



REGULATING BETTER IN VIETNAM

Two short papers on the challenges for implementing
a broader Better Regulation agenda in Vietnam

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INTRODUCTION

The two papers enclosed have been drafted to stimulate discussion and debate amongst the government, private sector and citizens on the future direction of regulatory reform activities in Vietnam.

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Paper one

**“THE THREE Ps: THE MISSING
GOVERNANCE FUNCTIONS IN VIETNAM”**

The Three Ps – The Missing Governance Functions in Vietnam

Faisal Naru¹ and Dr Nguyen Dinh Cung²

Vietnam has many reforms to improve its governance structures. This includes Public Administration Reform and the 5 Year Socio-Economic Development Plan 2006 -10 which promotes modern governance as one of the four pillars for the country's development. The legislative process and levels of accountability are also undertaking reforms to become more open, transparent and democratic. In analyzing the way that government operates when it regulates, there are three functions that are commonly found in developed economies which appear to be weak in Vietnam, to the point of appearing absent.

The Three Ps

The fundamental issue for Vietnam's governance machinery is the weakness and almost lack of three core functions being institutionalized and systemically implemented across government. These three functions are (the three Ps):

1. **Policy Making Function**
2. **Policy Coordination Function**
3. **Professionalism of Legal Drafting**

The lack of these core functions being effectively implemented in Vietnam is making the regulatory environment in Vietnam more difficult for enterprises and citizens.

1. The three Ps: One - Policy Making Function

In many developed economies, the regulation making process begins with a societal need that is addressed by government intervention i.e. by creating a policy. The process for creating the policy includes many of the tasks that are completed by drafting teams in Vietnam, such as research, studies, surveys, consultations with experts and the public. However, government policy is the embodiment of a specific government position which may lead towards government intervention and may eventually be enacted by a regulation. In effect it is the "soul" and or "spirit" of the proposed government interaction that describes the nature of the regulation, its intended effects and course of action to reach the desired outcome. The regulation is simply the "body" or vehicle that will have this policy inserted into it and be used to acquire the desired outcome. However regulating may not be the optimal course of

¹ Faisal Naru is the Chief Regulatory Advisor of USAID's Vietnam Competitiveness Initiative project (USAID/VNCI). The views expressed in this article are those of the author and do not necessarily reflect the views of the U.S. Government or Vietnamese Government.

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government intervention. Regulating is one of the tools that the government has in order to achieve the government position and address the societal need.

This distinction *firstly* embodies a different approach to regulating. That is that regulating is not the end, it is simply the means or vehicle for reaching the end point. Therefore the factory mentality of producing regulations for the sake of production is at the opposite end of the spectrum to this approach.

Secondly the policy making function allows for more rigorous policy analysis and consultation at the design phase of any potential regulation. It allows for debate and discussion with key stakeholders in a safe environment that is transparent and accountable. It also requires generic “policy analysis” skills from government officials who can apply the same set of skills to different requirements across government without needing expert knowledge. The “policy making” skill is a specialized skill set.

Finally, the policy making function does not automatically trigger the creation of regulations. One of the main purposes of this exercise is to determine whether government intervention is required at all in a more comprehensive fashion than currently exists in Vietnam. This then helps governments to set priorities on their Annual Legislative Agenda based on the readiness of the proposals during the policy making process. It also allows non-regulatory interventions to happen from the State that creates incentives and the environment for change, and not impose a direction for change via a regulation, which will not work. The investment in a higher quality policy making function that is *transparent* and *accountable*, **before legislating**, will have many benefits for Vietnam.



Figure 1: Example of addressing societal need in developed economy. Regulation is not required.

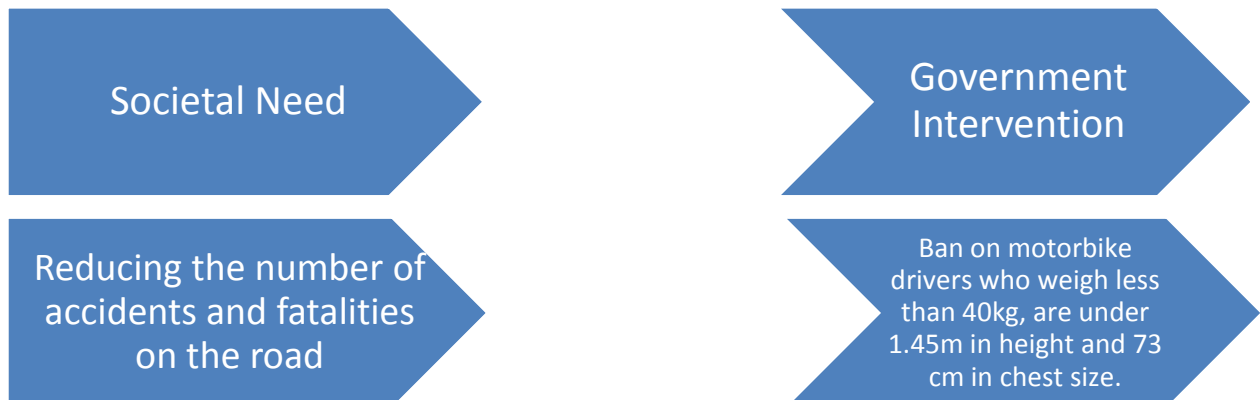


Figure 2: Example of addressing societal need in developing economy without policy making function where regulation is the automatic government intervention. The chosen intervention is not based on a government position or policy that has undergone analysis of the existing situation and regulatory environment. It is also not focused on achieving an outcome to realistically address the societal need.

