

Managing Investment Climate Reforms: Viet Nam Case Study

Draft case study prepared as input for the
World Bank's
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on
Investment Climate, Growth and Poverty

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Abstract

The primary objective of this study is to learn about Viet Nam's experience with reforms aimed at facilitating private entry into businesses, and in particular to understand how the reform process itself was managed, what have been the results or outcomes of the reforms, and what lessons have been learned. The focus of the analysis is the Enterprise Law reform episode and related reforms to promote domestic private sector development in Viet Nam.

The views expressed are those of the authors and do not necessarily reflect official views of the World Bank.

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Study Objectives

1. This is one of several case studies commissioned as input for the World Bank's World Development Report 2005 on Investment Climate, Growth and Poverty Reduction. The primary objective is to learn about Viet Nam's experience with reforms aimed at facilitating private entry into businesses, and in particular to understand:
 - How the reform process itself was managed?
 - What the results or outcomes of the reforms have been?
 - What lessons have been learned?
2. As requested, the consultant focused on key reforms facilitating
 - private entry/activity in Vietnam, in particular those reforms allowing entry,
 - moving from a system of licensing to business registration, and
 - simplifying existing business regulations under the Enterprise Law of 2000.
3. This focus of the analysis is on the Enterprise Law reform episode and related reforms to promote domestic private sector development in Viet Nam. The Enterprise Law was formally enacted in January 2000, but the process leading to its formulation started in the mid-1990s. While the focus of this analysis is on the second half of the 1990s, reference is also made to the earlier period of *Doi Moi* (renovation) reforms when the foundations for private sector growth were first laid. The focus of the Enterprise Law reforms was on facilitating entry of new firms, but also included reforms to help protect businesses from bureaucratic interference in business operations, increased flexibility to expand business operations, and more detailed corporate governance provisions.

A. Reform Context

(i) Situation prior to Enterprise Law reform

Country context

4. Viet Nam is a low-income country in the process of transition. Since a program of economic reform was launched at the Sixth Party Congress in late 1986¹, its economy has been moving -- from a centrally planned² -- towards a more market-oriented economic system. While reforms laying the foundations for private sector development have been gradually implemented since the announcement of *Doi Moi*, Viet Nam is still in a process of transition. Many of the institutions that underpin a competitive market economy are only recently established and weak, or are yet to be established.

¹ Doi Moi was launched at the 6th Party Congress in December 1986 in response to a mounting economic crisis, with hyperinflation and stagnating growth. Viet Nam's transition has been remarkably successful, with relatively strong growth and macroeconomic stability for most of the 1990s. From a closed economy, the ratios of FDI and exports to GDP have increased rapidly to levels that are high by international standards. Viet Nam has signed bilateral trade agreements with many OECD members, is a member of AFTA, and is seeking WTO membership. Strong commercial foreign exchange inflows have helped Viet Nam minimize dependence on ODA.

² While centrally planned, the Vietnamese State never exercised the same degree of central control over the allocation of resources that occurred in the former USSR. See Fforde, Adam and Stefan de Vylder (1996), *From Plan to Market: the Economic Transition in Vietnam*, Westview Press, Oxford, and Brian Van Arkadie and Raymond Mallon (2003), *Viet Nam: A Transition Tiger?* Asia Pacific Press, Canberra.

Doi Moi and private sector development

5. Government decisions paving the way for household business were issued in 1986³. The Party passed a resolution giving farmers medium term rights to use land for agriculture purposes in 1988. Legislation formally establishing the legal basis for private enterprises and companies were issued in 1990⁴. The 7th Party Congress in 1991 stated that “*All citizens are entitled to freedom of business activity in accordance with the law, and to guarantees as to legal ownership and income*”⁵. Constitutional changes were approved in 1992 stating that “*enterprises belonging to all components of the economy.... are equal before the law*”⁶. The 1992 Constitution provided guarantees against nationalization (Article 23), stated that foreign investment and trade were to be encouraged (Articles 24 and 25), and specified that SEs should be run autonomously and be accountable for their performance (Article 19). The 1992 Constitution stated that:

“The aim of the State’s economic policy is to make the people rich and the country strong, to satisfy to an ever greater extent the people’s material and spiritual needs by releasing all productive potential, developing all latent possibilities of all components of the economy -- the State sector, the collective sector, the private capitalist sector, and the State capitalist sector in various forms -- pushing on with the construction of material and technical bases, broadening economic, scientific, technical co-operation and expanding intercourse with world markets”. {Article 16}, and;

“In the private individual and private capitalist sectors, people can adopt their own way of organizing production and trading; they can set-up enterprises of unrestricted scope in fields of activity which are beneficial to the country and the people”. {Article 21}

6. Land reforms⁷, devaluation of the exchange rate, the relaxation of controls on prices and domestic and international trade, and administrative and financial sector reforms helped accelerate agriculture sector and service growth rates, providing the basis for a rapid expansion in household enterprise activity. These reforms laid the foundations for the emergence of new entrepreneurs and the accumulation of private capital⁸.

³ Council of Ministers Decisions 169, 170 and 171, 14 November 1986, “Renovation of the Management of State Farms”, “Policy Directions Towards the Private Economy and Private Business Enterprises in Agriculture, Forestry and Fisheries”, and “Reorganization and Renovation of Management in Agricultural Cooperatives”, and Council of Ministers Decision 146, 26 November 1986, “Development of the Family Economy”.

⁴ The National Assembly approved the Law on Companies and Law on Private Enterprises in December 1990. These laws were amended in June 1994. A Law on Foreign Direct Investment had been passed in December 1987.

⁵ CPV (1991), Communist Party of Vietnam: 7th National Congress Documents, Foreign Language Publishing House, Hanoi, p. 14.

⁶ Article 22, Socialist Republic of Viet Nam. Constitution 1992. Foreign Language Publishing House. Despite the Constitutional changes, progress in changing the attitudes of Vietnamese authorities towards the private sector was gradual, and many policies remained ambiguous. The role of the markets, and of foreign investment, was accepted more readily than that of the domestic private business.

⁷ Including National Assembly approval of a Land Law in 1993.

⁸ And helped Viet Nam to adjust to the cutback in external assistance from, and trade with, the former USSR in 1988/89.

7. Providing an adequate enabling environment for private sector development was not only a matter of changing policies and regulations, but also of changing bureaucratic and society attitudes. Former Prime Minister Pham Van Dong noted (in 1993) that drastically changing society's way of thinking was one of the most difficult aspects of the reform process, noting that the stigmatism attached to traders under Confucianism, and to any business activity under Communism, "*is not easily undone overnight*"⁹. Despite much improvement, there continued to be major formal and informal barriers to domestic private sector development in the mid-1990s.

8. Still, the initial macroeconomic impacts of the reforms were impressive. By the mid-1990s, severe macroeconomic instability has been replaced by relative stability, GDP growth had accelerated to over 9 percent, and inflation remained in single digits. Per capita food availability and incomes had increased substantially. The transfer of technology, know-how, skills and capital had resulted in rapid increases in productivity. Exports had more than trebled in 5 years to USD 6.8 billion for 1996, and had become much more diversified. Government revenue had nearly doubled to 25 percent of GDP, and the investment ratio had doubled to 28 percent of GDP. FDI inflows (as a ratio of GDP) were high, even by East Asian standards. Domestic savings had increased more slowly to about 16 percent of GDP. The number of household businesses increased from about 0.84 million in 1990 to 2.2 million by 1996. Some 190 joint-stock companies, 8,900 limited liability companies, and 21,000 private enterprises had registered under the 1990 Company Law and Law on Private Enterprise by 1996.

9. The strong economic response to reforms provided powerful evidence that incentives mattered in strengthening the economy and in improving livelihoods. Most importantly, the reforms have contributed to sharp reductions in poverty -- from more than 70 percent of the population in the mid-1980s, to about 37 per cent in 1998¹⁰. The informal and private sectors were responsible for most of the employment growth that led to this decline. In contrast, State enterprise (SE) employment declined during the early reform period. The impact of growth in informal and private sector employment on poverty reduction has helped reduce ideological barriers to private sector development.

10. Nevertheless, growth remained relatively narrowly based, and a large savings gap and high dependence on foreign savings left the economy vulnerable to economic shocks. Structural weaknesses were emerging prior to the 1997 Asian financial crisis. Household businesses, FDI, and SEs provided most of the growth in economic output. The domestic private corporate sector remained small. Agriculture and household business provided most employment, but this was mostly low productivity, low income employment, with minimal growth prospects. With the sharp reduction in FDI and limited scope for further increases in the productivity of the SE sector, accelerated development of the private sector was seen as crucial to increasing employment and incomes. The boom in FDI

⁹ Referred to in Tuong Lai, 1999, The Role of Small and Medium Scale Business in the Renovation Process of Vietnam, Duisberg Working Papers on East Asian Studies No. 24/1999, *Aspects of Private Sector Development in Vietnam*, p. 5.

¹⁰ According to World Bank analysis, which utilizes a "basic needs" definition of absolute poverty.

(which, via joint-ventures with SEs, had also stimulated improved SE performance) had peaked, with over-capacity in sectors such as property development, vehicle assembly, and some services. Productivity growth was slowing as the relatively easy gains from land, price, and trade reforms had been realized. And while Viet Nam avoided the worst effects of the Asian financial crisis, economic growth began to slow from 1996.

Main features of pre-Enterprise Law reform policies

11. Prior to the introduction of Doi Moi, private business was repressed and mostly limited to household businesses, often with uncertain legal status, and operating mainly in the black economy. Initial reforms were partly spontaneous, with emerging entrepreneurs (mostly traders) moving ahead of policy reforms. In such an environment, there was considerable uncertainty about what was legal (or at least tolerated) and what was not¹¹.

12. During the early post-Doi Moi period, legislation and regulations governing different business entities were promulgated on an *ad hoc* basis – often guided by Party resolutions -- to address emerging constraints. The National Assembly passed specific business laws¹² for different categories of owners and for different forms of investment (see Appendix 1). This distorted incentive structures and resulted in a sub-optimal allocation of resources with negative impacts on output, employment and equity. A lingering central planning bias against the private sector meant that the private businesses, and especially private companies¹³, were particularly disadvantaged.

13. In addition, a steady stream of central level ordinances, decrees, decisions, and circulars¹⁴, were issued to guide implementation of the business laws. Provincial party committees and people's councils issued additional regulations. Regulatory inflation -- together with limited capacity, *ad hoc* consultative mechanisms, and inadequate procedures for ensuring regulatory quality -- resulted in a cumbersome, overlapping and often inconsistent regulatory environment.

14. Domestic concerns about the costs and inequities of business entry (registration and licensing) were highlighted in a widely distributed CIEM report in 1998¹⁵. The report argued that registration and licensing procedures were unnecessarily onerous with responsibilities spread amongst different Government agencies depending on the ownership and form of business entity. Reports complained that business owners had to

¹¹ de Vylder, S and Fforde, A. 1988. Vietnam: An Economy in Transition, SIDA, Stockholm, p. 62.

¹² Laws in Viet Nam need to be approved by a majority of a full session of the National Assembly. While debate on new laws is increasing, most Laws submitted to the National Assembly are eventually passed by a large majority.

¹³ Gillespie (2002, p. 651) notes that “*Vietnamese authorities until the late 1980s treated companies as either colonial or capitalistic artefacts standing outside indigenous experience and ideology*”.

¹⁴ Ordinances are issued by the Standing Committee of the National Assembly; decrees are issued by the Government (Prime Minister and Cabinet); decisions are issued by the Prime Minister; circulars are issued by Ministers and/or Chairman of Provincial People's Committee.

¹⁵ For a good overview of the problems and inconsistencies of the existing system see CIEM (1998), “*Review of the Current Company Law and Key Recommendations for its Revision*”, Draft Report prepared for CIEM and UNDP.

“visit” ten different agencies to secure approval to register a typical enterprise¹⁶ and had to submit up to “20 different documents with official seals¹⁷” depending on the nature of the business. Potential entrepreneurs were required to submit curriculum vitae, medical certificates, references that they were of good character, financial references, as well as business plans with their applications for registration. Limits on the time taken by Government agencies to deal with applications and to supply written explanations for rejections were not enforced. Application documents had to be notarized, adding to time and costs¹⁸. Provisions in the Company Law on “*state economic management*” were used to restrict the permissible range of private business activity¹⁹. The average time lapsing between submission of dossiers requesting business registration, to approval, was about 3 months with fees paid to consulting firms to register a company averaging about VND 10,000,000 (about USD 700)²⁰.

15. Following registration, additional licenses were required depending on the form of business entity, and the nature of activities to be undertaken by the business entity. The procedures for obtaining each license were time-consuming, and often involved the provision of the same information and repetition of procedures. Many of these licenses had to be renewed on a regular basis (sometimes monthly). Domestic experts estimated that the total time required to incorporate a private enterprises prior to reforms was 6-12 months²¹ and cost from USD 700-1,400. Gillespie had argued that “*complex procedures inflate the cost of incorporation from approximately USD 150 in Korea and Singapore to USD1,000-10,000 in Viet Nam*”.²² He cited the case of Song Thu Ltd, which needed 8 months to incorporate (“... *the promoters submitted 40 documents requiring 83 official seals, and 107 signatures from 26 different official bodies*”). As discussed later, a major focus of the Enterprise Law reforms were on reducing such barriers to entry.

16. The regulatory framework was inconsistent and many applicants found them in “Catch-22” situations when trying to establish enterprises. For example, businesses were asked to provide details of the business address when registering, but also had to be a registered business to officially rent office space. Such difficulties were compounded because there were no mechanisms for systematically disseminating information to

¹⁶ Le Dang Doanh and Tran Kim Hao (1997), “Evaluation of Macroeconomic Policies and Administrative Formalities on Promotion of Small and Medium Scale Enterprises in Vietnam”, Draft Report to CIEM and UNIDO, Hanoi.

¹⁷ CIEM (1998), “*Review of the Current Company Law and Key Recommendations for its Revision*”, Draft Report prepared for CIEM and UNDP, p25).

¹⁸ Businesses claimed that there too were few notary offices, long delays in getting documents notarized, and frequent request for “facilitation” fees.

¹⁹ CIEM (1998), “*Review of the Current Company Law and Key Recommendations for its Revision*”, Draft Report prepared for CIEM and UNDP, p. 100).

²⁰ Actual time and costs varied substantially depending on the nature of the business and the province in which it was registered. Costs were lowest for narrowly focussed firms registering in the more remote provinces. Some firms complained of delays of more than one year in getting approval to register a business.

²¹ Nguyen Dinh Cung (2002), “Implementation of the Enterprise Law: New way of Policy Enforcement in Vietnam”, unpublished presentation, CIEM, Hanoi.

