Business Regulation Reform:
A Toolbox for Vietnamese Policymakers

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with the support of CIEM

for the Unified Enterprise Law drafting team.

Regulatory costs on SMEs in Australia have been estimated at nearly 3% of GDP. A similar level of compliance costs would be the equivalent of $1.2 billion in Viet Nam, or about the same amount as total ODA inflows and more than recent FDI inflows. Thus, efforts to reduce regulatory compliance costs should be an important policy priority.

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Abbreviations

AGM	Annual General Meeting
APEC	Australian Pacific Economic Commission
BCC	page 48
CEO	Chief Executive Officer
CIEM	page 1 etc
EL	Enterprise Law
EU	European Union
EGM	Extraordinary General Meeting
FDI	Foreign Direct Investment
FIL	Foreign Investment Law
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
J-Vs	Joint Ventures
LFDI	Law on Foreign Direct Investment
ODA	page 8
OECD	Organisation for Economic Cooperation and Development
ORR	Australian Office of Regulatory Review
RIAs	Regulatory Impact Assessments
SEL	page 47
SME	Small to Medium Enterprises
TOR	Terms of Reference
UEL	Unified Enterprise Law
UIL	Unified Investment Law
WB	World Bank

INTRODUCTION

Study Background

Report Objectives

1. This report is a reference guide for policy makers and it summarises selected recent international experiences of business regulation reform. The immediate aim is to provide lessons that can be used to further improve the regulatory environment for business in Viet Nam, including ongoing efforts to develop a Unified Enterprise Law (UEL)[1].

2. One lesson from international experiences – and from Viet Nam's own experience with Enterprise Law (EL) reform – is that the process of reforming business regulations can be just as important as the reformed content. Regular and substantive consultations with key stakeholders are a significant part of an effective reform process. This report aims to help improve the process by raising awareness of key issues, and to provide a relatively simple – and hopefully workable – approach by which the impact of proposed EL and other business regulation reforms can be systematically analyzed.

Methodology

3. This draft report is a desk study, and it was prepared in consultation with well-informed stakeholders, including members of the drafting and policy committees responsible for developing the UEL and the Unified Investment Law (UIL). The contents of the report were developed in direct response to specific requests for information by these stakeholders. An earlier draft was presented to key stakeholders in Ho Chi Minh City, Da Nang and Ha Noi and their comments helped shape the report. The report draws on publications[2] published by the Organisation for Economic Cooperation and Development (OECD) and the World Bank (WB) on international regulatory reform experiences, plus research on domestic issues undertaken by the Central Institute for Economic Management (CIEM) and the Steering Group on Enterprise Law Implementation.

Report Structure

4. The first section of the report is an overview of international experiences in business regulation reform. It is designed as a convenient reference guide for Vietnamese policymakers: at the present time, to assist in the drafting of the UEL and, in the future, to assist in developing new administrative regulations at all levels of government. It also includes a definition of key terms. The second section describes the experiences and impact of regulatory reform in Viet Nam. The third and final section discusses possible applications for drafting the UEL, and also includes a simple framework for analyzing the impact of possible reforms under the UEL.

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[1] An Enterprise Law in Viet Nam will potentially facilitate the establishment of all enterprises under a unified law.

[2] See http://www.oecd.org/topic/0,2686,en_2649_37421_1_1_1_1_37421,00.html and http://rru.worldbank.org/doingbusiness

Regulation and Regulatory Reform

What is Regulation?

5. Regulation is '*the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulations include laws, formal and informal orders, and sub-ordinate rules issued by all levels of government, and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers*'[3]. Regulations therefore also include a range of rules, instruments and standards used by government or non-government bodies to influence business behaviour, but which may not be reflected as gazetted regulations (for example, guidelines, advisory letters, codes of practice, standards or rules of conduct). These are often referred to as quasi-regulations.

6. Quasi-regulations are generally less transparent. It is particularly difficult to monitor and quantify their impacts. This is a big problem because some analysts argue that '*quasi-regulation is increasingly being used by governments. This reflects in part the advantages of such instruments, such as greater flexibility and increased participation and ownership by regulated parties. It may also reflect attempts to avoid the greater scrutiny that typically applies to more formal regulations*'[4].

What is Regulatory Reform?

7. The Organization for Economic Cooperation and Development (OECD) defines regulatory reform as:

> *'Changes that improve regulatory quality; that is, enhance the performance, cost-effectiveness, or legal quality of regulations and related government formalities. Reform can mean revision of a single regulation, the scrapping and rebuilding of an entire regulatory regime and its institutions, or improvement of processes for making regulations and managing reform. Deregulation is a subset of regulatory reform and refers to complete or partial elimination of regulation in a sector to improve economic performance'*[5].

8. Recent international research on regulatory reform has focussed on three categories:

> *Economic regulations intervene directly in market decisions such as pricing, competition, market entry, or exit.. Reform aims to increase economic efficiency by reducing barriers to competition and innovation, often through deregulation and the use of efficiency promoting regulations, and by improving regulatory frameworks for market functioning and prudential oversight.*
>
> **Social regulations** *protects public interests such as health, safety, the environment and social cohesion. The economic effects of social regulations may be secondary or even unexpected, but can be substantial. Reform aims to verify that regulation is needed, and to design regulatory and other*

[3] OECD, 1997. The OECD Report on Regulatory Reform: Synthesis, p. 11.
[4] Argy, S, and Johnson, M, 2003. *Mechanisms for Improving the Quality of Regulations: Australia in an International Context*, Productivity Commission Staff Working Paper, pp. 8-9.
[5] OECD, 1997. The OECD Report on Regulatory Reform: Synthesis, p. 11.

instruments, such as market incentives and goal-based approaches, that are more flexible, simpler, and more effective at lower cost.

Administrative regulations *are paperwork and administrative formalities – 'red tape' – through which governments collect information and intervene in individual decision making. They can have substantial impacts on private sector performance. Reform aims at eliminating those no longer needed, streamlining those that are needed, and improving the transparency of application*[6].

9. Institutional mechanisms and processes are required in order to effectively introduce regulatory reforms, and to therefore improve the business environment. Some key policy areas related to this issue, borrowed from the Asia Pacific Economic Cooperation (APEC), are presented in Box 1. These issues are central to both the development and effective implementation of regulatory reforms.

Box 1: Common APEC Themes in Regulatory Reform

Consultation	Providing channels to consult with key stakeholders and interested parties – in both the design and ongoing implementation of new and improved arrangements.
Transparency	Ensuring that all administrative arrangements and the processes behind them are transparent and facilitate public access to information.
Cooperation	Promoting – and taking advantage of – international and interagency cooperation.
Technology	Exploring technology as a mechanism for reducing administrative and transaction costs, and increasing the scope of services that can be provided.
Service Culture	Promoting a culture of providing services efficiently within administrative agencies.
Competitive Markets	Looking for a competition dimension in administrative arrangements, and ensuring that regulations meet appropriate objectives with minimal impediments to competition.

Source: APEC (2001), p. 3.

10. Viet Nam policy makers have been grappling with regulatory reform issues since the beginning of *Doi Moi*. Because of a weak legal infrastructure, initial attempts at developing a regulatory environment for business combined economic, social and administrative regulations into single laws. As a more comprehensive legal framework emerged, many social and administrative issues were addressed by separate legislation (for example, labour, the environment, accounting and auditing, etc). The net result has been overlap and inconsistency in regulatory requirements. Thus, there is now a need to review and simplify regulations that impact on business. The EL was an important step in this direction, but more needs to be done, as discussed later in this report.

Why Regulate? Benefits and Costs of Regulation

11. In market economies, regulations are widely used by government as a policy instrument because markets do not always result in socially optimal outcomes. Good

[6] OECD, 1997, The OECD Report on Regulatory Reform: Synthesis, p. 11.

regulations should achieve some social and/or economic good (for example, increased investment and employment, or protection of workers, consumers or the environment). Corporations would not exist in their present form without specially designed regulations that are intended to limit the liability of individual investors and protect the interests of investors and creditors. Well-designed regulations play a key role in promoting competitive market economies (for example, company and bankruptcy legislation). Viet Nam's initial EL reform process provides evidence of the beneficial impacts that a well drafted and widely supported regulation can have in terms of increased investment and employment.

12. However, regulations also generate costs. Regulatory compliance costs include the time, staff and consultant resources needed to comply with regulations, to develop and implement new monitoring and reporting systems, and to train staff. Regulations may have additional indirect social costs because of distortions in prices and reallocation of resources.

13. Many regulations – even if they are designed with desirable objectives in mind – have undesirable and unforeseen negative social consequences. All too often, inadequate attention is given to weighing the social costs when drafting new regulations. Regulations can be defined as 'bad' when regulatory compliance and other costs are higher than the benefits of the regulation. Bad regulations arise because of inadequate (or no) consideration of regulatory costs and benefits, and/or inadequate attention to enforcement issues. The need for such analysis is all the more important because regulatory agencies often have strong incentives to increase the scope of their regulatory activities to justify their role and/or need for resources. Policy makers face the challenge of developing a regulatory environment that maximizes the net social and economic benefits to a society.

14. The OECD estimated that '… in 1998, taxation, employment and environmental regulations imposed over $17 billion (nearly 3% of GDP) in direct regulatory compliance costs on small and medium sized businesses in Australia[7]. **Regulatory costs of about 3% of gross domestic product (GDP) in Viet Nam would result in losses of $1.2 billion, or about the same amount as total official development assistance (ODA) inflows and more than recent foreign direct investment (FDI) inflows. Actual compliance costs are probably much higher.** Thus, efforts to reduce regulatory compliance costs should be an important policy priority.

15. Regulatory impact assessment is a tool that aims to improve the quality of business regulations by formally assessing the costs and benefits of regulations.

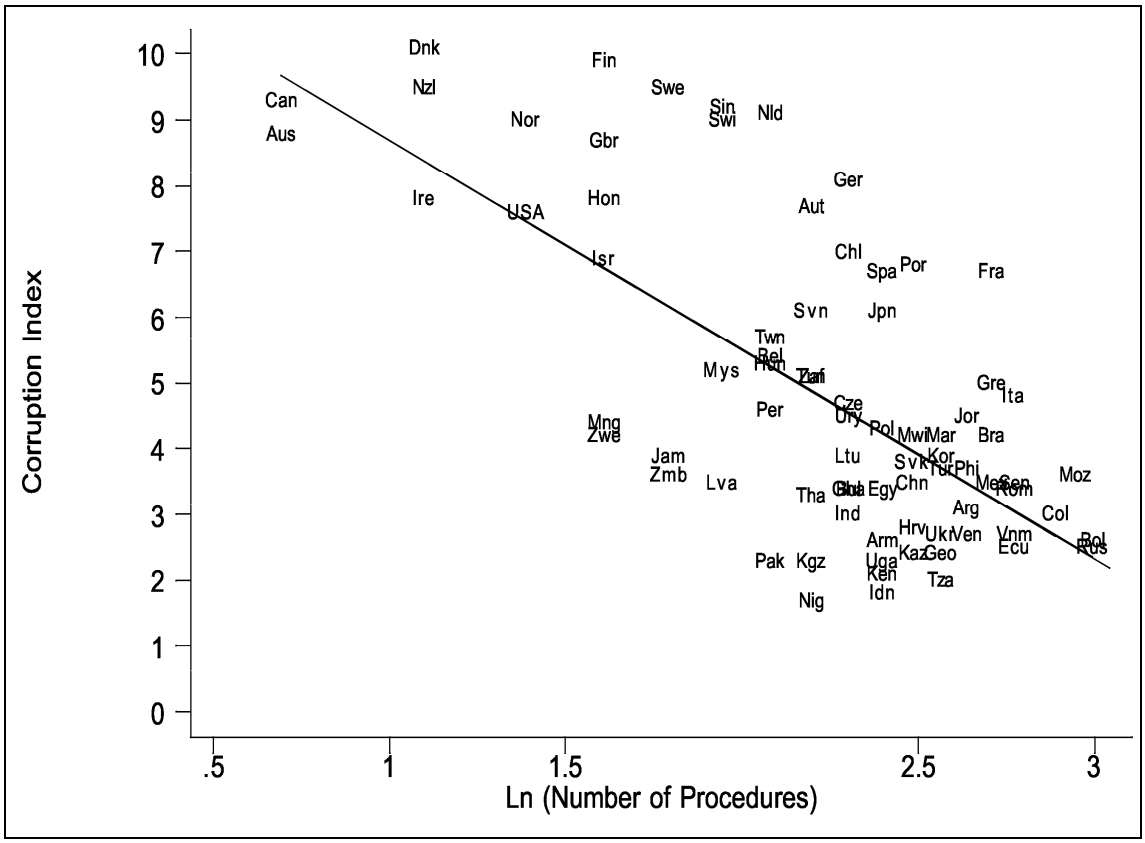
Regulatory Reform Can Help Reduce Corruption

16. Regulatory complexity increases the need for inspectors; it encourages frequent business inspections and corruption. As can be seen in Box 2, Djankov *et al* found that countries with less procedures to establish businesses score highly in terms

[7] Argy, S, and Johnson, M, 2003. Mechanisms for Improving the Quality of Regulations: Australia in an International Context, Productivity Commission Staff Working Paper, p. 9.

of freedom from corruption. Ambiguity and inconsistent regulations exacerbate the problem. Regulatory reform can help reduce corruption.

Box 2: Procedural Complexity and Corruption



Source: Djankov, S. et al, 2003. *The Regulation of Entry*, p. 47.

International Focus on Improving Quality of Business Regulations

17. Recent international studies have concluded that there is little doubt that most governments can substantially reduce regulatory costs, and increase benefits, by making wiser regulatory decisions. Considerable anecdotal and analytical evidence supports the conclusion that governments often regulate badly, with too little understanding of the consequences of their decisions, and with little or no assessment of any alternatives other than traditional forms of law and regulations.[8]

18. Improving regulatory processes has attracted considerable attention in recent years, partly as a result of this international research, which has helped raise awareness of the potential social and economic benefits of regulatory reform. Most developed countries have now adopted explicit policies to improve regulatory quality, including requirements for Regulatory Impact Assessments (RIAs)[9].

[8] OECD, 2002. Review of Regulatory Reform: Regulatory Policies in OECD Countries; From Interventionism to Regulatory Governance, OECD, Paris, p. 44.

[9] OECD, 2003, p. 16 states that 26 out of 28 OECD countries surveyed in 2000 had '*a government program to reduce administrative burdens*'.

19. Australia's Office of Regulatory Review uses a checklist to illustrate the attributes and characteristics of high quality regulations (see Box 3). This could serve as a useful basis for developing a checklist for policy makers when reviewing business regulations in Viet Nam.

Box 3: Checklist of Best Practices for Assessing Regulatory Quality in Australia

Regulations should be:

Minimum necessary to achieve objectives
- Overall benefits to the community justify costs
- Kept simple to avoid unnecessary restrictions
- Targeted at the problem to achieve the objectives
- Not imposing an unnecessary burden on those affected
- Do not restrict competition, unless demonstrated net benefit

Not unduly prescriptive
- Performance and outcomes focused
- General rather than overly specific

Accessible, transparent and accountable
- Readily available to the public
- Easy to understand
- Fairly and consistently enforced
- Flexible enough to deal with special circumstances
- Open to appeal and review

Integrated and consistent with other laws
- Addresses a problem not addressed by other regulations
- Recognises existing regulations and international obligations

Communicated effectively
- Written in 'plain language'
- Clear and concise

Mindful of the compliance burden imposed
- Proportionate to the problem
- Set at a level that avoids unnecessary costs

Enforceable
- Provides the minimum incentives needed for reasonable compliance
- Able to be monitored and policed effectively

Source: Argy, S, and Johnson, M, 2003. *Mechanisms for Improving the Quality of Regulations: Australia in an International Context*, Productivity Commission Staff Working Paper, p. 6.

20. The World Bank's *Doing Business in 2004: Understanding Regulation* played an important role in raising awareness of these issues among the development community by arguing that '*poor countries regulate the most…[and that]…heavier regulation brings bad outcomes*'[10]. This report highlighted that the poor are often worst affected by cumbersome regulations, while the '*rich and connected may be able to avoid cumbersome rules, or even be protected by them*'[11]. These findings were

[10] World Bank, 2004. *Doing Business in 2004: Understanding Business Regulation*, Oxford University Press, London, p. xv.

[11] World Bank, 2004. *Doing Business in 2004: Understanding Business Regulation*, Oxford University Press, London, pp. xiii-xiv.

further reinforced in the 2005 follow-up report and the World Development Report 2004.

21. APEC (2001) estimated that trade facilitation reforms implemented by APEC members would add USD 46 billion (1997 prices) to APEC's GDP by 2010. International trade agreements also require empirical justification for regulatory decisions[12].

22. The European Union (EU) introduced RIA requirements in 1990, and now requires formal RIAs. An important aim of RIAs is to ensure higher quality regulations. Quality regulations should achieve regulatory objectives with the greatest net benefit to the community. That is, regulations should be both effective in achieving objectives and efficient in limiting the regulatory costs (including compliance costs) to society. Poor quality regulations often add barriers to business entry and trade, increase costs, discourage innovation, and reduce economic efficiency.

23. Over the last 20 years, many developed countries have established an external independent agency that is responsible for overseeing quality and consistency. OECD argues that, in countries that do not have clearly identified independent supervision, ministries and agencies that are responsible for regulation have shown less commitment to RIA. Regulation quality control agencies perform a variety of functions, including advocacy, reporting on compliance with RIA, providing technical assistance and reviewing the quality of individual RIAs. Some supervising bodies are established at the centre of government, and they have the resources and technical capacity to conduct reviews and enforce RIA requirements. Examples include Australia's Office of Regulatory Review (ORR), Mexico's Federal Regulatory Improvement Commission, and the USA's Office of Information and Regulatory Review[13].

24. The terms of reference (TOR) for Australia's ORR are an example of such an agency's role. The TOR is quite sharply focussed on advising, monitoring and reporting on regulatory issues. The ORR promotes best practice regulation making and vets agency compliance with regulatory impact statement (RIS) required as part of the RIA process. ORR's principal activities, as set out in its charter, include:

- advising on quality control mechanisms for regulation making and review;
- examining and advising on RISs prepared by central departments and agencies;
- providing training and guidance to officials;
- reporting annually on compliance with the Government's RIS requirements;
- advising Ministerial Councils and national standard-setting bodies on regulation;
- lodging submissions and publishing reports on regulatory issues; and

[12] The General Agreement on Trade in Services (GATS) requires that service supply standards be 'based on objective and transparent criteria' and be 'not more burdensome than necessary to ensure the quality of the service' (WTO 1994).

[13] Argy, S, and Johnson, M, 2003. p. 54.

- monitoring regulatory reform developments at the state level, and in other countries[14].

25. The fact that most developed countries – and increasing numbers of developing countries – now have systems in place aimed at ongoing improvements in the regulatory environment reflects continuing concerns by most businesses that the quality of business regulation remains suboptimal and is a constraint to business development and economic well-being.

[14] Adapted from Argy, S and Johnson, M, 2003. p. 23.

Selected International Regulatory Reform Experiences[15]

General Approaches

Introduction

26. Most developed countries – and increasing numbers of developing countries – aim to increase regulatory quality by:

- introducing reforms to ensure greater regulatory transparency;
- simplifying and reducing administrative procedure costs (including plain language drafting requirements);
- reducing barriers to competition;
- improving mechanisms for managing regulatory processes;
- introducing obligatory requirements for regulatory impact assessments of new regulations; and
- having a greater focus on regulatory compliance.

Most countries include requirements for consultation with affected parties as an integral component of regulatory management programs.

Consultative Processes

27. Regulatory changes are irrelevant if they are not implemented, and a successful implementation depends on broad public support for change. An OECD study on regulatory reform in the Netherlands concluded that:

> *'The most important determinant of the scope and pace of further reform is the attitude of the general public…Evaluation of the impacts of reform and communication with the public and all major stakeholders, with respect to the short and long-term effects of action and non-action, and on the distribution of costs and benefits, will be increasingly important to long-term progress'*[16].