2. The three Ps: Two - Policy Coordination Function

In Vietnam, when regulations are drafted there is little effective coordination in the drafting processes. Although drafting teams will be represented by members of different ministries, and each related

ministry will be asked to submit comments on proposals from other ministries, the reality is that the coordination is quite haphazard. The contribution of different ministries in drafting teams largely depends on the competency of the ministry official attending the meetings, which can vary greatly. In addition, the process of obtaining and circulating comments from different related ministries is not as efficient or strategic as it could always be.

The role of coordinating is often mistaken as acting like a postal service and simply stamping and passing papers between agencies. However effective coordination requires a strategic perspective that will facilitate the difficult discussions in order to reach resolution and build quality into the regulatory system. This is a very different coordination role that requires political skill and linkage with the Cabinet, and key ministries. It requires the facilitation to navigate the making of the policy through the different dimensions of the policy making context (see figure 3 below³). This function helps to service the decision makers and make their process of decision making more efficient by ensuring the processes below them are adept to building consensus effectively and are based on more rigorous analysis.

In order to have better policy coordination there should be some clearly defined roles between agencies and resources to support these roles. In addition there should be a more systemized coordinator function within the Government that will actively play the role of actual “facilitator” across Ministries and state agencies within the Prime Minister’s office, within the political environment. This is often known as a *secretariat* with significant political levers, as well as resources, to deliver better results in terms of policies and legislation.

³ Professional Policy Making for the 21st Century, Cabinet Office, UK.

3. The three Ps: Three - Professionalism of Legal Drafting

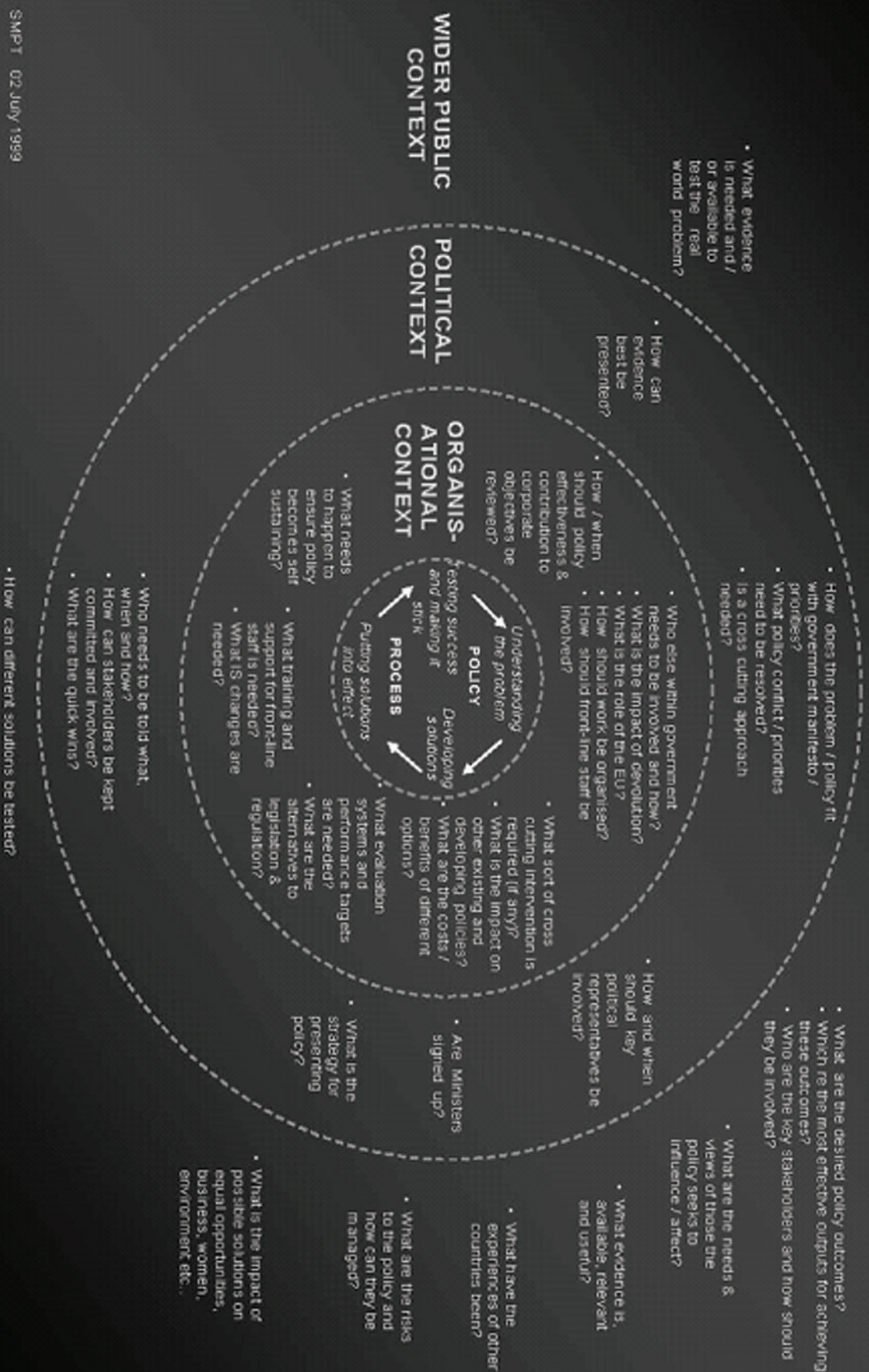
In many developed economies, regulation making is conducted in two separate steps, which are (1) policy making; and (2) legal text drafting. The policy making focuses on the policy analysis and recommendation. While legal text drafting is the sole domain of highly skilled legal experts. These experts take the government policy, and express it in legal language that is consistent with the legal framework and requirements within the legal system. The policy-making experts work with the legal experts to ensure the regulation (body or vehicle) reflects the intent and requirements of the policy (the soul or spirit).