²² Gillespie, John (2002), “Transplanted Company Law: An Ideological and Cultural Analysis of Market Entry in Vietnam”, *International Comparative Law Quarterly* vol. 51 (3), pp. 659.

responsible officials, businesses, or the public about changes in policies and regulations. Business people complained about being sent from one office to another where at each office they were given different instructions regard registration requirements: they had “to closely look at the “movement” of their documents, to “investigate” who is in charge of processing their document, in order to “make influence”, if necessary...”²³. Following registration, additional licenses were often required (e.g., to engage in import and export activities, for food safety, for public health approvals, etc.). It was very difficult to identify public interest issues in many of the licensing requirements (e.g., licenses to operate photocopying machines and to provide dancing lessons).

17. It was particularly difficult to for private businesses to obtain licenses in areas such as trade and some professional services. The Ministry of Trade had to issue import and export licenses before a business was permitted to engage in foreign trade²⁴. Such licenses were supposed to be available to all enterprises that meet specified criteria, but in practice, obtaining such a license was a time consuming and expensive process²⁵. While it was possible for private manufacturing enterprises to obtain licenses to directly trade in products that they produce, few licenses were issued to private trading companies. The Government also imposed quotas and other controls on the import and export of some major products, including rice, textiles, garments, minerals, petroleum products, fertilizers, motor vehicles, equipment and machinery, and any second hand goods. Most quotas were allocated to State enterprises. Actual production was often sub-contracted to private enterprises. Thus, State enterprise collected economic rents associated with the quota, but provide no or minimal value added²⁶.

18. Weak market institutions also constrained private business development. This was partly because it takes time to develop market institutions, but also because of policy failures. For example, contradictory laws and regulations hampered contract enforcement, and the development of financial institutions was constrained by failures in land policy and administration, interest rate ceilings, and weaknesses in foreclosure, bankruptcy and contract enforcement mechanisms. There were also regulatory hurdles in establishing and developing business and professional services. State controls made it difficult to develop effective business information services.

19. Businesses also complained about arbitrary minimal capital requirements for different sectors, and about the need for enterprises to specify in advance details of the scope of their business activities (with transactions outside the specified area being considered to be illegal)²⁷. It is not clear what public good was served by such restrictions. Many regulations (e.g. the minimum capital regulations were often

²³ CIEM (1998), “Review of the Current Company Law and Key Recommendations for its Revision”, Draft Report prepared for CIEM and UNDP, p. 26.

²⁴ Article 4 of Decree No. 89-CP ((15/12/95), “Revoking the Procedures for Granting Export or Import Permits for each Consignment”, Government Gazette (15/3/96). Decree 33-CP (19/4/94), “State Management of Export-Import Activities”.

²⁵ Le Dang Doanh and Tran Kim Hao (1997), pp. 95-105.

²⁶ See for example, ADB/IFPRI, 1996, “Rice Market Monitoring and Policy Options Study, ADB Hanoi.

²⁷ CIEM (1998), p. 61.

circumvented in practice).²⁸ Moreover, there were no specified procedures to allow an enterprise to change its name, shareholding structure, and/or scope of business activities without having to re-register as a new business.²⁹

20. Pre-reform regulations provided bureaucrats with considerable administrative discretion in the approval process. They were required to decide whether business plans were viable, and had to assess the financial background, physical health, mental capacity, personal character, and curriculum vitae of company founders. The fixed costs of obtaining businesses licenses were high, there were many opportunities for corruption, businesses faced unnecessary risks (because of regulatory inconsistencies it was almost impossible to comply with all regulations), and household businesses were discouraged from registering businesses under the Company Law and Law on Private Enterprises. Bureaucrats had strong incentive to be cautious because those approving registration could be held responsible and liable for checking the accuracy of business registration documents. The net results were delays, high business establishment costs, reduced competition, considerable opportunities for corruption, and disincentive to enterprises moving from the informal to formal sector.

21. Most successful applicants for business registration hired one of a limited number of law firm who were know to be able to secure business registration approvals. Fee structures reflected the nature of the approvals required (including informal facilitation payments). Such firms prepared “model” business plans (typically with limited input from the business owners) and other documentation needed for approval, and arranged the payment of formal fees and the informal facilitation costs.

22. Not surprisingly, many private businesses preferred to remain as household businesses where they could deal with local officials who were known to them and where they had established networks, which could help in securing administrative decisions. Local level registration as a household business also meant that they were less likely to be subject to inspection by central officials.

23. And while the information requirements for approval were onerous, the data collected was not regularly updated or used following approval of enterprise registration. Basic business registration information (such as the company charter, company address, names of initial shareholders, names and addresses of board members, and the number of shares issued), which might have provides some comfort to minority shareholders and creditors, was not available to the public or readily accessible by policy makers and regulatory enforcement personnel. In other words, the system was costly, but did not achieve implied policy objectives.

²⁸ For example “capital” was borrowed and deposited in a bank account for a short period of time to ensure minimal capital requirements are met at time of business registration. This could than be withdrawn after receiving the bank’s certification on minimal capital.

²⁹ Goddard, David (1998), “Enterprise Reform: Legal and Regulatory Issues”, Consultant Report to MPI/ADB Enterprise Reform Project. p. 60.

Economic and other consequences of pre-Enterprise Law policies

24. Compared with the pace of macroeconomic reforms and moves to a market based allocation of resources, decisive shifts in policy towards facilitating the development of domestic private companies was quite late in coming. The State initially appeared to be prepared to provide more opportunities for foreign corporations than for domestic companies. This may have reflected concerns that rapid domestic private sector growth would lead to the emergence of vested interests that may be difficult to contain. Whatever the reason, the early 1990s saw a rapid build-up in FDI inflows.

25. The rapid growth in the share of foreign invested enterprises had a major impact in terms of transferring technology and accelerating the development of Vietnamese industry. However, it was concentrated around the main cities, and was relatively capital intensive (compared with domestic private businesses). FDI created few new jobs outside the main urban areas. Thus, the rapid growth in FDI exacerbated growing rural-urban income disparities. Capital intensive State enterprises also tended to be concentrated near major cities and provincial capitals

26. Most domestic private sector growth was in the household and informal business sector³⁰. While private domestic investment was largely limited to household and micro business in Viet Nam, it underpinned much of the employment growth during this period. The relatively poor performance of the domestic corporate private sector can be largely attributed to the unfavorable regulatory and institutional environment that increased the costs and risks of establishing and operating private companies. It also made it hard for businesses to adapt to changing economic opportunities, because there was no flexibility to increase capital and/or change the nature of business without going through a costly and time-consuming process of re-registration.

Beneficiaries and losers from the pre-reform situation

27. Beneficiaries from the pre-reform situation included:
- The limited number of officials (central, provincial and district) responsible for issuing the myriad of licenses and permits that were needed to operate businesses. The complex regulations gave these officials (and those that could influence their decisions) power that could also generate economic gains either directly as bribes, or indirectly through favors.
 - State enterprises and well-connected private businesses (and their economic partners) benefited from monopoly powers in some areas (including highly lucrative external trade activities), and from reduced competition. They could use networks to secure licensing approvals, and use the vague and inconsistent regulatory framework to help stifle the emergence of new entrants and competition³¹. Foreign investors had an incentive to select State enterprises as

³⁰ The costs of having businesses operate in the “informal” economy are discussed in Stoyan Tenev, et al (2003), *Informality and the Playing Field in Vietnam’s Business Sector*, IFC, World Bank and MPDF, Washington, D.C.

³¹ Many of the owners of the first private enterprises and companies had family members working in the State sector. This could help in negotiating administrative and regulatory hurdles, and in enforcing contracts and other property rights.

joint-venture partners to gain easier access to decision and policy makers in order to facilitate administrative approvals.

- Barriers to domestic private sector development, and preferential treatment to foreign investors³², meant that some foreign investors faced minimal competition from the domestic private sector.

Losers from the pre-reform situation

28. Major losers from the pre-reform situation included:

- The rapidly increasing number of new entrants to the labor-force who were facing difficulty getting employment.
- Potential new business entrants who either paid high start-up and/or expansion costs, or were deterred from developing businesses because of these costs.
- Those without personal connections to officials. Potential new entrants from groups that are underrepresented in offices responsible for administrative decisions (e.g., ethnic minorities and women) faced particular challenges.
- Smaller enterprises suffered particularly because a large share of compliance costs were fixed, and had to be spread over a relatively small revenue base.
- Household businesses found it hard for to develop into SMEs because of institutional weaknesses. Well functioning institutions could have helped reduce their transaction costs. With weak institutions, small household enterprises minimized transaction costs by engaging mostly in spot transactions, and trading locally where they could use social pressure and personal contacts to enforce contracts.
- Constraints on domestic private enterprises meant that SEs were foreign investors' only choice as a joint-venture partners. Some foreign investors had problems with SEs as joint-venture partners because the ministries who "owned" the SEs also regulated joint-venture business and became involved in settling disputes between the two parties.

(ii) Reform genesis

Main objectives of reform

29. It is not easy to find clear and unambiguous statements about the objectives of specific reform measures. Sustained economic growth, continuing improvements in living conditions, and macroeconomic stability were important to sustaining the credibility of the Government and the Party. The need for stability, strong growth and improvements in living standards are recurring themes in the published reports from the 8th and 9th Party Congress and in the current five-year development strategy)³³.

30. Another theme that ran through most Party and Government documents was the need to modernize and industrialize the country. There were frequent references to the need to accelerate the transfer of technology and skills to increase productivity. Public

³² e.g., with the import of capital equipment and taxes, and some licensing requirements.

³³ CPV (1996), Communist Party of Vietnam: 8th National Congress Documents, The Gio Publishers, (e.g., pp37-41), and CPV (2001), Communist Party of Vietnam: 9th National Congress Documents, The Gio Publishers, (e.g., pp.34-50).

debate included a focus on the need to develop the dynamism apparent in neighboring countries, and more broadly to “catch-up” with neighboring countries.

31. During the later half of the 1990s there was increased (or at least more public) policy debate about the positive employment, distributional and equity impacts of small private domestic investments compared with the more capital intensive investments typically made by SEs and foreign investors. There was also increasing public discussion in the media about the adverse impacts of unnecessary and poorly drafted regulations in facilitating corruption, and stifling investment and employment growth.

32. In summary, reform objectives appear to have included sustained employment growth and poverty reduction, stronger and more equitable growth, reduced corruption, and “catching-up” with the income and living standards of neighboring countries.

Major impetus for reform

Pressure for strong growth and equitable improvements in living standards

33. Pressures to create new employment opportunities to increase incomes and reduce poverty have provided strong impetus for economic reforms in Viet Nam. Periods of economic slowdown have tended to increase pressure for change. The opening of the economy and an increasing public awareness of living standards in other Southeast Asian countries have increased pressures for reform measures to accelerate growth. Technical assistance has attempted to increase awareness of the potential benefits of business friendly policies by providing access to information on international experiences on the link between private sector development and employment creation.

34. With the onset of the Asian economic crisis in 1997, and the rapid devaluation of the currencies of major regional competitors, Viet Nam faced a downturn from in previously strong export growth. FDI inflows also fell drastically from 1997. Two differing views on appropriate policy responses emerged. One argued that the onset of the Asian crisis illustrated the dangers of globalization and argued for tighter controls on capital flows and the need for greater self-reliance³⁴. The other view maintained that an open economy was essential to modernizing and industrializing the economy, but also recognized the need for renewed efforts to mobilize domestic investment resources to reduce dependence on foreign savings. The fact that these two, otherwise opposing, views agreed on the need for a greater focus on domestic resource mobilizations, helped in developing the consensus needed to improve the enabling environment for business development. Equity and anti-corruption concerns provided further impetus for reforms that facilitated the development of domestic private businesses.

³⁴ Viet Nam was particularly vulnerable to an economic downturn in Asia, because about two-thirds its exports went to Asia, and a similar level of FDI approved was from Asia also accounted for about two-thirds of FDI approvals. However, Viet Nam’s closed capital account meant that it avoided short-run volatility in investment flows, and the eventual impact of the crisis on Viet Nam was less than expected. Economic growth fell to about 5.8 per cent in 1988 and 4.8 per cent in 1999, before recovering to more than 6 per cent in 2001.

35. Informal actions and institutions played a crucial role in promoting domestic private investment during the early *Doi Moi* period³⁵. In many market economies (especially in Asia) most transactions are conducted with limited reliance on formal contracts and enforcement mechanisms. However, limitations of informal institutions became more apparent as private businesses emerged and developed, including³⁶:

- the need to deal with “outsiders” (bankers, suppliers and traders) increased as the scale of business grew, -- either party may doubt that informal mechanisms will result in transparent and equitable outcomes.
- opportunities to enter contracts depend on established relationships based on past business contacts. Thus, informal institutions have a bias against new entrants with negative consequences for equity and efficiency.
- the emerging commercial financial sector requires formal contractual arrangements to reduce transaction costs and risks in assessing and enforcing debt repayment.
- informal arrangements can breakdown in periods of economic downturns. Borrowers continue to operate loss-making businesses longer than they should, losses increase, and financial problems can spread to suppliers and creditors.

36. The limitations of informal institutions were more pronounced in Viet Nam because business networks -- and informal “rules of the game” -- that played a pivotal role in financing private investment elsewhere in East Asia, were less developed³⁷. Thus, as business grew, there was increasing demand from both domestic businesses, and those that they did business with, for more formal market institutions and, thus, for the Enterprise Law reforms.

Public disquiet about perceptions of increasing corruption

37. Rapid growth in revenues from SE monopolies and in FDI inflows (often in joint-ventures with State enterprises) -- in an inconsistent, ambiguous and less than transparent regulatory environment -- contributed to increasing perceptions of high level corruption. While corruption was a problem before the mid-1990s economic boom, there was a widespread perception that its scale increased and that the benefits were concentrated to those involved in making decisions related to foreign investment and in limited number of State monopolies. This has caused growing disquiet, and pressures for action to deal with corrupt officials, and to reduce the incentives for corruption³⁸. The head of the Party Central Committee's Ideology and Culture Board (and Politburo member) recently announced that a Party survey “*found that most people are concerned with corruption*

³⁵ Instead, parties to a contract rely on relationships to enforce or adjust commitments, and/or to address non-performance of commitments. Penalties for non-performance are linked to reputation and opportunities to engage in future business.

³⁶ See Goddard (1998), for a more detailed discussion of this issue.

³⁷ Raymond Mallon (1999), “Experiences in the Region and Private Sector Incentives in Vietnam”.

³⁸ An Australian Department of Foreign Affairs and Trade briefing described actions to “*stem internal corruption and mismanagement. The dismissal of former Deputy Prime Minister Ngo Xuan Loc by the National Assembly in December 1999 represents the most prominent outcome of this campaign. At the March 2001 Central Committee Plenum, five Central Committee members... were disciplined for management irresponsibility. At the June 2001 sitting of the National Assembly, Chairman-Minister of the National Committee on Physical Education and Sports... was removed from his position*”.
http://www.dfat.gov.au/geo/vietnam/vietnam_brief.html

and red tape, which was seen by the Party as one of the reasons causing the loss of people's confidence in the Party"³⁹. Corruption -- and measures to reduce corruption -- was a major theme of the 6th Party Plenum in October 1998, and have been repeatedly raised since then by the Party Secretary-General⁴⁰.