28. Consultative processes help build public sector support for reform, and also help build public confidence in the overall regulatory system. This can enhance voluntary compliance, and reduce dependence on sanctions and other forms of coercion to enforce regulations. Other benefits from adopting consultative approaches include:[17]

- bringing into the discussion the expertise, perspectives and ideas for alternative actions of those directly affected;
- helping regulators to balance opposing interests;
- identifying unintended effects and practical problems;

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[15] This section draws heavily from material in various OECD reports on regulatory reform: OECD, 2003b. *From Rest Tape to Smart Tape*; OECD Paris and World Bank, 2004. *Doing Business in 2004: Understanding Business Regulation*, Oxford University Press, London; plus material from the Australian Office of Regulatory Review http://www.pc.gov.au/orr/

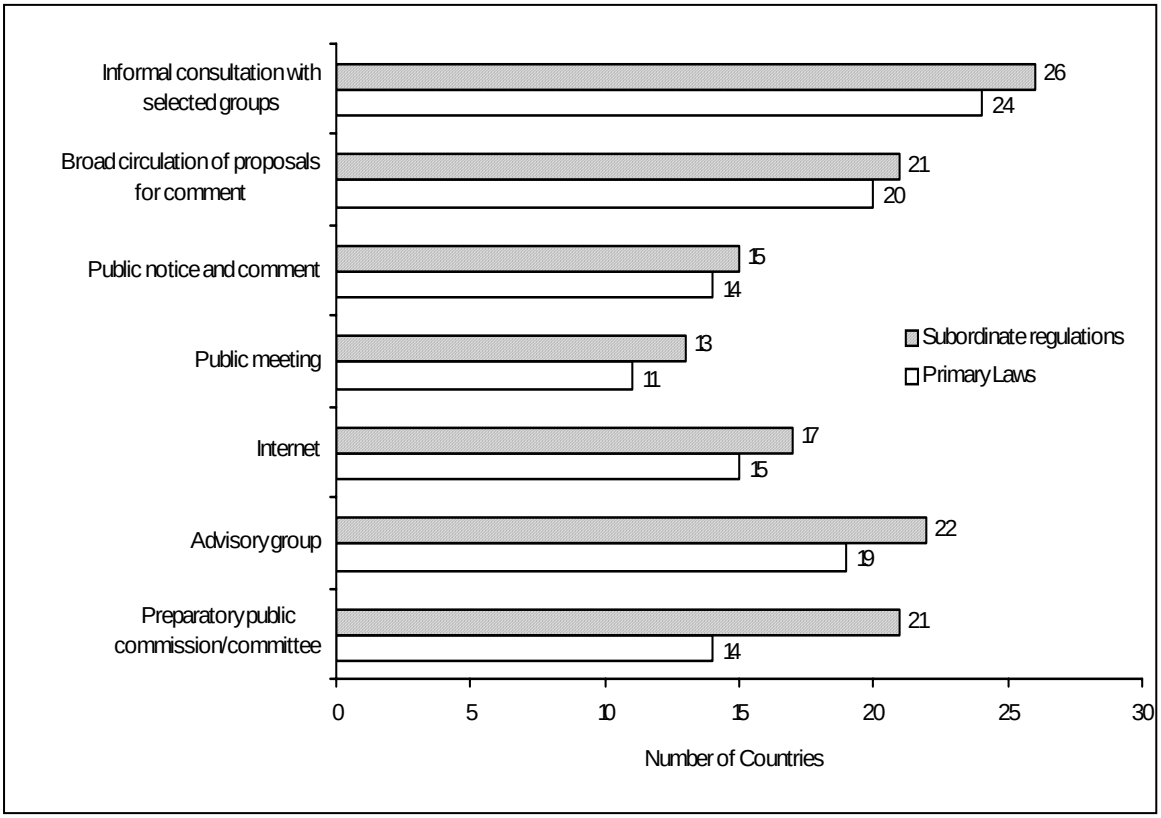
[16] OECD, 1999. Regulatory Reform in the Netherlands, pp. 148-9.

[17] OECD, 1995. p. 18.

- providing a quality check on the administration's assessment of costs and benefits; and
- identifying interactions between regulations from various parts of government.

29. As of 2000, some 20 OECD member countries applied systematic public consultation procedures to develop new laws, and another seven reported that they sometimes used public consultation (see Box 4). For subordinate regulations, only 14 countries reported that they have systematic public consultation procedures. Other countries used public consultation sometimes, or in some specific areas[18].

Box 4: Forms of Public Consultation Used in Developed Countries



30. However, it is important to note that consultation processes are time consuming, and can be counterproductive if not organized well. The objectives need to be clearly defined, and every effort must be made to address concerns raised. Where key concerns cannot be incorporated into regulatory reforms, clear explanations should be given as to why major concerns could not be addressed in the reform. Some best practices in consultation processes, which have been adopted by developed countries, are summarised in Box 5.

Box 5: International Best Practice Principles for Consultation

[18] Quoted in Argy, S, and Johnson, M, 2003. *Mechanisms for Improving the Quality of Regulations: Australia in an International Context*, Productivity Commission Staff Working Paper, p. 88.

Consistency and flexibility

- Consultation programs must be flexible enough for use in very different circumstances, while also meeting minimum standards, to ensure consistency and confidence in the process.
- Minimum standards allow all parties to assess whether the consultation has been properly undertaken, and provide clear guidance for regulatory policy makers.
- Adoption of a range of strategies and approaches will offer broad access to all interested parties, and maximise information gathering.

Consultation should be timely, balanced, broadly based and an ongoing process

- Early consultation helps identify optimal policy options.
- Consultation is most effective when information is made available early. Consultation documents should clearly identify both the policy objective and a wide range of alternatives.
- Provision of preliminary impact assessments to the public will facilitate substantive dialogue.
- Maximising participation (facilitate access by less organised interests), minimising discretion in deciding who participates, and making information widely accessible can be facilitated by:
  - innovative information dissemination including use of the public media and information technology;
  - draft in plain language and use reader friendly formatting; and
  - clearly set out key issues and their implications for key stakeholders.
- Structuring continuing dialogue enhances the benefits derived from consultation.

Transparency and responsiveness

- A systematic consultation policy gives the public an understanding of what opportunities can be used during the consultative processes. Consultation is more effective when organizers:
  - clarify why information is needed;
  - explain the process of decision making and opportunities for participation;
  - ensure public comments are appropriately taken into account; and
  - respond substantively to public comments.

A habit of consultation should be made part of administrative culture

- Consultation policies must be explicitly supported at high political levels, and reinforced with staff training, incentives and resources.
- Regular monitoring, evaluation and improvement of consultation arrangements are important.

Source*:* Summarized from OECD, 2002. pp. 162-5.

31. In practice, consultative processes range from unstructured informal contacts with selected stakeholders, to highly structured public notice and comment processes aimed at ensuring that all stakeholders have the opportunity to comment. The UK government issues guidelines on requirements for consultative processes, while formal consultation procedures are required by law in Korea and the USA. The USA's Administrative Procedures Act establishes that citizens have a legal right to be consulted, and specifies procedures that must be followed to facilitate consultations. While the Act provides some flexibility for government agencies to develop their own procedures, they must[19]:

- publish a notice of proposed rulemaking in the Federal Register, including the text or substance of the proposed rule;

[19] Summarized from OECD. 2002, p. 156

- provide all interested persons with an opportunity to participate in the rulemaking (the public must generally be given at least 30 days to comment in writing);
- consider any comments received and make all comments public in a formal rulemaking 'record'; and
- publish the final rule at least 30 days before the effective date of the rule.

Regulatory Transparency

32. A key challenge is to ensure that regulatory processes are not 'captured' by vested interest groups. Transparency in regulations and regulatory process can help to minimize this risk. Efforts to develop (i) transparent regulations (accessible and intelligible); and (ii) transparent regulatory process can play an important role in this regard. Deighton-Smith (2002) has proposed a number of factors that will promote transparency[20]:

- Accessibility and transparency
  - **Volume of legislation**. Too many, or too detailed, regulations are not conducive to transparency because those organisations/individuals that must comply with the regulations cannot absorb that amount of detail and determine which laws affect them and how.
  - **Incorporated material**. Adoption of regulation standards and codes of practice tend to reduce transparency by increasing the volume of detailed technical requirements.
  - **Codification** of legislation enhances transparency by ensuring consistency between laws, simplifying and clarifying regulatory requirements.
  - **Plain language** enhances transparency by making the law more intelligible.
  - **Electronic access** to regulations enhances transparency by improving access to regulations and reducing access costs.

- Regulatory processes
  - **Standard procedural requirements** ensure that regulatory processes are understood, and that opportunities to participate in, and influence, the process are known.
  - **Appeal rights** help ensure that the application of regulations is transparent.
  - **Consultation processes** are central to transparency, as they ensure active interaction between regulators and those affected by regulations.

Simplify Administrative Procedures and Reduce Compliance Costs

33. Another priority for reform has been to simplify administrative procedures and reduce regulatory compliance costs. OECD (2003. p.3) argues that '*"too much red tape" is one of the most common complaints of business and citizens in OECD countries*'. Most developed countries now have programs to reduce inspections and business regulation compliance costs.

[20] Deigthton-Smith, Rex, 2002. 'Assuring Regulatory Transparency: A Critical Overview'. Paper prepared as input to OECD, 2002. *Regulatory Policies in OECD Countries*, pp 2-3.

34. Some specific initiatives have included[21]:

- Establishment of one-stop shops (single contact points for public services).
- Establishment of central registries of regulatory requirements (often available electronically).
- Creation of quantitative targets for reducing administrative burdens and costs.
- Use of plain language to draft regulations.
- Government process and paperwork requirements are streamlined.
- Simplification and codification of legislation.
- Simplification and/or elimination of the need for business licenses and permits (and a move towards 'negative licensing' and *ex post* checking)[22].
- Privatization of certification functions.
- Computerization of the dissemination of regulations, and facilitation of interactions with government by electronic means.
- Limitations on administrative discretion.
- Adoption of rules to promote responsiveness, such as legislated time limits to respond to applications and 'silence is consent' clauses (automatic authorizations if decisions are not made within a specified time)[23].

Focus on Reducing Barriers to Competition

35. The promotion of more competitive markets has been an important objective of most regulatory reform efforts. Increased competition is seen as crucial to promoting innovation, and the increased productivity needed to succeed in increasingly integrated and competitive markets. Concerns about declining competitiveness in Australia led to agreement on a National Competition Policy which has driven much of the regulatory reform agenda.

36. A 1993 Report on National Competition Policy found that '*Australia is facing major challenges in reforming its economy to enhance national living standards…*'. In response, national and state governments agreed to a National Competition Policy which required a review of regulations at all levels of government to eliminate unjustified anti-competitive effects. Because competition law could not correct regulatory barriers to competition, the report stated that '*a new mechanism is required*'. The Australian governments agreed in 1995 to a set of principles aimed at ensuring that statutes or regulations do not restrict competition unless it is in the public interest. This involved:

- acceptance of the principle that any restriction of public competition must be clearly demonstrated to be in the public interest;

[21] See OECD, 2003, for experiences in reducing administrative burdens on business in Australia, France, Korea, Mexico, Netherlands, UK and USA.

[22] A negative licensing program provides licences on application, but businesses must meet specified standards on an ongoing basis in order to retain their licence. Regulators than monitor performance after the granting of a licence (i.e. *ex post* monitoring), rather than checking applications prior to the issuing of a licence.

[23] Italy has adopted this principle under the Administrative Procedure Law, as part of broader aims to improve the accountability and efficiency of official decisions.

- subjecting new regulatory proposals to increased scrutiny, with a requirement that any significant restrictions on competition lapse after a set period, unless re-enacted after scrutiny through a public review process;
- subjecting those existing regulations which impose significant restrictions on competition to a systematic review to determine if they conform with the first principle, and which would lapse within no more than five years unless re-enacted after scrutiny through a further review process; and
- ensuring regulatory reviews take an economy-wide perspective, to the extent practicable.

37. Financial incentives for reform were built into the Competition Principles Agreement, which is expected to increase national government distribution of Federal tax revenues to individual States and territories by around AUD 56 billion per year. Access to additional Federal tax revenues is dependent on state government progress in implementing this agreement[24].

38. As part of the ongoing monitoring of administrative costs, administrative forms that have to be submitted by Australian small businesses must include a box where the person completing the form can indicate how long it took to complete it. This also facilitates ongoing monitoring of compliance costs.

Improving Management of Regulatory Processes

39. While recognizing that varying political, constitutional and administrative environments imply a need for specific models for different countries, OECD (2002b) argues that all effective regulatory management systems should require the following three basics:

- Be adopted and supported at the highest political levels.
- Contain explicit and measurable regulatory quality standards.
- Provide for a continuing regulatory management capacity.

40. Countries with longstanding programs of regulatory reform have:

> '*found it necessary to establish an explicit policy statement on reform at the highest levels of government, both to communicate the reasons for reform and to build support for change…Countries with explicit regulatory policies consistently make more rapid and sustained progress than countries without clear policies. The more complete the principles, and the more concrete and accountable the action program, the wider and more effective was reform. By late 2000, 24 out of 30 OECD countries had adopted regulatory reform policies.*'[25]

OECD argues that explicit regulatory reform policies:

[24] Summarized from OECD, 2002. p. 37
[25] OECD, 2002, p. 40-41.

- signal the government's commitment to reforming the regulatory environment government-wide;
- set clear policy objectives and means for reaching them, establishing accountability for any government officials' use of regulatory powers;
- enhance the effectiveness of coordination and cooperation efforts, ensuring greater coherence and comprehensiveness in reforming the regulatory environment;
- authorize and mobilize action in administrative institutions;
- help show politicians and the public why policy objectives are important;
- enhance the credibility and transparency of change, and speed up results; and
- change the culture of regulation and pressure for regulatory inflation by requiring regulators to show why they should regulate.

41. Addressing broad based regulatory barriers can be complicated and require sustained high level inputs. Many countries have established central agencies to facilitate this process: Belgium established the Agency for Administrative Simplification (ASA) in 1988, France established the Commission on Administrative Simplification (COSA) in 1998, and Italy established a Regulatory Simplification Unit (Nucleo) in 1999. The process of securing national commitment to generalized administrative reforms can be a time consuming process, as demonstrated by experiences with the evolution of the National Competition Policy and generalized regulatory review processes in Australia.

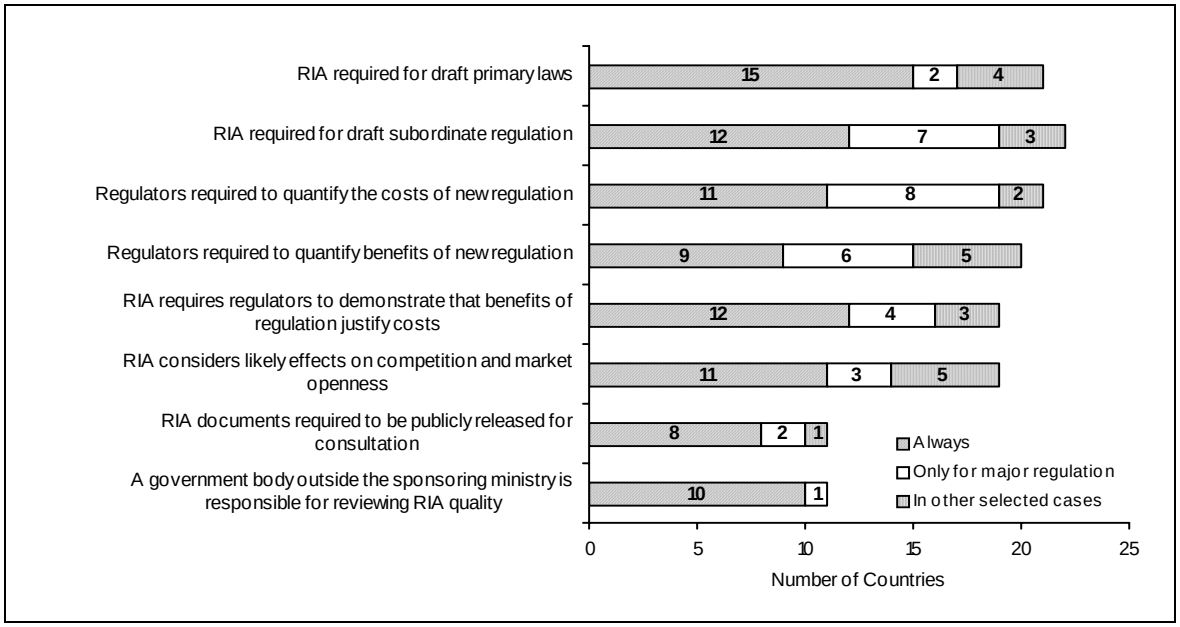
Regulatory Impact Assessments

42. A recent trend in both developed[26] and developing countries[27] is to require some form of RIA as an integral part of reform agendas. Most OECD countries now use some form of RIA in making regulatory decisions (see Box 6).

Box 6: RIA Requirements in OECD countries (Out of 28 Responding Countries)

[26] OECD, 2001, found that 20 countries were using RIAs, but the nature of their use varied considerably. Some transition economies (for example, Hungary) have formally included RIAs in their reform process.

[27] A survey by Kirkpatrick, et al (2003), found that the numbers of countries '*applying RIA to all or most regulations*' was eight in Asia, 11 in Africa, six in Latin America, and five in transition economies.



Source: Argy, S, and Johnson, M, 2003. p. 44, using data from OECD (2002b).

43. RIA encompasses a range of methods to systematically assess negative and positive impacts (i.e. the costs and benefits) of regulations. RIA serves as a guide to improve the quality of political and administrative decision-making, while also serving important political values of openness, public involvement and accountability. The OECD actively promotes the use of RIAs[28], arguing that well designed and implemented RIA can help address broader issues of competitiveness and economic performance. It suggests the following best practices are needed to gain the most from RIA[29]:

1. Maximize political commitment to RIA.
2. Responsibilities for RIA program elements are allocated carefully.
3. Train the regulators.
4. Use a consistent but flexible analytical method.
5. Develop and implement data collection strategies.
6. Target RIA efforts.
7. Integrate RIA with the policy-making process, beginning as early as possible.
8. Communicate the results.
9. Involve the public extensively.
10. Apply RIA to existing, as well as new, regulations.

44. While significant immediate gains can be realized from adopting RIA, OECD concludes that achieving the full benefit of best practices requires major cultural change among government bureaucrats, regulators and other interest groups. The integration of RIA into every day decision-making processes requires sustained political, administrative and public support. By forcing government agencies to undertake a rigorous assessment, RIA helps to prevent regulatory mistakes and protect society and business from ill-conceived policies. RIA also helps to insulate regulatory

[28] OECD, 1997. *Report on Regulatory Reform*, OECD, Paris.
[29] OECD, 2002. p. 48.

processes from vested interests by requiring a transparent public assessment of the broad impacts of new policies and/or regulations. Thus, RIA can also be a useful tool in reducing opportunities for corruption.

45. The role of RIA in improving transparency and accountability is a crucial point. When government agencies bind themselves to the formulation of policies and regulations that are in the national interest, they limit the use of government instruments for narrower sectoral or personal interests. Some government agencies will be reluctant to bind themselves in this fashion. On the other hand RIA can be used by more accountable agencies (for example, the National Assembly) to monitor and ensure that more narrowly focussed Government agencies (for example those more focussed on sectoral or provincial interests) take full account of national interests in formulating new policies and regulations. RIA becomes a way of binding oneself, and, more importantly, of binding others who might be inclined to undertake ill-advised policies and regulations.