In Vietnam, the two functions have not been separated and specialized. Ministry officials, who are not always legal experts, are assigned to draft the legal text. In addition their legal drafting is conducted with inadequate, or most often, the absence of any policy analysis. This causes inconsistencies within the legal system and creates regulatory risk with a potentially overlapping, contradictory and inconsistent regulatory environment

Conclusion

The methodology of creating regulations is important for improving the regulatory quality in Vietnam. The way that new regulations are drafted is critical to improving the regulatory environment. The enhancement and introduction of the **three P** functions will help to improve the regulatory processes and improve the efficiency and ability of the State toward delivering real benefits to society.

The policy process in context



Paper two

**“REGULATORY REFORM NOT
ADMINISTRATIVE REFORM”**

Regulatory Reform – Not Administrative Reform

Faisal Naru⁴ and Dr Nguyen Dinh Cung⁵

Vietnam's rapid economic growth, reduction in poverty and increase in societal well being has been well documented. In the past few years the leadership's focus has drastically changed from a rapidly growing economy to managing Vietnam's economy in the context of a global economic crisis. This has meant asking difficult questions about factors that can stifle or encourage economic growth, such as how competitive is Vietnam and what are the risks that Vietnam should address? According to the 2009 – 2010 World Economic Forum's Global Competitiveness Index (GCI), Vietnam's competitiveness has decreased since 2007. Vietnam was ranked 75 out of 133 countries, a drop of 5 places from 2008 and a drop of 7 places from 2007⁶. The 2010 – 2011 GCI, interestingly has increased Vietnam's ranking to 59 out of 139 countries. However this is largely due to business adaptability and sophistication in Vietnam as well as the comparative global economic environment rather than an improvement in Vietnam's competitive environment itself.

In fact, the 2010 – 11 GCI, shows that the burden of government regulation, efficiency of the legal framework, and transparency of government policy making have all deteriorated further in 2010 - 2011⁷. This shows there is much room for improvement in **how** Vietnam strives to become more competitive. And **how** Vietnam competes in a global economy, with a somewhat economic upturn and countries competing more aggressively for investment, is the key challenge that the Vietnamese leadership will face next with little room for complacency about attracting investment without improving the regulatory environment.

This short paper looks at the obstacles for Vietnam from the perspective of economic governance and the regulatory system within Vietnam. This paper provides the following:

1. An explanation of regulatory reform and the *Better Regulation* agenda;
2. An analysis of the current regulatory environment and machinery in Vietnam;
3. Current regulatory reform efforts in Vietnam;
4. Recommendations for improving Vietnam's regulatory machinery.

⁴ Faisal Naru is the Chief Regulatory Advisor of USAID's Vietnam Competitiveness Initiative project (USAID/VNCI). The views expressed in this article are those of the author and do not necessarily reflect the views of the U.S. Government or Vietnamese Government.

⁵ Dr Nguyen Dinh Cung is the Vice President of the Central Institute for Economic Management under the Ministry of Planning and Investment.

⁶ Global Competitiveness Index Vietnam Ranking: 68/131 in 2007-8, 70/134 in 2008-9. 75/133 in 2009-10.

⁷ Vietnam GCI Index Rankings (2009 – 2010, 2010 – 2011): Burden of Government Regulation drop in 14 places (106, 120), Efficiency of legal framework in settling disputes drop in 12 places (49, 61), Efficiency of legal framework in challenging regulations drop in 10 places (48, 58), Transparency of government policy making drop in 20 places (53, 73).

1. Regulatory Reform is not Administrative Reform

Regulatory reform is described by the OECD as “changes that improve regulatory quality”⁸ with a particular focus on the economy. Regulatory reform differs from administrative reform, legal reform and many other reforms, by starting with the fundamental questions of the legitimate relationship and role between the State and Society. It questions the need for State interventions and the type of intervention with a focus on the outcome in terms of its end result on society and the economy. The intervention is just the means. Regulatory reform examines the decision to intervene and how to intervene in the most effective and efficient way.

Vietnam has been conducting *Administrative Reform* for some time now. This encompasses reforms on administrative procedures, the administrative structure (institutional framework), administrative human resources, the use of information technology and e-government, and reforming the legal framework. This has been with a view to modernizing and improving the government administration into being a more efficient and effective operation to promote and implement *good governance*.

Regulatory reform is a new concept in Vietnam and is fundamentally different from administrative reform, although there are overlaps. Administrative reform is largely accepted as the “improvement of the administrative capability and capacity, particularly in developing countries, for achieving national goals and objectives”⁹. Vietnam’s Public Administration Reform (PAR) has the objective “**to develop a public administration which is democratic, transparent, sustainable and modern**”¹⁰. Key policies within this reform include adjusting functions and improving the operational Government mechanism, delegation and decentralization; separating the state management function from production and business activities, and public administration agencies from public service delivery agencies; further reforming state-owned enterprises and administrative procedures; developing a contingent of professional and qualified civil servants; strengthening order, and fighting red-tape and corruption¹¹.

So administrative reform focuses on firstly improving the overall governance mechanisms to operate more effectively, with a view to achieving better outcomes for society and the economy. But regulatory reform focuses on the outcomes first, particularly on the economy, with a view to ensuring that the overall governance mechanisms do not deteriorate the regulatory environment. It does this by continually assessing the role of the State versus society. The ultimate objective of regulatory reform is to have a higher quality regulatory environment that will give greater protection of citizens and the environment and increased economic growth.

⁸ *Regulatory Reform: A Synthesis*, OECD, Paris, 1997, page 11.

⁹ *An overview of the Administrative Reform in the Malaysian Public Service*, By Dr. Hj. Malek Shah b. Hj. Mohd. Yusoff, 2002

¹⁰ <http://caicachanhchinh.gov.vn/PortalPlus.aspx?/en-US/News/71//10303///>

¹¹ <http://caicachanhchinh.gov.vn/PortalPlus.aspx?/en-US/News/71//10303///>

2. Introduction to Regulatory Environment in Vietnam

The regulatory environment is an important part of Vietnam's competitiveness internationally and domestically. A healthy regulatory environment will help Vietnam to mitigate risks of change, better meet its WTO obligations, better protect citizens, the environment and society as a whole, and encourage economic growth and competitiveness especially in a more difficult and competitive economic climate.