Balanced development

38. There was also increasing media debate about public concerns that growth being concentrated around the major urban areas. More equitable development was seen as important in sustaining social and political stability, especially in a slower economic growth environment. Regulatory reforms to reduce the barriers to domestic business development and other smaller investors were seen as important in facilitating increased investment in less favored localities.

Changes in government

39. Viet Nam is a one-party state, governed by the Communist Party of Viet Nam (the Party). The distinction between the Party and Government is often opaque⁴¹. Key policy directions are established at Party Congresses, which are usually held every five years. Party support is crucial in securing major formal changes in policies and regulations affecting business. Key changes in the Government depend on directions set by the Party. The Congress elects members of the Party Central Committee (150 members were elected in 2001) and the Politburo (15 members). The Central Committee meets 2-3 times a year (Party plenums) to discuss particular policy or sector development issues. The Prime Minister, President, and State leaders are always members of the Politburo of the Party (the 15 member leadership committee). Most senior government officials, and most members of the National Assembly, are also Party members. Most Ministers and many provincial leaders are members of the Central Committee of the Party⁴². The Party has an extensive network reaching to the grassroots.

³⁹ Nhan Dan (14/1/04, p. 1).

⁴⁰ Most recently at the opening of the 9th Party Plenum (9th Congress) in early January 2004 where the Party Secretary-General called on the plenum to "*seek ways to boost the fight against corruption, wasteful spending, and bureaucracy*" www.vneconomy.com.vn/en_index.php?action=preview&cat=03&id=040107101807, and "*Leading officials of branches, localities, agencies and units must be responsible for the shortcomings, corruption and wastefulness in their branches, localities and units... Driving back corruption and wastefulness is an important task to consolidate the people's confidence*", Nhan Dan (13/1/04).

⁴¹ Under the 1992 Constitution, the Government is charged with the supervision of public sector agencies at all levels, and the overall management of the economy. The Prime Minister appoints deputy prime ministers, ministers and members of provincial people's committees. The Prime Minister also has the power to establish, dissolve, or restructure public agencies. The President has the power to recommend to the National Assembly the dismissal of the Prime Minister and to act as the Commander-in Chief of the armed forces. The President and the Prime Minister are elected by the National Assembly from among its members. The Party remains the dominant political force in the country despite some modification of its role in the 1992 Constitution. The National Assembly is beginning to play a stronger role, and the Chairman of the National Assembly is becoming an increasingly powerful position.

⁴² Raymond Mallon (2002), Approaches to Support the Development of an Enabling Environment for Small Enterprises: Viet Nam Case Study, GTZ Report to the Committee of Donor Agencies for Small Enterprise, Turin, p. 14.

40. The National Assembly (NA) officially elects the President, Prime Minister and the Chairman of the National Assembly. The National Assembly is elected every five years and meets 2-3 times per year. The National Assembly is usually elected some 6-12 months after the Party Congress. Candidates elected by the National Assembly to be President, Prime Minister and its Chairman have (at least since the 1990s) already been appointed by the Party as high ranking members of the Politburo. Nevertheless, the National Assembly is playing an increasingly more active role in promoting public debate on business issues. As discussed later, the Government had to actively engage the National Assembly to secure key reforms under the Enterprise Law.

41. Major changes were made in the country's leadership during 1997, which was a turning point for Enterprise Law reforms. The 8th Party Congress in June 1996 did not directly involve any leadership changes, but there were changes in the Politburo and Central Committee that foreshadowed future these changes. At the first meeting of the newly elected National Assembly, a new Prime Minister and President were appointed⁴³. Shortly after, a new Party Secretary General was appointed⁴⁴.

42. Given the nature of the political system, it is difficult to make judgments about whether reforms are a consequence of leadership changes. New appointments are usually made after some consensus is reached following internal debate about future directions of development. Thus, it is not surprising that new reforms are introduced following leadership changes.

43. Prior to his election as Prime Minister, Phan Van Khai had often stressed the important need for the Government to cooperate with the business sector to promote economic development. For example, in early 1997 he emphasized the importance of close cooperation between government and business "*The experience of other countries and of our country both show that economies will develop dynamically and steadily at high growth levels when close cooperative relations are established between the government and the business community. The government is ready to cooperate and listen closely to the opinions of the business community in many ways, and one of the most important ways is through the representative organization ... {VCCI}*".⁴⁵ His first speech to the National Assembly as Prime Minister also stressed the need to develop the domestic private sector. The Prime Minister's post-graduate training in economics may have helped in building internal consensus on the important link between incentives, business development and economic growth.

⁴³ Phan Van Khai replaced Vo Van Kiet as Prime Minister, and Tran Duc Luong replaced Le Duc Anh. Phan (Van Khai and Tran Duc Luong had been deputy prime ministers under Vo Van Kiet).

⁴⁴ Le Kha Phieu was elected to replace Do Muoi as a Party Secretary-General at an ad hoc mid-term Party Congress.

⁴⁵ Cited in Jonathan Stromseth, "Business Associations and Policy-making in Vietnam" in Benedict J.T. Kerkvliet, Russell H.K. Heng, and David Koh and (2003), *Getting Organized in Vietnam : Moving in and Around the Socialist State*. ISEAS, Singapore, pp. 63-109.

Table 1: Key Political Events and Leadership Changes 1986-2002

Major Political Events of (Party Congress, National Assembly)	Party Secretary General	Prime Minister (Chairman of the Council of Ministers to 1991)	President (Chairman of the State Council to 1991)	National Assembly Chairman
6 th Party Congress, December 1986	Nguyen Van Linh replaced Truong Chinh (November 1996), who had succeeded Le Duan (died, April 1986).	Pham Van Dong (From 1976 to 1987)	Truong Chinh from 1981 to 1987).	Nguyen Huu Tho (1981- 1987)
Election of 8 th National Assembly in 1987.	No change.	Pham Hung from April 1987 until he died in June 1998. Do Muoi appointed in June 1998.	Vo Chi Cong (appointed April 1987).	Le Quang Dao (Elected April 1987).
7 th Party Congress (June 1991)	Do Muoi (June 1991).	Vo Van Kiet (appointed August 1991).	No change	No change.
Election of 9 th National Assembly in 1992	No change.	Vo Van Kiet (re-elected).	Le Duc Anh (elected September 1992)	Nong Duc Manh (elected September 1992).
8 th Party Congress (June 1996)	Do Muoi (June 1996 re-elected).	No change.	No change	No change.
Election of 10 th National Assembly Elected in June 1997	No change.	Phan Van Khai (appointed September 1997).	Tran Duc Luong (elected by National Assembly 1997)	Nong Duc Manh (re-elected September 1997).
Mid-term Congress (December 1997)	Le Kha Phieu (December 1997).	No change.	No change.	Nong Duc Manh (re-elected Sep 1997).
9 th Party Congress (April 2001)	Nong Duc Manh (April 2001).	No change.	No change.	No change.
9 th Session of 10 th National Assembly, (June 2001)	No change.	No change.	No change.	Nguyen Van An (appointed by 9 th session, 10 th National Assembly).
Election of 11 th National Assembly (July 2002)	No change.	Phan Van Khai (April 2002, re- appointed).	Tran Duc Luong (April 2002, re-elected).	Nguyen Van An (July 2002, re-elected).

Source: CPV (various), Party Congress Documents.

44. Most of the new leaders had a background as technocrats⁴⁶ working in development related fields, and may have had a more shared commitment to economic development which would have helped in facilitating the implementation of reforms. Whatever the determining factors, consensus was reached on a quite specific action plan to improve the environment for private sector development were released at the December 1997 Party Plenum, soon after their appointments.

Changes in balance of power between branches of the State

45. While the National Assembly has become increasingly active, and vocal, in policy debate, and especially on issues affecting business, key reforms still depend on the directions set by the Party. The capacity of technocrats (both within the Government and Party) has strengthened, and this has helped in increasing awareness of international

⁴⁶ Le Kha Phieu had a military background, but Phan Van Khai was an economist, Tran Duc Luong was a geologist, and Nong Duc Manh was trained in forestry.

experiences and best practices with regard to economic and business development. Donor technical assistance (and overseas training in market economies) helped develop the capacity of Government technocrats to undertake applied policy analysis, and this helped in improving the sophistication of policy debates. Senior technocrats involved with the reforms argue that technical assistance has helped improve the quality of Government inputs to internal policy debates, and thus to the quality of reforms.

46. The judiciary remains weak and has very limited, if any, direct impact on the reform process. The lack of capacity is a major constraint to the use of courts as a formal mechanism to enforce regulations, contracts or property rights.

Changes in provincial power and links with central authorities

47. Provincial authorities (especially in the more developed areas) appear to exercise a greater degree of autonomy in practice than that indicated by law⁴⁷. This has been reflected, for example, in the policy reform experimentation that has taken place at the provincial level prior to formal policy and regulatory reforms⁴⁸. Gillespie (2002) argues that in some circumstance in Viet Nam, *it suits all levels of government to invest local authorities with discretionary power that technically exceed their statutory powers, to “soften law” to suit local conditions. ‘State economic management’ provisions in the EL, give corporate regulators broad powers to reconcile imported corporate concepts with action on the ground*. He argues that *“Local ‘fuzzy’ legality allows bureaucrats to filter imported rules through ‘cultural’ values, a process that produces new and innovative adaptation of corporate law”*⁴⁹.

48. While infrastructure and resources endowments remain important factors, provincial business policies also had an important impact on business development. Local ‘fuzzy legality’ appears to partly explain why some provinces have been relatively more successful in encouraging new enterprises. Some provinces drastically improved registration procedures (stricter time limits than required by law, and internet facilitate registration) others are still to comply with Enterprise Law requirements. Rapid economic growth and poverty reduction in the more successful provinces (e.g. in Dong Nai and Ho Chi Minh City) almost certainly helped strengthen the position of pro-business reformers in public policy debates. Differences in provincial economic performance became an increasingly frequent topic of public debate, contributing to pressure on poorer performing provinces to adopt a more pro-business stance⁵⁰.

Changing power of special interest groups

49. As businesses expanded, managers had to deal with an increasing number of officials from outside established networks to secure licenses, pay taxes, secure

⁴⁷ Decentralized decision making was an integral part of the military strategy during the war period.

⁴⁸ See, for example, the Adam Fforde and Stefan de Vylder (1996) discussion on “fence breaking”.

⁴⁹ Gillespie, John (2002), “Transplanted Company Law: An Ideological and Cultural Analysis of Market Entry in Vietnam”, *International Comparative Law Quarterly* vol. 51 (3), pp. 662-3.

⁵⁰ See, for example, CIEM/UNDP (2003).

financing, receive quality certification, etc. Business people began to see benefits in working with other business people, the Party, government officials, and the media, to push for change. Increased demand for change coincided with more systematic consultation between the State and the business sector to address business constraints.

50. The Viet Nam Chamber of Commerce and Industry (VCCI) is the largest and most prominent national business organization. VCCI has diversified its membership base to include a majority of private enterprise members. VCCI had about nearly 6,700 members in mid-2002, of which about 54% were private enterprises⁵¹. VCCI cooperated closely with CIEM, playing a visibly pro-active role in working with business and the media to build support for the Enterprise Law and related reforms, despite close links with the Government⁵². VCCI also facilitate increasingly systematic dialogue between the Government and domestic business to identify and address business constraints.

51. Professional services business services (lawyers, accountants, bankers and insurers) have not been fully developed in Viet Nam. Gillespie argues that it is these “*special interest groups... that create the uniform, transparent markets presupposed by company law... As a consequence, rather than structuring their businesses around company law principles, entrepreneurs form defensive family arrangements and particularistic (frequently corrupt alliances) with state bureaucrats*”⁵³. As professional services develop there could be greater demand for corporate reform.

52. More independent business associations began to emerge representing the interests of the new private sector (e.g. the Young Entrepreneurs Association) and the needs of particular sector groups. The Government directly encouraged the development of these associations, and recently issued a decree governing the establishment and operations of associations. Nevertheless, approval by the Ministry of Home Affairs is required to register and operate business associations.

53. A Viet Nam Business Forum (VBF, held in conjunction with the Consultative Group meetings) provided another formal forum for business to periodically discuss business constraints with the Government. However, foreign investors (especially those from western economies and Japan) have been the most active participants in the VBF.

Emerging citizen/grassroots mobilization:

54. The major grassroots organizations are closely affiliated with the Party and, therefore, with the State. Thus, there has been no independent grassroots mobilization of the kind that directly challenges the ruling regime. On the other hand, as with the earlier reforms, grassroots pressure to improve economic opportunities, increase living standards

⁵¹ Jonathan Stromseth, “Business Associations and Policy-making in Vietnam” in Benedict J.T. Kerkvliet, Russell H.K. Heng, and David Koh and (2003), *Getting Organized in Vietnam : Moving in and Around the Socialist State*. ISEAS, Singapore, p.3

⁵² Its leader was a former deputy Prime Minister and Central Committee member, most VCCI staff have worked with the Government, and the Government financed some of VCCI expenditure.

⁵³ Gillespie, John (2002), “Transplanted Company Law: An Ideological and Cultural Analysis of Market Entry in Vietnam”, *International Comparative Law Quarterly* vol. 51 (3), pp. 672.

and reduce corruption has helped push the reform process forward⁵⁴. CIEM and VCCI actively sought to mobilize grass-roots support through systematic cooperation with the media to promote public debate on business constraints⁵⁵.

Increasing role for technical staff

55. There are increasing numbers of technical staff returning to Viet Nam from post-graduate and other training in western countries. There is now a solid network of officials with a strong exposure to market economics, and some have been appointed to senior levels in the Government and Party. These technical officials have played an important role in developing reforms and in building the public support needed to push through reforms. It is difficult to assess just how pivotal their role has been, but it has been much easier for external technical advisors to transfer ideas and to provide advice on the formulation of policy reforms. Officials involved in drafting the Enterprise Law⁵⁶, for example, argue that such advice had helped to refocus reform efforts on simplifying enterprise establishment requirements, and on including provisions that provided maximum flexibility for an enterprise governance structure to evolve as it developed.

56. At the same time as the capacity of technical staff was being strengthened, the Government began playing a more pro-active role in developing policies and regulations to improve the enabling environment for business. This more pro-active role was partly facilitated by the 1992 Constitutional changes.⁵⁷

Macro/fiscal crisis or other shocks

57. As discussed earlier, an economic slowdown, cutbacks in FDI, and concerns about the broader impact of the Asian financial crisis were important in accelerating reforms to promote private sector development. While the general direction of reform had already been indicated, concerns about an economic downturn helped in generating consensus on an action plan for implementation.

