



STOCKTAKING OF BUSINESS LICENSES IN 2007

FINDINGS

POLICY RECOMMENDATIONS

Nguyen Dinh Cung and Colleagues
Hanoi, 2007

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Preface

Licenses are a tool of state management widely used around the world. In Vietnam, the license system was introduced as part of the establishment and development of the legal business framework. Licenses are used to regulate and control business activities, protecting the common interests of society and the community. In this way the license system has contributed to the development of the market economy, the stabilization of the macro economy, as well as helped create the conditions necessary for the development of some important economic sectors, particularly those in the service industries.

However, the licensing system has many shortcomings which undermine the validity of the system, are a cause of corruption in Vietnam and create administrative difficulties and obstacles for investment and business operations. The Government has recognized this problem and implemented several solutions in the last few years. Hundreds of unnecessary licenses have been eliminated or replaced by other forms of management. However, the fundamental shortcomings of the regulations remain and, in fact, are increasing daily.

By implementing the tasks assigned in Decision No. 1267/2006/QĐ-TTg dated Sep 25th, 2006 the Task Force for the implementation of the Enterprise Law and the Investment Law (TCT) has gathered, checked, analyzed and assessed most of the current regulations on business licenses. Based on the findings of the review process, the Task Force would like to submit this Comprehensive Report on the current situation, problems and recommended solutions to improve the quality of the existing licensing system in Vietnam.

The purpose of the report is to make reasonable recommendations in order to develop and implement a system of high quality regulations for business licenses. Therefore, the report will focus on the real situation and the issues and shortcomings of the current regulations on business licenses (and will not discuss the positive effects of the regulations).

The Report has three parts: Part I introduces the methodology, scope and content of the review, analysis and assessment. Part II summarizes the findings of the shortcomings and disadvantages of the current regulations on business licenses and Part III proposes some solutions. Parts II and III are mainly based on the results of the review of more than 289 current licenses and more than 400 relevant legal documents.

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1. Decision 19/2000/QĐ-TTg dated 3rd Feb 2000 of the Prime Minister on the elimination of licenses which are in conflict with the Enterprise Law; Decree 30/2000/NĐ-CP dated August 11th 2000 of the Government on the elimination of some licenses and conversion of some licenses to business requirements; Decree 59/2002/NĐ-CP dated 4th Jun 2002 of the Government on the elimination of some licenses and replacing some licenses by other management methods.
 2. The Task Force has the responsibility to "in coordination with relevant government agencies, VCCI and other business associations to review regulations on business licenses and other business requirements in order to make recommendations to:
 - a. Eliminate regulations that are unnecessary or in conflict with the Enterprise Law and the Investment Law;
 - b. Supplement and amend regulations that are incomplete, unclear, not reasonable and unpredictable;
 - c. Convert licenses into other non-license forms of management which are more suitable and effective;
 - d. Promulgate new regulations on business requirements if necessary, to meet the demand of state management of enterprises".

(Item 4, Article 2 Decision 1267/2006/QĐ-TTg dated Sep 25, 2006).



Scope and Methods of Review and Assessment

1. SCOPE OF REVIEW

In implementing the assigned tasks, the Task Force has partnered with the Vietnam Chamber of Commerce and Industry (VCCI) and a number of business associations to gather more than 320 licenses together with relevant legal regulations. In total, 289 licenses were reviewed in the following industries and areas:

■ Banking	38
■ Culture - information	33
■ Finance	27
■ Agriculture and rural development	20
■ Post and Telecommunication	19
■ Health	18
■ Natural Resources - Environment	17
■ Transportation	15
■ Science-Technology	15
■ Public Security	14

■ Trade	12
■ Justice	12
■ Tourism	10
■ Aquaculture	09
■ Invalids and Social Affairs	07
■ Industry	07
■ Education	04
■ Custom	04
■ Construction	04

During the process of reviewing the licenses, the Task Force gathered, reviewed, analyzed and assessed over 400 legal documents, including 28 laws, 14 ordinances and 110 decrees. The almost 300 remaining documents are circulars, decisions from ministries and some administrative official letters.

2. REVIEW OF CONTENT

The Task Force gathered and reviewed the legal regulations related to each license in the following ten areas:

- Name of the license;
- Legal justification (including: number, name and type of documents; content of specific articles that directly regulate the license, which are reviewed in legal documents related to that license);
- Purposes of the license;
- Business activities managed by the license;
- Who needs to apply for that license;
- The application, process and conditions for the license, including the following information:
 - Application dossiers (specific documents needed to complete and submit to the authorities);
 - Licensing authority;
 - Criteria or requirements for obtaining the license (the legal justification the licensing authority uses to grant or refuse the license);

- Licensing process;
- Time required to process.
- Validity period of the license;
- Application, process, procedures and requirements to add, change or extend the license, and the time needed to process the license;
- Revocation of license, including cases to be revoked, authority agencies and process and procedures in revoking licenses.
- Processes and procedures for complaining and methods to address complaints or to bring to administrative court cases that were refused licenses.

