1.6 Assessment of the competitiveness of the Vietnamese investment environment in comparison with other selected countries

Overview

Vietnam falls behind China, Thailand, Malaysia and Philippines in competitive ranking and Investment confidence index.

Vietnam is ranked relatively low in the world competitive survey conducted by the World Economic Forum and the FDI Confidence Index.

Although Vietnam's position in the FDI performance index has improved, Vietnam has never been one of the top 25 destinations. The ranking of China, Malaysia. Thailand and Philippines in the FDI Confidence Index is set out below.

Figure 39: Country's ranking in FDI Confidence Index

	2002	2001	2000	1999	Jun-98
China	1	2	3	2	3
Thailand	20	14	14	15	15
Malaysia	*	22	22	22	22
Philippines	*	*	*	24	*
Vietnam	*	*	*	*	*

Note: * - Not in the top 25 countries

Source: A.T.Kearney – FDI Confidence Index – September 2002, Volume 5

The main reasons for Malaysia falling out of the list of the top 25 countries were due to political instability, shortage of high skilled labour and increases in labour cost. Political problems and poor economic performance were the main reason for Philippines's drop in the country ranking.

In terms of growth and macroeconomic competitiveness, the ranking of selected countries is as follows:

Figure 40: Country's ranking in world competitiveness

	Growth competitiveness index rankings		Macroeconomic competitiveness index rankings	
	2002	2001	2002	2001
Vietnam	65	60	60	62
China	33	39	38	43
Thailand	31	33	35	38
Malaysia	27	30	26	37
Philipines	61	48	61	53

Note: Lower index means more competitive.

Source: World Economic Forum, 2002

1.6.1 Detailed assessment of Vietnamese investment environment

A detailed assessment of the competitiveness of the Vietnamese investment environment is conducted below.

Market access

Vietnam is less attractive than China and ASEAN 4 in terms of market access due to small local market size and high cost to access the regional market.

It was noted before that most foreign investors rate market access as one of the most important factor for overseas expansion and investment location decision. With a population of over 80 million and relatively low infrastructure, Vietnam has and can be an attractive market for those companies focusing on local sales. The rate of FDI in local market oriented sectors such as consumer goods industry, heavy industry, real estate, construction materials production etc., has been relatively high.

The protection policy applied by the Government of Vietnam, however, encouraged foreign investors into the protected areas to enjoy the benefits from the Government's protection policy rather than investment in the sectors which Vietnam has competitive advantages. In view of access to the regional and global market, poor quality and high cost of transportation infrastructure are still perceived as the key obstacles to FDI. In addition, the import and export policies of Vietnam and unpredictable changes in the customs regulations contribute to discouraging foreign investors from choosing Vietnam as the location for placing their production facility for export.

Overall, in terms of "market access", Vietnam is perceived as less attractive than ASEAN4 and China. This is a result of the relatively low GDP and GDP per capita in comparison with other ASEAN4 and China. The GDP of Vietnam is only 3% that of China's GDP, and only 24% of Thailand, 29% of Indonesia, 38% of Malaysia and 42% of the Philippines's GDP.

Cost of doing business

High cost of doing business is one of the main disadvantages of Vietnam.

Most foreign investors point out the high cost of doing business as the main disadvantage of Vietnam. The analysis of costs in Vietnam done earlier showed that investment cost and operating cost in Vietnam is relatively high compared to ASEAN4 and China. Based on our survey and interviews with various investors, although the dual pricing system did not have significant effects on the operating cost, it creates the perception of inconsistent treatment (i.e. discrimination) by foreign investors. This has negative effects on the business environment in Vietnam.

Lack of raw materials and supporting industries and unfavourable import tariff systems are also seen as other weaknesses of Vietnam and contribute to the high cost of doing business.

A comparison of the cost of doing business between selected countries is

presented in the Figure 41 below.

Figure 41: Assessment of Cost of doing business in Vietnam, China, Thailand Philippines

Cost and factors related to doing business	Vietnam	China	Thailand	Malaysia	Philippines
Cost/Quality of Power Supply	1	2	3	3	3
Cost/Quality of Water Supply	2	3	3	3	3
Cost of Telecommunication	1	3	3	3	4
Cost of Maritime Transport	1	3	2	3	2
Quality of Labour (unskilled)	1	2	3	3	3
Quality of Labour (skilled)	1	2	3	2	3
Labour Cost (workers)	4	2	2	1	3
Labour Cost (Mid – level Management)	2	3	2	1	2
Rental Cost/Quality (Office)	2	1	3	3	4
Rental Cost/Quality (Land Rental in IZ and EPZ's	2	2	4	3	2
Unofficial Costs (administrative fees, corruption)	1	1	3	3	2
Personal Income Tax	1	2	2	3	3
Effective Tax Rate	1	2	2	3	3

PwC assessment (1 = least competitive 4 = most competitive

Stable social and political environment

Social and political stability is the biggest competitive advantage of Vietnam.

In general, Vietnam is rated as a country with a stable social and political environment in comparison with other countries in the region. The Political and Economic Risk Consultancy (PERC) in Hong Kong ranked Vietnam in the first place in terms of social and political stability post September 11, 2002.

Compared to other ASEAN countries such as Indonesia, Malaysia, the Philippines and also China, Vietnam has less religion-related problems and ethnic disputes. After the introduction of "doi moi", Vietnam has achieved steady GDP growth rate. Macro-economic and political stability has been maintained. Vietnam is considered a safe place for investment.

Ease of doing business – reliability of judicial enforcement

Foreign investors in Vietnam faced more problems in doing business than in other ASEAN4.

Based on various surveys, Vietnam appears to be the country where foreign investors have relatively more problems in doing business than other countries in the region. Most of the problems encountered by foreign investors are the result of a lack of transparency, uncertainty and inconsistency in the legal and tax system. These lead to both reliance on political relations and strong discretionary powers of government officials.

Although Vietnam spent significant efforts in improving its legal framework, there remain many shortcomings. The problems of vague

formulation and divergent interpretation of the law lead to serious problems in implementation and enforcement.

Unexpected and retrospective change to the tax laws and regulations are also other major issue in Vietnam.

Reliability and quality of infrastructure and utilities

Quality and reliability of the infrastructure and utilities are lower than the standards.

It is fair to say that the infrastructure of Vietnam is still inadequate and does not meet the demand of the economic development in terms of availability, cost and quality. Despite the rapid improvement over the last 10 years, the availability and quality of infrastructure of Vietnam is still below the average level in the region and ASEAN4. According to a survey conducted by the German Development Institute (GDI), more than two third of all FIEs depend on roads to transport their goods and commodities. Most investors who were interviewed criticise the poor condition of the road network as a business constraint.

Most of infrastructure projects are capital intensive. To date, the investment in infrastructure relies mainly on State budget including ODA grant and soft loans. Private participation in the infrastructure is still very limited and mainly in the form of BOT (in power and water supply sector) and BCC (in the telecom sector). The management and operation of infrastructure sector is concentrated in the hand of few state-owned corporations. This results in the lack of competition, ineffective and efficient operation.

The experiences from other countries in the region such as Thailand, Indonesia, Malaysia and the Philippines indicate that the permission / promotion of private participation has contributed significantly to the development in the infrastructure sector. For example, in the Philippines, since allowing foreign investors to participate in the power generation in the form of BOT, the country has resolved the long lasting energy problem. This is a good example for Vietnam to follow.

Private participation in the provision of utilities services will also help to increase the quality and reduce the cost, which are the key factors to attract FDI into Vietnam.

Labour market

Vietnam has a strong and young work force, but lack of labour with technical and management skills.

Vietnam has a work force of over 40 million people and annual increase of 1.1 to 1.2 million. The labour cost is relatively low in comparison with other countries in the region as shown earlier. This is the competitive advantage of Vietnam.

Although the literacy rate of Vietnam is high compared to other countries (approximately 90%), the trained workforce is relatively low. According to the statistics published by the Ministry of Labour, Invalid and Social Affairs, only approximately 12% of the Vietnam work force is regarded as

trained workers. The labour workforce can be characterized by a surplus of unskilled, but a shortage of skilled labour. The quality of the trained workforce is another issue. This is the result of an inadequate training and education system.

According to the interviews with many foreign investors, lack of technical, managerial and business awareness are the main constraints of Vietnamese nationals. Based on the survey conducted by JBIC, 43.3% of Japanese surveyed said that recruitment of local management staff is challenging. This is ranked in third place as a critical problem facing by foreign investors after quality of infrastructure and legal system.

The Vietnamese labour market is still at an emerging stage and underdeveloped. The labour movement between different economic sectors is relatively low compared to other countries, particularly between the state and private sector.

The requirement that foreign invested enterprises should recruit local employees via authorized employment agencies restricts the flexibility of the labour market.

In summary, although Vietnam has a competitive advantage of a young and cheap labour force, the quality of the labour force remains very low. This reduces the competitiveness of Vietnam in high-tech industries.

Corruption

Vietnam was ranked in the 75th position in the Corruption Perception Index by TI in 2002.

Empirical evidence shows that frequent and unpredictable corruption hurts investment. According to the various surveys, corruption is viewed as a serious problem in Vietnam.

In the 1999 survey on corruption conducted by Transparency International (TI), Vietnam received a rating of 2.6 and ranked 75 out of the 99 countries in which the survey was conducted. (The corruption perception index applied by TI ranging from 10 (highly clean) to zero (highly corrupt). According to 2002 survey, Vietnam's index is at the low level of 2.4. This indicates that corruption in Vietnam has been perceived to have increases over the few years.

Figure 42: Corruption Perception Index 2002 – selected countries

Country	Rank	CPI 2002 score	High-low Range
Singapore	5	9.3	8.9-9.6
UK	10	8.7	7.8-9.4
Australia	11	8.6	6.1-9.3
Hong Kong	14	8.2	6.6-9.4
USA	16	7.7	5.5-8.7
Belgium	20	7.1	5.5-8.7
Taiwan	29	5.6	3.9-6.6
Malaysia	33	4.9	3.6-5.7
South Korea	40	4.5	2.1-7.1
China	59	3.5	2.0-5.6
Thailand	64	3.2	1.5-4.1
India	71	2.7	2.4-3.6
Philippines	77	2.6	1.7-3.6
Vietnam	85	2.4	1.5-3.6
Indonesia	96	1.9	0.8-3.0
Bangladesh	102	1.2	0.3-2.0

Source: Transparency International – Transparency International Corruption Perception Index 2002.

The Government of Vietnam is aware of the corruption problem and the damage corruption causes to the national economy. This has promulgated various measures to tackle this issue. However, corruption remains a critical issue of Vietnam and continues to be a factor that discourages FDI into Vietnam.

Availability of local suppliers of parts and materials

Lack of local parts, raw materials and supporting industries drive away potential investors.

Due to the underdeveloped domestic industrial sector, the access to local parts and materials is limited. As a result, most FIEs operating in the manufacturing sector such as electronics, automobile, and motorbike have to import parts and semi-products. Since the material cost in the manufacturing sector is the single largest cost component, the unavailability of local parts and materials leads to high production cost and reduces the competitive advantages of Vietnam.

The unreasonable import tariff system contributes further to the high cost of parts and materials. The average import duty imposed on parts and materials varies from 30% to 60%. In 2000, the new tariff system based on the localisation rate was introduced with the aim to encourage FIEs to explore using local parts and materials. According to the recent survey conducted by JETRO in October 2002, this change has increased the cost of imported parts and materials since there is a lack of domestic suppliers.

Based on our interviews with different authorities and industrial zones developers, lack of supporting industry and local suppliers is one of the main reasons for a large number of potential investors not choosing to place their facility in Vietnam.

The lack of local suppliers of parts and materials reduces the competitive advantages of Vietnam compared with ASEAN4 and China. This will become a bigger problem for Vietnam when Vietnam is fully committed to AFTA by 2005. By that time, Vietnam is required to reduce the import duty rate for 80% of commodities to below 20%. The sales of finished goods from other ASEAN countries to Vietnam will be subject to lower import duty rate. Thus, there will be no economic benefits for foreign investors to set up production facilities in Vietnam.

Overall assessment of Vietnam competitiveness

Compared with other neighbouring countries, Vietnam is still less competitive in key factors such as quality of infrastructure, potential market access, lack of a transparent and stable legal and tax system. Vietnam, however, has the advantages of a stable political and social system and is expected to have high potential market growth.