58. While important, the economic slowdown that helped accelerate Enterprise Law reforms was relatively modest compared with the economic shocks that had stimulated earlier reform efforts. When the Doi Moi reforms were initiated, the economy faced hyperinflation, major fiscal and external imbalances, economic stagnation, and food shortages. Shocks from cutbacks in external cooperation with the former USSR during the late 1980s provided further stimulus for reform.

⁵⁴ See the discussion on “fence breaking”. Adam Fforde and Stefan de Vylder (1996), “From Plan to Market: the Economic Transition in Vietnam”, Westview Press, Oxford.

⁵⁵ CIEM (2000) Regulatory Environment for Business: Evaluation Report. CIEM/UNDP Project VIE/97/016. Unpublished document. Hanoi).

⁵⁶ The secretary of the Enterprise Law drafting committee has completed a post-graduate diploma and a master’s degree in Economics in the UK. Many others involved in the drafting committee has considerable exposure to market economies.

⁵⁷ Painter (2003) argues that “since the adoption of a new constitution in 1992... there has been a steady process of institutionalisation of the idea of ‘rule by law’... This has seen a strengthening of the formal and substantive powers of the organs of government, including the office of Prime Minister as leader of a distinct executive arm”.

National aspiration to join regional or international bodies

59. Viet Nam joined the Association of South East Asian Nations (ASEAN) in 1995, and committed to AFTA prior to the Enterprise Law reform period. Viet Nam also joined APEC in 1998.

60. There has been an increasingly strong public policy commitment to joining the WTO in recent years, and references were made to the need to reform to join the WTO in the policy debate on private sector development during the 2nd half of the 1990s. The enterprise reforms have been consistent with efforts to join the WTO, and the desire to join WTO has strengthened the hand of those pushing for improvements in the regulatory environment for business during the Enterprise Law reform episode. However, it is difficult to assess the extent to which the desire to join the WTO provided impetus for the Enterprise Law reforms.

61. While it is difficult to identify causality between aspirations to join regional and international bodies and the Enterprise Law reforms, contacts with regional and international bodies have almost certainly helped the reform process. The economic performance of other ASEAN members and China are important benchmarks with which Viet Nam's policy makers often compare their own performance. Even prior to joining ASEAN, Vietnamese officials went on study tours to ASEAN member countries to study issues related to improving the enabling environment for business development.

62. The bilateral trade agreement (BTA) between Viet Nam and the USA was signed in December 2001, well after the major Enterprise Law reforms has been implemented. However, the private sector reforms implemented during the 2nd half of the 1990s almost certainly helped the process of reaching agreement on the BTA.

Technical change

63. While technical change was not a major factor, increasing access to information through improved information technology -- and partial relaxation of controls on the movement of people and information flows -- has helped society and the Government to more readily compare the country's performance with regional and international performance. While most of the population did not have direct internet access, information from the internet fed into the domestic media, and this probably helped increase pressure on the State to act to improve economic performance and livelihoods.

64. Improved information technology has also helped Government and other national researchers to access information on regional and international best practices. External comments on draft policies and legislation were provided by Email. The models of quickly registering enterprises over the internet, with searchable databases that were being adopted in countries such as New Zealand and Hong Kong, were quoted by policy makers as evidence of the potential positive impacts of a simplified business registration environment.

The election cycle and reforms

65. The National Assembly is elected every five years and meets 2-3 times per year. A Congress of the Communist Party of Viet Nam is held every five years, usually several months prior to the election of the National Assembly. The Congress elects the Central Committee and the Politburo. As discussed earlier, a Party Congress in 1996, followed by National Assembly elections in 1997, did result in leadership changes that were followed by the approval of actions plans to accelerate private sector reforms.

66. The nature of the system in Viet Nam is such that there is minimal public campaigning and pressures to increase public spending in the lead up to elections or Party Congresses. However, delays caused by the consensus oriented approach to decision making can be exacerbated in the lead up to Party Congresses and related meetings. Reform processes can slow down in the period prior to a Party Congress. Major policy initiatives are most likely to be introduced following a Party Congress and Party Plenums.

Role of external interest groups

67. Vietnamese policy makers actively seek information on regional and international best practices in designing reform programs. They frequently request information from external advisors and donors on experiences in Southeast Asia, China and other East Asian economies. Donors are frequently asked to assist in organizing regional study tours to learn from East Asian experiences with business development. External advice is sought to help provide counterparts with information and international experiences that may help in developing arguments for policy improvements. External advice is also sought to help develop capacity in applied policy research, to comment on domestic studies, policy proposals, and draft regulations, and to provide independent studies on key issues⁵⁸. Advice provided by external advisors and donors are sometimes reflected in policy reforms, but external inputs to policy formulation are mostly indirect, and the processes by which changes occur are difficult to define or attribute. Most foreign advisors find it difficult to understand the policy-making process, or even to reliably identify the key players.⁵⁹

68. Given the above it is difficult to accurately assess the overall impact that external interest groups had on the Enterprise Law reforms. Domestic policy makers involved in the reforms argue that external support helped in understanding the costs of regulatory barriers to private sector development, and that external advice, and study tours helped in the processes of drafting new policies and regulations.

69. Broader donor support to facilitating business development has been directed at: (i) providing a stable macroeconomic and institutional environment; (ii) improving the policy and regulatory environment; and (iii) strengthening institutions and policy implementation to promote business development. Modalities of assistance included: (i)

⁵⁸ This has been the rationale for a number of technical assistance projects (e.g., see CIEM (2000) Regulatory Environment for Business: Evaluation Report. CIEM/UNDP Project VIE/97/016. Unpublished document. Hanoi).

⁵⁹ Many senior national technocrats also note that the national policy-making processes are quite opaque.

joint donor dialogue with the government on business development issues; (ii) support in formulating new policies and regulations; (iii) institutional capacity building, and (iv) policy based lending. Painter argues that *“the main impact of the combined influences of technical assistance and loan conditions, with their attendant exhortation and monitoring, is probably to strengthen the hand of those within the Vietnamese government pressing hardest for accelerated reform and restructuring”*⁶⁰.

70. Policy based loans (loans provided subject to action on policy reforms) to Viet Nam were provided by ADB, IMF, Japan (the Miyazawa initiative) and WB⁶¹. Donors such as the Denmark, Sweden, and the UK have co-financed some WB support, but had little direct involvement in negotiating policy conditions. The Miyazawa initiative was closely linked to reforms in the enabling environment for the private sector and SMEs. WB and IMF supported broad macroeconomic reforms, and reforms in the institutional framework for business development, but were not directly involved in supporting Enterprise Law related reforms. More recently, the WB Poverty Reduction Support Credit (approved in 2001) includes several specific private sector development initiatives which reinforce some of the Enterprise Law reforms. ADB support has been focused on agriculture and finance sector reforms, and in the corporate governance of enterprises, but also included initiatives aimed at reducing barriers to private sector development⁶².

71. Some researchers argue that donors *“recognize that the level of tolerance for intrusive demands and conditions is not high among Vietnamese public officials”*⁶³. A GTZ study on the enabling environment for SMEs in Viet Nam found that *“Most national observers felt that while there had been substantive dialogue between government and donors on key policy issues that had helped in improving and developing the socio-economic development agenda in Viet Nam, formal policy based lending had not played a pivotal role in securing reforms. Many felt that, because of the strong national ownership of reform, policy based lending, was only effective when it was supporting reform measures for which there was already a broad national support. Some argued that donor attempts to accelerate reforms where there was no national consensus for reform -- such as the rapid transfer in ownership of State enterprises -- could be counterproductive.”*⁶⁴

72. In recent years donors have been increasing support to small and medium enterprise (SME) development in Viet Nam, with the aim of promoting private sector

⁶⁰ Martin Painter (2003), “The Politics of Economic Restructuring in Vietnam: the case of State Owned Enterprise ‘Reform’”, *Contemporary Southeast Asia*, 25(1), pp. 20-43).

⁶¹ Raymond Mallon (2002), *Approaches to Support the Development of an Enabling Environment for Small Enterprises: Viet Nam Case Study*, GTZ Report to the Committee of Donor Agencies for Small Enterprise, Turin, pp. 25-27.

⁶² Many major elements of the proposed enterprise reform agenda prepared under ADB technical assistance for the enterprise reform program were not included as program loan conditions (the ADB program focused on corporate governance), but have since been implemented.

⁶³ Martin Painter (2003), “The Politics of Economic Restructuring in Vietnam: the case of State Owned Enterprise ‘Reform’”, *Contemporary Southeast Asia*, 25(1), pp. 20-43).

⁶⁴ Raymond Mallon (2002), *Approaches to Support the Development of an Enabling Environment for Small Enterprises: Viet Nam Case Study*, GTZ Report to the Committee of Donor Agencies for Small Enterprise, Turin, p. 26.

development and poverty reduction. But the term SME is little used in national planning documents or the 5th Party Plenum (March 2002) resolution on private sector development. Government “SME” development policies are directed at State enterprises, cooperatives and the private sector.

(iii) Key Reform Changes

Main policy changes

73. The most significant change under the Enterprise Law was to simplify business entry. As discussed earlier, some of these reforms were introduced prior to the new Enterprise Law (e.g. simplification of business registration and relaxation of licensing requirements to engage in international trade). The Enterprise Law also included improved provisions: on private enterprise rights, protection against bureaucratic interference; providing increased flexibility to change business activities and structures; corporatisation of State enterprises; protection of minority interests; and on director and management obligations and creditor protection. The Enterprise Law reforms helped to:

- Reduce ambiguities and inconsistencies inherent in earlier legislation.
- Simplify enterprise registration and licensing procedures.
- Clarify the rights of investors and the enterprises to be protected from undue State interference in the operations of the enterprise.
- Provide an umbrella framework for a range of business entities previously governed by different legislation (joint-stock companies, limited liability companies (including providing for State enterprises to be incorporated as single owner limited liability enterprises), and sole proprietorship). It also provides for partnerships as a new form of business.
- Clarify procedures for changing the scope of business, merging or liquidating business entities, and for shifting from one form of entity to another. They no longer need to seek additional approvals from State agencies to change business activities, to establish additional offices or plants, or to change an address, investment capital, or shareholders, etc.

74. The Enterprise Law also includes many provisions aimed improved corporate governance, including:

- Clarify the rights and interests of company members, and especially the interests of minority shareholders.
- Clarify mechanisms for decision-making within the company structure.
- Better protect the interests of lenders by clarifying the conditions for withdrawing capital from company.
- Clarify procedures for profit distribution to protect the interests of shareholders.
- Define procedures for transferring ownership of non-cash assets.

75. There has been little, or no, post reform evaluation of these impact of these reforms. Gillespie⁶⁵ argues that in contrasting with the private sector support for market-

⁶⁵ Gillespie, John (2002), “Transplanted Company Law: An Ideological and Cultural Analysis of Market Entry in Vietnam”, *International Comparative Law Quarterly* vol. 51 (3), pp. 648-9.

entry deregulation “*entrepreneurs were less enthusiastic about reforming company internal management rules... they worried that imported corporate governance rules were remote from everyday practices and would further isolate entrepreneurs from the law. They also thought complex rules would confuse poorly trained regulators and judges.*” He argues that the emphasis in the reforms “*on technical sophistication over popular comprehension is partially attributable to [multilateral] technical assistance.*” The very limited domestic attention to the impact of corporate governance provisions of the Enterprise Law tends to support arguments that there was limited national ownership of the corporate governance provisions of the Enterprise Law. Some domestic experts argue that strong governance requirements were needed to build credibility in equitization, to help educate businesses about their corporate responsibilities, and to build foreign investor confidence in Vietnamese companies.

76. Subsequent changes in implementing regulations resulted in requirements for about 150 business licenses which restricted market entry being abolished. There have been gradual improvements in services provided by business registration offices (a number of provinces maintain websites to facilitate business registration), and more systematic dissemination of information to business about their rights and obligations. More generally, regulatory change combined with sustained high-level support for the reforms helped changed the attitudes of officials to adopt a more pro-business stand.

Chronology of key regulatory reform initiatives

77. The evolutions of laws governing business entities are summarized in Appendix 1. Key Enterprise Law specific reform events are summarized in the following table:

Table 2: Chronology of key events in the Enterprise Law reform process

Period	Key policy initiatives
early 1995	CIEM proposes a review of Companies Law (CL) and Private Enterprise Law (LPE) to clearly specify rights and obligations of limited liability and joint-stock companies.
late 1995	Government agrees to review CL and LPE.
8/1996	International workshop discusses 1st draft of revised laws. UNDP/WB experts provide advice on draft. First draft of CL borrows from sections of Thai legislation on companies.
Late 1996	3 rd draft of laws, building on international commentary, is circulated for internal comment.
June 1997	International comments on 5 th Draft of the Company Law.
28/11/97	8 th Draft of CL and LPE circulated for domestic and international comment.
12/1997	4 th Party Plenum (8 th Congress) ⁶⁶ called for broader enterprise reform and a more consistent regulatory framework for all types of business entities.
1/1998	Government establishes a formal drafting committee (Decision 37/QD-TTg, 13/1/98).
2/1998	Vietnamese lawyers attend workshop to discuss draft CL and LPE.
9-14/3/98	Workshop to review 8 th draft law of CL and LPE. Advice received from lawyers from NZ, Canada/Hong Kong, Germany and the USA. Debate generates public and media attention.
21/5/1998	National workshop of Government and business association representatives discuss draft report on issues in implementing old Company Law.
1998	Series of national studies highlight counter-productive business regulations, helping to focus attention on simplifying -- and reducing the cost of -- establishing new business.
7/1998	With the growing Asian financial crisis and declining FDI, the 5th Plenum stressed the need to

⁶⁶ 4th Plenum of the 8th Party Congress (December 1997)

Table 2: Chronology of key events in the Enterprise Law reform process

Period	Key policy initiatives
	mobilize and utilize the large amounts of untapped capital still “under the mattresses”.
6-7/1998	Meeting with businesses in Hanoi, Da Nang and Ho Chi Minh City to discuss draft Law.
7/1998	9th draft combines both laws under the Enterprise Law. The term Enterprise Law was adopted to allow the law to apply to all enterprises including SEs and FDI joint-ventures.
7/1998	Inter-ministerial circular (10/7/98), "Procedures for Establishing and Registering Private Enterprises and Companies" simplifies business registration procedures and requirements.
10/1998	Party Secretary General made pivotal speech to 6 th Party Plenum on need to better mobilize domestic resources by removing bureaucratic bottlenecks to business development.
10/1998	Report on comparative ASEAN business law distributed to National Assembly (NA).
11/1998	Report on issues and problems in implementing the Company Law circulated to NA.
12/1998	International consultants provide comments on 11 th draft of Enterprise Law. (This was last opportunity for international input).
12/1998	NA Standing Committee reviews proposed Enterprise Law reforms.
1-2/1999	6 th Party Plenum (2 nd session) highlights need to streamline bureaucracy to boost business and reduce corruption.
2/1999	Politburo endorses key Enterprise Law reforms.
3/1999	Report on implementing PE Law and Decree on household businesses submitted to (NA).
6/1999	NA approved Enterprise Law
December 1999	Steering Group for Enterprise Law Implementation SGELI is established to resolve difficulties in securing inter-ministerial consensus on EL implementing regulations.
Post Enterprise Law enactment reforms	
1/2000	Enactment of Enterprise Law
2/2000	Decrees 02 and 03 (3/2/00) and Decisions 19 (3/2/00) and 30 (11/8/00) abolish business licenses and procedures that are inconsistent with the Enterprise Law
2/2000	Private enterprises allowed to use land use rights as collateral to banks and for capital contribution or to joint-ventures. (Decree 04/2000/ND-CP (11/2/2000).
3/2001	9th Party Congress endorsed a Socio-Economic Development Strategy for 2001-2010 includes a commitment to move towards equal treatment for all enterprises.
11/2001	Government issues Decree 90/2001/ND-CP, 23 November 2001 outlining policies and establishing institutional mechanisms for promoting the development of SMEs.
12/2001	NA approves amendments to the Constitution to provide clearer recognition of the long-term role for the private sector.
2/2002	NA approved Amendments to 1996 Law on Issuing Normative Documents 02/2002/QH11 formalizes requirements for consulting on draft legal documents affecting business.
3/2003	5th Party Plenum gives an unambiguous commitment to private sector development. Party members allowed to own private firms.
7/2002	Government Action Plan ⁶⁷ to implement these resolutions.
23/7/2003	The Government issues a decree on facilitating the establishment of business associations ⁶⁸ .

