



EVALUATION OF AN ON-GOING PROJECT

Viet Nam

Project VIE/01/025

Improving the Regulatory Environment for Business

FINDINGS - LESSONS LEARNT - RECOMMENDATIONS

Mission members

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5. FINDINGS AND LESSONS LEARNED

Findings

- With the joint passage of the EL and IL in late 2005, the project as whole, and certainly the revised project, can certainly said to be a **success**. It is generally opined that the laws are better and were developed in a shorter time because of the project.
- The project has definitely contributed to an improved law drafting process through better policy studies before and during drafting, and wider consultations. But although the merits and example of this way of working are generally recognized, these are only sustainable or replicable up to point, as long as government budgets for law drafting and policy studies remain highly inadequate.

- The project has also successfully promoted and gained acceptance for consultation and dialogue between government and business, but not achieved institutionalization and professionalization.
- The project produced a large number of studies and reports on regulatory topics and drafting issues, many of definite value and usefulness, but would probably have gained in impact by concentration.
- Support to the 1999 Enterprise Law implementation and media advocacy was quite successful and innovative, at least in the earlier years of the project, less so as attention shifted to the drafting of the two new laws.
- The project has been valid overall. Its subject area is highly relevant and well aligned with the developments in the business environment during recent years and priorities for the coming years.
- The intervention areas address key constraints and challenges to success, and equally important, take into account both the technical reform substance and the actual reform processes.
- The choice of CIEM as the key project partner is highly valid because of its excellent commitment, appropriate expertise and capacity and leading roles in economic reform in Vietnam.
- The project document (and its modifications) has only partially reflected the "real" and evolving project and has played a relatively limited role in guiding the project, except on the level of overall goal and target.
- The initial spread of target areas and outputs may have been too wide for and dispersed to be really effective, but the project later became more focused and concentrated.
- The very flexible and dynamic shifting of project focus and concentration of effort, formal and informal, as priorities have shifted in the reform process has contributed to maintaining the relevance and validity of the project. But this flexibility and successive concentration strategy are somewhat after-the-fact constructions, and not really inherent or explicit in the project document.
- Management of the project has been highly informal and ad hoc, both at the overall and at the operational level. This has been a definite strength for a highly process-oriented policy reform project in a rapidly evolving environment, but risky, as success almost wholly depends on the personal qualities and interactions between the project management team members on both sides and other fortuitously concurring factors.
- Monitoring has been informal and rather anecdotal. This has not seriously affected the overall success of the project, but it has as a consequence it is not possible to assess the direct usefulness and impact of individual project activities and products except in a very general and amalgamated sense.

This may also have delayed the positive – in our opinion - shift in focus and concentration on fewer priorities, with some loss of efficiency in resource use.

- The “knowledge management” aspect of the project has not been adequately recognized, and this has probably resulted in less effective support. It can perhaps also be seen as missed opportunity for enhancing the sustainable policy study and action capacity of CIEM. Also, the opportunities for promoting reform networks were not more explored.
- Capacity building in the hard sense has been limited, mainly ad hoc and personal for certain staff. However, the “confidence capacity” of CIEM in itself as a think tank, as an effective policy advocate; and as an effective change agent does seem to have increased as the result of UNDP support over the two projects.
- UNDP has several comparative advantages over other donors in doing similar projects: its track record of successfully supporting initial breakthroughs in reform in Vietnam, its reputation as a neutral and disinterested party, and its being a truly global supplier of technical assistance.
- Despite there being quite a number of project and initiatives dealing with the business environment, regulatory reform and support to drafting of business-related laws, and several donors supporting CIEM itself, there do not seem to have been any obvious or direct overlap or duplication of effort. On the contrary, the multiplicity and diversity have probably been an advantage by enhancing reform momentum, dialogue and testing of new approaches and concepts.

Lessons learned

- A project that is essentially oriented towards process support needs to be designed, structured and presented differently from ‘blueprint’ projects, and needs to be managed with a high degree of flexibility.
- The non-formal and soft skills of project managers, programme officers and advisors are essential to success in managing process projects, skills that normally are not identifiable from CVs.
- Process projects are inherently more risky and sensitive to presence or absence of “success factors”. Success may not be easily replicable. Effective and continuous monitoring is essential, both formal and informal.
- Explicit attention to knowledge management aspects should be part of all projects that concern policy studies and reform, advocacy, stakeholder dialogue and consultation, and generally where production and application of information is major component. This should not only be reflected in

design and execution, but also in monitoring and outcome assessment criteria.