Figure 43: Assessment of competitiveness in terms of specific factors impacting FDI

Specific characteristics	Vietnam	China	Thailand	Malaysia	Philippines
FDI Confidence Index	2	4	3	3	2
Potential Economic Growth	3	4	2	2	
Quality of Infrastructure	1	2	4	4	2
Legal System (development, transparency, instability)	2	2	4	4	3
Tax System (development, transparency, instability)	2	2	3	3	2
Political and Social Stability	4	3	3	3	2
Foreign Exchange Rate Control and Stability	2	3	2	2	2
Procurement of Parts	1	3	3	3	2
Potential Market Access	2	3	3	3	2
Ease of Doing Business	1	2	3	3	2
Corruption Perception	1	1	2	2	2

Rankings are based on based on PricewaterhouseCoopers' calculation
Rank (4 = most competitive. 1 = least competitive)

1.6.2 SWOT Analysis of the Vietnamese investment environment

A SWOT analysis, Strengths, Weaknesses, Opportunities and Threats faced by Vietnam reveals the following:

STRENGTHS

Vietnam is endowed with natural resources and low cost labour.

Geographical Location: Located on the east side of the Indochina peninsula, Vietnam is at the centre of Southeast Asia. This enables it to have excellent contact with the rest of the work. Major air route and sea-lanes are in close proximity to the country facilitating access to major markets.

Vietnam's climate provides good conditions for agricultural production and its adjoining ocean area are conducive to aqua-based economic activities such as fishing and fish harvesting.

Natural Resources: Vietnam has a large variety of natural resources including oil, gas, and both metallic and non-metallic ores. It also has close to 7 million hectares of relatively fertile farming land.

Labour Resources: Vietnam's population of close to 80 million people indicates the domestic economy itself has huge market potential. The majority of the population is young – high labour force participation rate - and statistics indicate a high level of literacy. Wage rates are relatively low in comparison with other countries in the region.

Political stability remains in place.

Political Stability: The Communist Party of Vietnam has ruled the country for the past several decades and there is no expectation of changes in the political environment. The authorities have supported a policy of reform and the transition to a market economy continues.

General Stability: In light of the events of the past few years in terms of terrorism, Vietnam is perceived as one of the safest countries in terms of crimes against persons and property.

WEAKNESSES:

Lack of skill workers and management skills.

Geographical Location: The long coastline, particularly the centre of the county, is subject to typhoons and climatic events that impact on economic activities.

Natural Resources: While there are a large variety of minerals, their location if often scattered throughout the country resulting in mining and transportation difficulties.

Quality of Labour: The high labour force participation rate indicates that the economy must grow at a substantial level to avoid high levels of unemployment. While there is an abundance of cheap labour, the quality is generally low. The number of skilled employees is in short supply and the facilities necessary to train the labour force are generally inadequate. The labour situation is particularly severe in terms of the lack of management skills necessary to work in a competitive environment.

skills necessary to work in a competitive environment.

Low productivity and poor infrastructure are some of the main weaknesses

Backward Technology, Small Size and Low Productivity: Compared with a developed country, the level of technology used by Vietnamese enterprises (except foreign invested enterprises) lags by 20 to 30 years. The adoption of advanced technologies is concentrated in key industries such as oil& gas, telecommunication, power, electronic, garment & textile motorcycle and car assembly, where foreign investment dominates.

Vietnamese enterprises tend to be small and have a low level of technology, outdated equipment, and can only produce simple products that are not competitive.

Physical Infrastructure: The lack of adequate infrastructure is one of the main obstacles to economic development and serious deficiencies exist in all sectors.

Institutional Capability: The institutional capability, the capacity of the county's institutional infrastructure that includes its legal framework and institutions responsible for implementing the laws and regulation, remains relatively weak. There is a lack of clarity and coherence of rules that makes their interpretation subject to discretion. While improvements have been made over time and laws have been instituted to level the playing field for domestic and foreign invested enterprises, the enforcement of these policies is lacking.

The result of the deficiencies in institutional capability results in a high level of corruption. Corruption is perceived as "business as usual" in Vietnam and ~~is particularly rampant in the area of customs.~~

Lack of Stability, Predictability and Certainty: Government actions relating to laws and decrees regarding business practices are too often unpredictable and arbitrary, and in some cases, the decisions or laws are applied retroactively. The business environment is characterized by red-tape and lack of coordination between agencies at different levels of government

Lack of domestic intermediate inputs

Due to the undeveloped domestic private sector, primary and intermediate inputs for most industries, in particular for inputs for producing goods for export, are not available and should therefore be imported. This increases the production cost and reduces the competitiveness of Vietnam.

OPPORTUNITIES

New Market Access: The joining of regional and multilateral trade agreements will provide Vietnam with the opportunity to access other markets in the region and the US market – a potentially large market for consumer goods such as processed agriculture, forestry and aqua products, textile and shoes.

Access to new markets provides Vietnam with opportunities.

WTO Accession: The accession to the WTO will bring greater and more secure market access for Vietnam's export because of the non-discrimination and national treatment commitments of other countries. The membership will also help to avoid the designation of Vietnam as a "non-market economy" by major trading partners such as the EU and the US. This will avoid the application of less transparent and potentially discriminatory anti-dumping and safeguard practices by these countries.

The WTO accession would generate considerable benefits in terms of improved legal framework and business environment, all of which should result in substantial productivity gains and investment capital flows. As a WTO member, Vietnam would be in a better position to defend its interest on the international scene.

China's Accession to WTO: China's accession to WTO creates additional incentives for Vietnam to become a member of WTO. China's accession to WTO also increases China market access for Vietnam, especially for industries such as foodstuff processing, electronics, metals and petrochemicals.

THREATS:

Vietnam will be faced with increasing competition in the future.

Reduction in Tariffs: Currently, Vietnam applies high tariff measures to protect domestic production. As a result, the production cost of Vietnamese products is higher than imported goods. The reduction in tariffs in the coming years will have a significant impact on the key industries that are currently under state protection. These industries may no longer be able to compete with imports from other ASEAN countries. It is very likely that management of enterprises that are directly affected by tariff reduction will pressure the government to increase the fiscal transfers and credit they receive. This would only shift the burden of maintaining inefficient state-owned enterprises to other sectors of the economy.

Reduction in tariffs may well increase imports. In order to maintain the trade balance, Vietnam would need to find ways to offset such decreases with an increase in exports.

When tariff barriers between ASEAN countries are eliminated, the main competitive factor of ASEAN countries will be the "cost". Based on the cost analysis set out in Part I above, the cost of doing business in Vietnam is

generally higher than many ASEAN countries. If Vietnam cannot reduce the cost of doing business, it will not be able to attract more foreign investment and become an importing rather than an exporting country.

China's Accession to WTO: Chinese exports to third markets will intensify as a result of China's accession to WTO. This may impact Vietnamese exports, as Vietnam has similar advantages in labour intensive products. Vietnam's textile and garment industry may be directly affected by the abolition of quotas on Chinese textiles and apparel exports to the US and the EU starting in 2005.

The opening of China's service sector, including telecommunication, distribution, banking, insurance, etc. to foreign invested enterprises by China's accession to WTO, would significantly improve China's investment environment. Such improvements could divert foreign direct investment from other countries, including Vietnam.

Environmental Impacts: Integration with the world market would help Vietnam achieve a rapid growth rate. However, such growth may be accompanied by damage to the country's natural resources and declines in environmental quality. Land degradation is continuing and biodiversity is under threat. In cities and towns air, water and solid waste pollution needs to be addressed. Coastal and marine resources may also be severely affected.

1.6.3 Vietnamese Government efforts to improve the investment environment

In recent years, the Vietnamese Government has spent significant efforts in improving the investment environment by implementing overall legal and administrative reforms. Selected positive changes are listed below:

- In 2002, the Law on Foreign Investment issued in 2000 was amended towards more liberalisation. The key positive change was the move from application to registration procedures for certain types of investment projects. The issuance of the list of encouraged and special encouraged projects/regions contributes to more transparency in the licensing process. The amended Law on Foreign Investment also provide more financial incentives to encouraged projects. The decentralisation of the licensing process is also a positive move.

- The permission of corporate restructuring is another important change, which allows investors more flexibility and reduces the previous concern of existing barriers.

- Positive changes are also noted in the banking and foreign currency control areas. The compulsory level of foreign currency sales has been reduced from 50% to 30%. The ceiling interest rate has been eliminated. The access to foreign currency loan has been eased and

FIEs are now allowed to use land use right as mortgage for borrowing.

- As part of the administrative reform, various "baby" permits have been eliminated. Some provinces have tried to set up One-stop agency in the licensing and pre-licensing process.

- Substantial efforts have been reduced the cost of doing business, in particular the process to reducing telecommunication and personal income tax rates. A process to remove the dual pricing system has also been put in place.

- The state owned enterprises reform and the encouragement of private domestic sector through the implementation of the Enterprise Law are also contributed to improving the investment environment.

- Vietnam has concluded Double Tax Agreements and Agreements on Investment Protection and Guarantees with over 30 countries.

- The signing of the US-VN BTA and negotiations for WTO entry indicate strong commitment of Vietnam in liberalisation and economic reform.

As a result, the business outlook of Vietnam has improved over the last 2 years and is expected to improve in the future. According to a recent survey conducted by Vietnam Business Forum, the business outlook rating increased from 2.2 in 2001 to 2.8 for the 2004-2005 period. (3 being "somewhat satisfactory).

In terms of business environment, Vietnam scores 2.8 and more in four areas: political stability, location, inflation and exchange rate management. Interestingly, foreign companies rated these factors more positive than domestic companies.[32]

1.6.4 Key impediments reducing the competitiveness of Vietnam

Unfortunately, the positive business outlook has not yet generated increasing FDI inflows. Although foreign investors appreciate the positive response from the central and local Government to improve the business environment, there are still concerns about the speed of change. Many impediments remain, which diminishes the efforts of the Government to attract foreign investment. The key impediments reducing the competitiveness of Vietnam can be summarised as follows:

- Lack of comprehensive and consistent legal framework,
- Uncertainty in the tax and legal framework which leads to

[32] Vietnam Business Forum Survey, December 2002.

Uncertainties in the legal and tax regulation and lack of long-term vision are the key impediments of the investment environment in Vietnam.

inconsistent implementation and enforcement practice,

- Lack of a long-term planning leading to unexpected changes in the policies – the recent motorbike issue has particularly harmed the investor's confidence,
- Lack of transparency leading to corruption and red tape,
- Lack of problem-solving and cooperative attitude among administrative authorities
- Lack of accurate and timely information and statistics affecting the business decision and long term planning by business,
- Poor quality of physical infrastructure
- Limited access to local parts, raw materials and supporting industries leading to high cost of doing business,
- Shortage of skilled labour leading to difficulty in hiring technical and managerial staff,

PART II: ANALYSIS OF LAWS AND REGULATIONS ON FDI

2.1 Introduction

The investment policies of a country are affected by a variety of commercial, economic and political policies. Policies that are of the greatest concern to foreign investors are those that directly effect investment, such as:

- Investment entry requirements
- Investment Incentives
- Economic and financial policies
- Foreign exchange, repatriation and remittance policies
- Access to land and ownership regulations
- Labour laws, working conditions and visa/work permit requirements
- Local conditions, such as domestic market forces and available infrastructure and resources.

Whilst the investment policies of many Governments traditionally discriminate between frameworks for 'foreign investment' and 'domestic investment', there is a trend to move towards more uniform investment laws that do not differentiate between the policies that apply to foreign investors and those that apply to domestic investors. However, in practice, it is often difficult to sustain an investment framework that does not distinguish between the foreign and domestic investment policies at all, as the market forces and issues affecting local investors are often different to those that will impact upon and attract overseas investment.

In general, if the Vietnamese Government is serious in its intention to further attract overseas investment in Vietnam, it should endeavour to implement policies that are relatively transparent, procedurally simple, easy to understand and to the extent possible, uniform (in that they do not require individual assessment and the discretionary decisions of officials).

In this report, we have reviewed the current Vietnamese foreign investment legal environment in comparison with the People's Republic of China (China), Thailand, Philippines and Malaysia.

2.2 Investment entry requirements

The general principle remains that of application and evaluation procedures.

Regional policies with respect to investment entry requirements set out as a general principle application and evaluation procedures. In order to invest in one of the countries considered for the purposes of this report, the investor must comply with an investment application and assessment process in accordance with the laws, regulations and investment policies of that country at any given time.

Nonetheless, policies differ from country to country and investment procedures

reflect a wide array of situations such as:

- Obligation to submit all investment applications for assessment and approval;
- Minimal or selective evaluation;
- Simple registration procedure; or
- No assessment or evaluation procedures at all.

Generally, foreign invested projects must follow the standard rules and requirements to form a business entity (depending on the form of the proposed investment), with additional requirements for investments in particular industries or areas. Such company registration procedures include providing relevant information about the investor and the potential project. Other information such as evidence or explanation of the viability of the project, the investment capital and the proposed finances are also often required.

At the very least, the following documentation is usually required:

i. Memorandum and Articles of Association
ii. Explanation of the proposed entity/investment
iii. Statutory declaration by a person before appointment as a director, or by a promoter before incorporation of a company.

