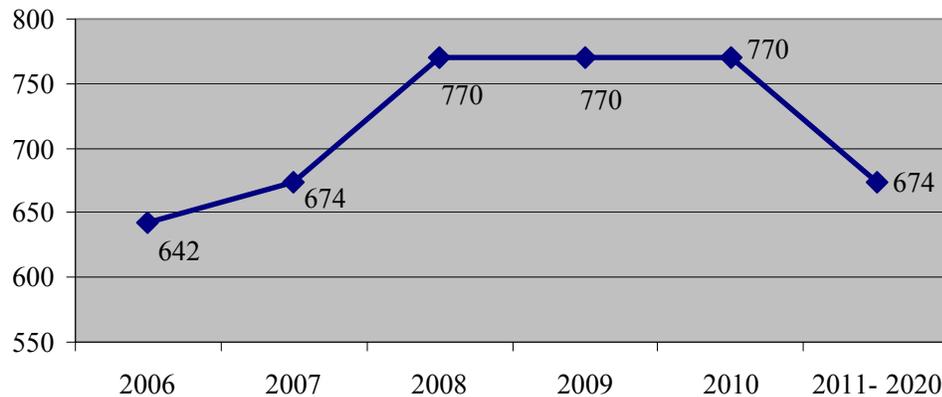


Possibility 1. After the UEL and CIL are passed, the number of FDI projects in Vietnam will not dramatically change compared to the 2000-2004 period. The number of inflow of FDI projects will remain stable at 600-650 projects per year.

Possibility 2. The number of inflow FDI projects will increase substantially as a result of the improvement in the legal framework (after the promulgation of the UEL and CIL) and of a stable economic growth. The number of inflow of FDI projects will increase steadily from 2006 onwards, reaching 750-800 projects/ year in 2007-2010, and then staying at a stable level of 650–700 projects/ year from 2011–2020.

However, according to respondents in the poll and researchers involved in the study, possibility 2 is much more likely. The cost and benefit analysis in the following section is implemented on the basis of this possibility.

Figure 8 – Forecast on Number of Inflow of FDI Projects in 2006 - 2020

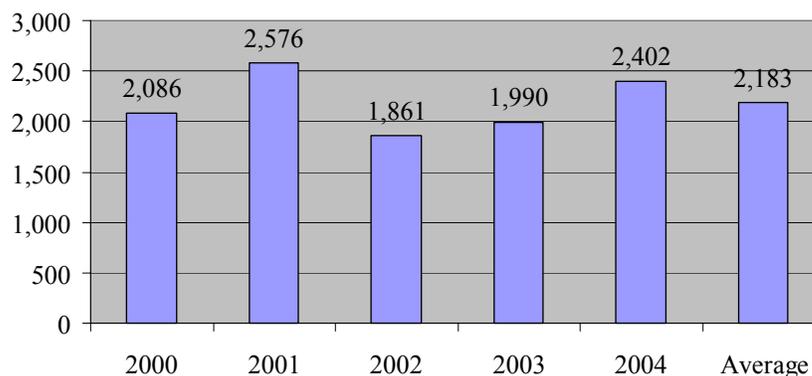


1.2. On Registered Capital

Thanks to the recovery from the Asian Financial Crisis, the inflow of FDI capital into Vietnam was relative stable in 2000-2004, varying between USD 1.8 – 2.5 billion per year.

Assumption: it is forecast that FDI inflow in 2005 will not vary significantly compared to the 2000 – 2004 period.

Figure 9 – Registered investment capital during 2000-2004

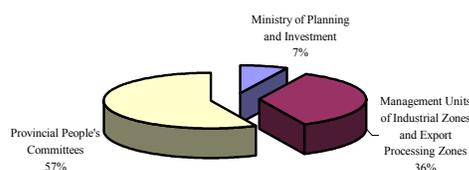


1.3. On Composition of FDI Project by Categories

According to the poll, FDI projects are classified into three categories and each has different structures of costs spent on obtaining an investment licence. The three categories are:

- *Category 1.* Including large scale projects with investment in sensitive sectors and requiring appraisal and approval by MPI or agreement from the Prime Minister. *Project licensed by MPI now account for 7% of total.*
- *Category 2.* Including investment project in normal manufacturing and service sector which under the licensing authority of the provincial people's committee. *They account for 57% of total.*
- *Category 3.* Including projects with investment into IZ, EPZ and under the licensing authority of the Board of the Management of the IZ and EPZ. *Project of this category currently account for roughly 34% of total.*

Figure 10 – Percentage of licensed projects by licensing agencies



It is assumed that the composition of the FDI projects by types of issuing institutions will remain unchanged from 2005-2020.