3. ASSESSMENT OF CONTENT

The Task Force then made an assessment of business license regulations in the following areas:

- Legality;
- Necessity (is it needed?);
- Sufficiency (do the regulations contain at least the ten areas mentioned above?);
- Specific, reasonable and effective;
- Consistency between the regulations on related licenses;
- State management effectiveness (will the objectives of state management be achieved through the use of the licenses?);

The Task Force used statistical analysis, expert opinion and field surveys to carry out these assessments.



Some initial findings from the review of current regulations on business licenses

1. LICENSES HAVE ANY DIFFERENT NAMES:

- 50 "documents" are called "Licences".
- 53 "documents" are called "Certification".
- 11 "documents" are called "Registration".
- 15 "documents" are called "Professional certificate".
- 7 "documents" are called "Card".
- 3 "documents" are called "Approval".
- 8 "documents" are called "Certificate".
- 8 "documents" are called "Certified documents".
- 17 "documents" are called "Decision".
- 4 "documents" are called "Confirmation", "Commitment" or "Signage".

- 10 "Approval documents"
- Lastly, two "Diplomas".³

In addition, some "licenses" do not have the form or content consistent with the regulations, but are in the form of "administrative decisions" such as "Certified documents" or "Decisions" of authorized state agencies.

The above shows that there is no consistent conception or awareness of the tools state agencies use to set up and maintain the relationships between state agencies and enterprises. "Notification" and "Registration" are not used, while "licenses" with different forms and names are widely in effect.

The unclear and diverse names make it more difficult to identify some licenses. "The receipt of the announcement of the quality of post and telecommunication service" as per decision No. 33/2006/QĐ-BBCVT dated Sep 6th, 2006 (to replace the Certificate of quality registration of post services, telecommunications networks and services) is one example. According to the name and process, it is not a license. However, as it is a result of an "approval" process from a state agency, and only after getting the "approval" can an enterprise announce its quality standards/criteria (on its website or at its transaction offices) it should be considered as one.

2. LEGALITY OF THE LICENSES

The key findings of the review on the legality of business licenses are below.

a. Firstly, the regulations on each business license are scattered. Licenses are often regulated by three documents (including a law, an ordinance and decree, a circular or a decision from ministerial level agencies). Some licenses even have ten different legal documents attached. However, the majority of content is regulated by ministerial level circulars and decisions (4) and are, therefore, a means for ministries to exercise state management functions in industry. As such regulations

3. There are three tools that collate to three levels of Government intervention into the concerns of investors and enterprises. They are "notification", "registration" and "licensing". Notification means enterprise need only send information as per requirements to the authorised government agencies, and do not need to seek acknowledgement, acceptance or approval from information recipients. Registration in this case means the acknowledgement and confirmation of the authorised government agencies for the rights and benefits of the individuals and organisations in accordance with the legal regulations. Licensing is the way government agencies consider and examine the application and, based on the requirements of the law, grant individuals and organisations (licensees) the rights to conduct one or more activities. Therefore, without written acceptance from authorised government agencies, such an activity will not (yet) to be conducted. Many documents are licenses according to this definition although they are not called "licenses".

4. This again shows that the assessment and examination of business licenses as per the procedures and processes stipulated in the Law on Promulgating Legal Documentation will not have the desired effects and will be unable to prevent or minimize the promulgating of regulations that are unnecessary or unreasonable.

often tend "to be of advantage to the agency, while presenting difficulties for people and enterprises".

License is a form of some business conditions applied for some businesses and industries that require licenses. In dealing with licenses and business conditions, the Taskforce for the Implementation of the Enterprise Law and the Investment Law follows Items 3 and 4 of Article 6 of the Enterprise Law 1999 and Items 2 and 5 of Article 7 of Enterprise Law 2005⁵ and so thinks that licenses only have legal justification if the business or business activity covered by the license and the requirements or criteria used as justification to grant or refuse that license are stipulated by law, ordinance, decree or decisions of the Prime Minister. In other words, of the ten specified areas of regulation at least "the business activity that is the subject to be managed by the license" and specific "requirements or criteria" for licensing must be stipulated in law, ordinance, decree or a decision of the Prime Minister⁶.

b. The majority of current licenses have a problematic legal justification. Many of the requirements or criteria on which the decision to grant or refuse licenses are based are stipulated in ministerial level circulars or decisions. More than one hundred licenses have been introduced, or modified since 2000. However, the regulations governing the introduction or modification of licenses do not conform to the principles of legal justification stated in the Enterprise Law 1999 and Decree 30/2000/NĐ-CP of the Government.

Often laws and ordinances do not have regulations on licenses, or the regulations are general, unclear and ambiguous. Consequently, the implementation of these articles is open to interpretation. Alternatively, "higher authority" documents do not require licenses, but documents from "lower authorities" specify the requirements for licenses. Some examples are given below.