The regional trend is to adopt streamlined investment application procedures.

Many countries are moving towards less complicated and administratively focused systems. Systems that require very little assessment and evaluation by administrative officials or have adopted a simple registration method are often considered by foreign investors as more attractive as such systems are regarded as less complex, more transparent and not requiring the discretionary assessment by administrative officials. Also, they are viewed as more predictable and reliable and less vulnerable to corruption.

The move to simplified investment application procedures is based on the premise that market forces direct the decisions made by private foreign investors who are risking their own funds and resources. Private foreign investors usually invest resources and conduct lengthy market research and feasibility studies to determine whether an investment project is viable. And as such, private foreign investors are generally more informed with respect to the likely success of a project than the investment authorities.

Figure 44: Comparison of Investment Application Procedures

Principle	Vietnam	China	Thailand	Malaysia	Philippines
Application or registration procedure:	- Application dossier - An investment license will only be granted if the relevant licensing authority grants approval for the project. -Registration or Evaluation procedures.	-Application -Foreign investment laws involve a rigorous application, assessment and approval criteria. -Two step licensing process: approval and registration for business licence.	-Registration of corporate form and investment project based on criteria. Generally same process for local and FDI. -Criteria: List based	-Registration -Only a registration of the business name is required. - In line with the Equity Policy that requires prior approval for certain projects.	-Registration -Registration process identical for domestic or foreign. - 3 step process
Approval of Authority:	- Yes. - Authority depends upon nature and sector of the investment project. - PM, MPI, PC MB depending on the sector and registered capital. - Group A projects approved by the Prime Minister.	-Yes - Approval by ministries and various official bodies can take time, but is often dependent on the particular official body, the region where the proposed project is to operate and nature of the investment.	Commercial registration department	- Approval that name is available. -Apply for registration to the CCM. -Application in prescribed Form 13A. -MITI, MIDA	Register with the SEC.
Time frame for approval	Maximum 45 days.	- Maximum 90 days - Generally, time limits set by law for approval should be viewed as maximum ceiling. In practice, local authorities set their own time frame for examination and approvals within the framework set by state laws and regulations.	N/A Approval process for List 2 and List 3 can be time-consuming with unpredictable outcomes.	- 3 months - Approved name reserved for 3 months. - Once name approved by CCM, reserved for 3 months. Foreign company must lodge documents with CCM within this 3 months.	
Additional	N/A (except for	Registration with	Business	Certain	

requirement	specific sectors) - Group B projects licensed by the MPI, DPIs and MBs depending on size / nature of the business.	AIC to obtain business licence.	engaged in List 2 and List 3 need to obtain an "alien business licence" before commencement of their business.	activities in specific industries to be licensed, such as in the manufacturing industry (if RM2.5 mill SH or 75 employees)	
Application or registration fee	N/A	N/A	Maximum Baht 250,000	RM 30.00	
Particular issues or restrictions	- Restrictions regarding particular sectors and types of business. -Group A and Group B projects.	- Chinese officials are interested in the level of registered capital that will be contributed - Projects with registered capital of greater than US$ 30 million should be approved by MOFTEC, otherwise by COFERT.	Criteria are used to assess the impact of project: advantages and disadvantages to the nation's safety and security, economic and social development, enterprise size, local employment, etc.	-Priority to manufacturing and high technology-based industries (MSC status). -Equity policies relaxed for Manufacturing –FIE can have 100% equity. -MSC status projects receive benefits -FEO of a private limited liability company does not require prior approval.	

Competitiveness of Vietnam's policies

In line with the regional trend to streamline investment application procedures and with the US-VN BTA which provides for that investment licensing must be free from any administrative measure that impedes the actualization of investment projects, the MPI, through repeated revisions of the Law on Foreign Investment (LFI), is in the process of simplifying foreign investment licensing procedures.

A new set of rules is currently under preparation and registration procedures that provide the easiest form of obtaining an investment license are expected for certain projects. Simplified investment licensing procedures should, first, concern the 3 following areas of foreign investment:

- projects with 80% export-led production,
- investments in industrial parks that are not included in the group A list but listed as special investment-encouraged projects; and
- projects of production capitalized at up to US$5 million with export-oriented production of 50% upwards.

Such simplified procedures could be expanded to a wider scale of projects at a later stage.

Respondents of the JETRO survey claimed that the LFI and its implementing texts, although they sometimes lack clarity or are inconsistent with existing texts legislating and regulating specific areas of law, set out a globally acceptable legal framework as regards entry procedures.

However, they underline, as numerous commentators, that the implementation of such legal framework is far from being satisfactory. They raise the issue of diluted powers and responsibilities, in particular at local level, most particularly when it comes to effectively issuing approvals and authorizations. If they underline the competence of MPI and DPI officials, they are generally suspicious as to the ability of local authorities to interpret correctly the texts enacted and passed at the central level of authority. This leads to inconsistency in the implementation of texts, lack of transparency, arbitrary or unpredictable decisions and in some cases to corruption. These impediments impact negatively on the foreign investors' opinion on the general business environment in Vietnam and dilute the country's competitiveness in terms of attracting FDI. .

The JETRO reports also emphasizes that there is often a lack of coordination and communication amongst authorities that can cause complication and delays in the licence application and approval process. Generally, it has been noted that legal time frames set out for examining projects and issuing decisions are rarely respected by the authorities. Excessive bureaucracy is also regarded as a significant impediment to entry procedures in Vietnam.

2.3 Restrictive policies

Most countries impose certain restriction on foreign investors

In general, most countries restrict foreign investment to some extent. The main restrictions that apply to foreign investors are with respect to:

- Corporate forms available; and
- Restrictions regarding the scope of business activities

Countries opt between 'positive list' or 'negative list' policy

Many countries have moved from a 'positive list' to a 'negative list' method to minimise administrative work and reduce corruption. Countries that adopt a 'positive list' system often assess applications for potential investment projects to determine whether or not they meet the criteria set out in the various investment policies, laws and regulations of that country. This 'positive list' approach is often administrative intensive and can therefore

result in corrupt practices, unpredictable results and bureaucratic delays.

'Negative list' approach is in general favoured by foreign investors.

Conversely, the 'negative list' method is a less complex system that involves clearly stipulating the areas, business activities and forms of investment in which foreign investment is not allowed. Under this 'negative list' method, foreign investors that intent to invest in a project that is not specified in the list may quickly and easily undertake simple registration procedures. The negative list approach will usually restrict foreign investment by designating certain locations or types of business activities that are not open to foreign investment.

Figure 45: Comparison of Restrictions to Foreign Investment

Principle	Vietnam	China	Thailand	Malaysia	Philippines
Corporate forms available:	-Joint venture enterprise -100% foreign owned enterprise -Business Cooperation Contracts	-Chinese-foreign equity joint venture -Chinese-foreign contractual joint venture (incorporated and unincorporated) -100% foreign owned enterprise -Joint stock company - Reinvestment by foreign invested enterprises in limited liability companies	-Limited companies (private and public) -Partnerships - Sole proprietorship - Branches of foreign corporations - Representative offices and regional offices	-Sole proprietorship -Partnership - Foreign company (registered under the Companies Act 1965): limited by shares (private and public)/limited by guarantee/ unlimited.	-Under the Corporations Code: single proprietorship/partnership/ joint venture/ corporation / foreign corporation -Under the laws on foreign investment: domestic branch office or operation / representative office / business association / local subsidiary (wholly or partially owned by a foreign business entity) / joint venture / affiliate entity
Negative / positive list:	Restricted Categories	Restricted categories	Negative list	Restriction on the manufacturing sector	Negative list
Restrictions on the scope of activities	Decree 24 contains a list of FDI prohibited and restricted projects as well as a list of encouraged projects.	The 'restricted category' contains 75 types of foreign invested projects Restrictions	IN 2000, Thailand introduced 42 restricted business categories in three lists (Alien Business Act):	Registration method adopts 'Promoted industry' sector approach. Manufacturing sector falls	Outside the 'negative list', foreign investors are free to set up companies subject to certain restrictions on ownership.

	FDI investments in certain 'sensitive' areas and sectors are only allowed in the form of JVE or BCC. Some services are licensed only to 100% local companies (no foreign investment)	affect also the capital percentage and industry sectors	-List 1: strictly prohibited to foreigners; - List 2 and 3: authorized only subject to the permission of central authorities	under the restricted list due to high labour demand.	

Competitiveness of Vietnam's policies

A brief review of the above table shows two indications. First, as many other countries, Vietnam retains some sectors and industries out of the scope of FDI. Protection of local industries and businesses, notably SMEs is a legitimate concern of the authorities. Also it is common policy throughout the region to reserve to local investors or SOEs a monopoly on certain sectors considered as 'sensitive' or essential to the monitoring of the economic policy by the Government. However, in the perspective of its regional and international integration in organizations such as AFTA and WTO and in line with the provisions of the BTA, Vietnam must fulfil a certain number of requirements with respect to the opening of various sectors of its economy to FDI.

Secondly, the nature and flexibility of investment vehicles remains limited compared to those offered by other countries in the region and is considered by foreign investors, as the JETRO study reflects it, an area of concern. In addition to this restriction, the minimum requirement regarding the level legal capital of a foreign invested project (i.e., 30% of the invested capital) is also considered as an impediment to the necessary flexibility required for the management of FIEs.

2.4 Incentives

Incentives and concessions have greater impacts for particular industries or for export-oriented projects than domestic oriented projects.

There are mixed theories with respect to the attraction and benefit of offering 'incentive' schemes in order to attract and stimulate foreign investment. Whilst many governments offer incentives and concessions in order to compete with the investment policies of other countries, there is evidence to suggest that the availability of incentive and concession schemes is not, now, the most important factor influencing the decisions of potential foreign investors.

Broadly, investment projects in the market place can be described as domestic sales and import focused investment projects and export-oriented projects. Many are of the opinion that whilst incentives and concessions may have some impact upon the choices made by investors generally, more important concerns are the availability of resources, a stable and competitive business environment and access to the market. Decision to invest in a country is normally a two-stage process in which investors first draw up a short list of acceptable

countries on the basis of the economic and political fundamentals. Only after the short list is drawn up on the basis of the investment "fundamentals" will the investors consider investment incentives. This is particularly so for domestic/sales –focused investment projects that are primarily concerned with the ability to profitably operate over a sustained period in a particular market. However, it does appear that the availability of incentive and concession schemes have a greater impact upon investors focused in particular industries (e.g. automobiles, or supporting industries) or for particular projects (e.g. export-oriented projects).

Incentives and concessions that governments often provide for export-oriented investment projects include:

- Tax concessions and holidays, which often extend to stamp duties, value-added tax (VAT) and other indirect taxes that apply to imports.
- Reform and removal of complex customs regulations and procedures.
- The removal of import regulations, so that licensing restrictions and controls are relaxed or will not apply to goods imported for re-export.
- Special regional incentives can influence investment flow within a country and assist with the development of industries in particular regions.
- Mechanisms that provide for the duty free import of capital goods and goods imported for further processing, such as:
  - bonded warehouses;
  - duty-free zones;
  - temporary entry entitlements; and
  - duty drawback schemes.

Performance based incentives:

Many countries provide higher tax allowances and tax credits to promote specific industries.

The application of many tax incentives are linked to the performance of the investment project, in that the business entity must be profitable before tax incentives will apply. Through the provision of tax credits and deductions for certain activities, many Governments enhance and promote the performance element of such schemes. An example of such performance-based incentives include promoting the domestic film industry by providing increased tax allowances for businesses that invest in or contribute to film projects or the development of new technology by providing investors with double tax allowances for investing or engaging in technology research and development. Another example is the provision of increased allowances upon wages and salaries in order to encourage and promote employment within businesses.

Incentives other than fiscal incentives should also be

Investors also look upon incentives other than fiscal incentives closely. Policies to enhance well local supplies of experienced human capital and modern infrastructure if successful may also be a powerful mean to attract FDI.

considered.

A simple, liberalised and transparent incentives system more effective.

Effectiveness of incentives:

The following issues should be considered with respect to how effective and attractive incentive policies are to foreign investors:

- Investment and Trade and procedures and regimes need to be liberalized and simplified and complex import procedures and duty charges need to be removed.
- Incentive policies need to be clear, transparent and simple, so that the application of the incentive policy and how it will apply are neither complex nor difficult to understand.
- Tax incentives and customs exemptions should be built into the tax and customs codes of the country. Administrative procedures can then be streamlined and automatic, which may eliminate the discretionary nature of the approval process.
- Incentive procedures and mechanisms require review to ensure they are efficient, reliable, affordable, and timely as in practice, policies and mechanisms are often difficult to administer. Often poor and corrupt management of customs procedures (at the whim of the discretion of customs officials) hinder the effectiveness and flow of investment to many countries.
- The impacts of the policy and the terms and conditions that will apply need to be clearly stipulated. Investors are more likely to be drawn to schemes that clearly set out the long and short-term advantages of the scheme, the application criteria and procedure and on going requirements that have to be met under the scheme.