Legislative and Executive actions

78. The reforms required both legislative change by the National Assembly and regulatory reforms by the executive branch of Government. And in Viet Nam, such reforms only occur with the strong support of the Party.

⁶⁷ Decision No 94/2002/QD-TTg (17/7/2002), “To Implement the Resolutions of the Communist Part on Private Sector and Collective Economy Development”.

⁶⁸ Decree 88/2003-ND-CP, “Issuing the Regulations on the Organization, Operations and Management of Associations.”

79. The Government requested relevant ministries to work with the National Assembly, business associations, and the Party to review and suggest amendments to the Company Law and the Law on Private Enterprises in 1995. Following slow progress, the Government established a steering committee in January 1998⁶⁹ (headed by the Minister for Planning and Investment) to accelerate reform. The Government agreed to committee recommendations to combine both laws under a single Enterprise Law in mid-1998. In all, it took more than five years between the decision to reform the Company Law and the Law on Private Enterprises, until the Enterprise Law was enacted to replace these laws.

80. The National Assembly approved the Enterprise Law in 1999. While the process of securing approval of the Enterprise Law was time-consuming, the consultations and public debate that took place during this process were crucial in building the public support for the law which helped in subsequent implementation. Implementation also required new decrees (approved by the Government), decisions (by the Prime Minister) and circulars (issued by ministers) to guide implementation and to repeal earlier regulations that were inconsistent with the new Enterprise Law.

B. Managing the Reform Process

(i) Reform formulation

Ex-ante assessment of the costs and benefits of reform options

81. While there was no formal ex-ante assessment of the costs and benefits of various reform options and alternatives, there was an ongoing process of efforts to improve policy reforms and regulations based on national, regional and international experiences. The Government actively sought advice from a range of sources. For example, the Government sought advice on the Enterprise Law from legal advisors with civil and continental law backgrounds, as well as advisors knowledgeable about company law in Asian economies⁷⁰. Thus, there was an ongoing process of seeking and assessing alternative sources of advice, but no formal cost-benefit analysis of options.

Discussion on options and trade-offs within the government

82. It is difficult for an outsider to assess this, but the extent of the change in the focus of reforms over time suggests considerable internal debate. As internal discussions progressed, there was increasing focus on simplifying the business enabling environment to reduce business start-up costs. This was seen as essential to accelerating employment generation and reducing corruption. Once there was agreement on the importance of simplifying entry, the focus of debate shifted to how best to achieve this while maintaining safeguards, and on the pace and sequencing of reform implementation.

⁶⁹ Decision 37/QĐ-TTg (13/1/1998) on Establishing a Steering Committee on amending the Company Law and the Law on Private Enterprises.

⁷⁰ In one notable workshop, CIEM invited lawyers from New Zealand, Canada/Hong Kong, Germany and the USA to comment on the draft law from 9-14 March 1998. There was considerable debate between the international lawyers, as well as between national experts and the international experts. The debate at this workshop attracted considerable national press attention.

83. There was much debate about the range of enterprises to be governed by the Enterprise Law. Some technocrats and private sector representatives argued that the law should apply to all business enterprises, including all State enterprises, foreign invested enterprises and cooperatives. Some State enterprises argued to retain a separate law to protect State interests. Some National Assembly and private representatives argued against including foreign invested enterprises under the Enterprise Law because of the lack of consultation that had taken place on this issue. They argued that it was better to gain experience in implementing the Enterprise Law, to be aware of implementation problems, and to engage foreign investors in discussions before generally applying the law to foreign investors. While the eventual focus of the Enterprise Law was on domestic private business, the Law also provides for State Enterprises, equitized enterprises and joint ventures enterprises with less than 30% foreign equity to be incorporated under the Enterprise Law. Provisions for State enterprises to be incorporated under the Enterprise Law as limited liability companies will facilitate improved governance and subsequent equitization. It is expected that, following a period of experimentation, the Law will be revised to cover all State enterprises and most foreign invested entities.

84. Another example of debate on alternative options is the ongoing debate on reducing business licensing requirements. Line ministries and some provincial authorities stood to lose considerable power, and scope for patronage, as a result of proposed reforms. Not surprisingly, there were attempts to defend these bureaucratic powers and access to extra-budgetary sources of finance, such as (official and unofficial) user fees related to business licensing. Social interest arguments were often used by ministries and provincial authorities for retaining business licenses, and if properly enforced there were valid social interest reasons for retaining licenses in some areas (e.g., for food and other social safety reasons).

85. Some of those pushing for accelerated reform argued that all licensing requirements should be removed within a certain time period, unless the concerned agencies prepared clear proposals on the need for the license with evidence showing that the license would be in the national interest.

86. Top-level commitment to reform, including the establishment of the Steering Group on Enterprise Law Implementation (SGELI), was important in overcoming some of the resistance to reform to push through significant reforms. However, while licensing requirements have been simplified in many areas, licenses remain in key manufacturing, mining, tourism, and trade areas.

87. Licensing issues continue to be debated internally (within the Government and Party) and in the press and business community. SGELI regularly complains about continuing failures of provincial and central authorities to implement key provisions of the Enterprise Law, and that *“many local authorities still hold on to their powers to issue sub-licenses and continue to employ the “ask-favor” system without regard for the*

*consequences for the business community*⁷¹. The Minister for Planning and Investment recently complained that while “The simplification of licensing procedures has facilitated the operation of more enterprises and increased the competitive edge of each enterprise”, the removal of “small” licenses has not been consistent among ministries and sectors⁷².

88. The Prime Minister issued a new directive in December 2004 to accelerate licensing reform. Noting that such directives had been issued annually since 2001 but had not been fully implemented, a *Vietnam Economy* reporter asked the Secretary of SGELI what was the problem. The response was that “*from what I can gather failures were the result of disagreement amongst ministries and agencies*”,⁷³. The new directive includes targets specific ministries and sets deadlines for each task, with quarterly progress reports to be sent to the Prime Minister.

Reforms were (are) part of a longer term reform process

89. As discussed earlier, the reforms were part of a long-term process of reform that started with the announcement of Doi Moi in December 1986. Reforms laying the foundations for the private sector have been steadily introduced since that time. There have also been much broader macroeconomic and institutional reforms that have also helped lay the foundations for private sector development. The marked shift in public and official attitude towards the private sector over this period has greatly helped in securing approval and implementation of the Enterprise Law reforms.

90. While the enactment of the Enterprise Law in 2000⁷⁴ was the most visible reform, there were, as discussed earlier, very important reforms introduced during the drafting stage (e.g., relaxation of restrictions on private sector involvement in external trade and simplification of business registration requirements), and since the law was enacted (most notably the implementing regulations on registering business and canceling licenses and permits contrary to the Enterprise Law that were issued in March⁷⁵). Since enacting the Enterprise Law, the Government has revoked about 150 business licenses and permits, and simplified other business licensing procedures. Despite considerable progress, business licensing remains a constraint and Government action plans call for further regulatory reform in coming years. Further amendments to the Enterprise Law are envisaged within the next five years to extend coverage of the Enterprise Law.

Learning and diffusion in facilitating policy formulation

91. “*Learning by doing*” and learning from regional experiences have been key features of reform efforts. Sometimes reform initiatives were initially implemented on a

⁷¹ Quoted in Gillespie, John (2002), “Transplanted Company Law: An Ideological and Cultural Analysis of Market Entry in Vietnam”, *International Comparative Law Quarterly* vol. 51 (3), pp. 654.

⁷² Voice of Viet Nam News, 3/11/03.

⁷³ “Legal framework to help firms concentrate on earning profits”, *Viet Nam Economy*, 11 January 2004. The report also quotes the SGELE Secretary as saying “*there’s nothing like a short deadline to move agencies into gear*”.

⁷⁴ Replacing the old Company Law and Private Enterprise Law.

⁷⁵ Decree 02/2000/ND-CP(2/3/00) on registering business under the business law, and decree 03/2000/ND-CP (2/3/00) and Decision 19/2000/QD-TTg cancelling licenses and permits contrary to the Enterprise Law).

pilot basis, and later formalized by regulatory changes. Often the regulatory changes formalized what was already happening in practice in some parts of the country. For example, the private sector began to emerge and small-scale private trading was widespread before it was formally legalized during the early stages of Doi Moi. Land use rights were widely used for collateral for informal credit before this was allowed. Some provinces experimented with changes in business registration requirements before formal regulatory changes were implemented. More recently, domestic business associations emerged prior to the issuing of decree legalizing their operations. Lessons learned from such experimentation fed directly into policy formulation.

92. The results of experimentation, plus information on comparative regional experiences, were disseminated to a broad range of stakeholders via the increasing media debate on business development issues, business association, and public-private consultations on business issues. In this way a broad range of learning perspectives fed into the policy formulation process. This helped in developing practical reform measures and in building support for change and for subsequent implementation. It contrasts with some of the more top-down attempts at reform (e.g., the Bankruptcy and State Enterprise laws, and equitization) where implementation has been problematic.

Interest group involvement in policy formulation

93. The main non-State interest group directly involved in policy formulation was the Viet Nam Chamber of Commerce and Industry (VCCI). VCCI was active in organizing formal and informal dialogue between the Government and business on business development issues. Dialogue included formal meetings organized throughout the country by VCCI. Some participants submitted written submissions and summaries of discussion were prepared and circulated to those directly involved in the policy formulation process. The lawyers association and smaller business associations also participated in formal and informal discussion on draft legislation, and provided written submissions to the Government on the need for reform. Private lawyers actively assisted the Enterprise Law drafting committee. The Viet Nam Business Forum provided another vehicle for supporting pro-private sector development reforms.

Champions of reform

94. The key institutional champions of the reforms were the Central Institute for Economic Management (CIEM) within the Ministry of Planning and Investment (MPI), and VCCI. The President of CIEM and the deputy Secretary-General of VCCI played high profile roles in engaging with policy makers, businesses and the business media to promote reforms. These “champions” were effective in putting together a team committed to reform and in mobilizing media and public support for reform which was important to success. They also played an important role in the Steering Group on Enterprise Law Implementation (SGELI)⁷⁶ which was established to overcome delays caused by difficulties in securing ministerial consensus on implementing regulations.

⁷⁶ Sometimes referred to in English as the Working Group on Enterprise Law Implementation.

95. CIEM played a deliberately pro-active role in championing business reforms. For example, CIEM produced and widely disseminated a report analyzing the experiences with the old Company Law. The report argued that cumbersome business procedures are circumvented in practice, encourage corruption, and add unproductive costs to doing business. The report argued that opportunities for corruption increase when civil servants have more discretion in administrative decisions. Key findings were disseminated via the media. Given increasing public concern about corruption, the widespread distribution of these findings undoubtedly helped mobilize support for subsequent reform. In an annual report for a UNDP financed regulatory reform project, CIEM summarized some of the ways that it had championed Enterprise Law reforms⁷⁷:

- *“Studies on issues and problems in implementing the earlier company and private enterprise laws were prepared and widely disseminated. The report provided powerful arguments for simplification of business registration and directly contributed to simplified regulations being introduced in July 1998 (inter-ministerial circular 05 in July 1998.*
- *Study report was published and circulated to all members of the National Assembly in November 1998. The study addressing similar issues with the Law on Private Enterprise was circulated to the National Assembly in May 1999. These reports were referred to frequently in National Assembly debate on the Enterprise Law.*
- *Articles based on this report were published and widely discussed in the local print and television media.*
- *Feedback from domestic investors attending workshops/seminars organised in Hanoi, Ho Chi Minh City and Da Nang to discuss the study and to obtain feedback on existing and proposed new legislation from domestic investors. Summary comments were compiled and circulated to drafting team members and other key policy makers. The Viet Nam Chamber of Commerce and Industry provided valuable support in facilitating these consultations. The time spent by senior managers of domestic enterprises in meeting with Project officials has added greatly to the regulatory drafting process.*
- *Study completed and workshop organized to identify key issues and recommendations related to the impact of economic crime provisions on business incentives. Study report provided input in amending the Penal Code in the November 1999 session of the National Assembly.”*

96. The experience of this project highlighted the important need to integrate applied research into policy reform processes (i.e., of the need to bridge the gap between policy makers and researchers). The targeted use of funds for applied research activities, using domestic research and consulting resources, was an important lesson for donors in supporting reforms. Such research helped improve the sophistication of public debates and the quality of reforms, while the use of domestic consultants helped build the capacity of domestic advocates of reform.

⁷⁷ CIEM (December 2000), VIE/97/016 Project Annual Report for 2000: Results and Future Issues, Unpublished report Hanoi.

Reforms: home grown or imported?

97. The reforms were largely home grown but, as discussed earlier, the Government actively sought to learn from regional and international experiences and best practices. External inputs to the process included presentation of regional and international experiences, assisting in analyzing potential impacts of policy reforms, and in commenting on draft laws and regulations. While the first draft of the Enterprise Law borrowed heavily from Thai Company Law, the general perception has been final draft was something quite uniquely Vietnamese. This is not surprising given that affecting major policy and institutional change in Viet Nam requires sustained efforts in consensus building, and that the law had been re-drafted many times following frequent consultations with stakeholders. The Enterprise Law reforms were only possible after intensive internal discussions had led to sufficiently broad consensus on the directions of these reforms.