46. A key tool used in RIA is to undertake a form of benefit cost analysis to help policy makers choose options that maximise net benefits (i.e. benefits minus costs). The costs of moving from traditional command-and-control regulatory systems to more flexible 'performance-based' systems can be difficult to estimate, given the dynamic regulatory costs of compliance, investment, innovation, productivity, trade and lost growth. The effectiveness of compliance and enforcement strategies also can have major impacts on the outcomes of RIA. Moreover, the cumulative impacts of regulation can be greater than the sum of individual impacts.

47. This does not imply a need for a full benefit-cost analysis with net benefits quantified as a single monetary value. Such analysis in this context requires data and institutional capacity that is not readily available, especially in developing countries, and which may add little to the decision-making process. Even in OECD countries there is still disagreement about what '*is pragmatically achievable*', and what analysts should estimate as '*the mix between qualitative and quantitative estimates*'[30].

48. Decisions about the forms of analysis used should be based on practical judgements about institutional capacity, feasibility and cost. The initial aim should be to ensure that policy makers are aware of the major benefits and costs of proposed regulations, and are able to make considered judgements about the distributional (or equity) implications of proposed changes. Later, as more capacity is developed and experience is gained, more formal cost benefit analysis of major regulations may be appropriate[31]. Regulatory impact statements must include:

- the problem or issues which give rise to the need for action;
- the desired objective(s) of the action;
- the options (regulatory and non-regulatory) that may constitute viable means for achieving the desired objective(s);
- an assessment of the impacts (costs and benefits) on consumers, businesses, government and the community of each option;

[30] OECD, 2002. p. 49.
[31] Kirkpatrick et al, (2003, p. 11) notes that, even in developing countries such as the UK and USA, RIA has evolved from fairly rudimentary analysis in the early stages.

- a consultation statement;
- a recommended option; and
- a strategy to implement the preferred option[32].

49. Finally it is important that the information generated by the RIA process impacts on policy decisions. Positive action to achieve this can include regular dissemination of findings to all stakeholders to help build a broad based political commitment to reform, and to hold the administration responsible for reform outcomes. This is another area where a specialised regulatory reform oversight agency – reporting to the government and/or National Assembly – can play an important role.

Regulatory Compliance

50. As noted earlier, regulations cannot effectively achieve their aims without adequate compliance. The level of compliance depends on public support for regulations (and thus consultative processes), regulatory design, sanctions for non-compliance, and implementation and enforcement strategies. Credible sanctions for non-compliance can be an important strategy for achieving better integration of RIA into policy-development processes, and the necessary cultural change within regulatory agencies. It is important that Governments monitor and evaluate the level of compliance. Poor compliance implies poor regulation, and can develop a culture that inhibits voluntary compliance. The use of frequent inspections to ensure compliance can increase costs and encourage corruption. Viet Nam needs to also focus on developing systems for measuring compliance rates and monitoring the impact of regulations in terms of achieving policy objectives.

51. The Netherlands has adopted a systematic approach to addressing compliance and enforcement issues. Regulators are required to ensure that they can 'adequately' enforce, a regulation, before introducing a regulation. The Inspectorate of Law Assessment, within the Ministry of Justice, is responsible for reviewing the risks associated with new (and ongoing) regulations. The Inspectorate applies a standard checklist called the 'table of eleven' key determinants of compliance to analyze the strengths and weaknesses of a proposed regulation (see Appendix 9).

Some Best Practices in Facilitating Business Entry

Introduction

52. Undoubtedly, the most significant aspect of Viet Nam's Enterprise Law reforms, and related business licensing reforms was the dramatic reduction in administrative burdens in establishing new enterprises. The WB has demonstrated the critical importance of simplifying procedures for, and reducing the cost of, business entry in developing countries[33]. A recent WB study concluded that regulatory barriers to business entry slow the growth in 'value added by naturally "high entry" industries'[34]. A related WB study notes that:

> '*Countries differ significantly in the way in which they regulate the entry of new businesses. To meet government requirements for starting to operate a*

[32] Australian Office of Regulation Review, 1998. *A Guide to Regulation*. p. B2.
[33] WB, 2003.
[34] Klapper, Leora et al, 2004. p. 32.

business in Mozambique, an entrepreneur must complete 19 procedures taking at least 149 business days, and pay US$256 in fees. To do the same, an entrepreneur in Italy needs to follow 16 different procedures, pay US$3,946 in fees and wait at least 62 business days to acquire the necessary permits. In contrast, an entrepreneur in Canada can finish the process in two days by paying US$280 in fees and completing only two procedures…We find that heavier regulation of entry is generally associated with greater corruption and a larger unofficial economy, but not with better quality of private or public goods'[35].

53. Some selected international best practices in facilitating business entry are discussed below[36].

Disseminating Information on Business Regulations

54. Governments are increasingly using specialized information centers to help in providing a single source of information on government policies and regulations affecting business. These may be physical one-stop shops, or an information portal using information technology. Most OECD governments now have concrete plans to promote 'e-government', with many member government agencies now disseminating information on the internet. A key element of most e-government plans has been the establishment of a centralized government portal '*to create an access point through which citizens or entrepreneurs can find all relevant government information and, ultimately, conduct a wide range of transactions with the Government*'[37].

55. **France** has a network of Business Formality Centres. These provide new and existing businesses with a single information entry point on the statutory requirements for establishment, for receiving documents and information needed for business start-up, and to process any changes to business registration. Online versions of these centres have been established.

56. **Australia** has established Business Licence Information Services (BLIS) in all states to provide a single first-stop point of enquiry and access for State and National Government licences, including application forms. BLIS services are available via CD-ROM and the Internet[38]. The Internet portal provides access to BLIS and to the National Business Information Service, and facilitates a number of business-to-government e-commerce transactions. While primarily aimed at providing information to prospective new businesses, it also provides information for existing businesses on licence renewals, transfers and general regulatory issues concerning business expansion.

57. **Finland** has been moving towards developing a single service bureau since 1993 that would act as an integrated service delivery point for most public services. The Netherlands has established Enterprise Service Counters to merge the service provision of municipalities, chambers of commerce and industry, tax administrations, and the Ministry of Economic Affairs.

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35 Djankov, Simeon et al 2003. The Regulation of Entry, p. 1 and p. 27.
36 See OECD, 2003, pp. 18-69, for a summary discussion of OECD country experiences.
37 OECD, 2003. pp. 19.
38 Argy, S, and Johnson, M, 2003. p. 33.

Business Registration[39]

58. **Australia** has established the Australian Business Register which assigns each business a unique business identification number (ABN), used in all commercial dealings, as well as those between the business and Government agencies, for example, the tax office. This has facilitated online transactions, reduced the time and costs incurred by business in meeting tax obligations, increased tax collection efficiency, and made it easier for other entities to verify details of a business with which they may be considering doing business.

59. **The Netherlands** adopted a similar approach in order to combine, under a Single Enterprise Register, four separate registrars that had been maintained by the Ministry of Finance, the Chamber of Commerce, the National Institute for Social Security and Statistics Netherlands. Businesses, self-employed professionals and other organizations use a unique number that provides one-time information to a single registrar and meets the information needs of all Government agencies.

Reforming Corporate Governance

What is Corporate Governance?

60. Corporate governance is about protecting the interests of key stakeholders in business enterprises. The focus is on mechanisms that protect the interests of those who contribute capital to a firm. Thus corporate governance may be seen as the processes by which boards oversee the company General-Director, and other managers responsible for day-to-day company management, and by which board members are accountable to investors, creditors, the enterprise and other stakeholders. OCED formally defines corporate governance as:

> '*the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance*'.

61. Good corporate governance is more relevant for larger firms because it facilitates access to external capital from the financial and capital markets, providing more efficient options for raising capital. On the other hand, poor governance undermines corporate performance, can limit access to external finance and threatened financial viability, and provides opportunities for fraudulent behaviour. The degree of protection provided to external financers has a major impact on financing patterns and levels. Investors need to feel confident that legal and regulatory frameworks will protect investors' rights to securities and equity shares, and will enforce creditors' rights to repossess collateral or take bankruptcy action when debt obligations are not met. Investor and creditor confidence depends on such factors as

[39] Much of this section is summarized from OECD, 2003b. *From Rest Tape to Smart Tape*, pp. 23-24.

the treatment of investor and creditor rights in company[40], bankruptcy, commercial and securities legislation, and the efficacy and autonomy of regulatory and legal compliance and enforcement.

62. In Viet Nam, both the EL and Foreign Investment Law (FIL) attempt to define key legal rights, but the ability of investors and creditors to exercise these rights is often restricted. The EL includes quite specific requirements with respect to corporate governance, but there has been little if any attention to monitoring enforcement of these requirements. Thus, it is difficult to assess whether these provisions are achieving their intended purpose. The limited corporate governance provisions in the FIL are aimed primarily at protecting domestic investors (for example veto provisions on key decisions), and are not in line with OECD principles outlined below. This is an issue that should be addressed during the process of unifying the EL. The Viet Nam situation has some similarities with that in China, as shown in Box 7.

[40] This includes protection against insider training, the rights and remedies available to shareholders especially with respect to appointment of the Board and major management decisions, requirements regarding the disclosure and use of information by insiders, and provisions regarding takeovers and the issuance of new shares. See Appendix 6 on selected Asian practices with regard to corporate governance.

Box 7: Company Law and Corporate Governance in China

The key laws of corporate governance in China are the Corporate (1993) and Securities (1998) Laws. Like Viet Nam, there is little mention of corporate government issues in foreign investment legislation. Company specific provisions are included in the Company Memorandum of Association (which is like a combined article of association and company by-laws).

The 1993 Corporate Law* requires companies to establish three governing mechanisms: (i) a general meeting of shareholders; (ii) a board of directors; and (iii) a supervisory board. The Corporate Law also specifies two statutory corporate positions: the Chair of the board of directors and the chief executive officer (CEO). While German companies are also governed by a board of directors and a supervisory board, the Chinese (and Vietnamese) supervisory boards have less power than is the case in Germany. The supervisory board and directors of Chinese companies are appointed directly by shareholders, while in Germany the supervisory committee is appointed by the shareholders, and the supervisory committee is responsible for appointing and dismissing directors.

* closely held corporations with 'few shareholders' and 'small capital size' do not have to establish boards.

Source: Adapted from Schipani, C A and Junhai, L, 2003. *Corporate Governance in China: Then and Now*.

63. Corporate governance is more important for publicly listed firms and less important for family owned firms and household enterprises that are not dependant on external financing. Good corporate governance becomes increasingly important for expanding firms as they seek to raise capital from financial institutions and/or the capital market. The most stringent corporate governance provisions apply to publicly listed firms. Given the early stage of stock market development, this is less relevant to most Vietnamese firms. On the other hand, corporate governance provisions aimed at protecting creditor rights can be important for the increasing number of Vietnamese firms that seek to raise capital from formal financial institutions for expansion.

International Principles of Corporate Governance

64. The OECD published its first international code of good corporate governance in 1999, while cautioning that corporate governance arrangements and institutions vary from one country to another. Experience in both developed and emerging economies has shown that there is no single framework that is appropriate for all markets. See Box 8 below and Appendix 8.

Box 8: International Principles of Corporate Governance

I. Ensuring the Basis for an Effective Corporate Governance Framework

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

II. The Rights of Shareholders and Key Ownership Functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

III. The Equitable Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

IV. The Role of Stakeholders in Corporate Governance

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between corporations and stakeholders in creating wealth and jobs, and in the sustainability of financially sound enterprises.

V. Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company.

VI. The Responsibilities of the Board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

Source: OECD, 2004. *Principles of Corporate Governance*. Paris.

65. These Principles are not prescriptive, but rather recommendations that each country can respond to as best befits its own traditions and market conditions. While the focus of these principles are on joint-stock companies (and, in particular, publicly listed entities), the aim of these principles is to help both member and non-member countries to '*evaluate and improve the legal, institutional and regulatory framework for corporate governance in their countries*'[41]. See Box 9.

[41] OECD, 2004, OECD Principles of Corporate Governance, p. 11.

Box 9: Different Approaches to Corporate Governance in Different Countries

It is generally accepted that the structure of ownership in the US and the UK is widely dispersed, while the situation in other countries is one of concentrated ownership. However, while the median largest voting block in these two countries is 10% or less, compared with 30-60% in other countries, the US and UK also have a substantial number of companies with very concentrated voting power. A similar pattern emerges when considering the second and third largest voting blocks, with the UK rather more similar to Europe than to the US.

The identity of the shareholders also differs widely in the OECD, with financial institutions as major shareholders in most countries, with the exception of France. The nature of the institution is also different with pension funds being very important in the US and the UK. With respect to the non-financial sector, individuals are dominant in the US but in most other countries, except the UK, it is other companies. This reflects the operation of company groups in many countries.

Groups of companies are often associated with particular types of control devices, such as pyramids and cross shareholdings. One study examined 2,890 companies in Europe and found that nearly 30% of them were in the third or lower down layers, but that a third also showed no deviation of cash flow from voting rights. The lowest deviation for the average cash to voting rights ratio was in the UK while there were large deviations in Belgium, France and Germany, with a rather complex picture emerging for Italy.

Powerful families, financial holding companies and cross shareholdings are a common feature. Corporate networks, voting agreements and hierarchical groups, especially in Belgium, France and Italy, are a device for concentrating voting power without concentrating ownership and cash flow rights*. They also shield the controlling group from hostile takeovers. However, they also open the system to abuse of minority shareholders.

*A. Melis, *Corporate governance in Europe: an empirical analysis of the Italian case.*

Source: OECD, 2003b, Survey of Corporate Governance Developments, pp. 18-19.

Alternative Approaches: Equity Market or Bank-centred Governance?

66. International comparative studies often distinguish between equity market-centered systems (common in countries with Anglo legal traditions, such as??), and the bank-centered approaches typically associated with Germany and Japan (Prowse, 1998), but also with other developing Asian economies, including Thailand. Under the equity market-based system, a broad range of investors typically play the lead role in monitoring and disciplining the management of companies, both directly and through the trading and pricing of company shares. In contrast, under the bank-centered model, banks play the lead role in the monitoring of firms. Other stakeholders are also involved in both cases, including the government, worker groups, consumer groups and other firms.

67. Some analysts argue that bank-centred systems, rather than individual or institutional investors, can ensure a supervisor's better access to information. It is sometimes argued that major bank involvement in governance may help resolve information asymmetries (differences in information available to managers and investors), which are typically a more significant problem in transition and less developed countries because of weak market institutions (for example, accounting and

auditing professions and credit rating agencies). Corporate governance remains crucial, but the relationship and expectations are different. Stockholders want to maximize profits while bankers are more concerned about debt recovery[42]. Securing debt recovery means that banks will be concerned about financial reporting and measures to safeguard against the misuse of corporate resources. In this case, firm managers remain accountable to owners and creditors.

68. Bank-centered systems may be more likely to result in non-market based lending decisions. Corporate governance in a bank-centred system may tend to redirect attention from the firm (and investor interests) to the banks. This can be particularly problematic if a highly regulated banking system is subject to pressure from Government and other interests to base lending decisions on non-commercial criteria. Banks and investors interests are most likely to be aligned if banks lend at commercial rates, taking into account the transparent assessments of credit risks. The lack of such commercial imperatives has contributed to the financial crisis in Asia. It has also caused problems in the past through lending by State-owned commercial banks in Viet Nam.

69. As companies develop, they become less dependent on external financing, and the leverage of banks in imposing discipline diminishes. The net result is often excessive diversification and inefficient investments, as occurred in Japan prior to the economic stagnation of the 1990s[43].

70. State enterprises face particular challenges in ensuring good corporate governance and commercial decision-making. The State (as owners) typically requires State enterprises to pursue multiple non-commercial objectives. A key aim of corporatization is to focus State enterprise governance structures on a commercial objective: that of maximising investment returns to the State. Effective corporatization aims to isolate managers from political pressure to achieve non-commercial objectives, while increasing their accountability for using the enterprise's resources to maximise returns to the investor.

71. A highly concentrated ownership structure is more likely to occur in weak institutions, as it can reduce the principal-agent problem in corporations. Data on ownership concentration in a range of countries that are at different levels of institutional development are shown in Box 10.

Box 10: Ownership Concentration in the Ten Largest Firms (1)

Asia	**All Firms (2)**	**Private (3)**	**Latin America**	**All Firms (2)**	**Private (3)**
India	38%	40%	Argentina	50%	53%
Indonesia	53%	58%	Brazil	31%	57%
Korea	23%	20%	Chile	41%	45%

[42] Different stakeholders in a firm can be expected to have different preferences as to how firm resources should be used. Shareholders may wish to maximize share value and/or dividend payments. Large shareholders with a controlling interest in the firm ('insiders') may try to increase their returns at the expense of minority shareholders ('outsiders'). Managers may try to maximize personal returns (for example, by increasing firm size and/or turnover or even misusing firm resources). Creditors often focus on debt repayment, and may prefer the firm to focus on less risky investments.

[43] See Alba, P et al, 1998, for a discussion of these issues.

Malaysia	46%	20%	Colombia	63%	63%
Pakistan	26%	54%	Mexico	64%	64%
Philippines	56%	37%	Venezuela	N/A	51%
Sri Lanka	60%	60%			
Thailand	44%	47%			

(1) The average percentage of common shares owned by the three largest shareholders in the ten largest non-financial firms. The percentages are not corrected for shareholder affiliation and cross-shareholding between firms.

(2) Excluding the public share.

(3) Largest 10 firms with no public ownership.

Source: Alba, P et al, 1998.

72. Effective corporate governance is essential to the development of a credible stock market, and thus to encouraging broad ownership of joint-stock companies by the population. The role of stock markets becomes more significant as market institutions provide better access to market information, and the legal system develops to a stage where is can provide relatively low cost protection for investors. The degree of concentration of ownership in private firms is quite low for countries like Korea and Malaysia, with their well established and stable institutions. If Viet Nam is to achieve policy objectives of broad based ownership of business entities (especially larger firms), then a greater focus on developing institutions needed for effective corporate governance will be required. Viet Nam needs to improve corporate governance to facilitate both financial and capital development markets.

Regulatory Reform in Viet Nam

Recent Business Regulation Reforms

Introduction

73. Regulatory reforms since the commencement of *Doi Moi* have facilitated the emergence of an increasingly dynamic private sector. The Vietnamese domestic private sector (especially the household sector) has generated most recent employment growth and now accounts for 90% of total employment. Most Vietnamese households now have members directly engaged in some form of business activity. There have also been substantial inflows of FDI since the early 1990s, and strong growth in State enterprise output. Rapid increases in investment and technology transfer have led to strong growth in labour productivity and average per capita incomes. The poverty incidence has fallen from more than 70% in the mid-1980s to about 37% in 1998, and about 29% in 2002. Regulatory reform has played a major role in encouraging the investment that has helped reduce poverty.

74. Despite this progress, many of the institutions that underpin a competitive market economy remain poorly developed. During the early post-*Doi Moi* period, legislation and regulations governing different business entities were promulgated on an *ad hoc* basis to address emerging constraints. Specific business laws were enacted for different categories of owners and for different forms of investment. Central and local authorities issued a stream of ordinances, decrees, decisions and circulars[44] to facilitate implementation of these laws. The proliferation of new regulations resulted in a cumbersome, overlapping and often inconsistent regulatory environment. This distorted incentive structures and resulted in a sub-optimal allocation of resources with negative impacts on output, employment and equity. Fixed costs of entry were high, placing smaller, and less well connected, investors at a particular disadvantage. Recent regulatory reform (most notably the EL reforms) aimed to address these constraints.

Pre-Enterprise Law Constraints to Business Development

75. Domestic concerns about the costs and inequities of business entry (registration and licensing) were highlighted in a widely distributed CIEM report in 1998[45]. 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 the business entity. Reports complained that business owners had to 'visit' ten different agencies to secure approval to register a typical enterprise[46] and had to submit up to '*20 different*

[44] 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 Minster; circulars are issued by Ministers and/or the Chairman of the Provincial People's Committee.