Figure 46: Comparison of Fiscal Incentives

Principle	Vietnam	China	Thailand	Malaysia	Philippines
Promotion of Foreign Investment:	General Incentives (in particular tax incentives) and Local Incentives (additional incentives to further attract investment)	China moved to an "open" market with more incentives and less restriction. There are general incentives and special incentives applicable to encouraged projects.	The BOI grants incentives that will benefit and assist the development of particular regions. The aim of incentives is to meet national economic goals.	General incentives and special incentives for export are offered. Basic corporate tax is 28%	Various tax incentives are available for foreign investors in particular areas, including tax exemption and tax credits.
Particular areas where	*- BCCs* Businesses with	*- Development Zones*	*- Industrial Estates* Special incentives	*- Promoted industries*	*- Pioneer projects* *- Economic Zones*

considered.

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Particular areas where	*- BCCs* Businesses with	*- Development Zones*	*- Industrial Estates* Special incentives	*- Promoted industries*	*- Pioneer projects* *- Economic Zones*

	income tax incentives * Infrastructure costs covered by the provincial budget * Training	exempt from the import license requirement.		Insurance Premiums and for the Promotion of Exports * Industrial Building Allowances * Others (as approved by the relevant authority) Incentives MSC's * 5 years Pioneer Status – 100% exemption. 100% Investment Tax Allowance * Research & Development grants * Freedom to source capital and borrow funds globally.	procedures

Competitiveness of Vietnam's policies

In most countries, incentives are tailored to specific projects or industries, which are clearly identified by the government. Export-oriented projects enjoy preferential tax treatment in a lot of countries.

Malaysia is a good example of a country that has since a long time intensively used fiscal incentives in attracting manufacturing FDI in certain industry. Three periods can be distinguished in the evolution of Malaysia's policy towards FDI. The first period corresponded to the import-substituting industrialisation period. Import barriers and fiscal incentives were used during this period, relatively successfully, to attract manufacturing FDI mainly oriented towards producing consumer goods for the domestic market. The second period witnessed policies that gave more emphasis to attracting export-oriented manufacturing FDI. This period was also characterized by the rapid growth of "free trade zones". In the current third period, Malaysia's top policy priority is to promote high-tech or knowledge-intensive production that will be competitive for tomorrow's global markets. Industry-specific fiscal incentives are offered and, overall incentives increase with the priority of the activity or industry, with the size of the project, with the amount of output to be exported, and with the amount of equity owned by Malaysians. Based on these incentives, in the late eighties, investors in the electronics industry, in

particular Japanese and Chinese-Taipei components and final-goods producers relocated their investments in Malaysia.

Thailand has also gone through different periods of FDI incentives policies. However, the financial crises forced the government to focus on the development of initiatives to improve the industrial base and exports, largely in the form of supporting industry.

In Vietnam, with respect to encouraged projects, at present, the list of areas where investment is encouraged is not very comprehensive, nor does it reflect the needs and economic conditions of many areas in Vietnam. In addition, the criteria defining the status of an encouraged investment project still lacks specific guidelines. This ambiguity can provide the relevant authorities with a great deal of power to make arbitrary decisions with respect to investment projects.

Furthermore, although corporate tax incentives, such as tax holidays and reductions are available to foreign investors in Vietnam, such incentives are often offset by other taxation provisions, such as those regarding the carrying forward of loss and restrictions on the deductibility of expenses.

Respondents of the JETRO survey claimed that an FDI issue in Vietnam was that 'supporting industries' were not adequately developing or being provided with sufficient incentives to stimulate development in this area, particularly 'technology' based support and infrastructure. In addition to export-oriented projects, Vietnam has not developed clear incentives packages tailored to specific industries. The JETRO report also emphasize that in Vietnam more EPZs should be encouraged with a particular focus to attract more 'supporting' industries.

Some countries are offering other forms of incentives apart from fiscal packages in order to attract FDI. For example, in China, local governments are generally given the authority to make land grants and to determine land-use fees. In Vietnam, land is perceived as a problematic issue for investors, with complicated procedures and high rentals. While certain types of projects such as Built-Operate-Transfer projects are exempted from the payment of land rental, this only concerns a very limited number of projects. However, some provinces in Vietnam are offering incentives in addition to the ones included in Decree 24 providing implementing regulations to the Law on Foreign Investments. For example, Dong Nai People's Committee issued Decision 782/QD-UBT dated 28 March 2002 providing investors with the following additional incentives:

- Land rent exemption for investments in specific areas as stipulated in the Decision;
- For investment projects located in industrial areas, such as Tan Phu, Dinh Quan, Xuan Loc and Long Khanh districts:
  - + exemption from infrastructure use fees (if infrastructure use

fees are applicable) for 5 years from the year of operation ;

+ for specially encouraged and encouraged projects in accordance with Decree 24, land rent exemption during the lease term,

+ for other projects, land rent exemption for a term of 15 years from the lease date.

Such measures taken by the local authorities will also foster competition between the different provinces.

Other non-fiscal incentives, which retain the attention of investors is the development of local resources, environmental management and infrastructure development. In China, the opening up of the domestic market by several local governments and labour training has proved to be effective to attract FDI.

Looking to the future, countries will emphasis in offering rules-based forms of competition to attract FDI. Rules-based forms of competition are a broader and more heterogeneous group of government actions, including a strengthening of the legal system, reduced discrimination between foreign and domestic investors, and a reduced role for incentives-based competition.

2.5 Access to land

Access to suitable and affordable land is a prime concern for foreign investors, as are policies with respect to the ability to own and manage land rights and assets. Governments that are serious in their intention to attract increased foreign investment need to cater for the land concerns of investors and modify their policies accordingly.

Generally, most countries impose formal or informal restrictions on foreign ownership of land.

Many countries do not provide foreigners with the right to own land. This is a particular concern for investors who usually require a degree of security with respect to their investment and the ability to acquire land ownership rights and enter lease arrangements for a long period of time.

Even where ownership rights are available, registration policies documenting ownership rights can pose additional concerns. Some countries do not have established registration system, which can mean trying to identify title and locate the owner of a parcel of land can be difficult and time consuming.

In order to overcome such problems, some countries have implemented managed and controlled procedures to further facilitate foreign investment. An example is the formation of land banks, in the form of investment estates and zones, that are specifically designated for investment with procedures aimed at ensuring foreigners can efficiently locate and finalise land contracts on clear commercial terms.

Figure 47: Comparison of regulation concerning Access to Land

Principle	Vietnam	China	Thailand	Malaysia	Philippines
Nature of rights	Basic principle: land is the property of the people and subject to the exclusive administration of the State There is no private ownership of land in Vietnam. Foreign investors can lease land from the Government and own the right to use. 2 separate set of rules applying to domestic & foreign land users.	Foreigners can obtain 'land use rights' but not the property of the land itself. Land use rights acquired by means of grant and assignment can be bought and sold. Land use rights acquired by means of allocation cannot be bought and sold.	Foreigners not permitted to own land (in principle). Exceptions and strategies exist that provide foreigners with the ability to secure property.	Foreign ownership of land is possible but subject to restrictions. Foreign ownership is subject to an approval procedure Approval from FIC and State Authority under NLC	Foreigners not permitted to own land (in principle) but can secure property. Exceptions and strategies exist that provide foreigners with the ability to secure property.
Particular restrictions:	Only certain projects qualify for 70-year lease terms. Lessee is not authorized to sublease the land unless operating an IZ, EPZ or HTZ. FIEs may only mortgage their LURs and the assets on the land if the land rental has been paid for the entire term of the lease or it is a lease where there has been a pre-payment of future land rentals for a least a five year period.	Foreign-invested joint ventures may obtain land use rights from a minimum of 40 to a maximum of 70 years, depending on the proposed use. The maximum period of time for which land-use rights may be granted depends upon the designated use of the land in question.	Foreign individuals Legal entities: - companies - partnerships -Thai registered juristic entities that are owned or controlled by foreigners	Foreign Interests: [defined under FIC & NLC (broader)] - foreign citizens, - companies incorporated outside Malaysia, - Companies incorporated in Malaysia, with ownership of more than 50% by foreign citizens or companies incorporated outside Malaysia or both. **Restrictions:** * Require approval *Foreign interests are not	Foreigners Former Philippine citizens (can only buy additional property up to the limits stipulated under the law – currently 1000 sqm of land for housing)

				allowed to acquire any property under RM250,000 in value, except for industrial land. * Foreigners can not resell property within 3 years from approval.	
Ways to secure land:	*JVs:* A joint venture may enjoy LUR by means of the Vietnamese party making a LUR contribution to the joint venture's legal capital. *Private enterprises:* A private enterprise may contribute LUR to a FIE only if the land rental has been paid for the entire term of the lease or there has been a pre-payment of future land rentals for at least a five-year period. - *Foreign banks branches* can take security over LURs and foreign lenders can take security over LURs.	*FIEs*: 1. Allocated or granted land use rights contributed by the Chinese party as capital. 2. Acquisition of land use rights by grant. 3. Acquisition of land use rights by assignment. 4. Land use rights acquired by lease.		All applications have to be made using the following forms: Form FIC 1/95 and Appendix A/95: (Residential units) Form FIC 2/95 and Appendix A/95: shop houses, commercial and office space, factory and factory lot. -------------------- - For units in Developer's Project, the rules are generally more relaxed - For units not comprised in Developer's Project, stricter rules apply - Foreign interests (for individuals) are not permitted to own more than two residential units. Foreign interests are not permitted to own more than one non-	Foreign National can secure property: Filipino Trustee Form a Corporation (Filipino partners with the sharing of 40% foreign 60% Filipino capital) Lease the Property (50 years renewable up to 25 years) Buy a Condominium Unit

				condominium - Consideration given to manufacturing companies or other encouraged projects.	
Particular requirements	- Land lease to FIEs subject to approval: * the Prime Minister, (for projects requiring 5 hectares of urban land, or 50 hectares of non-urban land), * the President of the provincial People's Committee for other projects. - 2 stage LUR granting procedure for FIEs, (prior to the investment licence application, after issue of the investment licence) - Standard form lease contract required.	- Land grant fees or site use fees are generally paid to the State. - Mortgages may be taken over land and must be registered within 30 days of signing with the appropriate authority to be valid. - The process of registration takes approximately 2 months.		<u>Agricultural Land</u> - Not permitted to acquire agricultural land for traditional agricultural activities. - Foreign interests are permitted for certain activities: (commercial advanced technology activities, agriculture based industries & tourism projects) MITI guidelines apply to equity structure where company produces goods for export. <u>Industrial Land</u> May acquire land to conduct operations in accordance with Investment licence. Properties acquired by companies exempt from obtaining a manufacturing license may not be rented or leased. **Development Land**	

				Land acquisition must be made by a company incorporated in Malaysia of which at least 70% is owned by Malaysians including 30% which is owned by Bumiputras.	

Competitiveness of Vietnam's policies

The principle that land cannot be purchased by foreigners is not exclusive to Vietnam. Therefore foreign investors may not consider this limitation as critical when making their investment decision.

Nevertheless, the LUR granting procedures with respect to foreign investment projects are often considered complicated especially since foreign investors are not used to the mechanism of LUR in their home jurisdictions. The process of securing and formalising a lease or allocation through land contributions is time-consuming. Delays may be lengthy and this may deter investors from coming to Vietnam or from expanding their operations.

Other issues affecting Vietnam's FDI competitiveness is the difficulties involved in the ability and procedures to lease land in Vietnam as well as the implementation of land clearance procedures.

Impaired flexibility in terms of a foreign investors ability to gain land use rights and to use that land, particularly with respect to the potential for investment and profit is a disadvantage.

Land rental rates are quite high in Vietnam, comparatively speaking. Land rent prices for foreign invested projects are approximately 80%-90% higher than the prices applicable to domestic projects.

Valuation of the LUR in case of termination of activities is also an area of concern since LUR shall be terminated upon cessation of activity of the FIE. Also stressed by the foreign business community and by the JETRO report is the difficulty of using LUR as a collateral due to the lack of clarity of the laws and regulations on the implementation of mortgage of LUR.

2.6 Economic and financial policies

Generally, the most important economic and financial concerns of foreign investors are:

- Access to local finance and loans;
- The ability to freely convert/exchange foreign and local currency;
- Availability of foreign exchange; and

- The ability to remit money and profits (either invested in or derived from the investment) abroad.