98. Nevertheless, Gillespie argues, while there is strong high-level and private sector support for market entry reforms, most of the corporate governance provisions in the Enterprise Law resulted from external inputs⁷⁸.

(ii) Reform implementation

Institutional arrangements and capacity

Institutional arrangements and leadership

99. The Prime Minister established the Steering Group on Enterprise Law Implementation (SGELI) 29 December 1999 to overcome delays caused by difficulties in securing ministerial consensus on implementing regulations. The 20 member SGELI was led by the then Minister of MPI (Mr. Tran Xuan Gia), and reported directly to the first Deputy Prime Minister (Nguyen Tan Dung). The former secretary of the Enterprise Law drafting committee also served as secretary to SGELI, and CIEM provided secretariat support to SGELI. Many of the other members of SGELI had also been actively involved in the formulation of the Enterprise Law reforms.

100. Effective implementation of the Enterprise Law also required complementary action at the provincial level, with Departments of Planning and Investment at the provincial level being responsible for registering new business. The ‘fuzzy legality’ discussed earlier, meant that actual implementation of the Enterprise Law varied greatly between provinces, especially in the initial stages. Some provinces established task forces to facilitate implementation, some established “one-stop” business registration offices with tight time guidelines for processing applications, and some developed internet based business registration and information services. However, other complained about the lack of clear implementing guidelines and made minimal changes. Many provinces now

⁷⁸ In a recent paper, John Gillespie (2002), “Transplanted Company Law: An Ideological and Cultural Analysis of Market Entry in Vietnam”, *International Comparative Law Quarterly* vol. 51 (3), pp. 641-672, argues that external technical advisors were partly responsible for the Enterprise Law emphasising “technical sophistication over popular comprehension.”

organize regular formal consultations with the business sector to identify ongoing problems and constraints to business development.

‘Local’ rules

“The Enterprise Law states that the relevant authorities must grant certificates of business registration within 15 days of application. The fee for the issuance of business registration certificates is VND 100,000 for private enterprises and VND 200,000 for other companies. In practice... enterprises must go through many “doors” at a cost of no less than VND 3 million. In various localities, enterprise owners... are confronted with requests for many documents deemed necessary only in the opinion the official in charge... even though these are not required by the relevant regulations. In the case of some enterprises whose business is considered ‘sensitive’ because of concerns about ‘social evils’, even though not forbidden by law, local authorities order their temporary suspension or insist they gain approval from the local People’s Committee prior to registration... the costs involved in just registering a business to participate in the market in some localities is as high as VND 1,500,000... Post-registration procedures are no less difficult. Enterprises must travel to and fro up to seven times to complete the procedures of appending the seal of the enterprise name, which takes fifteen more days. This adds an average of VND 600,000 Đ 800,000 to the process. Quite a few enterprises have to pay seal-engraving establishments (appointed by the police agency) to get the seal earlier than regulated, creating an unnecessary privilege for such establishments. The next step is to register the tax code at the local tax bureau. Generally this requires four trips to the tax bureau and a wait of 15 days or even a month to get the certificate of tax code registration, mainly for farcical reasons like the absence of the relevant official, an error in the network transmission or the absence of the file-keeper.”

Source: Quynh Trang, Vietnam Economic Times, (03/12/2003)

Requirement for inter-agency collaboration in reform process

101. Most “sensitive” decrees issued by the Government of Viet Nam require extensive consultations, because reservations by a single ministry can delay the process of approving and implementing reforms. Controversial decrees may have to be circulated and revised many times to reach a consensus. When it was clear that such delays were likely to delay Enterprise Law implementation, the Government established the inter-ministerial SGELI as a mechanism to accelerate this process. The Government was under pressure to act as the National Assembly had instructed the Government to issue key implementing regulations prior to the enactment of the Enterprise Law.

102. While the SGELI has resolved some problems, inter-agency coordination remains problematic. SGELI recently complained about the lack of coordination and asked state agencies to “change their management mindset and put themselves in the shoes of enterprises”. SGELI recommended that “the Ministry of Planning and Investment, the Ministry of Public Security and the Ministry of Finance should issue a joint circular to shorten the period it takes to grant a business license and make it easier for enterprises to reduce the cost of market participation. After granting the business registration certificate, the business registration agency should immediately send a copy of the certificate to the relevant seal-management police agency and tax agency. With this co-

*ordination, waiting time for business registration, seal engraving, tax code registration and buying invoices will be reduced ... a member of the Working Group noted that “the good offices of the three above-mentioned bodies will help reduce the time of market participation for enterprises from the current 60 days to only 20 or 25 days, including 7-10 days for granting the business registration certificate.”*⁷⁹.

Adequacy of institutional implementing capacity

103. Implementation arrangements worked in the sense that enterprise registrations far exceeded most expectations. However, the capacity of business registration offices and other provincial offices responsible for enforcing business regulations remain weak. There is no national business registration system, and the same business names are often registered many times in the one province. There is very little follow-up to ensure that businesses continue to comply with business registration requirements (e.g., publishing details of enterprise establishment, providing up to date information on directors and contact details). There has also been very little follow-up or analysis of implementation of the strengthened corporate governance requirements.

104. While enforcement of basic compliance requirements is weak, there continues to be extensive post-registration inspections and interference that impeded business development. As discussed earlier, there is a widespread public perception that this reflects rent-seeking behavior by the concerned agencies. There has been high-level commitment to reducing such interference, but it remains a major problem. Some provinces have tried to develop mechanisms to address the problem (regular consultations and “hot-lines” for complaints). Other provinces have taken steps towards ISO 9000 certification to ensure greater consistency and predictability in the services provided by provincial agencies to businesses. As noted earlier, the Party and Government are also increasingly focusing on anti-corruption initiatives.

105. SGELI recently announced results of a survey of market participation costs of enterprises operating under the Enterprise Law which found that *“newly-established enterprises are confronting the return of troublesome and cumbersome unwritten procedures among various local authorities. This not only makes it difficult for enterprises entering the business world, but also distorts the Enterprise Law which is regarded as a breakthrough in administrative reform ... In various localities, enterprise owners applying for business registration are confronted with requests for many documents deemed necessary only in the opinion the official in charge, such as rental contracts or certificates of building ownership, even though these are not required by the relevant regulations. In the case of some enterprises whose business is considered ‘sensitive’ because of concerns about ‘social evils’, even though not forbidden by law, local authorities order their temporary suspension or insist they gain approval from the local People’s Committee prior to registration. That approval usually costs a lot of money, and often discourages new businesses.”*⁸⁰ Improving implementation capacity clearly remains a key priority in promoting private sector development.

⁷⁹ “Old obstacles re-emerge”, Vietnam Economic Times (3/12/03).

⁸⁰ “Old obstacles re-emerge”, Vietnam Economic Times (3/12/03).

Availability of resources

106. The positive impact of the reforms suggests that “adequate” resources were available. The Enterprise Law reforms were a very high priority for CIEM, and had priority in terms of their staff resources and donor funding. The question then is whether more could have been achieved with more resources? There were times during the reform process where additional consultations were planned, but had to be reduced because of lack of budget. Some proposals to send key staff on highly relevant short-term regional and international training could not be funded. And at times it would have been useful to have additional funds for domestic studies on particular issues related to the Enterprise Law. On the other hand, the amounts of external funding needs were relatively minor, and when high priority needs arose, several key donors were cooperative and quite flexible (especially in terms of providing foreign experts).

107. The key skills needed were in economic policy analysis, in talking with the business sector to identify constraints, and in mobilizing official and public support for reform. There was also need for specialist legal drafting skills. Most CIEM staff were economists, and they needed domestic and foreign legal consultants to assist with drafting and to provide information on regional and international comparative best practices. The champions of reform took the lead in promoting public debate and building official support for change. External technical assistance provided a relatively minor addition to available resources, but was judged by the major domestic officials involved in the drafting process to have played a valuable role in improving the quality of reforms. External support also helped in funding contributions from private firms (e.g. legal and economic consultants) and from domestic research institutes.

Compensating losers

108. No systematic steps were taken to directly compensate losers. There were few losers, and these were mostly officials who had previously been engaged in rent seeking activities. Some established enterprises (especially State enterprises) may have lost out because of increased competition. However, some potential losers continue to be protected by restrictions on entry to a limited number of “strategic industries”.

Interest group involvement in process

Main interest groups

109. Working with SGELI, CIEM and VCCI continued to play major roles in facilitating implementation of the reforms. New business associations were also emerging, such as the Young Entrepreneurs Association, and playing an increasingly important role in raising problems with implementation. CIEM and VCCI (with UNDP and AusAID support) supported the training of officials responsible for implementation, as well as the training of business representatives to increase awareness of their rights and responsibilities. Sections of the business media also supported implementation through efforts to raise awareness and encouraging debate on barriers to implementation.

110. Some ministries (notably line ministries that owned State enterprises and/or were responsible for issuing business licenses), provincial officials and SEs were less

supportive of the reforms than others. A recent study of SE reform in Viet Nam stressed the importance of “*the inclusion in the state of significant commercial or business interests and their strong linkages with the party and with key state institutions, including the military. Their state positions give access to significant wealth, as well as power. The perspective adopted here is that successful management and containment of the conflicting ambitions of these groups... is a critical part of the maintenance of state policy capacity.*”⁸¹ Such interest groups also resisted Enterprise Law reforms because of the potential for increase competition. State officials resisted reforms because the removal of administrative discretion effectively reduce their power, and for some opportunities for additional income. Ideological, national interest, market failure and social interest (e.g., consumer safety) were used as arguments to resist elements of the reform program.

111. The trade union movement did not play a major role in the formulation and implementation of the Enterprise Law reforms. The Confederation of Trade Unions in Viet Nam is closely associated with the Party apparatus and is guided by Party policies. Moreover, most domestic private enterprises are very small and the role of trade unions in the domestic private sector is quite weak.

Mobilizing interest groups support for reform

112. The consultative process adopted during the drafting of the new Enterprise Law was a key turning point in Government relations with the business sector, and in the broader context of policy formulation. Consultations between government, the domestic business community, the media, and members of the National Assembly were protracted and substantive, resulting in widespread support for, and awareness of, this legislative reform. Reform proposals also included explicit reference to regional experiences with private sector development. The substantive consultations appear to have helped build business confidence that the Government and Party were serious in their commitment to private sector development.

113. The growing public debate about administrative barriers to business development reflected both growing grassroots discontent with cumbersome and costly administrative procedures, and the public dissemination of more systematic analysis of the equity implications of administrative and regulatory constraints to private sector development by CIEM, VCCI and other organizations. The Government and the champions of reform were able to mobilize this discontent to build support for reform.

Impact of ethnic or other divisions on implementation

114. Ethnic divisions were not a significant factor in the enterprise law reform formulation or implementation. Simplification of regulations and reductions in administrative discretion should benefit the ethnic minorities, who tend to be under-represented in the bureaucracy, and thus were less likely to be sharing in the economic rents of the previous less competitive environment.

⁸¹ Martin Painter (2003), “*The Politics of Economic Restructuring in Vietnam: the case of State Owned Enterprise ‘Reform’*”, *Contemporary Southeast Asia*, 25(1), pp. 20-43).

115. While some commentators remark on differences in entrepreneurial spirit between Hanoi and Ho Chi Minh City, both cities have similar levels of new business registrations per population (both in terms of numbers and registered capital per person)⁸². A recent CIEM study⁸³ found, not surprisingly, that there are much higher concentrations of private companies in urban than rural areas. The study also found that some rural provinces appear to have been more enthusiastic than others in working with the business sector to implement the Enterprise Law and to promote private sector development. However, it is difficult to link differences to ethnic or regional differences.

Communicating Government policy decisions to the public

116. Government drafting committees regularly, but not systematically, distributed drafts of new legislation to mass organizations for comment. From the early 1990s, distribution became more common and reached a broader range of interest groups, including the business associations. By the mid-1990s, drafts of some legislation were being widely circulated for comment. All business legislation is now published in the Government Gazette and many key documents are published and/or publicized in the domestic business media. There are national and some provincial level websites providing information on business regulations. These have been developed by State agencies, business associations, and commercial interests.

Assessment of Implementation Experience

Planned versus actual implementation period

117. The Enterprise Law, as passed in June 1999, was to be implemented in 2000. Implementing regulations were to be issued prior to the date. By late December 1999, it was clear that inter-Ministerial differences meant that key implementing regulations would not be ready. A key aim in establishing SGELI was to speed up this process. The Enterprise Law was officially enacted from January 2000, as scheduled, but full key regulations guiding the registration of new enterprises were not issued until early February 2000. As discussed earlier, the pace of implementation varied between provinces. Most of the more developed provinces moved fairly quickly to issue provincial guidelines governing business registration, and many reorganized business registration offices to provide more streamlined services. Progress in other provinces was much slower. Data on enterprise registrations per province are included in Appendix 1.

118. Despite marked improvements, targets to simplify business licensing requirements have often not been fully achieved. Efforts to reduce government interference in day-to-day business operations have been less successful than hoped. This partly explains why households remain a much more important source of output, income and employment than private businesses established under the Enterprise Law.

⁸² Appendix 1 provides a breakdown of numbers of newly registered enterprises and their registered capital per population by provinces since 2000.

⁸³ CIEM (2003), "Comparative Provincial Performance in Private Business Development: Some preliminary observations from nine provincial case studies", Draft unpublished report.

Household enterprises operate under a separate decree, but are still formally required to register at the district level. Reasons household businesses give for maintaining their status as household enterprises include: (i) they prefer to deal with commune and district officials that they know; (ii) book-keeping and reporting requirements are simpler; (iii) to avoid Labor Code provisions; (iv) they did not have to deal with the VAT paperwork; (v) they prefer to operate under a family structure, and; (vi) they prefer their taxes to go to local authorities to improve local infrastructure and services⁸⁴. This partly reflects limited technical and management skills of such entrepreneurs, and their difficulties in accessing information on opportunities.

Policy reform reversals

119. While there have not been any major reversals, there continues to be ongoing debate about how far de-regulation of business licensing should go, and at times government line agencies and provincial authorities continue to issue regulations that are counter to the spirit of the Enterprise Law, impeding implementation of the Enterprise Law. Realizing the full market entry and operational objectives of the Enterprise Law will require sustained effort at regulatory reform. Recent reforms in regulatory processes⁸⁵ will help in this regard, but there is need for ongoing applied studies to identify and publicize continuing barriers to competition and efficiency. Achieving the corporate governance objectives will require much greater public awareness and the development of key market institutions, including professional services.

120. Despite some setbacks, there appears to be little risk of a major reversal of recent reforms. It is much more likely that further reforms will be implemented to consolidate and extend improvements in the enabling environment for private business. The 5th Party Plenum (2002), on private sector development, and the National Assembly (November 2003) requested further studies to amend the Enterprise Law to further improve the business environment, and to extend the coverage of the Enterprise Law to cover foreign invested enterprises.