2. The reduction in costs for foreign investors in typical projects by categories

On the basis of the aforementioned assumption and of data and information collected from the *business test panels*, business survey and in-depth interviews the following table shows the calculation of reduction in costs incurred by foreign investors in relations to obtaining a business license if the investment registration is introduced⁸:

Table 4 – Reduction in costs incurred by foreign investor for each typical project in the scenario that the investment registration system is applied

Cost Item	Unit :USD		
	Category 1	Category 2	Category 3
Costs which foreign investors have to pay under the existing licensing mechanism			
1 Legal consultancy	6,000	3,000	2,000
2 Development of feasibility study and application document	10,000	5,000	4,000
3 Cost related to travelling, accommodation for staff working on the project	40,000	20,000	15,000
4 Paperwork, preparation of papers certifying legal and financial status	500	500	500
5 Informal expense (reception, meetings, presentation, etc.)	10,000	5,000	5,000
(A) Total	66,500	33,500	26,500
Costs which foreign investor have to pay under the new investment registration system (est.)			
1 Legal consultancy	5,000	2,000	2,000
2 Cost related to travelling, accommodation for staff working on the project	10,000	10,000	10,000
3 Paperwork, preparation of papers certifying legal and financial status	500	500	500
4 Informal expense (reception, meetings, presentation, etc.)	2,000	2,000	2,000
(B) Total	17,500	14,500	14,500
Reduction in costs incurred by foreign investor for each typical project in the scenario that the investment registration system is applied [(A) – (B)]	49,000	19,000	12,000

According to the table, the most expensive cost items incurred by foreign investors in their application for investment license are the following:

- Preparation of a feasibility study: the cost is normally at USD 10,000 in the case of large scale projects, and USD 4,000 – 5,000 in the case of projects under the licensing authority of the provincial people’s committees or of the Management Board of IZ and EPZ.
- Travelling costs, accommodation and other costs associated with the stay of the investor and/ or their staffs in the application process. Most of the polled investors disclosed that they had to come to Vietnam many times (in the best case 2 to 3 times and in the worst case 20 times) to present and justify the project to different Vietnamese authorities involved in the licensing of their project.

⁸ Data and information used for the estimation in this part are taken from the in-depth interviews, business polls and the business test panels.

- Informal expenses include those related to workshop to present the investment project, reception, etc.

3. Estimation of total cost reduction for foreign investors in the scenario of investment registration system

3.1. Assumptions

The composition of FDI project by categories: The composition of FDI projects categorised by types of issuing agencies remains unchanged in 2006 – 2020. Accordingly, during this period, 7% of the project will be of large-scale and, according to the existing licensing system, should have been licensed by MPI. Meanwhile, 56% of the project should have been licensed by the People’s Committees and 36% by Management Board of IZ and EPZ.

Number of projects: The number of FDI projects during the period will be based on the Possibility 2 mentioned above. The number of FDI inflow projects will increase steadily, reaching 750 - 800 projects/ year during 2007 – 2010 and then remain stable at 650 – 700 projects/ year during 2011 – 2020.

Reduction in cost of entry by one project: the entry cost reduction by project is calculated in the table above.

3.2. Estimation of total reduction in entry costs for foreign investors as a result of the replacement of the licensing mechanism with a registration system

On the basis of these assumptions, the total reduction in entry costs for foreign investors as a result of the replacement of the licensing mechanism with a registration system is estimated at USD 12 million to 14 million per year.

Table 5 – Estimation of total reduction in entry costs for foreign investors

Project Categories	Annual Reduction in Entry Costs (USD)		
	2006	2010	2011-2020
▪ Large-scale projects which should have been under the licensing authority of MPI	2,312,163	2,642,472	2,312,163
▪ Projects which should have been under the licensing authority of provincial People’s Committees	6,952,860	8,343,432	7,300,503
▪ Projects which should have been under the licensing authority of Management Boards of IZ and EPZ	2,773,440	3,328,128	2,912,112
Total	12,038,463	14,314,032	12,524,778

Besides the benefits in terms of reduction in time and money, it is also important to reiterate other benefits like a higher autonomy and freedom to do business, to expand the market and to seize valuable business opportunities. Thanks to the reduction in costs,

investors can reduce the prices of many goods and services which are believed to be much higher than the averages in many regional countries.