[45] 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 United Nations Development Programme (UNDP).

[46] 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.

documents with official seals'[47] depending on the nature of the business. Potential new business entrants were required to submit curriculum vitae, medical certificates, references that they were of good character and 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 costs[48]. Provisions in the Company Law on '*state economic management*' were used to restrict the permissible range of private business activity[49].

76. Following registration, additional licenses were required depending on the form and nature of activities of the business entity. The procedures for obtaining each license were time-consuming, and often involved repetition of both procedures and information. 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 enterprise prior to reforms was six-12 months[50] and cost from US$700-1,400. Gillespie has argued that '*complex procedures inflate the cost of incorporation from approximately US$150 in Korea and Singapore to US$1,000-10,000 in Viet Nam*'.[51]

77. The regulatory framework was inconsistent and many applicants found themselves in 'Catch-22' situations when trying to establish enterprises. For example, businesses were asked to provide details of the business address when registering, but they had to be a registered business in order to officially rent office space. Such difficulties were compounded because there were no mechanisms for systematically disseminating information to 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 regarding registration requirements: they had '*to closely look at the "movement" of their documents, to "investigate" who is in charge of processing their documents, in order to "make influence", if necessary…*'[52]. Following registration, additional licenses were often required (for example, to engage in import and export activities, for food safety, for public health approvals, etc). It was very difficult to identify if there were any public interest issues in many of the licensing requirements (for example, licenses to operate photocopying machines and to provide dancing lessons).

78. Private businesses faced particular challenges in obtaining 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

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47 CIEM, 1998. *Review of the Current Company Law and Key Recommendations for its Revision*, Draft Report prepared for CIEM and UNDP, p. 25.

48 Businesses claimed that there too were few notary offices, long delays in getting documents notarized and frequent requests for informal 'facilitation' fees.

49 CIEM, 1998. *Review of the Current Company Law and Key Recommendations for its Revision*, Draft Report prepared for CIEM and UNDP, p. 100.

50 Nugyen Dinh Cung, 2002. *Implementation of the Enterprise Law: New Ways of Policy Enforcement in Vietnam*, unpublished presentation, CIEM, Hanoi.

51 Gillespie, J, 2002. 'Transplanted Company Law: An Ideological and Cultural Analysis of Market Entry in Vietnam', *International Comparative Law Quarterly*, Vol. 51 (3), p. 659.

52 CIEM, 1998. *Review of the Current Company Law and Key Recommendations for its Revision*, Draft Report prepared for CIEM and UNDP, p. 26.

trade[53]. Such licenses were supposed to be available to all enterprises that met specified criteria, but in practice, obtaining such a license was a time consuming and expensive process[54]. While it was possible for private manufacturing enterprises to obtain licenses to directly trade in products that they produced, few licenses were issued to private trading companies.

79. Businesses also complained about arbitrary minimal capital requirements for different sectors, and about the requirement to specify, in advance, details of the scope of their business activities (with transactions outside the specified area being considered to be illegal)[55]. In practice, many regulations (for example, minimum capital regulations) were often circumvented[56]. There were no specified procedures that would allow an enterprise to change its shareholding structure and/or scope of business activities without having to re-register as a new business[57].

80. Most successful applicants for business registration hired one of a limited number of law firms who were known 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.

81. 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.

82. 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 provided 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.

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53 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'.

54 Le Dang Doanh and Tran Kim Hao, 1997. pp. 95-105.

55 CIEM, 1998. p. 61.

56 For example, 'capital' was borrowed and deposited in a bank account for a short period of time to ensure minimal capital requirements were met at the time of business registration. This could then be withdrawn after receiving the bank's certification on minimal capital.

57 Goddard, D, 1998. *Enterprise Reform: Legal and Regulatory Issues*, Consultant Report to MPI/ADB Enterprise Reform Project, p. 60.

Distribution of Adverse Impacts of the Old Company Law

83. A 1998 CIEM study[58] of the effectiveness of the Company Law concluded that the implicit policy objectives of this law were not being achieved. Major losers from inadequacies in the old Company Law included:

- potential new business entrants who either paid high start-up and/or expansion costs, or were deterred from developing businesses because of these costs;
- the rapidly increasing number of new entrants to the labour-force who were facing difficulty getting employment;
- potential new entrants without personal connections to officials that made key decisions[59]; and
- smaller enterprises, who suffered particularly because a large share of compliance costs were fixed, and had to be spread over a relatively small revenue base.

84. The following interest groups were potentially able to profit from the inadequacies in the old Company Law:

- Officials (central, provincial and district) responsible for issuing the myriad of licenses and permits that were needed to operate businesses, gained power because of their discretion in making key decisions.
- State enterprises and well connected private businesses benefited from monopoly powers in some areas, and from reduced competition. Well connected enterprises could use networks to secure licensing approvals, and to help stifle the emergence of new entrants and competition.
- Some State enterprises and foreign investors faced reduced competition from the domestic private sector because of their preferential treatment[60].

85. A clear understanding of the beneficiaries and losers of the old Company Law helped in mobilizing support for the Enterprise Law reforms.

Enterprise Law Reforms

86. The Enterprise Law (passed in July 1999 and enacted from 1 January 2000) represented a major step in reducing barriers to private sector development. The Law codified the rights of citizens to establish and operate private businesses, and to be protected from undue interference from government or other officials if these businesses were operating legally. It also marked a major shift in reform processes, with the Government working with the business sector to address business constraints.

87. The most significant change under the EL was to simplify business entry[61]. The EL reforms helped to:

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[58] CIEM, 1998. *Review of the Current Company Law and Key Recommendations for its Revision*, Draft Report prepared for CIEM and UNDP, p. 26.

[59] Groups that were underrepresented in official positions (for example, ethnic minorities and women) faced particular challenges.

[60] For example, with the import of capital equipment and taxes, and some licensing requirements.

[61] The process of simplifying business entry started prior to the enactment of the new EL (for example simplification of business registration and relaxation of licensing requirements to engage in international trade).

- reduce ambiguities and inconsistencies inherent in earlier legislation;
- simplify enterprise registration and licensing procedures;
- clarify the right 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), and also provides for partnerships as a new form of business; and
- clarify procedures for changing the scope of business, merging or liquidating business entities, and for shifting from one form of entity to another; i.e. they no longer needed 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.

88. The EL also includes provisions aimed at improving corporate governance, including to:

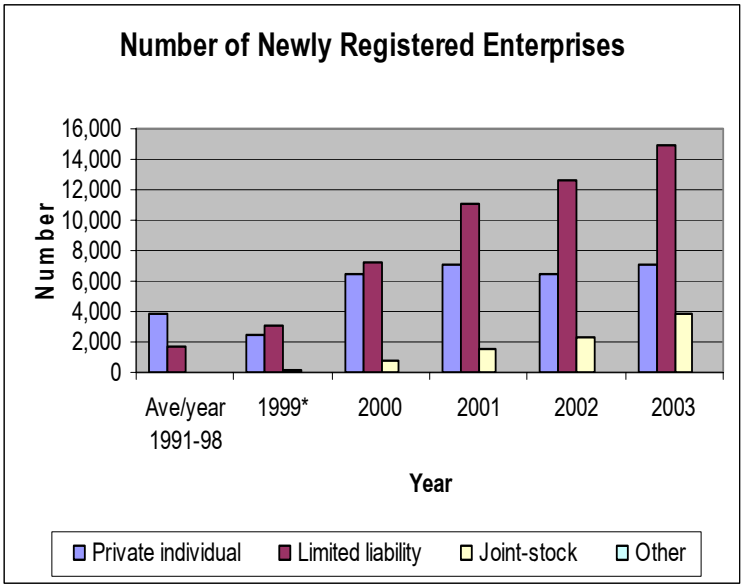
- clarify the rights and interests of company members, and especially the interests of minority shareholders;
- clarify mechanisms for decision-making within the company structure;
- better protect the interests of lenders by clarifying the conditions for withdrawing capital from companies;
- clarify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

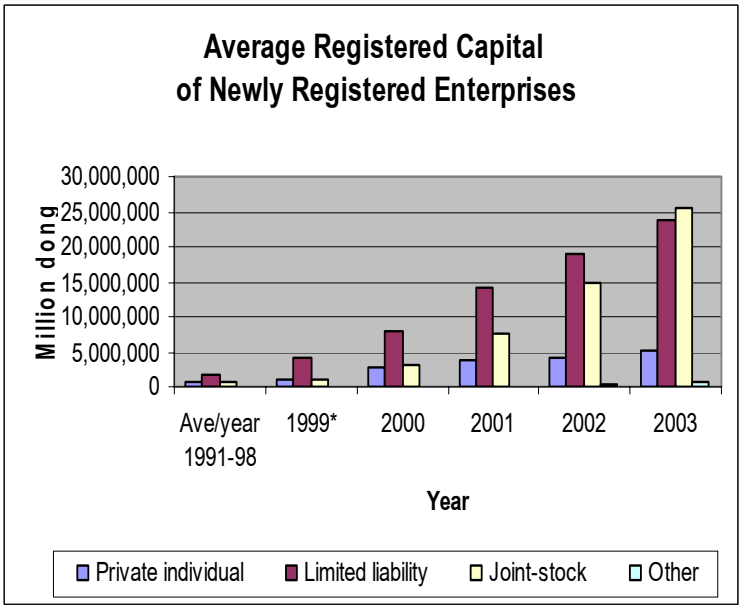
89. Changing the thinking of bureaucrats and societies was a particularly challenging aspect of the EL reform process[62]. Frequent high level commitment to private sector development – and more frequent informed media debate about business development issues – helped develop a more positive attitude to private sector development. Studies that demonstrated positive socio-economic benefits from pro-business reforms also helped in changing attitudes and building support for reform.

90. Recent Vietnamese experience shows that regulatory reform, especially when combined with extensive consultations with businesses and the broader community, can have a dramatic impact in terms of attracting increased investment and employment (see Box 11). Recognizing these benefits, Government and Party policy documents are increasingly focused on the need to sustain regulatory reform processes.

Box 11: Growth in Private Enterprises Since the Introduction of Enterprise Law

[62] Pham Van Dong (former Prime Minister) noted in 1993 that the stigmatism attached to traders under Confucianism, and to any private business activity under the pre-*Doi Moi* economic system, '*is not easily undone overnight'* (Source: 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.)





Source: Data from Enterprise Registration Database.

The Need for Ongoing Regulatory Reform in Viet Nam

91. Ongoing regulatory reform is required because there is a continuing need to remove and/or adjust bad regulations. As noted earlier, bureaucrats have many incentives to increase regulatory requirements, as regulations are generally linked to power and resources. Without ongoing regulatory reforms – and formal mechanisms to ensure greater consultation and assessment of regulatory impacts – the economy will become less competitive, with slower income and employment growth, and suboptimal progress in achieving economic and social objectives. Other pressures for further regulatory reforms include the following:

- The gap between regulations and enforcement: past regulations have been drafted with inadequate attention to enforcement issues, including the need for

public support. Even the EL faces enforcement problems, especially with respect to governance provisions.

- Regulatory and institutional weaknesses have adverse impacts in terms of the level and distribution of business investment, and thus in contributing to widening income gaps and inequality in living standards.
- Increasing recognition of the benefits of a strong domestic private sector to economic stability and employment growth. More balanced investment will help promote stability. A growth that is too heavily dependent on State enterprises and/or FDI may contribute to macro instability.
- Reforms introduced in neighbouring countries following the Asian financial crisis are increasing these countries' competitiveness, and their capacity to compete with Vietnamese business.

92. Despite major improvements in recent years, many regulations in Viet Nam still inhibit investment, and/or fail to achieve their intended objectives. Regulations continue to be issued without proper consultation with affected parties, and without adequate assessment of the costs and benefits of the regulation. There are concerns that inadequacies in the regulatory environment are contributing to growing income disparities, by favouring the "*rich and connected*" (to use the WB (2003) terminology referred to earlier in this report). There is also growing concern about corruption in Viet Nam, and increasing awareness that regulatory reform is important in reducing opportunities for corruption.

93. The head of the Party's Ideology and Culture Board (and Politburo member) recently noted that a Party survey 'found that most people are concerned with corruption and red tape, which was seen by the Party as one of the reasons causing the losing of people's confidence in the Party'[63]. Measures to reduce corruption were a major theme of the 6th Party Plenum in October 1998, and the issue has repeatedly been raised since that time by the Party Secretary-General[64]. Improvement in regulatory processes and ongoing regulatory reform, including further reforms to the EL, will be important in reducing future opportunities for corruption.

Current Strategies for Regulatory Reform and Business Development

94. Private business development has now been clearly established as an integral element of the national development strategy. The ten-year Socio-economic Development Strategy for 2001-2010 (SEDS) – endorsed by the 9th Party Congress and by the National Assembly – includes a commitment to creating a level playing field for all enterprises regardless of ownership, and to completely open the economy to global competition over the coming decade. The Government's Comprehensive Poverty Reduction and Growth Strategy (CPRGS, May 2002) focuses on: (i) creating

[63] Nhan Dan, 14 January, 2004. p. 1.

[64] 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*" , 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 January 2004.

a legal environment that supports fair and competitive business; (ii) maintaining macroeconomic stability; and (iii) creating a social environment that provides social equality, enhanced grassroots democracy and legal support for the poor.

95. The 5th Party Plenum (9th Congress) on Private Sector Development (March 2002) included a clear commitment to the important long-term role for the private sector in economic development. A Resolution issued by the Plenum declared that: '*The State respects and promotes the citizen's right of business freedom in accordance with the law, protects the right of legitimate property ownership, encourages, facilitates and manages the development of the private economy following laws and regulations, and ensures equal treatment among differing enterprises*'. The Resolution called for further reform to ensure more equal treatment of enterprises, and specifically called for reform of: (i) land policies; (ii) tax and credit policies; (iii) labour and wage policies; (iv) policies to support training, science and technology; (v) policies to support information access and trade promotion; and (vi) ongoing studies to monitor and learn from past experiences.

96. The EL reform process had a major impact in addressing many of these barriers to private business development, and to reduce the costs of business entry. However, resolving some key business entry issues has resulted in the emergence of new priorities for regulatory reform. Businesses continue to complain that regulations are stifling business development, though businesses in most countries have similar complaints. The Government appears committed to working with businesses to resolve ongoing priority concerns. In response to business concerns, and a desire to meet conditions for WTO membership, the Government established working groups in late 2003 to assist in developing policy guidelines for, and drafts of, unified enterprise and investment laws.

Reforming Corporate Governance in Viet Nam

Different Provisions under Different Laws and Weak Compliance

97. The current EL and LFI have very different focuses in terms of corporate governance issues. The LFI focuses mainly on State control and on protection of domestic partners in joint-ventures (J-Vs). The State EL deals with corporate governance issues in quite a different way, focussing on State management of its investments in business enterprises. The EL takes a broader approach in attempting to protect the interests of investors (including minority interests), creditors and the State. Key differences in the provisions of these laws are summarised in a separate matrix.

98. Very little attention has been given to date on implementation of the EL's corporate governance provisions. Many of the issues addressed in the law are more relevant to larger companies, with broad based share ownership. However, most Vietnamese companies are closely held. Nevertheless, better and more transparent corporate governance will provide increased opportunities to raise finance from the banking system and capital markets. Focussing on the issues will help in the education of stakeholders about the issues, and in gradually increasing demand for better corporate governance.

Corporate Governance in Viet Nam Relative to Other Selected Asian Economies

99. A detailed matrix of key corporate governance provisions in Viet Nam, relative to other Asian economies, is presented in Appendix 6. Most of this comparison relates to joint-stock (or shareholding) companies, with some provisions directly related to listed joint-stock companies.

100. The matrix shows that in some areas, Viet Nam's existing legislation appears to impose relatively relaxed restrictions in terms of corporate governance. The institutional mechanisms for enforcing these regulations are also generally assumed to be weak, but there has been no detailed analysis of enforcement since the new EL was approved. Moreover, Viet Nam lacks the self-regulatory institutions and industry-endorsed codes of best practice that are aimed at improving corporate governance standards in other Asian economies. This issue of developing practical approaches to improving enforcement is something that needs greater attention in the ongoing EL reform process.

101. In other areas, Viet Nam's corporate governance regulations are more restrictive. For example, Viet Nam has some of the most restrictive regulations on the appointment of non-nationals to the membership of a company's Board of Directors. Given the shortage of management skill, and stated national policy objectives of 'industrialization and modernization', it is not clear what policy objectives are achieved by such restrictions. The general lack of financial transparency is reflected in the difficulty in obtaining basic information such as non-performing loans in the commercial banking system.

Box 12: Non-performing Loans in the Commercial Banking Sector of Selected Countries

(% of total loans)

	Dec 1999	Dec 2000	Dec 2001	Dec 2002	Sep 2003
Indonesia	64.0	57.1	48.8	31.1	24.0
South Korea	23.2	14.0	7.4	4.1	4.9
Malaysia	23.4	22.5	24.4	22.4	21.3
Philippines	12.3	15.1	17.3	15.0	14.1
Thailand	41.5	29.7	29.6	34.2	33.5
Viet Nam	n.a.	n.a.	n.a.	15?	n.a.

Source: Data from World Bank, April 2004, East Asia Update.

Towards a Unified Approach Regardless of Ownership

102. The UEL should provide considerable flexibility to allow smaller firms, with few private shareholders, to operate with minimal obligatory corporate governance requirements. On the other hand, corporate governance requirements for joint-stock companies (and State owned companies) should be developed to incorporate international and regional best practices. This will be particularly important if foreign invested enterprises are to be encouraged to be incorporated under the law, and to build the confidence for domestic investors in taking on minority interests in joint-stock companies. The matrix on corporate governance provisions in other Asian economies (Appendix 6) is intended to be an initial step in facilitating that process.

Implications and Applications for Vietnamese Policymakers

Summary of Relevant International Experience

A Broad Perspective

- Businesses are regulated to various degrees in all market economies, but cumbersome regulations restrict growth and poverty reduction.
- Most successful economies aim to minimize what is regulated.
- Poor countries typically regulate more than richer countries.
- Poor people are worst affected by cumbersome regulations. The rich and well connected often avoid cumbersome rules, or are protected by them.
- Regulation can provide economic benefits (a company law promotes increased investment by limiting investor liability and protecting investor rights) and social benefits (protecting the environment, workers and consumers), but can also impose economic and social costs.
- Regulations often have unintended adverse impacts: regulators need to consider all potential impacts.
- Regulators often pay inadequate attention to the cost of regulations and to practical issues related to enforcement.
- Major benefits could be achieved from simplification and greater accountability in regulatory regimes. OECD studies have found that the cost of implementing business regulations can account for a considerable share of Government expenditure[65].
- OECD studies and OECD member country experiences demonstrate that regulatory reform is worth the considerable effort required by reformers to achieve change.

Managing Regulatory Regimes

- Unless regulatory agencies are accountable, there is a tendency to over-regulate. Viet Nam still has a relatively complex and at times overlapping regulatory system. There may be value in establishing an independent office with responsibility for improving regulatory quality.
- The aim of regulatory reform should be to improve incentives for business to increase investment and thereby increase income and employment.
- Those developing and implementing reforms need to regularly consult with key stakeholders and consciously aim to develop public understanding and support for regulatory reform.

[65] No reliable estimates are available for Viet Nam, but World Bank (2004, pp. 4-5) found that costs in several OECD countries ranged from 8-11% of Government budget expenditure.

- Efforts to raise awareness of the rights of investors can be valuable in facilitating implementation of reforms.
- Regulatory reform changes the attitudes and behaviour of firms, workers and individual citizens. This reinforces the effect of regulatory reform, by freeing up the entrepreneurial and innovative potential of society.