Government commitment to reforms and credibility

121. Strong official endorsement (by the Party, Government and the National Assembly) of the private sector appears to have had a significant impact in building investor confidence, and in increasing pressure on those mid-level officials that have been reluctant to implement streamlined business procedures. The resolutions of the 4th Plenum of the 8th Party Congress (December 1997) mapped out the major business reforms introduced during the last few years.

122. The resolutions of the 9th Party Congress (March 2001), and the 5th Plenum of the 9th Party Congress (March 2002) demonstrate a high level commitment to improving the enabling environment for private business. The 9th Party Congress endorsed a Five-Year

⁸⁴ CIEM (2003), "Comparative Provincial Performance in Private Business Development: Some preliminary observations from nine provincial case studies", Draft unpublished report.

⁸⁵ National Assembly (2002), Amendments to 1996 Law on Issuing Normative Documents (02/2002/QH11) formalizes requirements for consulting on draft legal documents affecting business.

Plan (2001-2005)⁸⁶ in 2001 that emphasized the need “to encourage enterprises and people to invest and conduct business” to eradicate hunger and reduce poverty through a more competitive economy with higher growth rates. The Plan called for:

“... to ensure that every economic sector will be provided with suitable conditions for development, cooperation, and fair competition.... All forms of discrimination will be abolished, ensuring equal opportunities and choices for economic sectors in access to capital, land labour, technology, production and import/export activities. The State will further capitalize on the positive impacts of the Enterprise Law, by preparing a uniform legal framework for all enterprises of all economic sectors.”

123. The Plan also stressed the need to establish a comprehensive set of market institutions: “an enabling environment will be created for market entry and exit to all enterprises and individuals, helping them to engage in business contracts freely, to have autonomy and responsibility in business, to minimize the State’s administrative intervention in business activities, and to ensure transparency and enforcement in business”. It stresses the need to strictly enforce the Enterprise Law, to improve the regulatory framework for enterprises, and to address inadequacies in the capital, labour and land markets. It also calls for the restructuring of SEs -- through corporatization, equitization, divestiture, leasing and contracting-out -- to be largely completed by 2005⁸⁷.

124. The 5th Party Plenum (March 2002) was particularly important in signaling an ongoing commitment to increasing the role of the private sectors. The Plenum stressed that the private sector is:

“an integral part of the national economy. In the past years, the Party and State reform guidelines and policies have enabled the private economy to grow vigorously nationwide, spreading out to all branches and sectors which are not prohibited by laws and have mobilised more social resources in production and business thus generating more jobs and procuring further for the State budget and making an important contribution to GDP growth.”⁸⁸

125. The 5th Party Plenum endorsed measures to further improve the business climate and a fair and competitive playing field for all enterprises and set priorities for further reform to support private sector development, including: (i) further improving the Enterprise Law and reduce remaining barriers to the entry of new businesses; (ii) changing the land law and mortgage procedures to make it easier for the private sector to use land use rights as equity and/or collateral; (iii) facilitating lending to the private sector through the provision of guarantees and consulting services; (iv) changing the accounting system to encourage private enterprises to adopt professional accounting systems; (v) clearly distinguishing between civil and criminal violations of commercial

⁸⁶ GOVN (2001), Directions and Task for the Five-Year Socio-Economic Development Plan (2001-2005), page 39.

⁸⁷ Party Resolution No. 05-NQ-TW (24 September 2001) of the Third Party Plenum of the 9th Congress outlines an action plan for accelerating State enterprises reform

⁸⁸ http://www.cpv.org.vn/index_en.html

regulations; (vi) encouraging national leaders to promote the image of the private sector; and (viii) allowing business people to retain Party membership. The fact that the Party recognized the need to promote the image of the private sector indicates that the leadership is aware of the importance of building public support for reform, and of sending credible signals of commitment to private sector development.

126. Such commitments have been reinforced by Government directives and actions, and regular pronouncements by the SGELI. Senior leaders repeatedly referred to these commitments in national speeches, during annual national meetings with the business community, in the media and in consultations with the businesses sector and other stakeholders. Prime Minister Phan Van Khai, in a speech to a November 2003 workshop reviewing four years of implementation of the Enterprise Law noted that “*The Enterprise Law has remarkably contributed to the development of enterprises in terms of quality and quantity, thus attracting the number of workers, reaching high economic growth rate, and bringing a facelift to the nation.*”⁸⁹ Following this meeting, the Prime Minister issued a directive with clear times for actions by ministries and local authorities to address constraints raised at this meeting⁹⁰.

C. Impact of Reforms

Main beneficiaries of reform: the winners

127. Businesses newly registered under the Enterprise Law, and workers employed by these business, were the major beneficiaries of the reforms. As shown in Table 5, there was a dramatic increase in new business registrations after the Enterprise Law was enacted in 2000. Most new businesses were sole proprietorships, limited liability companies and joint stock companies (including equitized State enterprises). Relatively few partnerships have been established.

Table 3: New business registrations

Types of Enterprises	1991-98*	1999*	2000	2001	2002	2003#	Total
	Number of newly registered enterprises						
Private enterprise	26,708	2,427	6,468	7,100	6,532	4,221	24,321
Limited Liability	12,163	3,147	7,244	11,121	12,627	9,187	40,179
Joint-stock	316	208	726	1,550	2,305	2,210	6,791
Others	0	0	19	30	71	68	188
Total	39,187	5,782	14,457	19,801	21,535	15,686	71,479
	Total capital of newly registered enterprises (billion VND)						
Private individual	5,261	971	2,813	3,877	4,112	2,708	13,511

⁸⁹ Voice of Viet Nam (3/11/2003). http://www.vov.org.vn/2003_11_03/english/kinhte1.htm

⁹⁰ Directive No. 27/2003/CT-TTg (11/12/03), “Continuing intensification of the implementation of the Enterprise Law and encouraging the development of Small and Medium-Sized Enterprises”, calls on ministries and provincial authorities to review all legal documents that have issued relating to operation of businesses and abolish, supplement or amend inappropriate regulations, and to issue new regulations to facilitate business development.

Limited Liability	12,236	4,280	7,985	14,168	19,111	14,844	56,108
Joint-stock	3,739	1,106	3,032	7,565	14,921	15,416	40,935
Others	0	0	73	160	385	476	1,093
Total	21,239	6,354	13,904	25,770	38,530	33,443	111,648

* registered under the old Law on Private Enterprise or Company Law.

to July 2003. More detailed analysis of trends in business registration are available in CIEM (2002), "The Enterprise Law's Enforcement: Achievements, Challenges and Solutions".

Source: Enterprise Registration Database.

128. While not directly governed by the Enterprise Law, household business that have not changed their status have also benefited from progress in changing official and social attitudes towards the private sector. There were also spillover impact to firms and other doing business with these enterprises. Consumers benefited from the impact of increased competition. The status of business associations and the business media were probably strengthened, because of their increasingly prominent role in the reform process.

129. Smaller enterprises wanting to incorporate in a more formal structure reforms have gained the most because the costs of complicated procedures are largely fixed (i.e., not related to enterprise size). Business entry costs could account for a large percentage of their total costs structure of smaller enterprises. Costs of complex and less transparent regulations were particularly high for less well connected firms (i.e., those without personal access to decision makers in the bureaucracy, including firms in isolated and rural areas and firms headed by ethnic minorities, women and other groups that are underrepresented in Government). Thus, simplification of procedures helped to reduce the bias against such groups establishing new businesses.

130. The power of central economic planning agencies was probably strengthened relative to those sector based line ministries and provincial authorities that lost economic and political power from licensing reforms because of the increased competition faced by State enterprises "owned" by these agencies.

Losers from the reform process

131. The main losers from the reform process were the public agencies and their employees (at central, provincial and district levels) responsible for making administrative decisions related to business registration and licensing. They lost the political power associated with making discretionary decisions, and opportunities to raise revenue (formally and informally) through user charges for processing applications. Their losses were very minor relative to gains, but the losses could be large -- and sometimes very large -- for the concerned individuals. Often these individuals were close to the political power structure at the level at which they operated. Such individuals had strong individual incentives to resist change.

132. However, most officials also have family members and friends engaged in business. While some of these businesses may have preferred the status quo (with their preferential access to administrative decisions and less competition), others would have benefited from simplified procedures (e.g., close links with district or even provincial

officials were often of little value in securing export licenses). The fact that many potential losers were closely involved with potential beneficiaries of reform has probably helped reduce resistance to reforms. Nevertheless, some officials continue to try to create new opportunities to raise income from enterprises: a recent State newspaper article on the Enterprise Law demanded that “*cadres and state officials... must not arbitrarily make up procedures to harass enterprises for bribes*”⁹¹.

133. State enterprises and some established private enterprises have lost because of increased competition, and reduced profits, as a result of de-regulated entry.

Financial/economic benefits and costs to Government and other stakeholders

134. There were minimal financial and/or economic costs to the Government of the reforms. Immediate economic benefits included freeing up considerable staff time from administering the previously cumbersome system of regulating businesses, and in increasing the credibility of the government in the view of many business people.

135. The larger benefits have been the rapid growth in private sector investment and employment. This has played an important role in increasing incomes and reducing poverty, and is beginning to be reflected in increased private sector tax revenue.

136. The costs to other stakeholders were outlined in the previous section on losers from the reform process.

Net impact of reforms

137. The Enterprise Law reforms simplified procedures for registering new businesses, and for operating and expanding these businesses. Simplified procedures have reduced opportunities and incentives for corruption, reduced uncertainty about the legality of business operations, and allowed investors to focus their efforts on business development. A tangible impact of the changes has been the marked reductions in the time between submission of dossiers requesting business registration and approval, and reductions in the average costs of registering a company. Domestic experts estimated that, prior to the reforms, the total time required to establish a private enterprise was 6-12 months⁹² and cost from USD 700-1,400. CIEM recently estimated that the average start-up costs for small businesses are now about USD 350, with a total time to complete start-up procedures reduced to about 2 months (including 15 days for business registration)⁹³.

138. The net result was a dramatic increase in the number and total registered capital of new private enterprises following the enactment of the Enterprise Law in January 2000 as shown in Table 5. Up until the end of 1996, only 190 joint-stock companies, 8,900 limited liability companies, and 21,000 private enterprises had registered under the 1990

⁹¹ Viet Nam News (17/12/03).

⁹² Nguyen Dinh Cung (2002), Implementation of the Enterprise Law: New way of Policy Enforcement in Vietnam”, unpublished presentation, CIEM, Hanoi.

⁹³ “Enterprise Law throws open investment floodgates”, Viet Nam News Service (10 July 2002), and “Enterprise Law energises economic change”, Vietnamnet, ((30/10/03) <http://english.vietnamnet.vn/reports/2003/10/17602>).

Company Law and Law on Private Enterprise. This had increased to 524 joint-stock companies, 15,310 limited liability companies, and 29,135 private enterprises had registered under the 1990 Company Law and Law on Private Enterprise by the end of 1999.

139. Following enactment of the Enterprise Law in 2000, numbers and the registered capital of enterprises of enterprises rose sharply. By July 2003, there were more than 70,000 newly registered enterprises - including 6,791 joint-stock companies. This rising number of private enterprises is now starting to be reflected in an increasing contribution of private business to GDP. The SGELI estimates that about two million new jobs were created by these firms, bringing total private enterprises employees to six million⁹⁴.

140. Of course, many of these “new” enterprises had previously been operating as household businesses or informally. There are also possibilities of some double counting, as some enterprises have (unnecessarily) registered more than once as they open branches in other province. As in any market economy, a significant number of the registered enterprises will have subsequently ceased operations⁹⁵. And some will have been established for fraudulent purposes (e.g. as part of tax avoidance schemes). Nevertheless, the growth trend is impressive.

Constraints to realizing reform benefits

141. While a promising start, the ratio of registered companies to population in Viet Nam -- and their contribution to GDP -- remains low relative to regional standards. Thus, the potential for further increases is substantial, but this will required sustained efforts to reducing remaining barriers to entry, and to the ongoing operations of business entities. As noted in the discussion in the implementation section, while the cost of entry has been greatly reduced, it remains much higher than regional norms. Business start-up costs are in the order of one-year’s income for most Vietnamese. And in contrast to Enterprise Law reform objectives, the cost of frequent Government inspection and other interference in business operation continues to be a significant constraint to business development. The extent of such problems varies between provinces, and the sector in which business are operating. A sustained medium term program of regulatory review and reform will be required to address remaining weaknesses.

142. There has been little domestic or international assessment of the demand for, and enforcement of, the corporate governance provisions of the Enterprise Law. The lack of focus on the issue suggests that this may be relatively low priority for key stakeholders but, given the extensive attention to corporate governance in the Enterprise Law, it is an issue that warrants more attention.

⁹⁴ This excludes considerable private sector employment in agriculture and household firms.

⁹⁵ Estimates of the number of enterprises that have ceased operations vary greatly from 10-40%. As reported in Viet Nam News Service (10/7/03), a recent CIEM estimate was that 15% of enterprises registered under the Enterprise Law had subsequently failed.

143. Even though Viet Nam is a “one Party” system, vested interests continue to resist reforms that leave them at a disadvantage. Line ministries and provincial authorities resist regulatory reforms and propose new regulations that run counter to the spirit of the Enterprise Law reforms. In some cases, this delays reform and/or results in less than optimal short-term compromises in reform processes. Thus, sustained efforts are needed to further improve the regulatory environment and to resist policy reversals.

D. Lessons Learned

Reform ownership

144. Strong national ownership of the reform process has been crucial in successfully implementing change. A strong domestic commitment to increased living standards, employment, and incomes through business development was key factor in achieving progress. Strong national ownership of the reform process helped in building public support for reforms, and this has helped in subsequent implementation.

145. Success in implementing the Enterprise Law reforms owed much to sustained efforts to mobilize broad support for reform, including extensive consultations with all key stakeholders. Consultations helped in improving the quality of reforms and in building the public support for reform that can greatly facilitate implementation. Proponents of reform need to work with business, media, legislators and industry organisations to help build support for reform. However, such consultations are time consuming: outcomes can be unpredictable and contribute to delays.

146. External factors may have helped improved the quality of reforms, and provided additional stimulus for reforms, but the reform process was driven by domestic factors.

Reform process

147. The reform process was more important than changes in the Enterprise Law itself. There was little excitement by international observers about the Enterprise Law when it was passed and first enacted. Many of the Enterprise Law provisions deal with corporate governance issues that have not been enforced. The consultative approaches to reform, the public debate about the important role of the private sectors, more frequent senior level commitment to private sector development, more active business associations, and an increasingly pro-business media helped build investor confidence, change social attitudes, and increased pressure on officials to adopt more pro-business practices.