Vietnam has taken steps to improve its regulatory environment, but in an ad-hoc and un-systemized manner. Many economic, legal and governance reforms have improved parts of the regulatory environment, but unknowingly. The 2010 Vietnam Development Report asserts that the first decade after *Doi Moi* was the era of devolution of economic power. The second decade was devolution of powers and responsibilities to the provinces and stronger accountability for communes. The current devolution is of functions to service delivery units and non-state-providers¹². This new regulatory environment requires a more sophisticated management system to orchestrate the different functional apparatus into a symphony, and not a loud incoherent and unpleasant noise.

However, the precise regulatory environment is still currently unknown in Vietnam. The lack of codification and considerable proliferation of legal regulatory instruments (*rules*) by regulatory authorities (*institutions*) with sometimes unclear and overlapping levels of accountability means that there is not a comprehensive picture, systematic reform or management of the regulatory environment in Vietnam.

The GCI 2010/11 ranks Vietnam 120 out of 133 countries in terms of the burden of government regulation, a drop of 14 places from 2009. It also ranks Vietnam 73 out of 133 countries in terms of transparency of the policy making process, a drop of 20 places compared to 2009. The burden and "jungle" of regulations¹³ provides a significant challenge for managing and improving the overall regulatory quality of Vietnam, and its impact on citizens, entrepreneurs, investment and ultimately competitiveness.

The current regulatory environment and machinery in Vietnam

The Stock of Regulation

The total number of regulations in Vietnam that impact upon businesses has increased dramatically since 2005. The rate of regulating has increased rapidly between 2005 and 2008, and in 2009 has jumped again (see Figure 1.). In the 4 years between 2005-2008, Vietnam issued more legal normative documents (LNDs)¹⁴ that impact on businesses than the previous

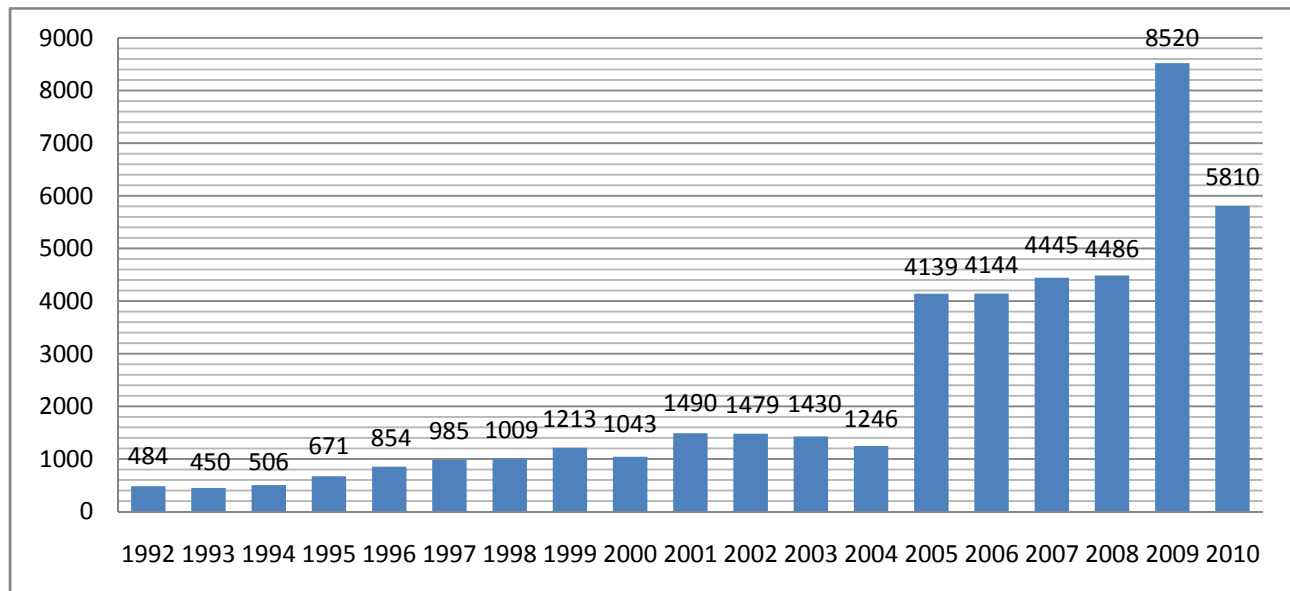
¹² Vietnam Development Report 2010; *Modern Institutions*, Joint Donor Report to the Vietnam Consultative Group Meeting, Hanoi December 3-4 2009.

¹³ In this paper the term "regulation" means any instrument by government that places a requirement on enterprises or citizens (OECD)

¹⁴ Legal Normative Documents are Laws, Ordinances, Decrees, Circulars, Inter-circulars, PM decisions, NA resolutions issued by NA, and Resolutions by NA's Standing Committee.

18 years put together (1987-2004). In addition, during 2005 – 2008, the number of official letters containing legal norms has more than tripled compared to the previous 18 years.¹⁵

Figure 1: “The rate of regulating in Vietnam” – The number of regulations issued by Central Authorities



Source: Office of National Assembly from www.luatvietnam.vn¹⁶, September 2010

This large unknown number of regulations is problematic in many ways. The uncertainty of the regulatory stock (*in terms of legal consistency, applicability or even necessity*) means potential unnecessary costs for citizens and businesses when trying to find the right regulation to comply with as well as providing the opportunity for rent seeking by corrupt officials. Such an uncertain environment is not friendly or productive to businesses or citizens.