Implications for Regulatory Reform in Viet Nam

- Aim to avoid, minimize or simplify regulations. Where regulations are needed, regulate well.
- Be aware of the regulatory impact on business costs. Require regulators to include some formal assessment of regulatory benefits and costs, and of the distribution of costs and benefits, when submitting new regulations.
- Study closely practical issues relating to the costs and probability of compliance and enforcement.
- Build public understanding and support for regulatory reforms. It is difficult and often impossible to implement top-down reform.
- Develop national institutional capacity to implement an ongoing program of regulatory review and reform.

103. Specific recommendations relating to the UEL reforms are included in Box 14 at the end of this section. Many of these recommendations reflect comments received during the consultations on drafts of this report.

The Ongoing Need to Improve Regulatory Quality in Viet Nam

Recent progress, but…

104. Viet Nam has made tremendous progress in recent years in improving the regulatory environment for business. The result has been a rapid and sustained increase in the numbers and average registered capital of domestic private businesses in Viet Nam. Despite this progress, the ratio of registered companies to population – and contribution to GDP – remains low relative to regional standards. While business entry costs have been greatly reduced, they are still higher than best practice. And frequent inspections continue to constrain business development. Thus, the potential for further increases, and for further employment growth and reductions in poverty, is substantial.

105. A sustained medium term program of regulatory review and reform will be required in order to address remaining regulatory weaknesses. Progress in one area often helps to expose other problems. This was demonstrated during the EL reforms, when marked reductions in barriers to business entry helped expose another layer of regulatory barriers affecting day-to-day business operations. Because the extent of these problems varies between provinces and sector, action is required at sectoral and provincial level, in addition to national level reforms.

106. International experience indicates that regulatory reform – i.e. efforts to continue improvements to regulatory quality – should be an ongoing process. Even in OECD countries where legal systems are long established, renewed efforts are being made to improve regulatory quality to facilitate business development.

107. Regulatory reform should also be a participatory process. In Viet Nam and elsewhere, experience has shown that building understanding and public support for reforms can be a crucial element in the successful implementation of reforms. New laws are difficult to enforce unless there is broad community support for the law.

Implications for Future Development

108. The key implication is the need for more formal and systematic thinking about the need for new regulations. The checklist presented below provides a useful starting point.

Box 13: OECD Checklist for Regulatory Decision Making

1. **Is the problem correctly defined?** The problem should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying incentives of affected entities).
2. **Is government action justified?** Document evidence that government action is justified, the likely benefits and costs of action, and assess alternative options for addressing the problem.
3. **Is regulation the best form of government action?** Review regulatory and non-regulatory policy options, taking account of costs, benefits, distributional effects and administrative requirements.
4. **Is there a legal basis for regulation?** Regulatory processes should respect the 'rule of law'. All regulations should be authorised by higher level regulations, be consistent with treaty obligations, and comply with other relevant legal principles.
5. **What is the appropriate level (or levels) of government for this action?** What is the most appropriate level of government action? Where multiple levels are involved, systems for coordinating actions should be specified.
6. **Do the benefits of regulation justify the costs?** Estimate the expected costs and benefits of regulatory options, and make these estimates available in an accessible format to decision makers.
7. **Is the distribution of effects across society transparent?** Assess, and make transparent, the distribution of regulatory costs and benefits across social groups.
8. **Is the regulation clear, consistent, comprehensible and accessible to users?** Make sure that rules will be understood to all concerned: the text and structure of rules should be as clear as possible.
9. **Have all interested parties had the opportunity to present their views**? Regulations should be developed in an open and transparent manner, with effective input from stakeholders such as businesses, employee organizations, other interest groups, or other levels of government.
10. **How will compliance be achieved?** Assess the incentives and institutions by which the regulation will be implemented, and design implementation strategies to maximize compliance efficiency.

Source: Summarized from OECD, 1995.

109. A key challenge now facing the Vietnamese Government is to develop a systematic framework to improve the quality of regulations affecting business, including the formalization of consultative requirements, and the need for formal assessment of the impact of regulations on business. The Government may wish to develop clear policy guidelines on measures to improve the quality of business related regulations that take into account recent national experiences and international best practices. Such guidelines should address both the need for an ongoing process of regulatory review (to review legal and regulatory constraints to business development imposed by existing policies and regulations), and to improve the quality of new regulations and procedures issued by all levels of Government. The development and implementation of training programs could increase the awareness of public officials and business leaders. Donors could support business associations to develop their capacity to assess the impact of regulations on their members. A relatively simple and practical approach to reviewing and presenting some of the key impacts of proposed regulatory changes in the UEL is proposed below, in the section 'Approach to Assessing Impacts of the Unified Enterprise Law in Viet Nam'.

Possible Use of RIA in Formulating the Unified Enterprise Law

Introduction

110. Different methodologies for assessing regulatory impacts are employed in different OECD countries: cost-benefit analysis, cost-effectiveness or cost-output analysis, fiscal or budget analysis, socio-economic impact analysis, consequence analysis, compliance cost analysis and business impact tests. OECD suggests (2002, pp. 129–130) that regulators should have some flexibility in the analytical methods applied and the extent of quantification required. OECD rightly argues that good economic analysis requires professional judgement, and cannot be the result of simply applying a formula.

111. The UEL as a whole is not particularly amenable to a formal regulatory impact assessment (RIA). Such an approach is more appropriate where there is a clear and fairly narrowly defined policy change which imposes costs and benefits directly on businesses. A formal RIA in such a case can help in deciding between alternative regulatory options. In the case of the UEL, the key changes are wide-ranging and generally aimed at reducing business compliance costs. The key aim of any analysis of the EL should be to highlight the benefits, and to indicate the major distributional impacts of these changes.

112. The proposed approach is to develop a structured framework for reviewing the overall and distributional impact of key proposed changes, and for discussing possible impacts with key stakeholders. The framework also includes provision for summarizing key concerns raised during the consultative process. This matrix could be further developed, for example by including a column to summarize enforcement issues related to proposed changes.

Approach to Assessing Impacts of the Unified Enterprise Law in Viet Nam

113. The proposed approach is to focus on the impacts of a limited number of proposed key changes to provisions in the UEL, and briefly summarize the key overall impacts on investment, employment and economic output (and thus on poverty reduction). The approach reflects the following principles:

- The primary aim and focus of the reforms is to reduce the costs of existing regulations. A key aim of the assessment should be to provide policy makers with an idea of the nature and distribution of benefits.
- The analysis should also aim to facilitate structured consultations with a range of stakeholders on the benefits and distributional impacts of the changes. It is important that the analysis be easily understood.
- The reforms should encourage voluntary compliance. Individual businesses will make their own assessment of the extent to which they wish to be regulated by the law, by deciding what type of business structure they wish to establish.
- National institutional capacity for formal benefit cost analysis is very limited. It is important to develop simple tools that can be used by a range of Government agencies to formally assess the impact of new regulations.

114. A brief analysis of the impact of selected proposed changes is presented in Box 14. These are initial examples of issues that may be addressed under the revised law. As consultations proceed, this list needs to be revised on an ongoing basis. Initial priority issues addressed in the impact assessment include:

- **Business Entry**. The impacts of simplifying business entry by moving from registration to licensing of all business entities (including foreign investment projects) in line with recent changes in domestic private enterprise registration.
- **Management, Restructuring and Governance Issues**. The impacts of changes to existing provisions relating to (a) rights and obligations of investment and other key business decisions processes; (b) mobilization and transfer of equity capital; and (c) financial and other reporting.

Box 14: Indicative and Incomplete Summary Assessment of Selected Regulatory Reforms with a Unified Enterprise Law

Problem with current situation	Proposed change	Anticipated impacts of proposed changes			Summary of key concerns raised during consultations
		Key intended benefits	Costs	Distribution of Impacts	
Business entry					
1. Basic concepts of business entities are defined differently under the EL, Cooperative Law, LFI and SEL. Different laws with different provisions result in inconsistent provisions and increases the problem of developing competitive markets with a level playing field.	Combine laws to remove overlapping and inconsistent provisions and to provide all majority private owned (domestic and foreign) enterprises with consistent rights and obligations.	Provide equitable incentives, make it easier to invest, and provide flexibility to maximize investment and investment efficiency. This will help attract resources to the most profitable investment. Reduce ambiguity, uncertainty and opportunities for corruption. Increase income and employment growth.	Public costs to enforce regulations would be reduced. Main cost of the reform will be in mobilizing the support to overcome vested interests that may resist reform.	Gains will be broadly spread across economy. Officials and institutions exercising administrative discretion stand to loose. As discussed below, some enterprises will loose preferential treatment.	
2. Business entry remains problematic for many foreign investors, especially in some of the poorest provinces most in need of increased investment. Article 3 of LFI has been used to restrict FDI in lower priority areas. Foreign investors are only allowed to invest a maximum of 30% in domestic enterprises (including equitized entities), but are allowed to invest up to	Establish simple and automatic procedures for business registration for all investors (domestic or foreign). Give investors the right to register in all areas not specifically prohibited by law. Develop a restructured and harmonized national business registration system operating under obligatory national	Help stop delays in registration of investments in areas that are not 'especially encouraged', when investors are not seeking concessions. Moving from a 'positive list' approach that requires lengthy approval procedures (subject to the discretion of officials) to a more 'negative list' approach should facilitate increased investment. Mobilize increased levels of	Cost of introducing a national computerised business registration system. Adjustment cost of State and other enterprises that have enjoyed restricted competition by previous barriers	Benefit investors and the Government (less tax concessions), and less corruption. Increased investment in provinces where red-tape has previously discouraged investments. Direct impact will be concentrated on wealthier Vietnamese with money to invest, but increased	

Problem with current situation	Proposed change	Anticipated impacts of proposed changes			Summary of key concerns raised during consultations
		Key intended benefits	Costs	Distribution of Impacts	
100% under the LFI. This is inconsistent and a barrier to the transfer of skills and technology to private and equitized entities, and thus slows down the equitization program. Foreign investors have to go through very lengthy and complicated licensing approval procedures while domestic investors just register their business. FIL restricts the form of foreign investment only in BCC or limited liability company (J-Vs or 100% FDI entities) Domestic firms may only sell shares to foreign investors if they operate in one of 35 sectors listed in Decision 260. The maximum aggregate foreign equity holding in a domestic unlisted company is 30% of the chartered capital of the company.	guidelines with adequate staffing and budget, performing within statutory response time. Reduce sub-licenses (requested by national or local authorities) requirements. Introduce 'One stop shop' service at provincial levels. Broaden the range, nature and flexibility of forms of FDI (to include joint-stock, partnership and indirect investment.) Permit local firms to issues shares to foreign investors in all businesses except a limited number of clearly specified sensitive or strategic business areas. Remove limits on foreign ownership of joint-stock companies.	investment from domestic sources by providing new investment opportunities. More domestic firms will have access to foreign investment capital, and to the value-added that foreign investors can provide in terms of technical expertise, management assistance, access to international markets and networks, etc. Removing caps on foreign participation in domestic companies will provide new opportunities for domestic firms to raise capital from the most appropriate investor. Share value will increase with the added option of selling equity to foreign investors.	to entry.	investment could lead to broad based increases in employment that would benefit the poor. More generally, these changes will encourage more broad based participation in business.	

Problem with current situation	Proposed change	Anticipated impacts of proposed changes			Summary of key concerns raised during consultations
		Key intended benefits	Costs	Distribution of Impacts	
3. Too many SEs are operating in areas that are of no strategic importance to the State. Given limited resources, State investment resources should be focussed on investing in priority areas where it is not possible to attract investment (for example basic health and education, basic infrastructure in rural areas).	Minimize the areas where State monopolies are permitted. Do not allow line agencies with regulatory responsibilities to exercise State ownership rights in firms with State investment. Ensure that State investment resources are directed to priority areas.	Free up State resources to focus on providing social services infrastructure (especially to deprived areas), and to develop market institutions. Increased tax revenue collection from private sector.	Direct financial returns from State investments in business may fall. Short-term reductions in State employment should be compensated by increased private sector employment.	Should ensure more resources available to reach disadvantaged areas and groups. The emerging domestic private sector would have freer access to investment opportunities.	
Management, Restructuring and Governance issues					
4. Best possible expertise is not being tapped, placing Viet Nam State enterprises at a disadvantage relative to foreign competitors.	Eliminate requirements that only Vietnamese citizens who are also permanent residents of Viet Nam can be appointed to SE Board of Management (Article 31 of SEL)	Increase the competitiveness of State enterprises. Accelerate the transfer of skills and technology to State enterprises. This should lead to increased growth and investment.	Some will see the appointment of foreign board members as a loss of national pride, but foreign managers are appointed to large corporations all round the world.	Should increase the competitiveness of SEs vis-à-vis private and foreign investors.	
5. Cumbersome procedures restructuring procedures for restructuring foreign invested entities increase the cost of adapting businesses to respond to	Remove requirement for approvals for changing business objectives and/or scope, or the legal capital contribution ratio for	Increase efficiency and investment by allowing FDI entities to adjust more rapidly to changing market and financial conditions.	Some loss of State control.	This should provide new opportunities for businesses to respond to smaller emerging opportunities (which would not be worth	

Problem with current situation	Proposed change	Anticipated impacts of proposed changes			Summary of key concerns raised during consultations
		Key intended benefits	Costs	Distribution of Impacts	
new opportunities.	foreign invested entities. Such changes should just require change in registration.	Less Government resources devoted to unproductive attempts to control business activity. Net result is increased output, income and employment.		pursuing if there was a high fixed cost of securing approval).	
6. Cumbersome procedures for establishing branch and/or representative offices increase the cost of adapting businesses to respond to new opportunities.	Remove the need for State approval to establish branch or representative offices in Viet Nam or overseas.	The aim is to promote business expansion and employment creation, and to minimize opportunities for corruption. Accelerated business and trade expansion.	Some loss of State control over enterprises.	Benefits should be broadly based, but of special benefit to enterprises that are integrated into the world economy.	
7. Ambiguity in rules governing the trading of shares in entities originally established under the LFI.	Clarify that all ordinary shares in former FIE (other than restrictions in the Company Charter and possible ceilings on foreign ownership in some sectors?) can be freely traded (i.e. trades just need to be registered).	Develop the share market to increases mobilization of domestic investment resources. Increased domestic investment and growth. Transfer of foreign management.	None. Some perceived loss of State control.	Should facilitate increased domestic investment and participation in commercial business investments.	
8. Many day-to-day management issues need to be approved unanimously by all J-V partners. This discourages investment by	Replace provisions (Art 14, LFDI 7 & Art 122 (d24)) requiring unanimous decisions regarding appointment	Reduce bottlenecks to resolving disputes that have stifled activity in many J-Vs. This should ensure more rapid implementation of	Some loss of decision making power by minority (usually Vietnamese)	Benefits will be broad based. Some of the smaller J-Vs outside major centre have been	

Problem with current situation	Proposed change	Anticipated impacts of proposed changes			Summary of key concerns raised during consultations
		Key intended benefits	Costs	Distribution of Impacts	
majority partners and slows investment implementation.	of D-G and deputy D-G, and to amend the Charter of a J-V, with provisions requiring majority approval.	projects and/or winding up of J-Vs where problems are insurmountable. Freeing up of resources will increase confidence and investment, and help generate increased growth in income and employment	partners.	particularly constrained by this provision. Larger enterprises tend to have better access to power structures that can help resolve disputes.	
9. Restrictions on use of foreign management services limit opportunities to increase productivity and competitiveness, and to build domestic capacity.	Remove the need for State approval for FIE (or any) enterprise to employ foreign management services (or other foreign contractors)	Accelerate improvements in the quality of services available in Viet Nam and accelerate the transfer of skills transfer and technology. Increased economic opportunities, income and economic growth.	Established, but inefficient, local firms may lose opportunities.	Can help in ensuring that high quality (and value) services (such as tourism) can be provided throughout the country, and this may contribute to balanced development.	
10. Management sometimes misuse enterprise resources for personal gain. There is a lack of clear guidelines to ensure transparency in contracting arrangements between enterprise management and related parties. Members of the Board of Directors and senior managers are not required to disclose all material interests in transactions or	Develop clear, consistent provisions to ensure transparency of contracting arrangements for all large businesses. Require members of the Board of Directors and senior managers to disclose all material interests in transactions or matter affecting the company, including through indirect	Ensure consistent and clear regulations to ensure transparency and to avoid conflict of interest in entering contracts. Clarity and consistency will make it easier to raise awareness and to implement provisions. This will reduce corruption and increase investor confidence. Costs of implementing provisions will be reduced by greater clarity and	There may be some increased administrative compliance and reporting costs. Corrupt enterprise officials will have less opportunity to misuse investor funds.	Major benefits will be to protect the rights of smaller investors, and State and institutional investors not involved in day-to-day business management.	

Problem with current situation	Proposed change	Anticipated impacts of proposed changes			Summary of key concerns raised during consultations
		Key intended benefits	Costs	Distribution of Impacts	
matter affecting the company, including through indirect beneficial interests. This makes it difficult to monitor and control related party transactions which could work against the best interests of minority shareholders.	beneficial interests.	consistency.			
11. Article 17 of the LFI restricts the life of foreign invested entities to a maximum of 50 years. This will lead to enterprises being rundown with no new investment as the life of the project expires. This is not good for efficiency, output, and/or employment.	Allow all business entities to be established as ongoing entities for an indefinite duration as presently allowed under EL.	Increase incentives to investors to maintain and further develop business activities beyond time limits imposed under the old LFI. Increase efficiency and growth in income and employment.	No net costs envisaged, but some SEs or State agencies may have been hoping to take over valuable assets after the life of the investment.	Benefits will flow to foreign investors, their employees, and to those domestic enterprises undertaking commercial transactions with these businesses.	

Problem with current situation	Proposed change	Anticipated impacts of proposed changes			Summary of key concerns raised during consultations
		Key intended benefits	Costs	Distribution of Impacts	
12. Frequent and illegal inspections continue to constrain many domestic and foreign investors.	Improve provisions on State inspections, specifying the rights of business to take action against State officials who breach the law with regard to State inspections (for example Art 119(4) in Decree 24.	Raise awareness of business rights to be free of harassment and to increase pressure on State officials to comply with the Law. While business rights are mentioned elsewhere, specific recognition here helps to increase pressure to resolve one of the major constraints facing business.	Some rent-seekers will loose a source of income and/or power.	Harassment from State officials can be a particular problem for small business because it is a largely fixed cost that has to be spread over smaller revenue.	
13. EL does not require the dissemination of sufficient information to shareholders such as: the charter, the minutes of past meetings of shareholders; quarterly, semi-annual and annual financial statements; list of company assets subject to pledges or other restrictions imposed by creditors	UEL should require a company to disclose the information to their shareholders in a timely manner or upon request.	Increase transparency and reduce opportunities for misuse of investor funds. Increased investor confidence should result in mobilization of increased investment resources.	Some additional costs involved in preparation and dissemination of information. Allowing use of new information technology for reporting should reduce these costs.		