148. There was little, if any, formal cost benefit analysis of alternative policies. Reforms involved considerable “learning by doing”. The results of policy experiments, plus information on comparative regional experiences, were disseminated to a broad range of stakeholders via the media, business association, and public-private consultations on business issues. In this way a broad range of learning perspectives fed into the policy formulation process. This helped in developing practical reform measures and in building support for change and addressing resistance to change from vested interests. This has helped facilitate subsequent implementation and contrasts with some

of the more top-down attempts at externally driven reforms (e.g., the Bankruptcy and State Enterprise laws, and equitization) where implementation has been problematic.

149. Arguments from researchers that reforms would help create employment, reduce poverty, and promote equitable development helped in attract high-level support for the reform. The analysis, dissemination and public discussion of information on the winners and losers from reform process can help in overcoming resistance from vested interests. Domestic research organization (like CIEM) can play a valuable role in building support for reform by disseminating research information on the distributional impacts of reform.

150. Reform takes time, but at the same time, opportunities to improve the enabling environment can emerge unexpectedly. Rushing reform can be counter-productive, but at the same time flexibility is needed to respond quickly to new opportunities.

151. Reforming business regulations is only one element of the enabling environment. Many of the major business enabling environment issues are also key issues in the broader development agenda. Reform issues that are likely to have major impacts on small enterprises development include: (i) public administration reform; (ii) land policy and administration systems (iii) taxation; (iv) access to information; (v) financial services; (vi) contract enforcement; (vii) business associations and improved advocacy support; (viii) increased local involvement in planning infrastructure and services.

Role of interest groups

152. Even in a “one Party” system, vested interests resist changes that disadvantage them. Line ministries and provincial authorities resist regulatory reforms and propose new regulations that run counter to the spirit of the Enterprise Law reforms. Thus, sustained efforts are needed to further improve the regulatory environment and to resist policy reversals.

153. The establishment of a steering committee to oversee drafting of the Enterprise Law -- and another committee to accelerate work on implementing regulations and monitor and evaluate Enterprise Law implementation -- helped to overcome resistance to reforms from some officials in line ministries and provincial authorities.

154. Analysis showing that reforms increase investment and employment, reduce poverty, and ensure more equitable income distribution can be useful tools in building support for reform and resisting vested interests. The use of domestic consultants in undertaking such studies can help in strengthening domestic proponents for reform. Donor support to assist national institutions to publicize policy studies and draft laws and regulations, to undertake comparative studies and to conduct well-structured consultations can help in building support.

External impacts

155. Donor support helped facilitated the formulation and implementation of improvements in the Enterprise Law reforms, and increased Government dialogue with

the business sector. Donors have also helped raise the profile of public policy debate on links between regulatory reform, business development, equity, and poverty reduction.

156. External support to these reforms was successful because there was a strong demand for this support by the national champions of reform. This demand emerged from earlier cooperation between key donors and proponents of reform. Supporting national efforts to build reform commitment appears to have been more effective than earlier attempts to impose business reforms (e.g., requirements to issue the Bankruptcy and State Enterprises Laws under a policy based loan).

157. National counterparts sometimes preferred to obtain support for sensitive policy reforms to be provided by donor agencies perceived as “neutral” or less ideological in the provision of advice, and/or with long established development cooperation relationships. Multilateral donors were sometimes seen to be more likely to provide a mix of international perspectives to sensitive issues.

Designing external assistance to support reforms⁹⁶

158. As noted earlier, national ownership of reform processes was crucial to reform success. This implies that counterpart agencies need to play a leading role in defining TA needs and be actively involved in designing support. Counterpart and funding agencies should have a shared view of needs and the role of donor support. Achieving a shared view can require protracted dialogue between counterpart and donor agencies. Because opportunities to push forward with reform can emerge unexpectedly, donors also need have some flexibility to respond to emerging opportunities.

159. Also important is the need for donors to develop a strong understanding the national context for reform. Tools that donors have used to develop their understanding of reform processes include:

- Consulting widely with a broad range of stakeholders to develop strategies – including a vision of the expected outcome of this support -- for supporting special studies before starting assistance.
- A phased approach to designing and implementing assistance can help donors and counterpart agencies to learn by doing.
- The preparation and dissemination of case studies on what has worked, and not worked, in particular sectors and/or provinces can help in understanding reform processes.
- Dialogue with officials on the development and reform processes in other developing countries can help in developing understanding constraints and issues facing policy makers in Viet Nam.

160. Assisting domestic institutions to publicize, and publicly debate, policy studies, draft legislation, and related documentation can help build support for change. Well-structured workshops can help build awareness of business concerns, and the realities of

⁹⁶ Raymond Mallon (2002), Approaches to Support the Development of an Enabling Environment for Small Enterprises: Viet Nam Case Study, GTZ Report to the Committee of Donor Agencies for Small Enterprise, Turin.

implementing business policies and laws. Comparative studies can also be a useful tool in building support for reform, especially when domestic institutions are actively involved in undertaking comparative analysis. External assistance can also help in disseminating information on regional and international best practices.

161. The institutional reform and development needed to affect substantive improvements in the enabling environment takes time. Donors need to take a medium-term (5-10 years) perspective in providing support to improve the enabling environment (even if individual projects have a shorter time-frame). Time and careful analysis is needed in preparing technical assistance to support reforms. While donors may feel confident about what an ideal enabling environment should include, the processes of establishing such an environment can be very complex.

162. Long-term assistance needs to be geared towards developing domestic capacity to undertake applied policy analysis to increase public awareness about the economic and distributional consequences of reform. Long term donor support is important in developing and strengthening the market institutions needed to make the reforms work, and in developing the capacity of local research institutions (including those linked to business associations) to monitor and evaluate the implementation of business related reforms. Priorities for support to market institutions include: the legal and regulatory framework; social norms and the formal mechanisms needed to facilitate compliance and enforcement; professional services, standards and ethics; financial institutions and capital markets; real estate and labor markets; information services; industry and professional associations; and education and training.

Are Vietnamese Enterprise Law reform experiences generally replicable?

163. Without a strong national commitment to improving living standards through business development, donor support to improve the business enabling environment will have limited impact. Thus, experiences from Viet Nam may not be easily applied to countries that lack this commitment. Where commitment is weak, donors may need to focus more on developing domestic capacity to undertake substantive analysis of the employment, equity and poverty alleviation impacts of improvements in the enabling environment. This may help in building a stronger commitment for change.

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Appendix 1: Evolution of Laws Governing Business Entities

Law	Dates law approved and amended or repealed	Categories of business entities or arrangements addressed under law
Companies	Enacted December 1990 Amended June 1994 Replaced January 2000	Joint-stock companies Private limited liability companies
Private Enterprises	Enacted December 1990 Amended June 1994 Replaced January 2000	Private unlimited liability enterprises
Enterprise Law	Approved June 1999 Enacted January 2000	All domestic private enterprises (including equitized SEs and enterprises with less than 30% foreign equity). SEs can be incorporated as limited liability companies.
State Enterprises	Approved April 1995	Entities with State invested capital (State corporations, public service enterprises, and business enterprises)
Co-operatives	Approved March 1996	Co-operatives
Financial Institutions	Approved November 1997	Banks and other financial institutions
Bankruptcy Law	Approved December 1993	All business entities
Commercial Code	Approved May 1997	All business entities
Land Law	Approved December 1987 Amended November 1993 Amended December 2001	Applies differently to different entities
Labour Code	Approved June 1994	Applies (but not equally) to all entities
Promotion of Domestic Investment	June 1994 Amended April 1998	All domestically owned business entities
Foreign Investment	Approved December 1987 Amended June 1990 Amended December 1992 Amended April 1997 Amended May 2000	Joint-venture entities Foreign owned entities Business co-operation contracts Build-operate-transfer projects

Source: Adapted from CIEM/UNDP (2001).

Appendix 2: Newly Registered Enterprises (/1,000 people)

No	Province	Total Enterprises					Total Enterprises Registered Capital (VND'000/person)				
		Number Newly Registered/1000 people									
		2000	2001	2002	2003 ¹	Total ²	2000	2001	2002	2003 ¹	Total
1	Hà Nội	0.84	1.19	1.45	1.19	4.48	748	1,499	2,425	2,895	7,330
2	Hà Nội Phấn	0.18	0.35	0.42	0.30	1.23	219	541	2,573	801	4,090
3	Hà Nội Tây	0.06	0.10	0.12	0.09	0.36	64	189	211	176	630
4	Hà Nội Đông	0.05	0.06	0.12	0.07	0.30	29	39	168	145	370
5	Hà Nội Yên	0.05	0.11	0.10	0.08	0.33	111	360	335	430	1,220
6	Hà Nội Nam	0.06	0.08	0.15	0.06	0.35	47	122	192	60	410
7	Nam Định	0.06	0.06	0.05	0.00	0.17	33	33	44	0	100
8	Thái Bình	0.07	0.12	0.12	0.07	0.37	32	92	90	92	300
9	Ninh Bình	0.08	0.13	0.15	0.12	0.49	102	84	133	388	700
10	Hà Nội Giang	0.08	0.12	0.12	0.05	0.36	74	161	168	130	520
11	Cao Bằng	0.05	0.14	0.12	0.06	0.36	45	200	290	119	640
12	Lào Cai	0.11	0.15	0.21	0.09	0.54	93	213	270	142	700
13	Bắc Kạn	0.06	0.13	0.20	0.15	0.53	50	142	240	164	580
14	Lạng Sơn	0.06	0.11	0.12	0.05	0.33	44	130	170	85	420
15	Tuyên Quang	0.05	0.14	0.15	0.05	0.38	30	122	291	260	690
16	Yên Bái	0.03	0.04	0.10	0.07	0.24	54	57	112	274	490
17	Thái Nguyên	0.10	0.14	0.07	0.13	0.42	53	150	60	210	460
18	Phố Thủ	0.09	0.11	0.13	0.09	0.42	68	159	241	326	780
19	Vĩnh Phúc	0.06	0.11	0.08	0.11	0.37	52	105	139	293	580
20	Bắc Giang	0.02	0.07	0.06	0.06	0.21	21	70	117	109	310
21	Bắc Ninh	0.07	0.13	0.24	0.23	0.65	77	266	595	484	1,400
22	Quảng Ninh	0.14	0.25	0.30	0.21	0.88	147	832	1,700	1,766	4,400
23	Lai Châu	0.04	0.05	0.09	0.07	0.23	25	37	101	94	250
24	Sơn La	0.02	0.03	0.05	0.04	0.14	27	31	83	67	200
25	Hồ Bình	0.05	0.08	0.12	0.07	0.32	10	77	145	67	290
26	Thanh Hóa	0.04	0.02	0.00	0.04	0.10	46	10	0	47	100
27	Nghệ An	0.08	0.10	0.13	0.08	0.37	46	105	134	85	360
28	Hà Nội Tĩnh	0.05	0.09	0.11	0.06	0.31	30	63	158	83	330
29	Quảng Bình	0.04	0.18	0.00	0.00	0.22	18	159	0	0	170
30	Quảng Trị	0.17	0.20	0.16	0.09	0.61	111	194	171	111	570
31	T.T. Huế	0.19	0.21	0.21	0.13	0.73	168	149	573	191	1,060
32	Đà Nẵng	0.22	0.69	0.17	0.51	1.55	171	939	145	2,148	3,370
33	Quảng Nam	0.03	0.00	0.00	0.11	0.14	14	1	0	353	360
34	Quảng Ngãi	0.05	0.08	0.11	0.07	0.30	53	170	124	115	450
35	Bình Định	0.09	0.11	0.17	0.09	0.45	71	111	187	163	520
36	Phước Yên	0.11	0.09	0.14	0.09	0.42	44	60	542	549	1,180
37	Khánh Hòa	0.31	0.31	0.32	0.21	1.12	175	367	358	295	1,170
38	Kon Tum	0.11	0.10	0.17	0.12	0.49	166	147	188	173	650
39	Gia Lai	0.10	0.09	0.11	0.07	0.37	95	90	165	105	440
40	Đắk Lắk	0.09	0.08	0.11	0.05	0.33	51	75	96	48	260
41	TP.HCM	1.05	1.29	1.37	0.92	4.49	1,116	1,734	2,226	1,527	6,420

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No	Province	Total Enterprises					Total Enterprises Registered Capital				
		Number Newly Registered/1000 people					(VND'000/person)				
		2000	2001	2002	2003 ¹	Total ²	2000	2001	2002	2003 ¹	Total
42	Lôm sâng	0.16	0.14	0.17	0.09	0.55	185	133	161	109	579
43	Ninh ThuËn	0.06	0.10	0.08	0.05	0.28	63	93	82	35	266
44	B×nh Ph-íc	0.13	0.25	0.18	0.15	0.69	97	226	198	321	821
45	Tøy Ninh	0.16	0.17	0.17	0.16	0.64	110	206	180	147	633
46	B×nh D-õng	0.43	0.52	0.59	0.34	1.80	861	1,549	1,368	963	4,551
47	sâng Nai	0.16	0.19	0.19	0.13	0.66	220	283	305	266	1,054
48	B×nh ThuËn	0.17	0.19	0.19	0.11	0.64	139	266	337	217	939
49	B.R.V.Tp	0.37	0.38	0.40	0.24	1.34	532	530	542	570	2,114
50	Long An	0.04	0.22	0.07	0.11	0.43	20	242	153	157	562
51	sâng Th, p	0.09	0.10	0.10	0.06	0.34	35	67	129	54	285
52	An Giang	0.10	0.08	0.10	0.05	0.33	75	108	132	60	365
53	Tiøn Giang	0.10	0.16	0.15	0.07	0.48	47	92	181	49	367
54	Vũnh Long	0.08	0.12	0.14	0.06	0.39	111	157	210	83	551
55	Bõn Tre	0.12	0.14	0.14	0.05	0.44	54	62	206	41	357
56	Ki ^a n Giang	0.12	0.15	0.15	0.09	0.51	96	119	161	144	510
57	CÇn Th-	0.04	0.14	0.07	0.10	0.35	19	142	62	197	411
58	Tru Vinh	0.04	0.05	0.05	0.04	0.18	27	69	64	105	265
59	Sắc Trõng	0.08	0.11	0.13	0.06	0.37	47	75	268	71	451
60	B ¹ c Li ^a u	0.01	0.09	0.09	0.04	0.22	37	89	173	87	376
61	Cp Mau	0.17	0.21	0.20	0.13	0.69	118	137	239	159	633
Total		0.19	0.25	0.27	0.19	0.88	179	328	483	414	1,381

1/ Data to July 2003.

2/ Total is total of all enterprises registered up until to 2003 divided by the estimated population in 2003. The ratios in the annual data are ratios of the population in that year. Thus, summing annual averages ratios will not equal the ratio for total enterprises where there has been significant population growth.

Source: CIEM (2003), "Comparative Provincial Performance in Private Business Development: Some preliminary observations from nine provincial case studies", Draft unpublished report.