The Flow of Regulation

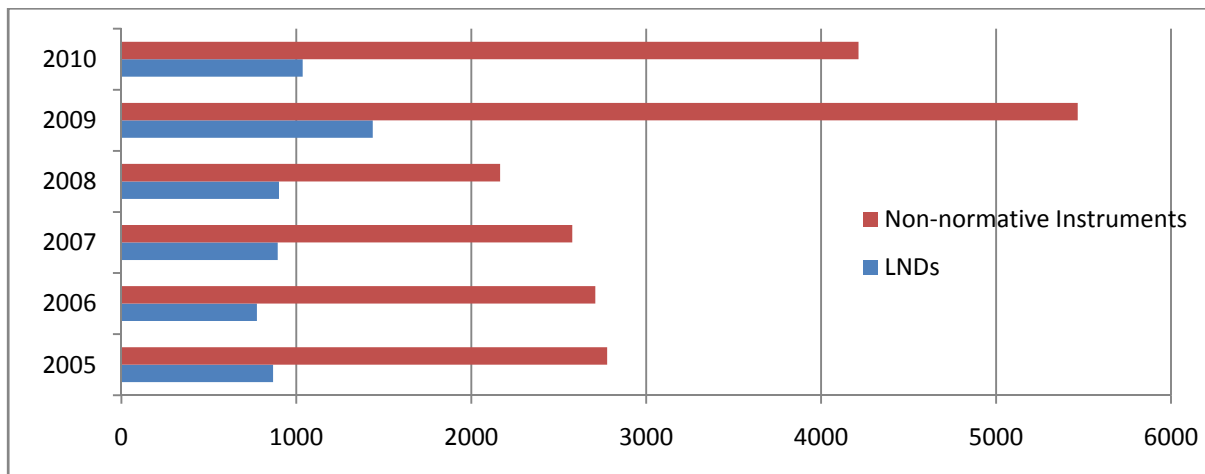
A large number of new regulations that impact on businesses and citizens are introduced every year in Vietnam. The number of LNDs that have been introduced in Vietnam between 2005 and 2008 has averaged almost 860 LNDs per annum. In 2009 the number jumped to almost 1500 new LNDs. During 2005-2008, on average, almost 2,560 non-normative regulatory instruments¹⁷ were introduced every year. The number of new non-normative regulatory instruments has more than doubled in 2009 (5467). (See Figure 2) This trend of new regulations has continued in 2010.

¹⁵ Quang, Phan Vinh and John Bentley 2009. “Codification: A New Approach to Reforming Vietnam’s Legal System” STAR-Vietnam.

¹⁶ Source: www.luatvietnam.vn is the most comprehensive subscription database which collects and publishes documents containing rules of general applications including official letters applicable for businesses. Currently there is no source of information on the number of legal documents as there has not been a consolidation or codification of the legal system yet and therefore this is the most reliable indicative source available at this time.

¹⁷ Non-normative instruments are Official letters, Notices and Directives.

Figure 2: Number of regulatory instruments introduced in Vietnam



Source: www.luatvietnam.vn (as assessed on 30 September 2010)

Apart from the large number of regulations being issued, another problem with the creation of regulations by institutions is their *quality*. This is a major concern when considering non-normative regulatory instruments such as official letters that have sharply increased. This has coincided with efforts to improve the quality of LNDs through the Law on Laws, and could be a perverse reaction to these new quality controls¹⁸. It could also be a knee-jerk reaction to events, for instance the economic situation, and authorities seeking “quick” solutions and to avoid formal government procedures. Nonetheless, official letters can have profound impacts on Vietnam’s economy and society, as often detailed rules are included in these non-normative documents that can have requirements on tax, banking interest rates or other important areas, but without having the same level of rigor or scrutiny (*quality control*) as LNDs.

The Regulatory Machinery

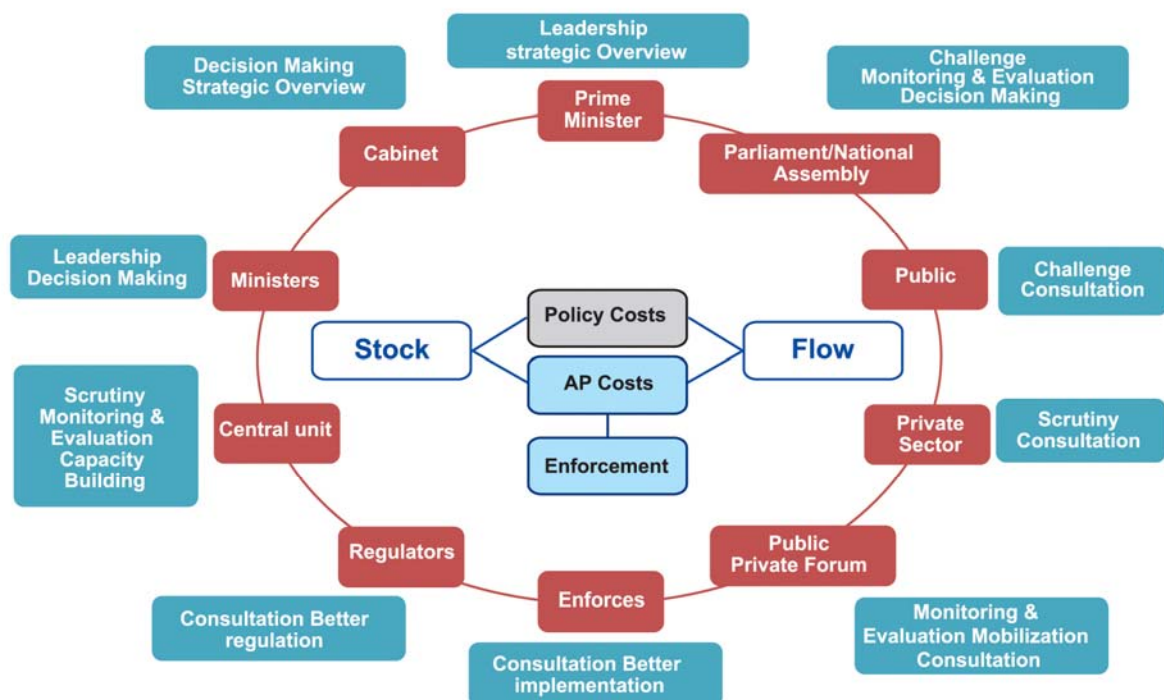
For many observers, the *modus operandi* of the government machinery is unclear and confusing when it comes to creating regulations. It is not clear how or why new regulations are instigated in order to be drafted and proposed to the government and National Assembly. Although there is a full process for drafting regulations, especially at the central level, there is little known about the systemic process for deciding government policy other than a fluid and organic process of policy making.