Access to local funds and foreign exchange

An attractive investment environment allows free access to local funds and foreign exchange.

Investors that are taking the risk of contributing funds into a foreign investment project require a degree of certainty, control and commercial flexibility with respect to access to local finance and freely convertible foreign exchange. An attractive investment environment is one that provides an investor with the ability to obtain local finance and few restrictions on the convertibility of foreign currency and the local currency abroad. Such aspects increase investment confidence in the commercial viability and stability of the business environment. In light of this, many countries have adopted exchange and currency policies that allow investors to borrow funds locally and a degree of stability and convertibility with respect to foreign currency.

Certain countries such as Thailand, the Philippines and Malaysia are fairly liberal with respect to the ability to obtain access to local currency and finances, convertibility and access to foreign exchange control and the remittance of funds and profits off shore. Conversely, China however and Vietnam are more restrictive with respect to access to funds for foreigners and the remittance of profits, and indeed are still in the process of being developed in order to cater for increased levels of foreign investment.

The importance of access to foreign exchange:

As net earners of foreign currency, exporting companies often require access to foreign currency. When operating investment projects foreign investors often require foreign currency in order to purchase imported goods and services. A Government's ability to ensure access at all times to foreign exchange facilities is a critical feature in attracting and securing significant levels of foreign investment.

Availability of foreign currency in developing countries:

Access to foreign currency is a particular concern with respect to investment projects in developing countries, as it is possible to experience national shortages of foreign currency and fluctuations in exchange rates.

In order to secure foreign investment in these regions, Governments must take serious measures to ensure that the country's economic framework appears stable and credible and the financial needs of investors are met. In this regard, policies must be reformed and mechanisms improved and implemented to ensure international investors can be provided with unrestricted access to local finance and to convertible foreign exchange.

Repatriation and Remittance of funds

The ability to remit profits and funds is the key investment decision factor.

Guarantees against the expropriation and nationalization of finances are important factors affecting the investment policy climate of a country. The ability to freely remit profits from a country is a well established feature of most developed foreign investment policies. Governments are increasingly aware of how important it is to ensure investors can remit proceeds invested in, and profits derived from, their investments to offshore destinations without the imposition of restrictions or penalties. Restrictions upon the ability to remit profits and the initial investment capital works to limit the flow of foreign investment into a country and can encourage practices that aim to avoid or evade such restrictions. Indeed, many investors are weary of countries that tend to frequently change the nature of their economic policies or that adopt particularly nationalistic and protectionist policy positions.

However, many countries (particularly developing countries) that do not have convertible currencies that provide the ability to remit finances to foreigners do not provide this right to local investors at all and consequently, initial investment funds and subsequent profits are subject to the control and approval of Government agencies.

At times, foreign investor's may chose to retain funds and profits within the host country. The following factors will often impact upon such a decision or requirement:

- The state of the international economic climate at the time;
- The nature and stability of the host countries economy and its comparative position with respect to the international market;
- The profitability of the local investment;
- The financial needs of the investment project; and
- Banking policies and investment opportunities within the host country.

Figure 48: Financing & Foreign Exchange

Principle	Vietnam	China	Thailand	Malaysia	Philippines
Ability to obtain finance/ loans	All buying, selling, lending and transferring transactions in foreign currency must be made through financial and credit institutions authorised by the State Bank. Capital and capital-natured funds such as loans are not subject	FIEs may obtain cash security services and Rbm loans subject to certain conditions. Foreign-invested financial institutions can carry on RMB business if it : • has carried on business in	All foreign exchange transactions should be conducted via authorised banks, companies, or persons. The BOT has the responsibility of foreign exchange administration	Foreign currency bank accounts can only be opened at commercial & merchant banks. No restrictions on the inflow and outflow of funds through the foreign currency accounts of non-	Since 1992, many foreign exchange requirements and restrictions were lifted. *Foreign Borrowings:* Public Sector Loans: with BSP approval (some

	to compulsory sale. These capital funds may be kept in foreign currency. The transfer of foreign currency is authorized for: • payment for imports and services abroad; • refund of loans contracted abroad; • payment of accrued interest transfers of profits and dividends; and • revenues from transfer of technology.	China for 3 years; and • has made a profit for 2 years; and • meets other prudential requirements.	Authorized persons (money changers) can only engage in the purchase of foreign notes and travelers' checks and the selling of foreign notes.	residents. Banks which are not Designated Banks can only open foreign currency accounts for residents who have obtained approval from the Controller of Foreign Exchange in Malaysia Credit Facilities Non-residents may obtain credit facilities in foreign currency from commercial banks for any purpose other than financing the acquisition or development of immovable property in Malaysia.	exceptions). Private Sector Loans: BSP approval and registration in certain cases. Short-term loans of private sector exporters or importers: subject to certain conditions. Priority projects: certain projects have priority - the proceeds of all loans, irrespective of maturity, must finance foreign exchange requirements of eligible projects. Loans of direct and indirect exporters and public sector borrowers can finance both foreign exchange costs and local costs of their projects. *Domestic Borrowings:* No restrictions apply to domestic loans, except banks should
Ability to	All transactions in	FIEs can take	Subject to	Exchange	Purchase of

freely convert & exchange Currency	Vietnam should be made in local currency However, exceptions are applicable to payments for exports made between consignors and their agents, and authorized payments for goods and services purchased from institutions. "Specially important" projects can obtain a foreign currency conversion guarantee	offshore loans, issue foreign currency bonds and other debts instruments subject to registration.	conditions, individuals and companies can open foreign currency bank accounts. All export proceeds must be deposited at Thai banks. Subject to some conditions, exports are free from any exchange restriction. Importers can purchase or draw foreign exchange from their own foreign currency accounts for import payments. Letters of credit may be opened without authorization.	control policies of Malaysia applied uniformly to transactions with all countries except Israel and the Federal Republic of Yugoslavia (for which special restrictions apply). The exchange control policies aimed at monitoring the settlement of payments and receipts as well as encouraging the use of the country's financial resources for productive purposes in Malaysia. Payment exceeding RM10,000 or its equivalent in foreign currencies to a non-resident for purposes other than those permitted under the Exchange Control Notices requires the prior approval of the central bank of Malaysia, Bank Negara Malaysia in its capacity as the Controller of Foreign Exchange.	foreign currencies is possible, but subject to certain requirements. Non-residents can open local and foreign currency accounts without prior approval and can withdraw funds. However, non-resident bank accounts may only be credited with the proceeds from inward foreign exchange remittance or with income earned in the Philippines. Foreign investors can have access to local and foreign sources of funds subject to compliance with certain requirements.
Ability to remit funds	Foreign investors can remit its profits	All foreign exchange	Prior approval for remittance is	All export proceeds are	There are no restrictions on

& profits	legally earned in Vietnam abroad. *Trapped cash issue:* Investment capital can only remitted by the end of the project.	earning must be remitted to China.	required with certain exceptions.	required to be repatriated back to Malaysia in accordance to the payment schedule as specified in the sales contract, which in any case should not exceed six months from the date of export Foreign direct investors are freely allowed to repatriate their investment, including capital, profit and dividends, without being subject to any levy.	repatriation of BSP registered foreign investments. BSP registration of foreign investments is only necessary in some cases.
Main restrictions / approvals required	Up to 30% of all export proceeds be sold to local authorised banks. After fulfilling their tax obligations, foreign investors may transfer abroad: - Their profits earned from business operations and distributed income; - Payments received from provision of services and transfer of technology; - Principal and interest on any foreign loan; - Invested capital; and - Other sums of money and assets lawfully owned by	30 days after the investment licence is issued FIEs must obtain a Foreign Exchange Control Certificate from the State Administration for Foreign Exchange ('SAFE'). Certificate is required to open a foreign currency account with a bank. Approval from SAFE required to open a foreign currency account outside of China. Any capital transfer must be	Export proceeds exceeding Baht 500,000 must: - be collected (within 120 days from export date); and - be surrendered to an authorized bank or deposited in an authorized Thai bank foreign currency account (15 days from the date of receipt). *BOT approval not required to remit:* * Foreign direct investments or lending to	<u>External Accounts</u> An External Account is a Ringgit account with a financial institution in Malaysia which may be opened and maintained by a non-resident (or by residents on behalf of non-residents where the beneficial owner of the ringgit funds is a non-resident) and includes any form of bank deposit. <u>Permitted sources</u>: Proceeds from permitted credit facilities or repayment of credit facilities	Approval &/or registration with central monetary authority (BSP) is required for: • repatriation of capital, • dividends, • loan repayments; • outward investment of residents over • US$6,000,000.00; and Foreign borrowings by the public sector

	them.	approved by SAFE. Foreign currency transactions require supporting documentation. • FIEs must submit an annual foreign exchange and currency report to SAFE.	affiliated companies abroad not exceeding US$5 million per year; * To Thai emigrants with permanent residence abroad not exceeding US$1 million per person yearly; * An estate to a permanent residence abroad not exceeding US$1million per person yearly; * Funds to family or relatives who have permanent residence abroad not exceeding US$100,000 per person yearly; and * Travel expenses to US$20,000.	extended in accordance with Exchange Control Notices, sale of foreign currency or ringgit assets, income derived from Malaysia or crediting of ringgit cash not exceeding RM10,000 per day. **Special Status Granted to Selected Companies** • Offshore Entities in Labuan IOFC • Multimedia Supercorridor Companies • Approved Operational Headquarters • Approved International Procurement Centres	

Competitiveness of Vietnam's policy	All buying, selling, lending and transferring transactions in foreign currency are to be made through credit institutions and other financial institutions organisation authorised and controlled by the State Bank. Finance laws of Vietnam appear more restrictive with respect to access to funds for foreigners and remittance of profits abroad.
Concern over rule imposing all export proceeds to be sold up to 30%.	The rule setting out that foreign currency revenue earned in Viet Nam from export, the rendering of services or from other sources must be deposited in, and sold up to a certain limit to local authorised banks (currently 30%) is seen as unfair and cumbersome by foreign investors and notably by the JETRO study respondents. It increases the risk associated with foreign exchange, especially where the procedure to purchase foreign currency is rather complicated. Restrictions on portfolio investment by individuals and businesses make the Vietnamese market less attractive to many investors as does restrictions regarding foreign exchange loans, which reduces the ability of businesses to operate with the level of commercial flexibility they often desire.

Investment capital can only be remitted by the end of the project – trapped cash issue.

Also trapped cash is a major concern of investors since the present regulation leaves a discretionary power to the licence issuing authority to bar the investor from repatriating the value it added to the project over its existence.

As stated, only "specially important" investment projects may be granted a guarantee by the Prime Minister for the availability of foreign currency balance, leaving al other investors concerned as to the availability of foreign exchange in due time to cover their needs.

2.7 Labour laws

Investors are concerned about restrictive labour laws that lessen flexibility in hiring and terminating employment contract.

Labour cost and restrictive labour laws can discourage foreign investors.

For countries aiming at attracting low-labour-cost investments, their promotional strategies need to concentrate on labour costs and labour restrictions. Investors in such sectors as clothing, footwear, furniture and consumer electronics will avoid locating their investments in countries where labour policies are excessively restrictive. On the other hand, when countries change from policies aimed at attracting low labour-cost investments, their promotional strategies and sectoral targeting need to concentrate on investments that require higher skills levels. This implies a greater focus on manpower training and education policies and on steps to ensure that these policies translate into a more skilled labour force.