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Appendix 1: Summary of Recent Private Sector Reforms

Period	Key policy initiatives
late 1995	Government agrees to review Company Law and Law on Private Enterprise
August 1996	International workshop discusses 1st draft of revised laws.
November 1997	8th Draft of CL and LPE circulated for domestic and international comment.
December 1997	4th Party Plenum (8th Congress) called for broader enterprise reform and a more consistent regulatory framework for all types of business entities.
1998	Series of national studies highlight counter-productive business regulations, helping to focus attention on simplifying – and reducing the cost of – establishing new business. National workshop of Government and business association representatives discuss draft report on issues in implementing old Company Law.
July 1998	With the Asian financial crisis and declining FDI, the 5th Plenum stressed the need to mobilize and utilize the large amounts of untapped capital still 'under the mattresses'.
July 1998	Decision taken to combine Company Law and Law on Private Enterprise under a single Enterprise Law.
July 1998	New regulation on 'Procedures for Establishing and Registering Private Enterprises and Companies' simplifies business registration procedures.
October 1998	Pivotal speech by Party Secretary General to 6th Party Plenum on need to better mobilize domestic resources by removing bureaucratic bottlenecks to business development.
October 1998	Report on comparative ASEAN business law distributed to National Assembly (NA).
October 1998	Report on issues and problems in implementing the Company Law circulated to NA.
Jan-Feb 1999	6th Party Plenum (2nd session) highlights need to streamline bureaucracy to boost business and reduce corruption.
February 1999	Politburo endorses key Enterprise Law reforms.
June 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	
January 2000	Enactment of Enterprise Law
February 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
February 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).
March 2001	9th Party Congress endorsed a Socio-Economic Development Strategy for 2001-2010 includes a commitment to move towards equal treatment for all enterprises.
November 2001	Government issues Decree 90/2001/ND-CP, 23 November 2001 outlining policies and establishing institutional mechanisms for promoting the development of SMEs.
December 2001	Amended Constitution clearly recognises the long-term role for the private sector.
February 2002	Amendments to 1996 Law on Issuing Normative Documents02/2002/QH11) formalize requirements for consulting on draft legal documents affecting business.
March 2003	5th Party Plenum gives an unambiguous commitment to private sector development. Party members allowed to own private firms.
July 2003	Government decree issued to facilitate the establishment of business associations.
December 2003	Government issues directive requiring agencies to review all legal documents issued impacting on to business operations, and to abolish or reform inappropriate regulations to facilitate the businesses development and international integration.

Source: Summarized from Mallon, R, 2004. *Managing Investment Climate Reforms: Viet Nam Case Study*, Draft input for the World Bank's World Development Report 2005.

Appendix 2: Indicative Possible Contents for Initial RIA Reports in Viet Nam

Main topics	**Contents to include**
Problem definition	Succinct statement of the problem to be addressed.
Identify the objectives of introducing measures to address the problem.	Succinct statement of national objectives for the proposed measures to address the problem. Discuss the economic rationale (and legal basis) for policy or regulatory interventions to address the problem.
Identify regulatory and non-regulatory alternatives.	List regulatory and non-regulatory alternatives that should be considered and a description of the process used to select them.
Describe consultative processes and key issues raised during consultations.	List persons and groups that were consulted in each step and summarize the main points or information provided. Note how main points were incorporated, and/or why some main points could not be addressed in the draft regulation.
Identify key benefits and costs of alternative options.	List benefits and costs likely to result from a particular regulation, and regulatory and non-regulatory alternatives. Include a quantitative or qualitative assessment of costs and benefits of alternatives and make recommendations on preferred approach.
Discuss enforcement issues and describe strategy to achieve compliance.	Describe the methods to be used to ensure compliance under the regulation, and the costs of compliance to the government and other stakeholders. Describe experience of enforcement agencies elsewhere with similar regulations and alternatives.
Key conclusions and findings.	Summarise key findings and recommendations. Note any remaining unresolved issues .

Appendix 3: Evolution of Federal Level Regulatory Reform in Australia

1985 – the Federal Government established the Business Regulation Review Unit (BRRU) in the then Department of Industry, Technology and Commerce.
1986 – RIS requirements were introduced for Cabinet proposals affecting business. These requirements were set out in a BRRU circular to departments and in the Cabinet Handbook.
1989 – the BRRU was moved to the then Industry Commission and renamed the ORR.
1996 – the Industry Commission was asked to report on progress in microeconomic reform. The report recognised that the existing RIS requirements were being largely ignored because there were no sanctions for not preparing them. Recommendations were made to enhance quality controls on new or amended regulations. The Government appointed a Small Business Deregulation Taskforce in 1996 to make recommendations for improving regulation reform processes.
1997 – A Prime Ministerial statement 'More Time for Business' accepted many of the Taskforce's recommendations, including: widening the scope of the RIS requirements; giving the ORR a stronger gatekeeper role; and increased incentives for compliance and sanctions for non-compliance. Mandatory RIS requirements were consolidated in 'A Guide to Regulation' which was endorsed by the Government in September 1997.
1998 – The second edition of the Guide was published and endorsed by Cabinet.
2001 – The Government publicly reaffirmed its support for the RIS process.

Source: Adapted from Argy, S, and Johnson, M, 2003. *Mechanisms for Improving the Quality of Regulations: Australia in an International Context*, Productivity Commission Staff Working Paper, p. 23.

Appendix 4: Summary of RIA Practices in Selected Countries Mapped to International Best Practices

OECD Best Practice	Selected RIA practices from OECD countries
Maximise political commitment to RIA	– Examples of high level ministerial committees responsible for the oversight, review and coordination of regulations include the Special Committee of Council in Canada (Cabinet level) and the Regulatory Reform Committee in Korea (includes Prime Minister and six ministers as well as non-government members). – In the UK, ministers for Regulatory Reform assigned to key departments are required to report to Panel for Regulatory Accountability. – Ministerial sign-off or certification of RIA, for example, in the UK and Canada. – Sign-off or certification of RIA by senior officials in Mexico and New Zealand.
Allocate responsibil-ities for RIA program elements carefully	– Agency heads must also review validity of RIA in Korea. – UK Cabinet Office Regulatory Impact Unit (RIU) at the centre of a system of satellite departmental Regulatory Impact Units (DRIUs). – In the US, agencies are required to issue their own guidance to ensure and maximise the quality and objectivity of information, including RIAs. – Regulatory authorities in the USA and Canada have the power to return proposals. In Mexico, the Office of the President's Legal Council will not consider any proposals submitted without a RIS. – In the Netherlands, comments on RIAs are received from other ministries. – In several Australian states, Parliament has specific responsibilities for ensuring RIA requirements are met. – OIRA in the USA and the UDE in Mexico publish information on their web pages on current proposals under review, including RIA compliance status. – In NZ, Cabinet papers, which include comments on adequacy of RISs/BCCSs, are generally released to the public on request.
Train the regulators	– In the UK, RIA has comprehensive approach to training, including providing training through Civil Service College training courses on policy making (Italy and Korea also include such training for officials as part of their overall strategies). – Help desks offer a means of providing expert advice (used for example in the Netherlands). – Detailed guidance available on different aspects of conducting RIA in the UK, USA and Canada. – In Canada, departments offer extensive in-house training, and develop regulatory process manuals tailored to the specific regulatory programs they manage, and many have hired cost-benefit specialists.
Use a consistent, but flexible analytical method	– US implements rigorous and comprehensive quantitative analysis, but this detailed benefit-cost analyses is targeted at major regulations. – Explicit net-benefit test (for example, US, Canada and Australia). – In Mexico, three broad levels of analytical rigour and effort are distinguished by guidelines, depending on the importance of the regulations. – Many jurisdictions use a two or three-stage RIA process to improve cost-effectiveness (for example, Italy, Canada, the US and the UK). – Detailed guidance on compliance cost assessment (for example, UK and NZ). – Implementation and enforcement issues are addressed well in the RIA requirements of Mexico and the Netherlands. – Mexican RIAs must include a very detailed description and justification of any formalities created, modified or maintained by the proposed regulation. – Denmark's Business Test Panels and Model Enterprise Program are used for
Develop	

OECD Best Practice	Selected RIA practices from OECD countries
and implement data collection strategies	collecting information on compliance costs. – Two cost-estimating aids are used in Canada – 'Business Impact Test' software and a Business Impact Cost Analysis Protocol – to improve data collection for RIA. – Netherlands Help Desk assists ministries with the design of analyses, data collection, the analysis and interpretation of data, access to a statistician and funding for necessary research.
Target RIA efforts	– Several jurisdictions use monetary tests as a 'rule of thumb' for determining those regulations that meet threshold significance requirements, or a combination of a monetary and other tests (for example, USA, Korea and the UK) – Independent review of RISs by oversight bodies is typically selective, focusing on RISs for more important regulations only (for example, UK and US).
Integrate RIA with the policy-making process	– Adoption of a staged RIS process can facilitate integration and improve cost-effectiveness (for example, the UK, Canada and the US). Release of draft RISs for consultation can also contribute to better integration. – In Denmark, preliminary RIA is required at the time of consideration of proposals for inclusion on the legislative program at the start of each parliamentary year.
Involve the public extensively	– Releasing draft RIAs for consultation can improve the quality of information on impacts of regulatory proposals. This practice is used, for example, in Canada, the US and most Australian states. – Denmark employs several strategies to ensure public involvement including: standard use of consultative committees for developing legislative proposals; release of proposals for broader public consultation; business test panels; and publication on the Internet of business impact assessments (part of RIA process).
Commun-icate the results	– Executive summary or page limit (for example, NZ) may maximise usefulness in informing decision making, provided that supporting detail is available on request. – In NZ, RISs/BCCSs must be attached to the press statement announcing any new policy and published on the web.

Source: Summarized from Argy, S, and Johnson, M, 2003. pp. 78-80.

Appendix 5: State of Play: OECD Conclusions on Regulatory Tools

Regulatory policy tool	**Is this tool still recommended as a best practice?**	**Are there clear best practices?**
1. Regulatory policies.	Yes, for all countries.	Policies must be designed to meet the needs of the country and the political opportunities that exist. They must reflect sufficient consensus on the nature of the problem to be implemented effectively. Policies should broaden and deepen over time as experience and expertise grow, and as additional problem areas are identified. The objectives of the policy should be clearly defined, and the quality standards explicit and measurable enough to hold regulatory bodies accountable for implementation. Competition and benefit-cost principles should constitute the core of much policy. The coverage of the policy should be as broad as possible with respect to instruments, institutions and levels of government. Co-ordination between regulatory quality and related structural policies will yield faster and better results.
2. Systematic programs for keeping regulations up-to-date.	Yes, for all countries.	A clear set of principles is needed to guide review programs, including particularly competition principles. These should be complemented by standardized evaluation techniques and decision criteria. Review processes should be transparent and should provide for involvement by key stakeholders and the general public.
3. Regulatory impact analysis.	Yes, but expectations should recognize that implementation is a medium-term task.	There is no single model of a good RIA program, but the country review program demonstrates that the ten best practices identified in 1997 are still good reference points for designing an effective program. The need to build an RIA program progressively must be recognized. However, all RIA programs should be based on the benefit/cost principle and the principle of comparative policy analysis.
4. Systematic considerat-ion of regulatory and non-regulatory alternatives.	Yes, but relatively little progress has been made, limiting the experience base from which to draw conclusions.	While further experience and learning are needed to fully understand the benefits, costs and risks of alternative instruments, it is clear that there are many circumstances in which policy tools other than traditional command and control regulation are likely to be more effective in meeting regulatory objectives. Governments should require that regulatory alternatives be considered when creating new regulations, should provide guidance in their use to regulators and should publish a regular review of the impact and performance of regulatory alternatives.
5. Adminis-trative simplifi-cation and reduction of permits and licenses.	Yes, particularly for countries recently embarked on reform, including	Best practices are emerging, but require more assessment. A mix of policy responses, such as one-stop shops and central registries of formalities combined with electronic access is needed to address various sources of the problem. In selecting priorities, a greater focus on reducing ex ante licenses and permits is likely to yield significant economic

Regulatory policy tool	**Is this tool still recommended as a best practice?**	**Are there clear best practices?**
	transition countries. Should ideally be integrated with other policy elements and made more systematic.	benefits as investment and market entry increase. Electronic solutions promise considerable gains that are as yet only partly realized. Adopting a more systematic approach to the implementation of burden reduction measures ex ante – through RIA processes – may also be an area for further consideration.
6. Public consultat-ion, regulatory communi-cation and access strategies.	Yes, for all countries, and for both primary laws and lower level regulations.	Best practices in public consultation are highly contextual, while different forms of consultation may need to be combined, in order to achieve different objectives. In general, more open and accessible procedures are more legitimate, less vulnerable to capture, and more likely to bring in high quality information that improves analysis of policy options. Discretion in deciding who and when to consult should be minimized and transparent in order to avoid giving special access to 'insider' interests and systematically excluding 'outsider' interests such as weaker, less organized, and new interests. Attention is needed to dealing with evolving civil society interests and to uses of new technological means such as IT. In terms of regulatory communication, more evaluation is needed of the effectiveness of various tools. Strategies of codification, registries, plain-language drafting, early planning and information technologies each seem to be effective in addressing facets of the overall problem, but each is insufficient in itself. The centralized business registry with positive security in particular seems to offer substantial benefits to both domestic and international benefits in reducing barriers to entry and competition.
7. Due process and administrat-ive certainty.	Yes, for all countries.	Administrative procedures acts or other high-level instruments are needed to ensure that administrative decisions are subject to appropriate appeals mechanisms, with independence from the initial decision-maker, an important principle. The extent of administrative discretion must be carefully considered. Mechanisms such as the 'silence is consent' strategy can be effective in encouraging more responsive administrative actions. Mediation mechanisms and ombudsmen are being adopted in some countries to supplement administrative and judicial procedures, with the accent being on improving accessibility of these processes.
8. Adopting regulatory compliance strategies	Yes, for all countries.	Effective forms of compliance analysis are emerging, but require additional refinement as experience is acquired with their use in practice. Importantly compliance levels are closely related to the adequacy of regulatory design. This

Regulatory policy tool	**Is this tool still recommended as a best practice?**	**Are there clear best practices?**
		means that achieving compliance relies substantially on good regulatory design as well as appropriate and effective enforcement tools.
9. Mechanisms for promoting, coordinating, and tracking regulatory quality reforms.	Yes, for all countries.	Very few best practices have yet been identified, since institutional effectiveness is highly contextual and oversight must fit into domestic policy-making and administrative structures. In general, countries find that the capacities for promoting regulatory quality work better if placed in the centre of government, preferably close to traditional management functions such as budgeting or policy oversight, rather than in a line ministry. Ministerial responsibility for the function increases effectiveness, as does expertise, capacity to intervene in the regulatory process, and capacity to advise on quality of individual regulatory measures. Care should be taken, however, in differentiating the advisory, challenge and advocating functions.
10. Independent regulators.	Yes, but careful design is needed to avoid substantial policy risks.	No best practices have yet been identified, but good practices are needed as a benchmark. The OECD is attempting to develop good practices in design and operation of these arms-length regulatory bodies.

Source: OECD, 2003. pp. 108-109.

APPENDIX 6: CORPORATE-GOVERNANCE SELECTED ASIAN COUNTRIES

(Summarized from OECD 2003, White Paper on Corporate Governance in Asia: some provisions relate to listed firms only)

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
I./II Shareholders Rights and Equitable Treatment										
1. Shareholders' information										
1.1 What periodic information are listed companies required to provide?										
	Annual reports	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Un-audited semi-annual reports	Yes	Yes	Yes	Yes	Yes	Yes	Yes (audited financial reports)	Yes (for financial institut-ions)	No
	Quarterly financial statements	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (audited statements for listed firms)	No
1.2. What information must be contained in the company's annual report?										
	General information on the company	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	Audited annual accounts	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (but only for those JSC where the law requires annual audited financial reports)
	Personal details of company's directors	Simple introduct-ion	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Directors' report on past and future operations	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	Financial status of the company	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Consolidate financial statements	Yes (if company up to disclosure standards).	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	Information on Corporate Governance	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No
2. Shareholder Participation										
2.1. Convening of shareholder meetings										
	Time of notice (days before annual or extraordinary general meetings: AGM or EGM)	30 days	21 days	28 days	21 days (14 days for EGM)	14/21 days	14 days	20/30 days for AGM 10/15 days for EGM	7 days; 14 days for some EGM matters	7 days
	Information contained in the notice.	Agenda, relevant company documents, accounts, details on auditors, directors	Agenda Reports and accounts. Draft resolutions, proxy forms, explanatory note on special business	Agenda items, substance needed for EGM	Agenda, material facts, statement regarding effect of proposed resolutions.	Agenda items, details of proposed resolutions or other business.	Agenda, details on directors, candidates for the board and auditors.	Agenda items, proxy form.	Agenda items, background information, opinions of board	Agenda, discussion documents for proposed resolutions.
	Thresholds for requesting or convening an EGM.	10% of voting rights to request directors to convene EGM	10% of paid-up share capital carrying voting rights can request	10% to request EGM	10% of voting rights or issued and paid-up capital.	10% of paid-up capital	3% of voting rights to request directors to convene EGM	3% of outstanding shares.	20% of issued shares or 25 shareholders with at least 10% of	10% of ordinary shares held for >6 months (default provision)

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
			EGM						shares.	
	Legal minimum quorum requirements	None	2 people	50% of voting shares (67% or 75% for some special resolutions).	2 people	2 members	50% of voting shares	50% of voting shares (67% for special resolution)	1st call 25 persons or 50% of shareholders holding 33% of shares; 2nd call none	1st call 51% of voting shares; 2nd call 30%; and 3rd call none.
2.2 What kind of voting rights may shares have?										
	Non-voting common	No	No	No	No	No	No	No	Yes, (non-voting depositary receipts possible)	No
	Multiple voting rights	No	No	No	No	Not for publicly listed.	No	No	Not for common shares	No
	Removable voting rights	No	No	No	No	No	Yes	No	No	No
2.3 Can shareholders vote by:										
	Proxy	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Mail	No	Yes	Yes	No	Yes	Yes	No	No	Yes
	Telephone /video-conference	No	No	No	No	Yes	No	No	No	No, unless charter allows
	Other means	No	No	No	No	Yes	No	No	No	No, unless charter allows
2.4 Do shareholders have the right to vote on:										
	Appointment of directors	Yes (ordinary resolution	Yes (ordinary resolution	Yes (ordinary resolution	Yes (ordinary resolution	Yes (ordinary resolution	Yes (ordinary resolution	Yes	Yes	Yes (ordinary resolution >50%)

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
		>50%)	>50%)	>50%)	>50%)	>50%)	>50%)			
	Removal of directors	Yes	Yes (ordinary resolution >50%)	Yes (ordinary resolution >50%)	Yes (ordinary resolution >50%)	Yes (special resolution >67%)	Yes (ordinary resolution >50%)	Yes (special resolution >75%)	Yes (ordinary resolution >50%)	Yes (ordinary resolution >50%)
	Appointment and removal of auditors	Yes	Yes (ordinary resolution). Special resolution for State companies	Yes	Yes (>50%; >75% if not proposed in notice)	Yes (ordinary resolution >50%)	Yes (ordinary resolution >50%)	Yes	Yes (ordinary resolution >50%)	No (unless prescribed by company charter)
	Authorising share capital	Yes	Yes, special resolution (>75%)	Yes	Yes (ordinary resolution >50%)	Yes (special resolution >75%)	Yes (ordinary resolution >50%)	Yes (67% of attending shares for public companies).	Yes (special resolution >75%)	Yes (special resolution >65%)
	Issuing share capital	Yes	Yes, special resolution (>75%)	Yes	Yes (ordinary resolution >50%)	Yes (ordinary resolution >50%)	Yes (ordinary resolution >50%)	No	Yes (special resolution >75%)	Yes (special resolution >65%)
	Amendments to company articles or statute	Yes, special resolution (>67%)	Yes, special resolution (>75%)	Yes	Yes (special resolution >75%)	Yes (special resolution 75%)	Yes, special resolution (>67%)	Yes (67% of attending shares for public companies)	Yes (special resolution >75%)	Yes (special resolution >65%)
	Remuneration of Board members	Yes	Yes, special resolution (75%)	Yes	No	Yes (ordinary resolution >50%)	Yes (ordinary resolution >50%)	Yes (>50%)	Yes (ordinary resolution >50%)	No
	Major corporate transactions (acquisitions, disposals, mergers,	Yes, special resolution (66%)	Yes, special resolution (75%)	Yes, special resolution (75%)	Yes, if transaction is >25% of net tangible	Yes	Yes, special resolution (67%)	Yes (67% of attending shares for public	Yes of transaction >50% of net tangible	Yes, special resolution (65%)