This fluidity provides flexibility for Ministries to draft regulations, however it also means that there are inconsistencies in the way that regulations are drafted. For instance, public

¹⁸ Quang, Phan Vinh and John Bentley 2009. “Codification: A New Approach to Reforming Vietnam’s Legal System” STAR-Vietnam.

consultation methods can vary from department to department within a Ministry, let alone across the entire government. In addition the facilitation of internal government consultation can also vary meaning that proposals that are not ready can be sent to the government and National Assembly for approval. Recently the National Assembly has been very vocal in its critique of proposals being put forward for their approval. The lack of an effective regulatory management system is being realized.

Figure 3: Functions in a Regulatory Management System¹⁹



The government apparatus is operating like a large monopolistic factory that has a production line of regulations that are imposed upon enterprises and citizens. This machinery requires updating and a new management system that adds quality control, strategic oversight of the production line, and the overall impacts of the factory's activities and product on society, the environment and the economy. The functions of a regulatory management system need to be institutionalized within the Vietnam government machinery. But more importantly, the approach towards regulating must change, from a control orientated factory towards a demand-driven and needs-based orientated factory for the market. The market for government is society and the economy in Vietnam.

¹⁹ Hill & Naru 2010.

3. Current Regulatory Reform Efforts in Vietnam

As previously mentioned, many of the economic, legal and governance reforms have had some impact on changes to the regulatory environment (e.g. business licensing reforms). However, there are two substantial systemic regulatory reform activities currently being implemented in Vietnam to address the stock and flow of regulations to improve the overall regulatory environment quality.

Procedures and Processes

Stock activities: Prime Minister's Master Plan to Simplify Administration Procedures in State Management – Project 30

Over 5,700 Administrative procedures at all four levels of government across all 63 Provinces have been collected on an e-database and have been reviewed with recommendations to abolish, simplify or remain, in a comprehensive approach with a target of simplifying at least 30% of all administration procedures in 2010. The review process is using the principles of impact analysis to assess the administrative procedures. Project 30 has been conducted by the Special Task Force in the Office of Government (OOG) with involvement of the private sector through the Advisory Council for Administrative Procedures Reform (ACAPR).

By the end of 2010, a new agency called the Administrative Procedures Control Agency in OOG will be set up to continue the role of Project 30 on an ongoing basis and also manage the flow of new administrative procedures.

This has demonstrated significant commitment by the government of Vietnam to improve the existing regulatory environment from the perspective of the instruments that have a direct impact upon citizens and enterprises i.e. administrative procedures. The OOG has estimated that the total compliance cost saving of US\$1.45 billion per annum once the recommendations have been fully implemented.

Full implementation will require the amendment of various legal instruments through the legal process, which poses a risk of the time taken to navigating the recommendations through the due processes without watering down the recommendations. The compliance cost figure is also an estimate, and the real compliance cost reduction will not be known until implementation will occur. But more importantly, the real feeling or perception of the “relief from administrative burdens” by citizens and businesses will not be known until implementation occurs.

Flow activities: 2008 Law on the Promulgation of Legal Normative Documents – Law on Laws

The process for drafting new legal normative documents has been enhanced through the requirements for public comment and impact analysis of proposed LNDs during the drafting and submission to government processes and the National Assembly. These requirements support greater transparency and introduce evidence based policy making for better regulatory decisions. However the requirements are clearly stipulated for Laws, Ordinances and Decrees, while lower level LNDs and non-normative instruments are not subject to these same formal requirements.

4. Challenges for improving the regulatory environment in Vietnam

Regulatory Environment and Quality

The 2009 PCI²⁰ recognizes that the decrease in transparency at the local level and increase in informal charges along with a reduction in the number of private operations seeking to expand in Vietnam shows “declining private sector optimism”²¹. This sentiment may have changed since the height of the economic crisis. However, this was despite the awareness and appreciation of businesses about government efforts to reform, reduce paperwork and become more effective at dealing with bureaucratic procedures²² which has given some areas of improvements in overall governance.

The perception of corruption in Vietnam is still high and the perception of a lack of transparency is still a problem. Vietnam ranks 120 out of 180 countries in the Corruption Perception Index by Transparency International²³. A World Bank study across 194 countries showed that “transparency is associated with better socio-economic outcomes and human development indicators, as well as with higher competitiveness and lower corruption.”²⁴

The growth of the number of regulations and rate of production of regulations, especially non-normative instruments such as official letters, are a concerning development in the regulatory environment for citizens and businesses. An uncertain regulatory environment decreases investor confidence and entrepreneurial initiative to increase business activity, and negatively impacts Vietnam’s competitiveness.

²⁰ The Provincial Competitiveness Index (PCI) is an annual survey of businesses across Vietnam that ranks each Province in terms of its governance in creating a transparent and enabling business environment. The PCI is collaboration between Vietnam Chamber of Commerce and Industry (VCCI) and USAID/VNCI.