The business registration mechanism applied under the Enterprise Law in 1999 proves that these benefits are being well-reaped by domestic enterprises. After 4 years of implementing the Enterprise Law, it is estimated that domestic enterprises have saved VND 50 billion (about US\$ 3 million) in business registration costs. Thanks to the benefit, the number of newly registered enterprises, especially small and medium enterprises, has risen sharply. The rise has been playing an important role in creating millions of jobs and in sustaining the high economic growth rate in our country.

4. Forecast of direct costs incurred by the Government in order to shift from the licensing mechanism to registering system

In order to replace the “appraisal – licensing” mechanism to “investment registration system” applicable on inflow of FDI projects, it is necessary for the Government to invest into the following objectives:

- **Objective 1:** Implementing study on institutional arrangement for the expansion and improvement of the *business registration system* which is operating under the existing Enterprise Law; this will include the development of an enterprise database which is well-coordinated with the database on intellectual property.
- **Objective 2.** Training on the implementation of UEL and CIL with particular emphasis on staffs of the Business Registration Departments in provinces and FDI Divisions in DPIs.
- **Objective 3.** Additional investment into equipment, office, hardware, and other facilities for *business registration departments*.

The total costs in relation to these objectives are estimated at USD 27 – 28 million. The costs will be spent in the first 2 years after the two laws are promulgated. 60% of the costs (USD 17 million) will be made in the first year and 40% (USD 10.7 million) in the second year.

Table 6 - Direct Costs Incurred by the Government to Apply the Investment Registration System in the First Two Years

<i>in USD</i>		
Cost items	Cost per province	Total costs for 64 provinces
For Objective 1	100,000	6,400,000
For Objective 2	100,000	6,400,000
For Objective 3		15,000,000

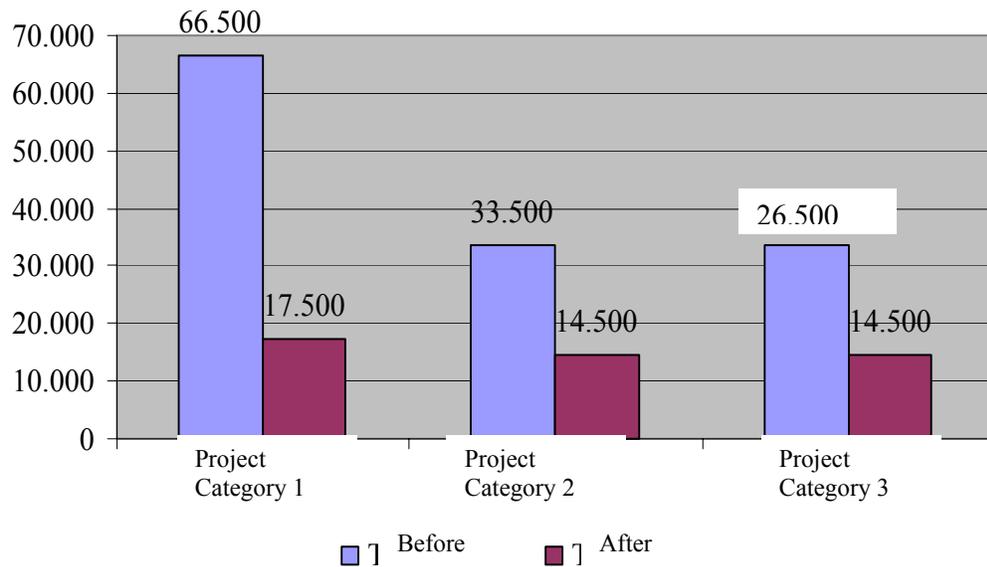
It is important to emphasize that once these investments are made, the capacity of the business registration system will be significantly improved. Such a system will allow the investor to register his business on-line and will be capable of providing investment or business information to the public, the business community and the Government, etc. Furthermore, the costs incurred by the Government in relations to project appraisal, paper works, consultation with relevant government agencies, etc. will be minimized. The costs

in terms of time and money in these unnecessary procedures will be considerably reduced while efficiency is improved. Overall, the benefits brought about by the investments will obviously outweigh the costs.

5. The shift from *investment licensing* to *investment registration* will bring about net benefits

The cost and benefit analysis conducted earlier shows that there is a net benefit, particularly in terms of market entry costs, for foreign investor if the investment licensing system is replaced with a registration system. The net benefits for foreign investors are demonstrated in Figure 11.