	China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
takeovers)				assets (ordinary resolution)			companies)	assets. Special resolution (75% majority).	
Transactions with related parties	Yes/No, not all require approval	Yes	Yes, interested persons shall abstain from voting).	Yes, ordinary resolution (>50%); interested person shall abstain.	Yes, ordinary resolution (>50%); interested person shall abstain.	Disclosed in annual report	No	Yes, for transactions >10 million Baht or 3% of net tangible assets. Special resolution.	Yes. If contract valued at >20% of total value of Company's assets.
Changes to company business or objectives	Yes, if changes to company articles are required	Yes, special resolution (75%)	Yes, special resolution (67%)	Yes, special resolution (75%)	Yes, special resolution (75%)	Yes (ordinary resolution >50%)	Yes, if this requires amendments to the articles.	Yes, special resolution (75% majority).	Yes, if this requires amendments to the articles.
2.5 How are votes counted and by whom?									
How are votes counted and by whom?	Poll, counted by at least 2 shareholders and one supervisor monitored by notary public.	Show of hands counted by meeting Chair. Shareholder-s (10% of shares or RS 50,000) can request a poll.	Notary, Secretary to the Board under monitoring of notary public.	Show of hands, but shareholders (10%) can request a poll counted by the Chair.	Show of hands, but shareholders can request a poll	Show of hands, or poll counted by the Chair.	Show of hands, or poll counted by the Chair.	Show of hands, or poll counted by a person appointed by the Chair.	Not specified by EL.
2.6 Does the law provide for the disclosure of voting arrangements?									
Yes/No or details	No	No	No	No	No	No	Yes	Agreement disclosed in	No

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
									annual report.	
2.7 How may shareholders directly nominate candidates for the board of directors?										
	Details	At least 1% of shares for independent directors, >5% of shares for others.	No special procedure required.	No special procedure required.	>5% of voting rights or minimum of 100 members with >Rm500 in shares.	Shareholders holding >5% of shares	No special procedure required.	No special procedure required.	No special procedure required.	No special procedure required.
2.8 To what extent and how does the board of directors (BOD) nominate candidates for the board?										
	Details	BOD can nominate candidates at AGM	Candidates nominated by BOD	Candidates nominated by shareholders	Nomination committee of BOD usually nominates directors	Nomination committee nominates listed company directors.	Nomination committee are usual for nominated large companies	Since May ’03 BOD can make recommend directors.	Candidates are usually nominated by BOD	Not specified in EL.
2.9 Can shareholders place items on the shareholders meeting agenda?										
	Details	Yes, 5% of shares are required.	Yes, if application is made by at least 100 shareholders.	Yes, 10% of shares are required.	>5% of voting rights or minimum of 100 members with >Rm500 in shares.	Yes	Yes, but must have held shares of 6 months.	Shareholders may propose contemporaneous motions at meeting.	Yes, 1/3 of issue shared capital.	Yes, 10% of shares held for 6 months.
3. Share in the profit of the Corporation										
3.1 Does the law or regulations provide for timely payment of shares to shareholders?										
	Details	Dividends payable within 2 months after declaration.	Dividends payable within 30 days after declaration.	No. Date fixed by board, based on shareholder resolution.	Payable within 1 month after book closure, 3 months after	No.	Dividends payable within 1 month after declaration.	No. Date fixed by board, based on shareholder resolution.	Payable within 1 month after declaration.	No. Date fixed by Board.

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
					declaration.					
3.1 Body responsible for declaring, approving and issuing dividends?										
	Details	Declaration & issue: Board. Approval: shareholders	Interim: Board. Final: shareholders	Shareholder meeting.	Declaration and issue: company. Approval: shareholders	Share-holders	Share-holders	Share-holders	Interim: Board. Final: shareholders	Declaration and issue: Board. Approval: shareholders
4. Corporate Control										
4.1 Thresholds for notification in case of substantial acquisitions of shares										
	Percent	5%	5%	5%	5%	5%	5%	10%	5%	5%
4.2 Thresholds requiring a mandatory offer for all shares at a particular price										
	Percent	30%	15%, mandatory offer to an extra 20%.	25%	33%	30%	NP	Acquisition of 20% within 50 days.	25%, 50%, 75%.	25%.
5. Shareholders Redress										
5.1 How can shareholders seek redress if their rights are violated?										
	Derivative Action	No	Yes (100 shareholders holding 10% of voting rights).	Yes (1+ shareholders jointly holding >10% of voting rights).	Yes	Yes	Yes, for shareholders who own >1% of outstanding shares.	Yes (share-holders holding 3% of shares 1 year).	Yes (Min. 5 shareholders or 20% of shares)	Yes.
	Direct individual action	Yes	Yes (Company Law Board and Tribunal)	Yes	Yes	Yes	Yes	Yes	?	Yes
	Class action/minority	No	Yes	Yes	Yes, with	Yes	No	Yes	? new law	No

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	action		(Company Law Board)	(Supreme Court law)	procedural limitations				was being drafted.	
	5.2 Are lawyer contingency fees allowed?	No	With the permission of the court.	No	No	No	NP	Yes	No	No
	5.3 Who pays the legal fees of the prevailing party?	The losing party.	The prevailing party.	Proposed by plaintiff, decided by the court.	Decided by the court.	NP				
6. Insider Trading										
6.1 Penalties attached to the offence of insider trading?										
	Civil liability	Yes, but no detailed regulations.	Yes, Penalty up to 3 times of the made profit.	No.	Yes, Penalty up to RM 500,000 or 3 times profit.	Yes, Up to 3 times profits (or losses avoided), s.t. minimum penalties.	Yes, up to the value of shares purchased or sold.	Yes, up to 3 times of the amount of the damage.	Yes.	Yes.
	Fines	Up to the value of shares purchased or sold.	Determined by the adjudicating officer.	Up to Rp 15 billion.	Minimum of RM 1 million.	Yes, Up to 3 times profits obtained or loss avoided, s.t. to min. penalties.	Up to Won 20 million.	Up to NT3 million.	Min. Baht 500,000. Max. 2 times of the profit made.	From VND 2-50 million.
	Imprisonment.	Up to 10 years	Up to 3 years.	Up to 10 years	Up to 10 years	Up to 7 years	Up to 10 years	Up to 7 years	Up to 2 years	No provision.
	Others	Restriction on exercise of profession.	Restriction on exercise of profession.	Admin sanction.	Action for recovery and penalties by Supreme Court.	Restriction on exercise of profession.	NP.	Restriction on exercise of profession.	Disqualify from profession	Restriction on exercise of profession.
7. Related party-transaction										
7.1 Does the legal and regulatory framework provide for the disclosure of related-party transactions?										

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	Yes/No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7.2 Must related-party transactions be approved by the shareholders?										
	Details	Yes, if value of transaction is >5% of net tangible assets or >30 million RMB.	Yes, (with exceptions).	Yes, should be approved by independent shareholders .	Yes, if value of transaction >5% of tangible net assets.	Yes, if interested director counted in the quorum, or majority vote by the board.	NP	No (only major transactions)	Yes, if transaction >10 million Baht or 3% of net tangible assets.	Yes, if contract if valued at > 20% of total value of assets.
7.3 Are related persons required to abstain from voting on the transactions?										
	Yes/No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
III. The Role of Stakeholders										
1. Codes of Conduct										
	1.1 Self-binding instruments applied by companies to protect shareholder rights?	Codes of corporate governance applied for listed companies.	Recommendations of national report on corporate governance. Voluntary code of conduct.	By agreement or per company's article or code of conduct.	Codes of conduct may be issued by companies.	Memorandum and articles of association.	NP	Corporate Governance Best Practices Principles. Internal company rules following SFC guidelines.	Stock exchange guidelines, codes of conduct issued by companies.	Working manuals, internal rules. (Not specified in EL)
2. Employee Rights										
2.1 What are the rights of employees regarding?										
	Information on the company?	No special rights (public information only).	No special rights (public information only).	No special rights (public information only).	No special rights (public information only).	No special rights (public information only).	NP	No special rights (public information only).	No special rights (public information only).	No special rights (public information only).

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	Collective bargaining	No specific regulations.	Right to collective bargaining.	Through labour unions.	Through labour unions.	No restrictions.	Yes.	Through employee unions.	Through employee committees and unions.	Right to collective bargaining.
	Participation in the BOD	None	None	None	None	None	None	None	None	None
	Consultation	Prescribed by labour code	No special rights.	None.	Prescribed by Code of Conduct on Industrial Harmony.	No restrictions.	Yes	None	None	None (only in the case of privatization).
2.2 Can employees participate in the company's profits by…?										
	Share ownership	Yes	Yes	Yes	Yes, but no statutory rights	Yes	Yes	Yes	Yes	Yes
	Share options	No	Yes	Yes	Yes, but no statutory rights	Yes	Yes	Yes	Yes	Yes, available to employees with shares.
	Profit sharing schemes	No	Yes	Yes	Yes, but no statutory rights	Yes	NP	Yes	Depends on contractual provisions.	Productivity based bonuses
2.3 Who manages employee pension funds?										
	Details	Social security adminis-tration	Government trustees, Regional provident fund	State owned fund, private insurance company or company itself.	Employee provident fund board, other government pension funds and approved schemes.	The Central Provident Fund Board.	National Pension Fund and employer.	Central Trust Bureau of China.	Asset management companies	Viet Nam Social Insurance Agency
	2.4 What priority do employees and benefits have in the event of insolvency?	2nd, after fees and costs of bankruptcy	None	2nd, after government	2nd, after fees and costs of bankruptcy	Before secured creditors.	1st priority for last 3 months wages, 3	2nd after expenses and debts pertaining to	Among the priority claims under section 130	2nd, after fees and costs of bankruptcy proceedings

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
		proceedings			proceedings		years accumulated severance and compen-sation for work related injuries	the estate in insolvency.	of bankruptcy code.	
	2.5 Do employees have access to internal redress mechanisms (mediation/ arbitration) in case of violation of their rights?	Depends on the company	Yes, Trade Unions/ Boards of Conciliation.	Yes, Trade Unions/ Boards of Conciliation, or courts.	May be prescribed by contract.	Yes, representatives of workers though unions.	Arbitration Committee, collective contract with employer	Yes, Labour Dispute Mediation Office, Labour Relations Committee	Depends on the company	Yes, labour conciliation councils of companies. Labour bureau labour conciliators.
3. Creditors rights										
3.1 Are creditors involve in governance in the context of insolvency?										
	Details	Yes (they apply to court to appoint insolvency committee members)	Yes/No (right to participate in the process of winding up a company).	Yes, through creditor's meetings.	Yes (consent of creditors required for arrangement scheme under appropriate company law provisions).	Y/N (creditors can initiate proceedings to wind-up a company).	NP	Yes (Creditors meetings may decide on procedure, administrati on and continuing proceedings) .	Yes (vote on composition of credit committee and re-organization plan. Credit committee monitors adminis-tration).	Yes (creditor meeting proposes restructuring plan and monitors distribution of assets).
3.2 How are creditors protected against fraudulent conveyance/insolvent trading in the context of insolvency?										
	Details?	Statutory provisions and insolvency committee.	Any transfer within 6 months prior to winding-up is suspect.	Internal control and insolvency committee.	Personal liability of parties for fraudulent conveyance, application	Protected by criminal sanctions.	NP	The trustee in bankruptcy shall apply to the court in cases of	Application to the court, insolvent trading legislation.	Insolvent trading regulations prohibit disposals and certain

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
					to court by liquidator or creditors.			insolvent trading.		transactions during insolvency.
3.3 How can creditors seek redress if their rights are violated?										
	Details?	Judicial redress	Criminal prosecution	Judicial redress or arbitration	Judicial redress	Redress from adminis-trator or courts.	Civil and insolvency law.	Trustee may void acts done within 6 months of declaring bankruptcy.	Through creditors' committee, judicial redress	Judicial redress?
IV. Disclosure and Transparency										
1. Consolidated financial reporting										
	1.1 Does law or regulations provide for consolidated financial reporting?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No?
2. Non-financial information										
2.1 Are companies required to disclose information on:										
	Corporate governance structures and practices	Yes (annual report)	Yes (quarterly compliance/ annual report)	Yes for listed companies (JSX listing rules)	Yes (code on corporate governance)	Yes (annual report)	Yes	Yes (annual report)	Yes (annual report)	No
	Education and professional experience of directors and key executives	Simple introduction in annual report	Yes (annual report)	Yes for listed companies (in prospectus)	Yes (profile of directors)	Yes (annual report)	Yes	Yes (annual report and prospectus)	Yes (annual report)	Yes (for listed companies)
	Remuneration of directors and key executives	Yes (salary brackets)	Yes (annual report)	Yes for listed companies (JSX listing rules)	Yes (salary brackets)	Yes (annual report)	Yes	Yes (annual report, financial statements & prospectus)	Yes (annual report)	Yes (for listed companies)

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	Deviations from corporate governance codes.	No	Yes (annual report)	Yes for listed companies (JSX listing rules)	Yes	Yes (annual report)	No	Yes (annual report)	Yes (annual report)	No
	Management discussion and analysis (MDA).	Yes	Yes (annual report)	Yes (annual report and prospectus)	Yes (chair, CEO and management)	Yes (annual report)	No	Yes (annual report, prospectus)	Yes (annual report, quarterly discussions)	No
	Forward looking statements of the company	Yes	Yes (directors reports)	Yes (annual report)	Yes (chairman's statement)	Yes (annual report)	Yes	Yes (in some cases)	Yes (part of the MDA above)	No
3. Audit/Accounting										
	3.1 Are companies required to have their financial statements externally audited?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (listed, finance firms & firms under FI Law)
	3.2 How and by whom are external auditors appointed	By shareholders at AGM	By shareholders	By shareholders or delegated to the Board	Appointed by shareholders , nominated by Board	By shareholders at AGM	By Audit Committee or External Auditor Appoint-ment Committee	By a resolution of the Board	By shareholders upon Board proposal	Not applicable. (Specific regulations for banks and SEs)
	3.3 To whom do the internal auditors report?	Board of Directors	Manage-ment	Audit Committee (if any), Board of Directors	Audit Committee	Audit Committee	Board of Directors, shareholders at AGM	Board of directors and supervisors	Board of Directors	Board of Management
	3.4 What rules regulate the audit profession?	Audit Law	Institute of Chartered Accountants Act (1949)	Directorate General of Financial Institutions	By-laws issued by the Council of the	Companies Act and Accountant Act	Act on External Audit of Stock	Accountant Law, Securities and	Auditing Act, Securities and	Law on Accounting and Audit?

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
			and Companies Act (1956)	(MOF) and Indonesian Institute of Accountants	Malaysian Institute of Accountants .		Companies, Act on Public Accountant	Exchange Law, and implementin g regulations	Exchange Act	
	3.5 Is certification or training of auditors mandatory?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	3.6 Is there a code of ethics relating to the audit profession?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	3.7 Which authorities ensure the review, quality and independence of auditors?	China Securities Regulatory Commission CSRC) and Ministry of Finance	Institute of Chartered Accountants : Accounting Standards Rules	Directorate General of Financial Institutes (MOF)	Audit Practice Review Committee	Public Accountants Board and SGX	Financial Supervisory Board	CPA Association and others	Board of Auditing Practice, Stock Exchange Commission	Ministry of Finance, VN Association of Accountants?
	3.8 Is rotation of audit firms and auditors mandatory?	No, but new regulations proposed	NP	Yes	No	Yes (every 5 years)	Yes (audit partner cannot direct audit of listed firm for >4 consecutive years	No (but recommen-ded by best practices principles)	No (only for banks which must change at least every 5 years)	No
	3.9 To what extent do national auditing and accounting norms materially diverge from international accounting standards (IAS)?	Basic principles are similar to IAS: Diverges in areas like measuring “fair market value”	NP	No material divergence	No material divergence. National standards follow IAS and GAAP.	Closely aligned	Mixture of IAS and USA GAAP.	No material divergence	No material divergence	No material divergence

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	3.10 Which body is responsible for the development of accounting standards and oversight of accountants?	Standards: MOF. Oversight: MOF and CSRC	Institute of Chartered Accountants (self regulatory body)	Directorate General of Financial Institutions (MOF) and Indonesian Institute of Accountants	Standards: Malaysian Accounting Standards Board (MASB). Oversight: Malaysian Institute of Accountants	Standards: Council on corporate disclosure and governance committee. Oversight: Public accountants board	Standards: FSC, Korean Accounting Standards Board. Oversight SFC	Standards: Financial accounting standards committee (self-regulation board). Oversight: SFC and CPA association	Standards: Thai Institute of Certified Accountants and Auditors. Oversight: Board of Auditing Practices	Ministry of Finance, VN Association of Accountants?
4. Reporting Requirements										
To what extent do Stock exchanges require?										
	Semi-annual reporting	Yes	Yes	Yes	Yes	Yes	Yes	Yes (audited financial statements)	Yes (financial institutions)	Yes
	Quarterly reporting	Yes	Yes	Yes	Yes	Yes (if market capitaliz-ation >S$75 million)	Yes	Yes	Yes	Yes
	Publication of audited annual report?	Yes	Yes (6 months after end financial year & 21 days prior to AGM)	Yes	Yes (6 months after end financial year)	Yes (120 days after end financial year)	Yes	Yes (4 months after end financial year, 60 days for financial statements)	Yes (120 days after end financial year)	Yes (90 days after end financial year)
	Immediate reporting of price-sensitive information?	Yes (within 2 days)	Yes	Yes	Yes (immediate reporting)	Yes (immediate reporting)	Yes	Yes (before trading hours next	Yes (the day on which the event	Yes (on a real time basis for listed firms)

	China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
							day)	occurs)	
4.2 What penalties are attached to the non-compliance with the above-cited prescriptions?	Criticism by relevant media. Temporary suspension of trading	Show cause notice to company, possible suspension or de-listing	Stock exchange policy	Reprimand, fine <RM 1million, possible suspension or de-listing	Reprimand, fine < S$250,000, prison up to 7 years, civil penalties	Warning, prison < 1 year, fine >Won 5 million	Fine NT$120,000 -600,000, possible suspension or de-listing	Fine < Baht 100,000 + Baht 3,000/day of contraventio n	Fine (VND 20-50 million)?
4.3 Is there a central registry for financial and non-financial corporate information, whish is readily accessible to shareholders?	No (information kept by company or on SSE website)	Yes (electronic Data information filing and retrieval system).	Capital market electronic reporting system (recent)	Yes (Companies Commission Malaysia)	Yes (registry of Companies and Businesses (RCB))	Yes (Financial Supervisory Services and Stock Exchange)	Yes (market observation System, post system)	No (information kept on SEC and SET website)	No
4.4. To what extent is information technology integrated into disclosure regimes?	Electronic filing of disclosure reports	Electronic data information filing and retrieval system	Capital market electronic reporting system (recent)	Posting of corporate notices on KLSE website	Electronic filing with RCB	Electronic filing of disclosure reports for listed companies	MOPS website, electronic filing	Electronic filing at SEC and SET, documents on SEC and SET website	Some electronic filing of business registration and disclosure reports?)
V. Responsibilities of the Board									
1. Members of the Board									
1.1 Prescribed board structure (unitary/dual board structure)	Dual Board structure	Unitary	Modified dual structure	Unitary	Unitary	Unitary	Modified dual structure	Unitary	Unitary
1.2 Can a dual board structure be established in the articles of association?	NA	NP	NA	Yes (but option not used)	Yes (but option not used)	No	NA	NP	NP
1.3 Minimum/maximum number of directors for	Min: 5 Max: 19	Min: 3 Max: none	Min: 2 Max: none	Min: 2 Max: none	Min: 2 Max: none	Min: 3 if capital >	Min: 5 Max: none	Min: 5 Max: none	Min: None Max: 11