²¹ 65% of private operations in Vietnam intend to expand over next two years in 2009, compared to 78% in 2008 and 77% in 2007. Only 47% of small business plan to expand – PCI 2009.

²² 72% of firms are aware of public administrative reforms. 47% of firms report that government required paperwork as declined. 44% of firms acknowledge that civil servants have become more effective in dealing with bureaucratic procedures – PCI 2009.

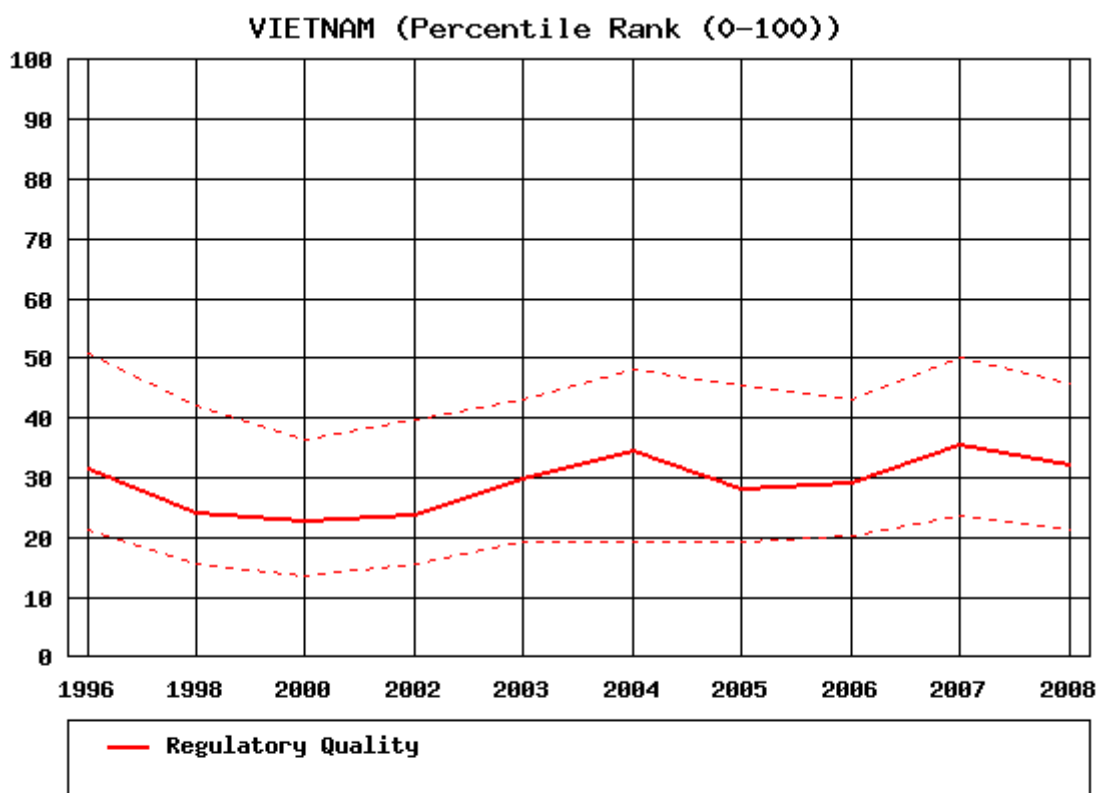
²³ Corruption Perception Index 2009 by Transparency International (www.transparency.org). Ranking in 2007 was 123 and in 2008 it was 121.

²⁴ Bellver, Ana, and Daniel Kaufmann, 2005, "Transparenting Transparency: Initial Empirics and Policy Applications," World Bank Policy Research Working Paper

The quality of regulations and quality of their implementation is difficult to assess. The recent World Bank Governance Indicators showed that Vietnam's regulatory quality has dipped in 2008 after an improvement in 2007 (*see figure 4*). In 2008, Vietnam's regulatory quality was one of the lowest four within the ASEAN region (*see figure 5*). As already noted Vietnam has taken significant efforts since then to improve its regulatory environment and quality.

The fact that there is greater access to regulations centrally and that some of the right systems for improving quality, such as increased transparency and accountability at the central level through formal consultation requirements and gazettes, means that some good steps have been taken to improving the quality. The PCI indicated that regulatory compliance costs have been reduced which also indicates some improvement in quality. The quality of regulations is also dependant on many other factors such as the capacity and competency of the public administration where many reforms are underway. However a good regulatory management system ensures some formal quality control levers and monitors them for quality measurement. This does not exist in Vietnam at the moment.