Figure 49: Labour Laws

Principle	Vietnam	China	Thailand	Malaysia	Philippines
Governing bodies / law	Labour Code (1994) Ministry of Labour, War Invalids and Social Affairs	Labour Law 1995 Local labour administration authority	Labour Protection Act B.E. 2541 and the Civil and Commercial Code on hire of services. Department of Labour Protection and Welfare	Employment Act (1955)	Labour Code
Recruitment /Registration Requirement	Registration required Labour Contract must be entered and registered. Notification of employment to the	Intermediary recruitment organization required for certain areas/projects. SI tax	Internal Regulations must be submitted to the Director-General of the Department of Labour Protection and	Contract of Service	

	provincial Labour Department. SI, HI & PIT tax obligations	obligations	Welfare (7 days from effective date of regulations).		
Recruitment procedures	Employment service agencies must be used to recruit for branches and ROs of foreign companies, foreign non-governmental organizations and foreign diplomatic missions.	There are no restrictions on recruitment process An employer may, decide the time, terms and conditions, and method of recruiting employees, as well as the numbers of employees. JV may also recruit employees directly, subject to the approval of the local labour administration authority.	There are no restrictions on recruitment procedures. For more than 10 employees, employer is required to have a written working Internal Regulations in Thai containing compulsory information.	There are no restrictions with respect to hiring procedures. Terms and conditions of the labour contract should not be less favourable than the terms and conditions set out in the Labour Law	There are no restrictions with respect to recruitment procedures.
Termination issues:	Labour Code stipulates detailed provisions on in which cases an employee will be subject to dismissal.	Labour disputes can be extremely protracted due to the prolonged nature of the arbitration, litigation and appeal procedures. Employees' only need to pay RMB 300 were he/she loses the case in arbitration. The employer's expenses are greater - need to hire a lawyer(s) to satisfy the	The employer or the employee may terminate an employment contract (no fixed term) at any time with prior notice. An employment contract may be terminated lawfully by the employer without prior notice under certain circumstances (such as employee's willful	The employer and the employee to a contract of service may at any time give to the other notice of termination (notice periods set out by law & depend on length of employment).	Labour Code governs termination issues. Labour Code provides safeguards regarding labour unions, strikes and picketing, collective bargaining, voluntary modes of settling labour disputes and other labour-related rules.

		burden of proof.	disobedience)		
Main features	*Employment agency* FIEs can directly recruit Vietnamese employees without using an employment introduction agency. *Bonus* The employer will provide a bonus or award to the employee based on the annual business results of the enterprise and the performance of the employee.	*Labour disputes* Labour disputes can be extremely complicated. *Wages* - Wage based on equal pay for equal work principle. - Wages paid to employees may not be lower that the local statutory minimum wage standard published by each city/county. *Termination of Entity* Where an entity which has ceased operating is found not to have paid its full social insurance contributions, the administration for industry and commerce and the tax authorities will refuse to carry out de-registration procedures.	*Termination* If the employer terminates the employment, he/she must pay: - severance pay - wages, - overtime pay and - holiday pay accrued for the time of employment. *Severance pay* The employer does not pay severance pay if the employment is terminated due to certain grounds.	*Termination* Main grounds for terminating a contract of service are: - Breach of contract of employment - "misconduct". - employee continuously absent from work for more than 2 consecutive working days (without informing employer prior to leave or at the earliest opportunity during absence).	*Protection* The Labour Law protects both the employees and employer *Minimum wage* Basic standards for minimum wage fixing through the various Regional Tripartite Wages and Productivity Boards. Each region has its own set of minimum wage rates and rules. *Probation* Probationary employment shall not exceed six months (unless employee is under an apprenticeship scheme).

Competitiveness of Vietnam's policies

Investors and commentators underline the extremely large number of Government decrees, circulars and directives issued by the Ministry of Labour, War Invalids and Social Affairs that regulate labour issues in Vietnam. Once again the lack of publication and the dissemination of this legal material are detrimental to a sound and confident business environment. Most particularly, the main concerns of foreign investors relate to the recruiting procedures, the employment contract and the termination of the employment relationship which are considered as cumbersome and over-protecting employees, therefore hindering the flexibility required in labour-intensive industries

Vietnam has addressed a number of these concerns, by amending the existing Labour Code and introducing new measures that have become effective as of 1 January 2003. The main improvements are:

i) Foreign invested enterprises are entitled to directly recruit Vietnamese employees without using an employment introduction agency, as previously required. However, notification of the employment to the provincial Labour Department is still necessary. The requirement to use such employment service agencies continues to apply to branches and representative offices of foreign companies, foreign non-governmental organizations and foreign diplomatic missions.
ii) The total overtime worked by an employee has been increased from 200 hours to 300 hours per year in special circumstances.
iii) The employer must provide a bonus or award to the employee based on the annual business results of the enterprise and the performance of the employee. The nature of such bonus/award will be determined by the employer after consultation with the Executive Committee of the Trade Union. This provision appears to give the employer more liberty in determining whether to provide an employee with annual bonus/award entitlements. Previously, the Labour Code required the employer to commit a portion of the annual profits of the enterprise to pay an annual bonus to all employees who have been working for the enterprise for one year or more.
iv) Two additional disciplinary measures are introduced. An employee may be further disciplined by not being entitled to a salary increase for a period not exceeding 6 months; or by being permanently demoted or transferred to a different position.

It is expected that the Government and the relevant authorities will issue guiding instruments to implement the Amended Labour Code in the near future.

2.8 Work permits and visa access

Restricted access to work permit and visa would adversely affect foreign investment.

Restrictive access to work permits and visas for expatriate workers also adversely affects investment flows. Investors usually want key posts being held by expatriates during the first few years of operation of their investments until local staff can be hired for such positions. If visa and work permit restrictions prevent foreign companies from employing expatriates, or if the procedures are more bureaucratic than in other countries, investment inflow will be reduced.

Figure 50: Working permits and visa access

Principle	Vietnam	China	Thailand	Malaysia	Philippines
Requirement for foreigners	Yes	Yes	Yes	Yes	Yes

work permit	All foreign workers working for more that 3 months must obtain a work permit from the provincial Labour Department. The maximum duration of a work permit is 36 months, subject to extension.	Employment licence required. Application for Employment licence must be submitted to the local labour and social security bureau.	All foreign workers must obtain a work permit from the Ministry of Labour and Social Welfare.	All foreign workers must obtain an employment permit, which is subject to specific guidelines based on the foreign paid-up capital of the company.	Work permit is required before foreigners are granted employment visas by the BID.
Permit procedures	Legalisation and notarisation of relevant docs required (complicated procedure). In addition to the general application documents, other documents such as university degree or qualification certificates are also required. These must be legalized and notarized.	The work permit is not difficult to obtain, but time consuming. FIEs must undertake a 4 step process and deal with 4 authorities in order to obtain a work permit. 1. Employment Licence 2. Invitation Letter 3. Submission of 1 & 2 to visa authority 4. Submit Application form & dossier and then sign employment contract.	The procedures are perceived as being complicated. There is one stop service centre for work permit issuance. Foreigners working in companies promoted by the BOI or under other special laws (such as the Petroleum Act of 1971) can be rapidly issued work permits.	The level of difficulty of obtaining the work permit depends on the requirement and justification of the position.	Work permit procedure is easy. Applications for work permits are filed with the Department of Labour and Employment
Time		One to 2 months	3 to 4 weeks	4 to 8 weeks	2 to 3 weeks
Other issues	The legalisation and notarisation of relevant application documents is time consuming and is the most complicated aspect of the application procedure.	Foreigners seeking employment must be qualified for the position, a special need must exist & no suitable Chinese citizen can be	Foreigners working in BOT promoted companies may commence work immediately, but should apply for a work permit within 30 days	Easier to obtain permit for technical positions involving manufacturing & transfer of technology.	There are restrictions on employment of foreign technical and managerial personnel, subject to the requirement

		hired and which does not violate State laws and regulations.	from the date of entry into Thailand.	It is more difficult for positions in the trading or service sectors.	that the skills they possess are not available in the Philippines. In such an instance, an understudy program where local staff are trained.

Competitiveness of Vietnam's policy

With respect to visas, Vietnam is clearly less competitive than other countries in that it is not possible to obtain a temporary/business visa on arrival.

The procedure for obtaining a work permit is long and subject to a disturbing medical examination. It is however noteworthy that foreigners holding key positions such as members of the board of management, general director or chief representative, are exempt from this requirement.

Vietnamese laws only allow foreign invested enterprises to recruit qualified foreign professionals who possess hi-tech expertise, high management skills, etc. These requirements cause difficulties for foreign invested enterprises when they also need to engage highly-skilled foreign workers, not only experts and those with qualifications.

2.9 Key legal impediments in FDI regulations in Vietnam and recommendations

Vietnam has liberal investment regulations, however their implementation remain problematic

Whilst Vietnam has relatively liberal foreign investment laws compared with other countries such as China, Thailand, Malaysia and the Philippines, in some respects they are uncompetitive, in particular as highlighted earlier in this report, with respect to implementation.

There are a number of legal impediments and suggested initiatives that have been put forward for the review and consideration of the Government of Vietnam. Whilst some of these initiatives have been implemented in order to improve Vietnam's business and investment environment. However, there remain many outstanding issues that require further consideration and attention in order to significantly address the concerns of investors and increase levels of foreign direct investment.

The following are recommendations aimed at improving Vietnam's FDI framework in order to make the country more attractive to foreign investors.

2.9.1 Investment entry requirements -Recommendations

General recommendations

- If the Vietnamese Government is serious in its intention to further attract investment in Vietnam, it should endeavour to implement policies that are relatively transparent, procedurally simple, easy to understand and to the extent possible, uniform (in that they do not require individual assessment and the discretionary decisions of officials).

- In China, FDI processing has been 'decentralised' from central cities to provincial authorities. On this point, Vietnam should aim to remove regional differences between FDI policies and systems.

- The Vietnamese Government should improve the promotion, access and quality of information services with respect to FDI policies, procedures and additional investment information.

Application and evaluation procedures

- To encourage foreign investment, the Vietnamese Government should apply the "registration" procedures to more projects, or to allow the application of the "registration procedures" to all projects (like domestic companies). The scope of the registration requirement should be expanded to say, US$10 million, so that private investors below that level would not need to go through a full-scale approval procedure. We understand that a draft law, which aims to broaden the projects subject to the "registration" process is currently under review and should be approved soon.

- The number of government approvals should be reduced. Issuance of permits should be made more "automatic" so that if the applicant meets the clearly defined requirements in the regulations, it must be given a license. Where licenses and permits are required, they should be centralized to the greatest extent possible to eliminate duplicative procedures.

- The application dossier for investors should be streamlined in order to encourage and facilitate foreign investment.

- The issuance of licenses should be based on clear, objective criteria, as stated in the relevant regulations, uniformly and consistently applied.

- Investors seeking approvals, licenses and permits must be given a right of appeal to protect them against the arbitrary abuse of the authorities that can damage their businesses. Such appeals should be not only to the higher level of the authority that issues a decision, but also to an independent organ of the State, such as a court.

- The MPI should maintain its commitment to improve licensing procedures in accordance with its obligations under the BTA, as such a move will necessitate not only simplified licensing procedures, but also streamlined formalities.

Post-Licensing

- Certain aspects of the post-licensing formalities could be streamlined to avoid delays between licensing and tax registration. Processes could possibly be managed or coordinated by the licensing authorities, by:
    - o coordinating with the Police Department in order to issue the seal together with the investment license.
    - o coordinating with the relevant tax department in order to register and issue the tax code together with the investment license.

Reporting

- Reporting obligations of enterprises should be consolidated, streamlined and harmonized. As mentioned in the JETRO report, monthly statistics reports should be quarterly or semi-annually.

Sub-licences

- Many kinds of sub-licences should be abolished.

Conditional and prohibited Projects

- More specific definitions of the categories of projects that are subject to conditions and prohibited should be devised and published. The general principle of "if it's not prohibited, it's permitted" should be taught to licensing officials who tend to be very conservative when encountering new lines of business.

Ineffectiveness of "One-shop" service and lack of coordination

- A finding of the JETRO report was that coordination between the authorities was one of the weakest aspects of the Vietnamese Government. Therefore, particular attention with respect to communication between authorities and the supervision and facilitation of FDI policies and how they are implemented in various regions by different authorities is required.

- Many respondents felt that there were often policy conflicts between the interests of related authorities, such as the MOT, MOI, MPI and Government Office. Accordingly, it is necessary to form a central authority that has strong coordination power with respect to the approach adopted by various authorities regarding FDI issues.

- A 'one-shop' service should be introduced at local authority levels, as local authorities are often not aware or informed of regulations decided upon by high -level bodies.

2.9.2 Restrictive Policies

General Recommendations

- All restrictions or prohibition should be clearly stated in only one or two legal documents, for example the Foreign Investment Law and Decree 24. Imposing restrictions that are not referred to in Decree 24 will cause confusion to investors.

- Moving from a 'positive list' approach that requires lengthy approval procedures (subject to the discretion of official) to a more 'negative list' approach may reduce administrative procedures and delays.

Corporate forms available

- The LFI should be revised to broaden the range, nature and flexibility of forms of direct foreign investment that foreign investors may choose from. The following forms could to be added: foreign invested joint stock company, partnership and holding company forms. In addition, the types of the foreign companies that can establish a branch in Vietnam should be broadened.

- Remove the compulsory form for investments in certain sectors, such as the business cooperation contract for telecommunication network projects.

Non permissible activities and conditional activities

- More detailed definitions of the nature of the investments that are subject to conditions and prohibited should be included and published.

- Issue implementing regulations in order to allow foreign companies to undertake trading activities. This will be a positive move to promote FDI.

Capital - Debt equity ratio

- The minimum requirement with respect to the legal capital of an investment project, (i.e the legal capital must not be lower than 30% of the total investment capital) is not reasonable. The requirement of minimum ratio of legal capital to investment capital should be abolished.

- Reduction of the legal capital contribution should be permitted, as currently the level of legal capital cannot be reduced during the operation of the investment. This adversely effects foreign investment since the ability to reduce the level of legal capital can 'trap' funds in

Vietnam, which is a major concern of investor.