	China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
listed companies?						Won 500 million Max: none			
1.4 Does law require representation of labour unions on the Board?	No	No	No	No	No	No	No	No	No
1.5 Is cumulative voting* for the election of board members permitted? (*helps minority shareholders elect director)	Yes (mandatory if shareholder owns > 30% of shares)	No	Yes, if provided for by articles of association.	No	Yes, if provided for by articles of association.	Yes	Yes (default rule)	Yes (default rule)	NP
1.6 Maximum election term for members of the Board	3 years (re-election possible)	None	None	3 years (re-election possible)	None	3 years (re-election possible)	3 years (re-election possible)	3 years (1 year for cumulative voting)	3 years (re-election possible)
1.7 Does the regulatory framework permit staggered election terms for Board members?	No specific regulations	No	NP	Elections every 3 years	Yes	Yes	No	Yes, except in case of cumulative voting	Depends on company charter
1.8 Is their a limit to the number of Boards on which an individual may serve?	No, but max. of 6 years service for independent directors on any one board	Yes (max 15)	No	Yes (10 for listed companies and 15 for others)	No	Max of 2 for non-executive directors	Y/N. Maximum of 5 boards for independent directors	No, except for directors of banks (limit of 5)	No
1.9 Are companies required to disclose the attendance records of Board meetings?	No	Yes	No	No	No (but is recommen-ded best practice)	Yes	No	No (included in SEC guidelines)	No
1.10 What is the minimum number of	4	4 (one every quarter)	No minimum	No minimum	No minimum	No minimum	No minimum,	4	4

	China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
board meetings to be held per year?							but 6 suggested		
1.11 Limitations to the appointment of non residents or foreigners to the board of listed companies?	None	Approval by Reserve Bank and Department of Company Affairs required.	None	None	None	None	None	Yes, ½ of board members shall be resident	Yes only residents are allowed to be board members of other than foreign invested enterprises
1.12 What are the rules and procedures for:									
Nominating?	Nominated by board of directors, shareholders or supervisory board.	Application to be filed by candidates 14 days prior to AGM	NP	Nominating committee (if any), or board, or shareholders with not <5% of voting rights.	NP	Nomination committee (including candidates nominated by major share-holders)	Nominations made at shareholder meetings.	Nomination committee of major shareholders	Shareholders >10 of shares for 6 month (default rule)
Electing?	Elected by shareholders	Elected by shareholders	Elected by shareholders	Elected by shareholders	Individually elected by shareholders	Elected by shareholders	Elected by shareholders (cumulative voting)	Elected by shareholders (cumulative or ordinary voting)	Elected by shareholders
Removing Board members?	No specific regulation	Removed by ordinary shareholder resolution	Removed by shareholder resolution	Removed by ordinary shareholder resolution	Removed by ordinary shareholder resolution (28 days notice to be given)	Removed by shareholder resolution	Removed by shareholder resolution (2/3 majority required)	Removed by special shareholder resolution (75% majority, 50%	Removed by ordinary shareholder resolution (51% majority)

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
									quorum)	
1.13 Does the law require the separation of Chairman and CEO		No	No	No	No, but recommend by corporate governance code)	No, but recommen-ded best practice	No	No, but recommen-ded best practice	No	No
2. Powers of the Board										
2.1 Does the Board of Directors decide on										
	Appointment and compensation of senior management?	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Review and adoption of budgets and financial statements?	Yes	Yes	Yes	Yes	Yes	Yes	Prepared by Board (reviewed by supervisor)	Yes	Yes
	Review and adoption of strategic plans?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Major transactions outside the ordinary course of business?	Depends on articles of association	Yes	Yes, plus shareholder approval	Yes, for substantial transactions	Yes	Yes	Yes	Yes	Yes
	Changes to the capital structure?	Yes, plus shareholder approval	Yes	Yes, plus shareholder approval	Yes, plus shareholder approval	Yes, plus shareholder approval or court order	Yes	Yes (within authorized capital)	Yes	NP
	Organization and running of shareholder meetings?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Process of disclosure and communications?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NP
	The Company's risk policy?	No specific regulation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	NP
	Transactions with	Yes, if	Yes	Yes, plus	Yes, with	Yes, plus	Yes	Yes, for	Yes	Yes, if <20%

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	related parties?	transaction <5% of NTA or < RMB 30 million		independent shareholder approval	shareholder approval also required if >5% of NTA	shareholder approval		acquisitions of real property		of total assets
3. Board committees										
3.1 Which Board committees must be established under the current law or regulations?										
	Audit committees	No	Yes	Yes, JSX listing requirement	Yes	Yes	Yes, if assets >Won 2 trillion	No	Yes	No
	Remuneration committees	No	Yes	No, but recommen-ded best practice	No, but recommen-ded best practice	No, but recommen-ded best practice	No	No	No, but recommen-ded	No
	Nomination committees	No	No	No, but recommen-ded best practice	No, but recommen-ded best practice	No, but recommen-ded best practice	Yes, if assets >Won 2 trillion	No	No, but recommen-ded	No
	Other committees	None	Shareholder and investor grievance committee	No	Banks are required to set up risk management committees	None	None	None	No, but risk management committee is recommen-ded	Inspection committee in companies with > 11 shareholders
4. Directors qualifications										
4.1 May legal entities serve as directors?		No	No	No	No	No	No	Yes	No	NP
4.2 Prescribed minimum/maximum age of directors?		Min: none Max: none	25-70 for managing directors	Min: none Max: none	Min: 21 Max: 70 (default rule)	Min: 21 Max: none	Min: none Max: none	Min: 20 Max: none	Min: none Max: none	Min: adult Max: none
4.3 What other requirements must members of the Board fulfil?										

	China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
'Fit and proper test' (i.e. no criminal convictions or prior bankruptcies)	Yes	Yes	Yes	Yes	Yes	Yes (for financial sector)	Yes	Yes	Yes
Minimum education and training	No	No	No	Yes, KLSE requires mandatory training (may take after election)	Yes	No	No	No	NP
Professional experience	No	No	No	Yes	Yes	No	No	No	Yes, in specific industries
4.4 Does law or regulations require continuing training for board directors	No	No	No	Yes, KLSE listing rules	No, but recommen-ded best practice	No	No	No	No
4.5 Does law or regulations provide for certification procedures of Board directors?	No	No	No	Yes, accreditation	No	No	No	No	No
4.6 Does the institutional framework provide for voluntary training possibilities for Board directors?	Yes (stock exchange)	No	Yes	Yes, compulsory and voluntary training by KLSE and SC.	Yes (Singapore Institute of Directors)	No	Yes (Securities and Futures Institute)	Yes, (Thai Institute of Directors Association)	No
5. Independent directors									
5.1 Does law, regulations or listing rules require	Yes (SEC guidelines)	Yes (1/3 with non-	Yes (JSX listing rules)	(Yes, 2 directors or	No (but recommend	Yes (255 for listed firms;			No

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
the election of independent directors to the Board?			executive chair, ½ with executive chair)		1/3 of the board)	1/3)	3 directors and >50 of Board for banks or companies with >Won 2 trillion in assets)			
5.2 Does the definition of "independence" exclude persons who are:										
	Related to the management (by blood or marriage)	Yes	No	No, unless director has interest in company.	Yes	Yes	Yes	Yes	Yes	No
	Related to major shareholders	Yes	No	No, unless director has interest in company.	Yes	Yes	Yes	Yes	Yes	No
	Employees of affiliated companies	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	Representatives of companies having significant dealings with the company in question	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6. Directors liability										
6.1 May breaches of duty by members of the Board generate their individual liability?										
	Civil liability	Yes	No	Yes (possible)	Yes	Yes	Yes	Yes	Yes	Yes
	Administrative	No	No	Yes (possible)	Yes	Yes	Yes	Yes	Yes	Yes
	Criminal	Yes	Yes	Yes (possible)	Yes	Yes	Yes	Yes	Yes	Yes

	China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
6.2 Does law or regulations provide for:									
Individual shareholder suits against the Board of management	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (5% of outstanding shares required).	Yes
Class action suits against the Board and management	No	Yes	Yes	Yes, though s.t. procedural require-ments	Yes	Yes	Yes	In progress?	Yes
Derivative suits on behalf of shareholders?	No	Yes	Yes, >10% of shares required	Yes	Yes	Yes	Yes	Yes (5% of outstanding shares required)	Yes
Ombudsman on behalf of shareholders?	No	No	No	Yes, (in limited cases) by relevant regulatory authorities)	No	No	Yes (Investor Protection Institute).	Yes (corporate registrar).	No
6.3 To what extent is the Board responsible for the financial statements included in the company's annual report	Criminal liability	Fully responsible	Fully responsible	Collectively responsible	Certification by directors required	Jointly responsible. Fine of up to 30 million Won or 3 years jail.	Discharged by shareholders unless unlawful conduct.	Liable as far as statement made wilfully or knowingly.	Responsible for timely submission to general meeting.
6.4 Do insolvent trading laws apply to directors?	No specific regulations	No specific regulations	Yes	Yes	Yes	NP	Yes	No	NP
6.5 Is directors/officers liability insurance commonly obtained?	No	Yes	No	Yes	Yes	Yes, for listed companies	Tendency rising	Yes	No
6.6 In what circumstance is the company prohibited from indemnifying a director?	In case of breach of duty prescribed	Actions outside course of employment	In cases of negligence, default, breach of	In cases of negligence, default, breach of	In cases of negligence, default, breach of	NP	In case of final judgement against the	None	NP

	China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	by law, regulation or article of association.	and director's powers.	duty, breach of trust.	duty, breach of trust.	duty, breach of trust.		director.		
7. Remuneration of Board members									
7.1 Is there a trend towards the use of stock options for director's remuneration?	No	Yes	Yes	Yes	Yes (with limitations on no. of options a company can grant.	Yes	Yes (but limited to directors who also act as employees)	Yes (used by3-5% of listed companies in 2001)	No (only 3 out of 20 listed companies used stock options in 2003.)
7.2 Does law or regulations provide for the approval of executive director's remuneration?	No	Yes, for Managing Director/ Manager, Full-time director)	Yes	No	Yes	Yes, for aggregate compen-sation and grant of stock options.	Yes	Yes	No
7.3 Does the law or regulations require directors to take a portion of their remuneration n company shares?	No	No	No	No	No	No	No	No	No
8. Self-dealing transactions									
8.1 Under which circumstances must self-dealing transactions be disclosed to:									
The Board of directors	A director has a direct of indirect interest in a contract of proposed contract.	All transactions by board members, relatives or major shareholders	All related parties and conflict of interest transactions.	All related party transactions (as recommen-ded by the Code on Corporate	NP	Transactions >1% of total sales or assets, cumulated transactions >5% with the same	When there is personal interest in a matter under discussion at Board meeting.	Varies from company to company	NP

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
					Governance) .		person.			
	The shareholders	A director has a direct of indirect interest in a contract of proposed contract.	All transactions by board members, relatives or major shareholders	All related parties and conflict of interest transactions.	All related party transactions >5% of net tangible transactions.	Transaction value (or aggregated annual value) >3% of net tangible assets and above S$100,000.	Transactions >1% of total sales or assets, cumulated transactions >5% with the same person.	NP	Transactions > 1million Baht or > 3% of net tangible assets.	Transactions valued at >20% of total value of assets.
	The stock exchange or securities commission	All related party transactions.	No specific regulations.	All related parties and conflict of interest transactions.	All related party transactions.	Transaction value (or aggregated annual value) >3% of net tangible assets and above S$100,000.	NP	Disclosure through financial statements and through MOPS for public reporting companies.	Transactions > 1million Baht or > 3% of net tangible assets.	Changes in the ownership of related parties.
8.2 Under which circumstances must self-dealing transactions be disclosed to:										
	The Board of directors	All related party transactions.	Transaction exceeding a quantified price limit.	No specific regulations.	Not prescribed.	Transactions value (or aggregated annual value) >5% of net tangible assets.	Transactions >1% of total sales or assets, cumulated sales >5% with the same person.	NP	All direct, or indirect, transactions between a director and its company.	Related party transactions valued up to 20% of total value of assets.

		China	India	Indonesia	Malaysia	Singapore	South Korea	Taiwan	Thailand	Viet Nam
	The shareholders	Transactions >5% of net tangible assets or 30 million RMB.	None.	No specific regulations.	Transactions >5% of net tangible assets, plus annual shareholders meeting for regular transactions.	Investments (including loans, advances, equity.) in an associated company.	Grant of stock options	NP	Transactions >10 million Baht or 3% of net tangible assets.	Transactions valued at >20% of total value of assets.
	The stock exchange or securities commission	Some acquisitions and dispositions (before notification to share-holders).	None.	No specific regulations.	Announcem ents as required in KLSE listing require-ments.	None.	NP.	NP.	None.	NP.

Source: Summarized/adapted from OECD, 2003, "White Paper on Corporate Governance in Asia", pp. 62-92. Responses for Viet Nam modified based on stakeholder feed back.

Appendix 7: International Principles of Corporate Governance 2004

I. Ensuring the Basis for an Effective Corporate Governance Framework

The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.

A. The corporate governance framework should be developed with a view to its impact on overall economic performance, market integrity and the incentives it creates for market participants and the promotion of transparent and efficient markets.

B. The legal and regulatory requirements that affect corporate governance practices in a jurisdiction should be consistent with the rule of law, transparent and enforceable.

C. The division of responsibilities among different authorities in a jurisdiction should be clearly articulated and ensure that the public interest is served.

D. Supervisory, regulatory and enforcement authorities should have the authority, integrity and resources to fulfil their duties in a professional and objective manner. Moreover, their rulings should be timely, transparent and fully explained.

II. The Rights of Shareholders and Key Ownership Functions

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

A. Basic shareholder rights should include the right to: 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect and remove members of the board; and 6) share in the profits of the corporation.

B. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorisation of additional shares; and 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.

C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings:

1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting.

2. Shareholders should have the opportunity to ask questions to the board, including questions relating to the annual external audit, to place items on the agenda of general meetings, and to propose resolutions, subject to reasonable limitations.
3. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known on the remuneration policy for board members and key executives. The equity component of compensation schemes for board members and employees should be subject to shareholder approval.
4. Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia.

D. Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

E. Markets for corporate control should be allowed to function in an efficient and transparent manner.
   1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class.
   2. Anti-take-over devices should not be used to shield management and the board from accountability.

F. The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated.
   1. Institutional investors acting in a fiduciary capacity should disclose their overall corporate governance and voting policies with respect to their investments, including the procedures that they have in place for deciding on the use of their voting rights.
   2. Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest that may affect the exercise of key ownership rights regarding their investments.

G. Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.

III. The Equitable Treatment of Shareholders

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.

A. All shareholders of the same series of a class should be treated equally.
   1. Within any series of a class, all shares should carry the same rights. All investors should be able to obtain information about the rights attached to all series and classes of shares before they purchase. Any changes in voting rights should be subject to approval by those classes of shares which are negatively affected.

2. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress.
3. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares.
4. Impediments to cross border voting should be eliminated.
5. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes.

B. Insider trading and abusive self-dealing should be prohibited.

C. Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation.

IV. The Role of Stakeholders in Corporate Governance

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises.

A. The rights of stakeholders that are established by law or through mutual agreements are to be respected.

B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

C. Performance-enhancing mechanisms for employee participation should be permitted to develop.

D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.

E. Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this.

F. The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

V. Disclosure and Transparency

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company.

A. Disclosure should include, but not be limited to, material information on:

1. The financial and operating results of the company.
2. Company objectives.
3. Major share ownership and voting rights.
4. Remuneration policy for members of the board and key executives, and information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.
5. Related party transactions.
6. Foreseeable risk factors.
7. Issues regarding employees and other stakeholders.
8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented.

B. Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure.

C. An annual audit should be conducted by an independent, competent and qualified, auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

D. External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.

E. Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

F. The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice byanalysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice.

VI. The Responsibilities of the Board

The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders.

A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.

B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly

C. The board should apply high ethical standards. It should take into account the interests of stakeholders.

D. The board should fulfil certain key functions, including:
   1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.

2. Monitoring the effectiveness of the company's governance practices and making changes as needed.
3. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning.
4. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders.
5. Ensuring a formal and transparent board nomination and election process.
6. Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions.
7. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.
8. Overseeing the process of disclosure and communications.

E. The board should be able to exercise objective independent judgement on corporate affairs.

1. Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgement to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and non-financial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration.
2. When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.
3. Board members should be able to commit themselves effectively to their responsibilities.

F. In order to fulfil their responsibilities, board members should have access to accurate, relevant and timely information.

Appendix 8: New Issues in the 2004 International Corporate Governance Principles

The OECD Principles of Corporate Governance, first published in 1999, have been widely adopted as a benchmark both in OECD countries and elsewhere. These principles were revised in April 2004. The revised Principles emphasise the need to ensure transparent lines of management responsibility within companies so as to make boards and management truly accountable, and called for a stronger role for shareholders in executive remuneration and the appointment of board members. Specific issues addressed by the revised Principles include:

Shareholder rights

- The rights of investors must be strengthened. Shareholders should be able to remove board members and participate effectively in the nomination and election processes;
- They should be able to make their views known regarding executive and board remuneration policy and any equity component should be subject to their approval.

Conflicts of interest and auditor responsibility

- A new principle calls for rating agencies and analysts to avoid conflicts of interest which could compromise their advice.
- The duties of the auditor must be strengthened and include accountability to shareholders and a duty to the company to exercise due professional care when conducting an audit.
- Auditors should be wholly independent and not be compromised by other relations with the company.

Stakeholder rights and whistle-blower protection

- The Principles make reference to the rights of stakeholders, whether established by law or through mutual agreements.
- A new principle advocates protection for whistleblowers, including institutions through which their complaints or allegations can be addressed and provides for confidential access to a board member.

Board responsibilities

- The duties and responsibilities of the board have been clarified as fiduciary in nature; this is particularly important where company groups are concerned.
- The principle covering board independence and objectivity has been extended to avoid conflicts of interest and to cover situations characterised by block and controlling shareholders, as well as the board's responsibility for oversight of internal control systems covering financial reporting.

Institutional investors

- They should disclose their corporate governance policies, how they decide on the use of their voting rights and how they manage conflicts of interest that may compromise their voting.
- Restrictions on consultations between shareholders about their voting intentions should be eased to reduce the cost of informed ownership.

Source: OECD, 2004, Principles of Corporate Governance, Paris

Appendix 9: Netherlands 11 Key Determinants of Compliance

Spontaneous compliance dimensions (factors that affect the incidence of voluntary compliance; that is, compliance that would occur in the absence of enforcement):

T1. Knowledge of rules: Target group familiarity with laws and regulations, clarity of laws and regulations.

T2. Cost-benefit considerations: Material and non-material advantages and disadvantages resulting from violating or observing regulation.

T3. Level of acceptance: Extent to which the target group (generally) accepts policy, laws, and regulations.

T4. Normative commitment: Innate willingness or habit of target group to comply with laws and regulations.

T5. Informal control: Possibility that non-compliant behaviour of the target group will be detected and disapproved of by third parties and the possibility and severity of sanctions that might be imposed by third parties (for example, loss of customers/contractors, loss of reputation).

Control dimensions (the influence of enforcement on compliance):

T6. *Informal report probability*: The possibility that an offence may come to light other than during an official investigation and may be officially reported (whistle blowing).

T7. *Control probability*: Likelihood of being subject to an administrative (paper) or substantive (physical) audit/inspection by official authorities.

T8. *Detection probability*: Possibility of detection of an offence during an administrative audit or substantive investigation by official authorities. (The probability of uncovering non-compliance behaviour when some kind of control is applied.)

T9. *Selectivity*: The (increased) chance of control and detection as a result of risk analysis and targeting firms, persons or areas (that is, extent to which inspectors succeed in checking offenders more often than those who abide by the law).

Sanctions dimensions (the influence of sanctions on compliance):

T10. *Sanction probability*: Possibility of a sanction being imposed if an offence has been detected through controls and criminal investigation.

T11. *Sanction severity*: Severity and type of sanction and associated adverse effects caused by imposing sanctions (for example, loss of respect and reputation).

Source: OECD (2002b, p. 79).