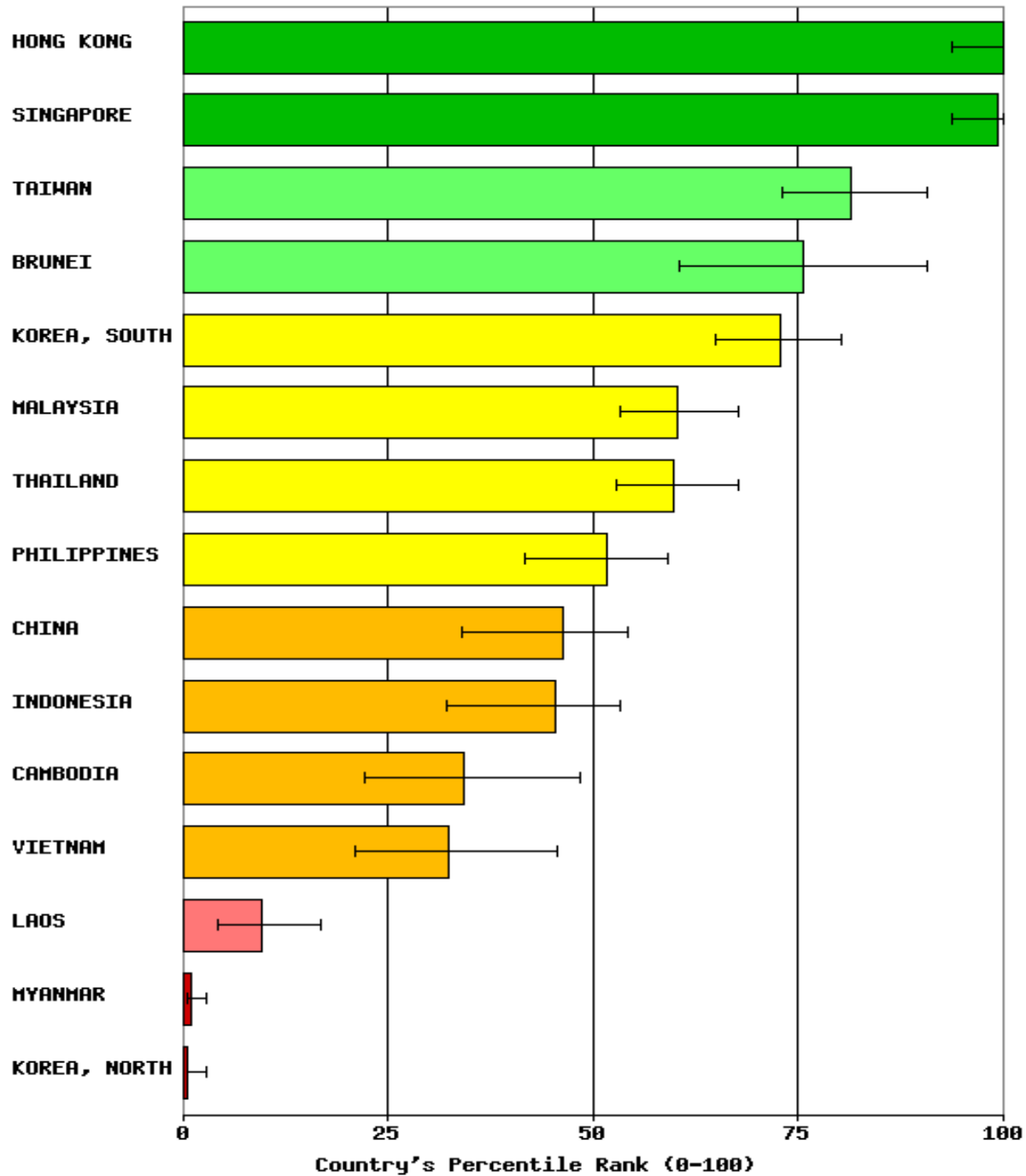
Figure 4: World Bank Regulatory Quality Indicator for Vietnam from 1996 to 2008



Source: Kaufmann D., A.Kraay, and M.Mastruzzi 2009: *Governance Matters VIII: Governance Indicator for 1996 - 2008*

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.

Figure 5: World Bank Regulatory Quality Ranking in ASEAN Region 2008
Regulatory Quality (2008)



Source: Kaufmann D., A.Kraay, and M.Mastruzzi 2009: *Governance Matters VIII: Governance Indicator for 1996 - 2008*

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Institutional Framework

The Institutional Framework for regulatory reform is fragmented across Government agencies. The Ministry for Home Affairs is in charge of Administrative Reform as whole. The OOG is responsible for the stock and flow activities for Administrative Procedures. The Ministry of Justice is responsible for flow activities for upper-level LNDs²⁵. In addition other LNDs are not managed or controlled for regulatory quality which is worrying given the expansive proliferation of official letters and other non-normative instruments over the past year (see *Figures 1 & 2 above*). None of these agencies has responsibility to oversee the overall economic, social and environmental impacts of regulation on Vietnam.

This weakens the ability to have an effective regulatory management system in Vietnam that can provide decision-makers with the necessary information to ensure country priorities are met and not jeopardized by unnecessary or over-regulation.

The National Assembly and its committees have taken a keen interest in the requirements for more rigorous analysis and transparency in developing draft LNDs that are submitted to them. Their ability to provide strategic oversight of the regulatory environment can be improved with greater public consultation and evidence based law making. However this is reliant on the capacity of the human resources and incentives within institutions to have the will and ability to service this demand for higher quality information for better decision making.

The role of citizens and businesses in the management of the regulatory environment has not been institutionalized in a systemized fashion. Project 30 has set up a temporary engagement vehicle and the flow activities have tried to begin a top down approach of engagement in a piecemeal way²⁶.

The need for Regulatory Reform

In order to address the challenges for improving Vietnam's regulatory environment, there is the need for a commitment toward a long term regulatory reform agenda. The agenda, which is a new concept in Vietnam, should include institutionalizing the regulatory management functions required to improve regulatory policy, but most importantly it requires a change in approach of the way the state 'thinks' about intervening in society and the economy. The institutions in Vietnam are still young in terms of having the capacity to deliver the needs of society and

²⁵ i.e. Laws, Ordinances and Decrees.

²⁶ There is no effective supervision of the compliance with the requirements in the Law on Laws. An indicative survey of 22 ministries showed that only 3 recorded how many public consultations had occurred for issued LNDs. The 22 ministries also showed an unofficial compliance rate of 25% with the requirement to consult the public. This is assumed to be much lower than the actual compliance rate but there is no official monitoring mechanism for the requirements in the Law on Laws. USAID/VNCI 2009.

manage a modern market economy. They will require nurturing to deliver better regulations and mature in the right way. State intervention should be the last resort, when other interventions are not sufficient or have been proven to not be able to achieve the outcomes desired. This forms the core ethos of the regulatory reform agenda, which is very different from the traditional administrative reform agenda.