6. RECOMMENDATIONS

Passing laws is only the first step; the really difficult part in Vietnam is effective implementation in actual practice. The following would seem to be some of the major challenges for the coming years:

- The success of improvement of the business regulatory environment depends heavily on continued commitments from highest political and government leaders. Quality of the laws and regulations depend much on the continued improvement of the quality of the drafting process, and more rigorous stakeholder dialogue and consultation.
- There is an increasing risk that various government authorities try to protect or reintroduce their special interests during the drafting of laws and their subordinate implementing documents. Conflicts between EL, IL and other specialized laws persist and may increase. Backsliding is risk as soon as vigilance and advocacy slacken.
- Implementation and enforcement remain a serious and refractory problem in practice. There is a lack of an efficient monitoring mechanism and transparency in implementation of laws.
- The lagging pace of public administration reform, the still low professional capacity and traditional attitudes of many civil servants, will remain major constraints to effective implementation

If one accepts this scenario, then there is continued critical need and role for an effective and dynamic reform champion, with the means and resources to push and monitor the implementation process. In the current context, it is difficult to identify any institutions other than CIEM and PMRC that could take on this role. Although the bulk of actual support to implementation would be at the provincial and local level, only organizations at the national level can be effective advocates for institutionalizing better implementation methods and at the same time be effective guards against regulatory backsliding.

CIEM has shown itself capable of absorbing and making good use of external support, and of taking on board new concepts and techniques. However, the CIEM government budget will remain inadequate for the foreseeable future for this type of role. Without extra support the momentum of CIEM will dissipate. By and large, the same applies to PMRC, although since it is a lighter and looser structure, the resource squeeze may be somewhat less constraining.

There definitely is a case for further support to CIEM and PMRC in the field of business regulatory reform. Conceivably, support could come from other sources than UNDP. However, the comparative advantages of UNDP mentioned earlier are still valid. Also, with careful focus of support, there is

reasonable chance of making a 'flagship' difference in the "implementation climate" with relatively small amounts of money. Furthermore, such support would have synergy with more substantial support to business environment development and to EL and IL implementation at the provincial level.

As mentioned earlier, PMRC is the other key agency, and a natural complement to CIEM in this area.

We therefore recommend that UNDP consider continuing to support CIEM as well as PMRC.

This recommendation has two levels.

The **first level** concerns "minimum" support focused solely on consolidating and sustaining the results and impacts of the support from the current project (and is considered highly desirable in order not to jeopardize the real achievements so far, irrespective of whether support is also given on level "two" below)

1. Follow-up (Monitoring, assessment, consultation and advocacy) on the EL and IL implementation.
2. Development, testing and application of a practical but rigorous model and package for implementation monitoring of the two laws, based on international state-of-the-art but adapted to Vietnamese realities
3. Monitoring, assessment, consultation and advocacy on continuing business regulatory reform, overall but also especially at sub-law level (actions by ministries, provinces etc).

We feel that the comparative advantages of UNDP are still valid here, apart from the fact that this is a natural follow-up of the previous project. Both CIEM and PMRC would have roles here, especially in (1) and (3). Although PMRC was primarily involved in the pioneering RIA attempt, CIEM would be mainly responsible for (2), as the challenge now would now be institutionalizing a new model.

Developing these components more fully goes beyond the scope of this report, but a few suggestions are offered.

(1) Follow-up of EL and IL implementation

This could be modeled along the lines used for the 1999 EL implementation follow-up, using a task force approach, with 4-6 members from CIEM and PMRC. But at least one member should be full-time, supplemented with a research assistant, as secretariat. While follow-up should be national and general, it is also important to follow the reality of strengths and weaknesses at provincial level, as well as attempts at backsliding through constraining subsidiary regulations and "bad faith" in interpreting the laws. This will mainly have to rely on secondary reports from provinces, studies, various projects and

other sources, but could be complemented with more detailed and direct follow-up in 3-4 selected provinces covering the range of conditions in Vietnam. The main role of the full-time member and research assistant would be to conduct this provincial follow-up.