Term of Investment

- The limit on the term of Foreign Invested Enterprises to 50 years and extensions thereof should be confirmed and concrete regulations on the basis allowing FDI projects to prolong for 70 years should be issued.

Capital Restructure

- With respect to the requirement to obtain the approval of the licensing authority in order for a FIE to restructure its legal and investment capital, the Board of Management should only be required to register the restructuring of the investment capital with the licensing authority.

Dual legal framework for FIE and domestic companies

- Remove current dual legal system applicable to foreign invested enterprises and to domestic companies. Within the near future, foreign investors should be allowed to establish companies under the Enterprise Law as well.

2.9.3 Access to land

Legal Framework

- The Land Law should be amended to be in line with the Law on Foreign Investment with respect to the handling of Land Use Rights in cases of enterprise's dissolution or bankruptcy, as the Law on Foreign Investment and Decree 24 reflect the more current policy of the State and are most consistent with international practice and the needs of the Vietnamese economy.

- The Ordinance on Rights and Obligations of Foreign Organizations and Individuals Leasing Land in Vietnam should be amended. Currently the Standing Committee of the National Assembly is drafting the amendment of the Ordinance on the Rights and Obligations of Foreign Organizations and Individuals Leasing Land in Vietnam.

- The Government should create a single body of legal rules applying to both foreign and domestic land users. Such approach will provide uniformity and certainty of the legal system on land and create a level playing field between domestic and foreign investors.

- The laws should aim to provide specifically for types of projects, which may be granted a 70-year lease by giving the government a general discretion. This would encourage investors committed to longer-term projects in Vietnam.

Cost of Land

- Under Decision 189, land rent prices for foreign invested projects are approximately 80%-90% higher than the prices applicable to domestic projects. This difference in land rent price between local and foreign-invested enterprises should be abolished, in order to increase Vietnam's competitive advantages and end discrimination.

- Improvements with respect to access to and use of property in Vietnam are still required to further attract a foreign investment.

Land Use Rights (LUR)

- LUR granting procedures should be simplified and the administrative procedure should be reformed.

- Clear procedures for enforcement of mortgages, and sale of the realised assets and LURs should be established. FIEs should be allowed to mortgage their land use rights to borrow loans at offshore credit institutions. We understand that the Government is currently working on a draft regulation to allow such mortgage. Detailed implementing procedures for the registration of mortgages of land use rights should be issued.

- Local treatment for foreign-invested enterprises established under Vietnamese law in order for them to transfer and lease on terms and access similar to those applicable to domestic enterprises;

- A central registry should be established where any form of land interest (e.g., LUR, leasehold, rental contract, etc.) could be registered, and where failure to register by a certain date would render unregistered rights void against a bona fide 3rd party;

- Allow all land interests to be freely transferable among eligible buyers, with the buyer protected against claims that have not been duly recorded.

Availability of land for foreign investors

- Provinces to coordinate and to identify land available for projects;

- Inform investors on land available (free from any occupants and cleared);

- All land clearance and compensation to be undertaken by the Government for land to be identified for FDI projects.

2.9.4 Incentives

General

Incentive policies need to be clear, transparent and simple.

- The impacts of the incentives policy and the terms and conditions that will apply need to be clearly stipulated. Investors are more likely to be drawn to schemes that clearly set out the long and short-term advantages of the scheme, the application criteria and procedure and on going requirements that have to be met under the scheme.

- Government to identify priority industries and to tailor the incentives to each kind on industry (see case study No.1 and 2 below)

- Other forms of incentives (non-tax related) should be introduced, such as:

    - Expand the list of projects entitled to land rental exemptions;
    - Infrastructure costs to be covered by the provincial budget;
    - Propose training support and services to improve qualifications of Vietnamese workers

Encouraged investment projects

- Improvements should be made with respect to encouraged investment projects, to broaden the eligible sectors and the benefits they will receive

- The criteria defining the status of an encouraged investment project still lacks specific guidelines. This ambiguity can provide the relevant authorities with a great deal of power to make arbitrary decisions with respect to investment projects.

- Respondents of the JETRO report noted that import duties applying to domestic market sales should be abolished, and exemptions with respect to import duties applicable to raw materials was suggested.

- JETRO respondents also suggested that it is necessary to implement measures to encourage and assist investment for small/medium size companies and supporting industries (at any cost).

- Import duties applying to finished products are an issue to be addressed to ensure that assembly companies are sustainable.

Case Study No. 1: Incentive package for the electronics industry

The electronics industry is divided into two, the assembling and the parts and components manufacture. In Vietnam, few enterprises are involved in parts manufacture. Vietnam should consider focusing on

attracting these parts manufacturer by offering the following incentives package:

- Establishment of special industrial parks;
- Improving quality and reducing infrastructure costs;
- Simplify import procedure requirement, such as abolish import quota registration requirement or reduce the timeframe to 2 days to allow
- more flexibility and to permit the investor to adapt to changes which are common in the electronics market;
- Free 100% foreign owned producers from export requirements;

Case Study No. 2: Incentive package for the development of EPZ

The following measures should be considered by the Government:

- Government and local authorities to be responsible for site clearance and compensation for land to be allocated for EPZ developers;
- Expand the scope of services to be provided by EPZ;
- Generalise the exemption of the import of commodities from the domestic market from import-export tariffs and procedures;
- Higher tax incentives for enterprises investing in EPZ, in comparison with the enterprises having an export ratio of more than 80% of the products/services in the IZ (ref. Taxation paragraph).

Specific Tax issues

- Although corporate tax incentives, such as tax holidays and reductions are available to foreign investors in Vietnam, such incentives are often offset by other taxation provisions, such as those regarding the carrying forward of loss and restrictions on the deductibility of expenses.

- Tax incentives and customs exemptions should be built into the tax and customs codes of the country. Administrative procedures can then be streamlined and automatic, which may eliminate the discretionary nature of the approval process.

- The customs and tax authorities should have a common valuation approach, and in the event of inconsistencies in their respective determinations, a resolution mechanism should be established so that a single fair price will apply for both purposes.

- Overall, inconsistencies between Decree 24 and various taxation laws should settled and be clearly made consistent. With respect to the inconsistency between Decree 24 and the Law on Enterprise Income Tax, Article 46(1)(b) should make clear distinctions of the projects that would be subject to the tax rate of 20%. With respect to the inconsistency between Decree 24 and Decree 36, clarifications should be provided with respect to the tax rate applicable to FOE in IZs and EPZs..

- "Tax Guidance" Documents have the effect of law and should only be issued prospectively. They should be better considered in terms of their impact on the economic environment and the rule of law, and not just used as short-term methods of boosting tax revenues when the tax offices involved consider it necessary. Tax rulings or interpretations of the tax law should only be used for very specific issues that can not be addressed in the regulations. They should be published and applied to other taxpayers prospectively.

- Regarding import tax exemptions for FDI projects, there should be consistency among the approval documents required. There are currently too many legal documents required to provide for the same issue of import tax exemptions which leads to different interpretations and applications

- Regarding VAT reimbursement, there should be clear and consistent guidelines on the preparation documents, in order to avoid the situation whereby an investor has to re-submit as many times as up to 10 times its application.

2.9.5 Access to funds and foreign exchange

In order to improve Vietnam's policy concerning access to local finance and less controlled foreign exchange policy, the following measures may be adopted:

- The purposes for which foreign invested enterprises may borrow foreign loans should be broadened.

- Provide the option of "convertible" local currency accounts.

- Permit foreign exchange accounts to be opened or exempt certain types of company from the requirement of obtaining approval to open an offshore bank account.

- Provide for retention accounts with respect to a percentage of export proceeds and profits.

- Restrictions on portfolio investments by individuals and businesses should be reduced, as they make the Vietnamese market less attractive

to many foreign investors as does restrictions regarding foreign exchange loans, which reduces the ability of businesses to operate with the level of commercial flexibility they often desire.

- With respect to foreign exchange payment for local exports, foreign invested enterprises that export locally should be allowed to receive either foreign exchange or Vietnam Dong, depending on their business requirements.

- The compulsory foreign exchange sale ratio of 30% for companies should be abolished.

2.9.6 Visas and work permits

Work permits

- The authorities should consider issuing longer term visas for up to 3 – 5 years to ease the administrative burdens of legitimate foreign employees and immigration officials. Also, residency permits and drivers' licenses to be valid for the period that a foreigner's work visa is valid.

- The documentary requirements to apply for permits are burdensome. Instead of legalisation and notarization, sworn affidavits of the foreign worker should be sufficient to establish the veracity of his signed C.V./qualifications.

Visa Access

- "On arrival" working visas should be available for business people needing to enter Vietnam on short notice.

- The time required to apply for an entry visa should be reduced.

Labour

- The requirements for the employment of foreign employees should be more flexibly drafted and the implementing provisions should give FIEs broad discretion in employing highly skilled workers as well as experts from abroad, according to their needs.

- Respondents from the JETRO survey claimed that the Labour Code and Social/Health insurance policies are currently burdensome for employers and too favourable to employees.

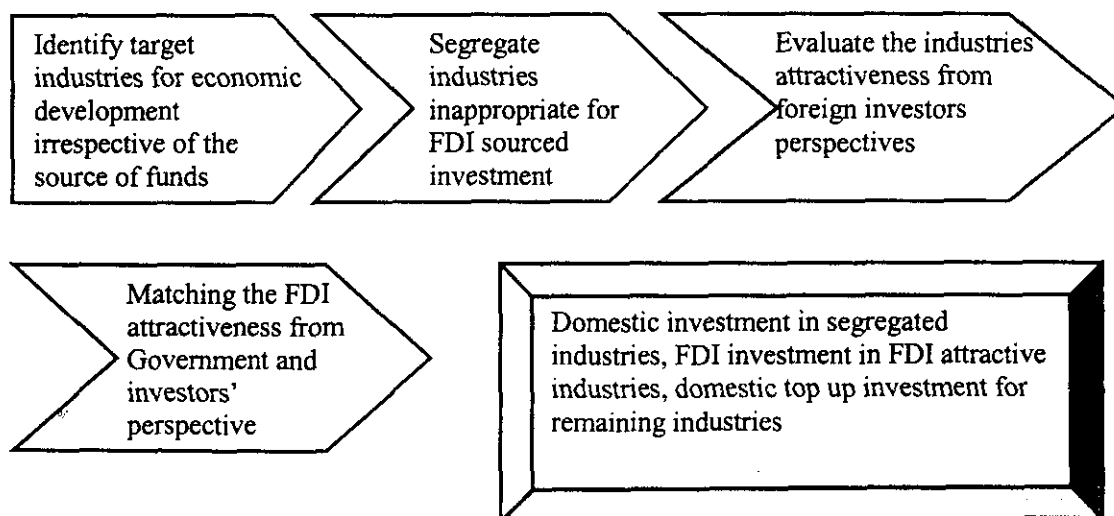
- Others felt that personal income tax rates were restrictively high. Many respondents felt that a reduction in personal income tax rates would improve Vietnam's competitiveness in the area of FDI.

PART III - ANALYSIS OF INDUSTRIAL SECTORS FOR FDI PROMOTION

With limited resources that can be allocated to investment promotion, Vietnam will need to implement a FDI promotion strategy focusing on targeting industries. Such a targeted approach can help Vietnam to promote FDI in those areas which best achieve strategic objectives related to such aspects as employment, technology transfer, export and cluster development. This would be in line with Vietnam's industrialization strategy and target to be an industrialized economy by the year 2020.

The purpose of this section is to carry out a high level review of the industrial sectors to identify the target industries for FDI promotion, which is an important step toward developing a targeted FDI promotion strategy. In order to identify target industries for FDI promotion, it is necessary to analyse the attractiveness of FDI from both the Government and investors' perspectives.

The process of identifying industrial sectors for FDI promotion and overall industry promotion strategy is illustrated in the following flowchart:



Targeting foreign investment promotion, however, does not necessarily imply that the Government of Vietnam needs to "pick winners" and pursue selective industrial policies. The debate over the nature and role of selective industrial policies in Asia has been intense, but one thing is clear — there is no firm consensus that the adoption of such policies has been the major reason for those countries' growth experience.[33] This debate, however, is not really relevant and neither Western nor East Asian countries are appropriate models for Vietnam as

[33] Trade and Industry Policies for Economic Integration, Center for International Economics- UNIDO, 1999.

Vietnam is in the transition process to a market economy.

Industry policy and industry strategies, as well as the role for government, are about much more than picking winners or the protection of industry. The biggest, and most important challenge for Vietnam is to develop the institutions that are necessary for the industrialization process. Private property rights, a legal framework for contracts and business operations, along with a sound financial system all need to be put into place if the government wants to influence industrial investment.