Figure 11 – Comparison of Market Entry Costs Before and After the UEL and CIL



It should be further clarified that the investments made to improve the business registration system will benefit not only foreign investors but also domestic enterprises. A well-functioning, effective and unified business registration system will contribute a great deal to business development and investment in our country. Therefore, it is very obvious that the benefits for domestic and foreign investors will well outweigh the costs related to the investment into the business registration system.

Additionally, the costs associated to the operationalization of an investment registration system which will be incurred by the Government will be very much lower than the benefits (both qualitative and quantitative) discussed throughout the report. In addition to the more efficient of public service provision, the overall benefits for the economy will be significant e.g. a more effective intervention of the Government into the economy, the transparency of business information being improved, strong trust and confidence of

domestic and foreign investors, a probable sharp increase in FDI inflow, more competitive investment climate, better preparedness for WTO and other international trade agreements, etc.

Table 7 - Summary of Costs and Benefits

Nature of Impact	Impact on	Description
Costs	Government	Major direct costs are borne by the Government in developing new administrative arrangements and developing staff capacity to implement the new arrangements [see Section 3 (III)].
	Business	Businesses bear the cost of internal learning about the provisions of the new law. This is minimal.
	Consumers	No costs to consumers.
Immediate Benefits	Government	Once the new system is established, the Government will require less staff and related resources to implement legislation. Qualified staff will be freed to work on other high priority tasks.
	Business	Costs of establishing a new business will be greatly reduced [see Section 3 (III)]. This will promote increased investment, income and employment. Small business will particularly benefit (because a significant part of the costs saved are fixed costs).
	Consumers	Increased business development will increase options to consumers and help reduce prices.
Other Important Benefits	Government	Less ambiguity and discretion will reduce opportunities for corruption, and increase public confidence in public officials. Increased business activity will generate increased tax revenue to the Government.

	Business	<p>Increased business investment and investment returns will have multiplier effects throughout the economy, via increased employment, incomes, and exports, and will accelerate technology transfer and productivity growth.</p> <p>The proposed changes will also send an important signal to potential investors (and to officials implementing Government policy) that the Government is serious about making it easier for investors to invest in Viet Nam. This should generate substantial increases in investment beyond that estimated above. Increased confidence will encourage increased investment in projects with longer term payback periods.</p> <p>Reducing business start-up costs will increase the viability of smaller investment projects (such as agro-processing) which are more likely to be located outside the main urban centres. Thus, the change could help facilitate more balanced regional development.</p>
	Consumers	<p>The multiplier effects through the economy will further reduce prices, stimulate quality improvements (e.g. via technology transfer), and increase consumer choice.</p>
Conclusion	<ul style="list-style-type: none"> ▪ Net benefits to the economy are substantial. The net impact is expected to be positive for the three categories of stakeholders. ▪ The proposed change is in the national interest. 	

PART 4 – CONCLUSIONS

As analysed in the main report, qualitative and quantitative information and data show a strong support to the UEL and CIL by the business community and other regulated communities. **The support is especially high in such fields as: replacement of the investment licensing mechanism with an investment registration system, removal of restriction on business sectors, non-discrimination between enterprises.** The principles of the laws are in national interest and are fully in line with the trend of “localisation” of international agreements to which Vietnam is or will be a party (e.g. the trade agreements signed with Japan, the European Union, and the USA and, hopefully in a very close future, the agreement to join WTO).

The study also confirms the general perception that **the benefits yielded by the two laws will be much higher than the costs associated to the implementation of the laws.** The benefits are visible in many aspects, including economic benefit, social development, improved transparency and competitiveness of the investment climate, strengthened trust among investors and a broadened freedom, etc. The shift towards an investment registration system will bring about not only concrete, direct and measurable benefits for domestic investors but also benefits for the whole nation like a friendly, sound and transparent investment climate, improved efficiency of government services, removal of discriminatory treatment between investors and are more effective response to requirements in terms of NT and MFN.

Through creating a unified legal framework applicable to all type of investors, the UEL and CIL will further lower the market entry barriers. This will make particular sense from the perspective of encouraging foreign investment. The shift from the existing investment licensing mechanism towards a more effective and simple investment registration system will be a breakthrough in opening up the domestic market, and, according to the local press, it will bring about a “*new wave of investment*” in Vietnam. The two laws will enable Vietnam to be better prepared for the adhesion to WTO, improve the competitiveness of the economy and the attractiveness of its investment climate. More importantly, they will be significant contributors to sustaining economic growth, early achievement of the Millennium Development Goals and to the improvement in the living conditions and well-being of the Vietnamese people.