(2) EL and IL implementation monitoring model

Some foundations have already been laid, notably the RIA conducted by PMRC/GtZ, but also the compliance cost assessments conducted by the EU Private Sector Support Program. But one should not only look at these specific methods. In general, the techniques and methods of performance audits are also very relevant, as the effectiveness and efficiency of the public administration impact considerably on the implementation of the laws. Based on these experiences, other international experiences and methods, as well as on the traditional administrative monitoring and reporting mechanisms used, CIEM would develop, discuss and test a model suitable to Vietnamese conditions and resources, to be used both *ex ante* (at drafting stage) and *ex post* (at implementation).

Fully developing and implementing such a model, and imparting the required skills to practitioners, will obviously take some time, perhaps 1-2 years. In the meantime, the laws still have to be monitored. It is therefore suggested to quickly develop a simplified list of some key indicators, a checklist of questions for field or desk assessments, and some rapid survey instruments that can be used in the meantime to at least get a semi-quantitative overview of implementation beyond the traditional narrative reports.

While the immediate goal is to apply such a model to the EL and IL, it could also serve as model for more general reform of law implementation monitoring.

(3). Monitoring etc on continuing business regulatory reform

This is similar to (1) but concentrates more on other laws and factors affecting the business regulatory environment (including other critical reform areas such as PAR). Apart from advocating for specific new reforms, it is also important to promote higher awareness of "bad" regulations in general, and to encourage the channels through which the voice of business can be effectively heard. Obviously, CIEM and PMRC would not be alone in these fields, and in any case cannot substitute for the multitude of increasingly active stakeholders at national and local levels. Rather, their role should be to set and coordinate the overall agenda; mobilize and encourage other stakeholders; promote, synthesize and publicize pertinent studies and research; and act as pioneers in raising issues and testing new approaches; and generally "keep up the momentum" of reform.

The **second level** concerns general support to the main priority tasks of CIEM and PMRC in business regulatory reform for the next 3-4 years, as broadly spelled out in the 10th Party Congress resolutions and later in Government

directives. CIEM has already prepared a draft concept paper on what could be included in a new project.

Inter alia, areas for support could include continued improvements in market institutions post WTO (including regulatory reform, broader legal framework for business, corporate governance, PAR, rapid elimination of non-market economy elements); improving competitiveness of the economy in general as well as of enterprises; development of a balanced multi-sector economy.

These are all relevant and significant areas, but it is beyond the scope of this evaluation to comment in any detail on contents and priorities, except to repeat that support per se is recommended, for reasons given above. But the experience of this project, the combination of success factors and the comparative advantages of UNDP may be less compelling for the new project, as the issues are broader and involve an even wider range of stakeholders and sectors. There is more dispersion of action and timelines, and not so many visible and symbolic goals (once WTO accession is secured).

On the other hand, the UNDP cooperation has shown itself to be effective and productive, so one could argue that it would be a pity to dismantle a mechanism that works well. However, the emphasis at CIEM and PMRC would still be mainly national, and this may conflict with the desire to have a more provincial and local focus. Support to reforms at both national and local levels are useful and needed, but whether to support one or the other or both is a UNDP policy prioritization that goes beyond the scope of this report.

Exit strategy

Be that as it may, support at both levels should include an exit strategy, in the form of assurances and mechanisms to determine and ensure sustained and adequate Government funding for CIEM and PMRC to fulfill their tasks to high standards with progressively less external support. A “performance-oriented” study on resource requirements for business regulatory legal drafting and reform, consultations and studies, advocacy and implementation monitoring and evaluation, based on some different levels of ambition in terms of quality and quantity could be the initial starting point for dialogue and consensus-seeking in this respect. Such a study should be included in any support project.

Recognize the process aspects more explicitly in the project design.

Policy reform is both a process and technical issue. The project document should reflect this through more attention to defining the desired objectives and outcomes and how these are to be achieved, and relatively less to specific activities; the mechanisms through which support and advice is channelled to decision makers and policy deliberating fora; the risks and success factors to be monitored dynamically, the criteria for reorienting or discontinuing support; and how to ensure that advice and information is optimally “packaged” and injected into the reform process for maximum impact.

Support to process facilitation should be major duty of any international senior technical advisor (or equivalent)

Knowledge management

Knowledge management and promotion of networks, international as national, are essential elements of capacity building for policy reform. These should be explicit components of any policy reform support project. Assistance with these two elements should be included as major duties of any international senior technical advisor.