3.1 Determine target industries for economic development before consideration of FDI

The first step in determining target industries for FDI promotion is to identify which industries are important for the national economic development as a whole. There are various criteria to determine the target industries. In view of the globalisation process, in which most Vietnamese industries are subject to tough competitive pressures in the regional and international markets, the following criteria will be used:

Criterion 1. The contribution of an industry to the development of other industries

As part of the development of appropriate industry promotion strategy, it is necessary to consider the inter-relationship between different industries and economic sectors and the contribution of each industry to the development of other industries. As set out in the socio-economic and industrial development goals, Vietnam aims to be an industrial country by 2020 and achieve a high growth rate of industrial production (i.e. 13%-14% during the period 2001-2005 and 12%-13% for the following 5 years). To achieve this objective, Vietnam will require strong key sectors to build the foundation for the industrial development such as infrastructure, public utilities, construction, banking and finance etc.

Also, if essential demands of the country cannot be met (for example, demand for water and electricity), the country could not go far in the process of changing into an industrial country.

This criterion evaluates the extent to which an industry could affect the development of the economy as a whole or the development of other industries. The role of an industry in the economic development is rated as:

High = significantly impacts on other industrial sectors
Medium = some impact on other industrial sectors
Low = little or no impact on other industrial sectors

Due to its importance, this criterion is given a weight of 2.

There is no statistical data for evaluating the role of an industry. The

assessment is subject to the individual view of the importance of an industry.

Criterion 2. Play a decisive role in implementing socio-economic goals

Any strategy or policy is designed to meet certain objectives. Therefore, meeting the strategic objectives is one of the key criterions for determining the target industries.

The socio-economic goals set out by Vietnam for the next ten years are to build up the foundations for Vietnam to become an industrial country and achieve fast and sustainable growth that goes along with social progress and justness. The detailed long term objectives for the industry development strategy for Vietnam has been set out by the Government and as follows[34]:

- By the year 2020, Vietnam will have to build up certain key industries with modern technology such as electricity, oil exploitation and processing, some mechanical industries including ship building and repair, manufacturing of electric equipments, agriculture and processing machines/equipments of small and medium size, lifting, loading and transportation equipments.
- Electronics and information technology, especially software industries will have to gain a certain position in the world market.
- Chemical and petro-chemical must be developed on the basis of utilising the country's resources. Production of fertilisers and basic chemicals will meet not only the country's demands, but also export demand.

Due to resource constraints and the current level of industrial development, it is not possible to target all the above industries at the same time. Thus, it is necessary to break down the long- term objectives into shorter terms. The criteria will evaluate the extent to which each industry can contribute to the achievement of the set objectives in the short term, medium and long term in accordance with the following ratings.

High = can be developed to meet set objectives in the short term (1-3 years)
Medium = can be developed to meet set objectives in the medium term (3-6 years)
Low = need to be developed to meet set objectives in the long-term (over 6 years)

This criterion is given a weight of 2

Criterion 3. Industries which utilise local resources

No country can start with developing industries for which the country has no resources. Industries focusing on utilising local available resources (natural resources, labour resources, local materials, etc) will be in a better position to

[34] Resolution of IX Party Congress .

develop and compete in the national and international markets.

The extent to which local resources can be utilized by an industry will be rated as follows:

High = requires resources that are abundant or readily available .
Medium = requires resources that are somewhat available
Low = requires resources that are not available or can only be obtained at high cost

This criterion is given a weight of 2.

Criterion 4. Industries can and/or will be able to compete in regional and world markets (i.e. export competitiveness)

A priority among countries – whether rich or poor – is often the ability to export products, as this will provide an engine to growth. The objective of Vietnam is to develop export oriented industries to become the key foreign currency earners for the country.

This criterion will evaluate the extent to which an industry is able to compete in the regional and international markets and bring hard currency for the country. The evaluation is based on the recent analysis by Montague Lord that rates export competitiveness in Vietnam relative to other countries in Asia[35] and other research and studies on the competitiveness of Vietnamese industrial products in comparison with other countries in the region.

Based on this analysis, the ability of an industry to compete in the regional and international market is rated as:

High = export competitiveness rating greater than or equal to 1.5
Medium = export competitiveness rating greater than or equal to 0.5, but less than 1.5
Low = export competitiveness rating less than 0.5 and industries which focus on domestic market

This criterion is given a weight of 2

[35] Source: Montangue Lord, The export competitiveness of Vietnam – the integration between trade policies and macro-economic policies.

Figure 51: Export competitiveness of Vietnamese products

Industrial product	Vietnam	Indonesia	Malaysia	Philippines	Singapore	Thailand	China
Resource –based	2,06	2,31	0,94	0,67	0,60	1,20	0,66
Foodstuff and animal	3,48	1,01	0,35	1,24	0,23	3,03	0,88
Minerals material	2,78	3,28	0,88	0,16	1,26	0,23	0,41
Woods and oil	1,17	8,97	3,40	1,38	0,15	1,06	1,22
Non-metallic mineral products	0,97	0,66	0,36	0,33	0,20	1,26	0,97
Crude material, not foodstuff (exclude combustible)	0,70	2,24	0,99	0,72	0,23	1,18	0,56
Vegetable oil and animal oil	0,64	11,02	21,93	8,05	0,61	0,55	0,18
Beverages and tobacco	0,13	0,39	0,34	0,36	0,83	0,29	0,31
Paper and paper board	0,09	1,78	0,27	0,21	0,17	0,53	0,27
Inorganic fertilizer	0.00	1,37	0,42	1,05	0,02	0,15	0,75
Low-skilled Labour	5,59	2,53	0,77	1,58	0,30	1,79	3,78
Footwear	33,55	4,43	0,15	0,71	0,17	2,30	6,47
Travel goods and handbag	11,46	1,36	0,12	4,65	0,16	4,01	7,95
Clothe	5,19	2,74	0,94	2,56	0,47	2,14	5,07
Wood	2,85	2,21	1,49	1,88	0,08	1,24	1,65
Textiles fibres	0,86	2,31	0,54	0,49	0,27	1,29	2,64
Leather and leather product	0,67	0,75	0,13	0,04	0,24	2,12	1,38
Higher skilled Labour	0,15	0,40	1,04	1,04	1,21	0,85	0,82
Welding equipment, heating and light	0,33	0,45	0,25	0,65	0,19	0,73	2,78
Electrical machinery and accessories	0,23	0,52	2,30	2,35	2,43	1,28	1,08
Metal product	0,22	0,44	0,44	0,26	0,34	0,69	1,51
Rubber product	0,21	0,75	0,55	0,55	0,30	1,28	0,74
Explosive and firework	0,20	0,10	0,09	1,56	12,97	0,07	3,32
Chemical and chemical product	0,14	0,68	0,29	0,14	0,74	0,35	0,73
Essential oil and flavour	0,14	0,63	0,36	0,29	0,69	0,52	0,23
Scientist product	0,14	0,16	0,46	0,16	0,93	0,62	1,02
Material and chemical product	0,13	0,28	0,56	0,23	0,62	0,63	0,44
Engine	0,07	0,38	1,44	1,64	1,74	1,13	0,65
Iron and steel	0,05	0,33	0,26	0,05	0,17	0,42	0,79
Transportation equipment	0,04	0,07	0,12	0,24	0,13	0,27	0,26
Plastic and plastic products	0.03	0,66	0,42	0,13	0,42	1,17	0,19
Pharmaceutical	0,02	0,06	0,04	0,06	0,35	0,09	0,34
Dyeing material and leather	0,02	0,27	0,34	0,07	0,91	0,28	0,73
Inorganic Chemicals	-	0,49	0,00	-	0,97	0.99	0,18

Source: Montangue Lord, The export competitiveness of Vietnam – the integration between trade policies and macro-economic policies.

- *Criterion 5. Industries having a high expected growth rate compared with other industries in Vietnam*

Expected growth rate is an important factor to consider in targeting industries for further development. Those industries that have high expected growth rate in the domestic and international markets will make a more significant

contribution to economic growth and can gain a crucial position in the country's economy.

The rating is based on the average growth rate and forecast of industrial value growth rate produced by the Strategic Research Institute of the Ministry of Industry. Since the average annual growth rate of the industrial sector is in the region of 9%-10%, the growth rate of an industry will be rated as follows:

High = estimated growth rate greater than 12% over the next five years
Medium = estimated growth rate between 8% and 12% over the next five years
Low = estimated growth rate less than 8% over the next five years

This criterion is given a weight of 1

Criterion 6. Create high value added

Focusing on industries that can create high value added will enable Vietnam to improve productivity levels and increase profitability. This is also an objective of the industrial development of Vietnam. However, it is not an easy task, as the development of those industries would require more advanced technology and a skilled labour force. At present, Vietnam does not possess these attributes. Nevertheless, from a longer-term perspective, development of these industries must be considered. The rating is based on the historical data and forecast of industrial value added produced by Strategic Research Institute of the Ministry of Industry and:

High = estimated growth rate greater than 15% over the next 5 years
Medium = estimated growth rate between 10% and 15% over the next 5 years
Low = estimated growth rate less than 10% over the next 5 years

This criterion is given a weight of 1

Criterion 7. Encourage the utilisation of advanced technology

Outdated technology is one of the main issues of Vietnam. It reduces the productivity and product quality and therefore has adverse effects on the competitiveness of Vietnamese industry in both the local and international market place. It is recognised that the use of modern technology has been one of the keys to successful development and a rapid increase in the standard of living. The encouragement of industrial sectors that utilise modern technology is highlighted in all the country's socio-economic development plans. However, the adoption of advanced technology requires significant investment, which is a critical issue of Vietnam.

For the purpose of determining target industries, this criterion measures the extent in which an industry is able to adopt advanced technology with the limited investment available and is rated as follows:

High = industry able to utilise modern technology in the short-term

Medium = industry able to utilise modern technology in the mid-term
High = industry able to utilise modern technology in the long-term

This criterion is given a weight of 1

The assessment of ability of utilising advanced technology is relative and based on the estimated investment required to adopt new technology.

Criterion 8. Should foster job creation

Job creation is one of the primarily objectives of the Government. The criterion measures the expected direct and indirect employment created by an industry in relation to the size of investment.

High = high potential for job creation
Medium = fair potential for job creation
Low = low potential for job creation

This criterion is given a weight of 1

It should be noted that Vietnam has a large unskilled workforce, but is shortage of skilled labour. Thus, those industries requiring a large force of high skilled labour will not be rated high due to the limited supply of the labour market.

Criterion 9. Must not create negative environment impacts

The experience of many developing countries has shown that environmental issues can have significant influence on the socio-economic development of a country. Developing an industry without having a detailed review of its environmental long-term impacts (ozone layer impact, green house impact, etc.) may not enable the country to achieve sustainable growth, and the country must also guard against rapid depletion of natural resources. This criterion measures the extent an industry could affect negatively the environment before consideration of environment protection measures and is rated as follows:

High: little or no environmental impact
Medium: some, but no significant negative environment impact
Low: potential for harmful environmental impact

This criterion is given a weight of 1

The assessment of the industrial sectors against the above criteria is set out in Figure 52 below. This study focuses on industrial sectors, which in narrow terms means manufacturing. However, the experience of the established and newly industrialised economies indicates that the industrialisation process is much more than expanding the manufacturing sector. It also has a great impact on the relative size of the services and agriculture sectors. In this regard, although the emphasis of the analysis is placed on an industry, a high level review of other economic sectors is also conducted to highlight their role in the

economic development and industrialisation process.

It should be noted that the classification of industries in Vietnam is not consistent with the one adopted in other countries. Within Vietnam, the classification adopted by different authorities also differs. Given that this sections deals with industrial sector analysis, the classification of industries used in this study is based on the industrial sector classification adopted by the Ministry of Industry in its Draft Master Development Plan for the period 2001-2010[36].

It should be noted that the weighting given to each criterion in this report is a subjective rating based on the assessment of the current situation and development objectives of Vietnam. These ratings will change over time due to changes in the internal and external environment as well as the policy and objectives of the Government. Accordingly, the list of target industries will change over time.

A long list of target industries could comprise all industries achieving a score of 25 or more after weighting. As such, the analysis gives the following results:

- Oil and gas industry
- Mechanical engineering
- Electronics
- Information Technology
- Chemicals
- Fishery products processing
- Agriculture products processing
- Garment
- Textile
- Shoes
- Leather products
- Power and water supply
- Transportation
- Telecommunication
- Banking and Finance
- Hotel – Tourist
- Culture – Health - Education
- Other services
- Urban development
- Office – apartment building
- EPZ and IZ infrastructure construction
- Agriculture, Fishery and Forestry

[36] Ministry of Industry, Draft Master Development Plan for industrial sectors for the period from 2001-2010.