- Regarding the "License for employment matching services", Article 18 of the Labor Code stipulates: "Employment matching organizations are responsible to consult, to introduce employees to laborers, to recruit and supply laborers

5. Item 3, Article 6: "Enterprises are entitled to conduct business activities that are subject to certain conditions as required by laws, ordinances and decrees only if all such conditions are met by them";
Item 4, Article 6: "Enterprises are entitled to register business activities that laws, ordinances and decrees require legal capital or profession certificate only if they have enough capital or profession certificate as required by legal regulations".

Then, Item 1 Article 4 Decree no. 03/2000/NĐ-CP dated Feb 3rd, 2000 guiding the implementation of the Enterprise Law has distinguished business conditions into two types; business conditions that require licenses granted by authorised government agencies and business conditions without licenses.

Item 2, Article 7 of Enterprise Law 2005: "Enterprises are entitled to conduct business activities that are subject to certain conditions as required by the investment law and other related laws only if all such conditions are met by them".

Item 5, Article 7 of the Enterprise Law 2005: "Ministry, the People's Council and Committee at all level are not allowed to stipulate or decide on conditioned business activities and conditions thereof".

6. This was also well presented in Article 2, Decree No 30/2000/NĐ-CP dated August 11th, 2000 of the Government on the elimination of some licenses and the conversion of some licenses into business requirements.

as requested by employers, to collect and supply information about the labor market and other services permitted by the Law. The Government regulates conditions, procedures on establishment and the operation of employment services providers". The Labor Code does not specify in detail the requirements for the license for employment matching services. However, Article 18 of the Labor Code, Decree 19/2005/NĐ-CP promulgated by the Government elaborates the requirements, stating that "possessing an employment matching service license" is a prerequisite for institutions wishing to participate in the employment matching business.

- Regarding "Approval of factoring service provided by credit institutions", Article 49, the Law of Credit Institutions stipulates that "Credit institutions shall be entitled to extend credit to organizations and individuals in the form of loans, discounting commercial and other valuable papers, issuing guarantees, finance leasing and others as permitted by the State Bank". The requirements for possessing a license to provide factoring services are not specified. However, in 2004 (seven years after the effective promulgation date of the Law of Credit Institutions) the State Bank of Vietnam issued Decision No. 1069/2004/QĐ-NHNN of September 6, 2004 stipulating that Credit Institutions must obtain permission in the form of a license from the State Bank of Vietnam to provide factoring services.
- Regarding the "Approval of using Internet application services for credit institutions", Article 17 Decree No. 55/2001/NĐ-CP of August 23, 2001 on the Management, Provision and Use of Internet Services states that "(b)ased on the strategy and planning for Internet development in Vietnam, the General Department of Post and Telecommunications shall regulate procedures and conditions for the granting of permits for Internet access and connection service provision; the Ministry of Culture and Information shall regulate procedures and conditions for the granting of permits for Internet information service provision; the ministries and branches shall, according to the fields under their specialized State management function, regulate conditions for the provision of other Internet application services".

Article 36 stipulates that "(t)he ministries, ministerial-level agencies and agencies attached to the Government shall exercise state management over Internet application services in the fields under their respective management, including:

1. Promulgating and guiding the implementation of regulations on the management of the provision and use of Internet application services.
2. Making and announcing a list of Internet application services which are banned or not yet permitted for provision and use on the Internet.

These regulations assign responsibility to related Ministries and, in some cases, the State Bank of Vietnam to manage internet services activities. However, a license is not always necessary and in some circumstances issuing licenses is beyond the competence of the state agency in question. Circular 09/2003/TT-NHNN defined the "License of using Internet application services for credit institutions".

- Other examples include "Internet service agencies are responsible to comply with regulation of internet service management promulgated by state bodies" (Decree 55/2001/NĐ-CP). Inter - ministerial Circular 02/2005/TTLT has defined "Certification of business registration and satisfaction of conditions for taking part in internet services business" making this service a conditional sector.
- Similarly, Decree 92/2001/NĐ-CP stipulates business conditions for car transportation services but does not define a specific license. However, during implementation, Ministry of Transportation regulated that such services require four different licenses (mostly for inland passenger transportation)⁷.
- The consequence of the business licensing method presented above is that most the conditions for existing licenses are stipulated in Circulars and Ministerial Decisions. Although the principle that Ministerial Agencies and the Government's subordinated bodies are not authorized to promulgate regulations on business conditional sectors and define conditions has been enforced for more than seven years in practice almost all business conditions and criteria for granting business licenses are regulated by Ministries or Ministerial Level Offices. The principles prescribed by the Law are not strictly understood or followed during the drafting and promulgation of new regulations

⁷. This decree was already replaced by decree 110/2006/ND-CP

on business conditional sectors.

c. Another issue is that although original legal documents used as legislative justification for a number of licenses have expired and replaced promulgated licenses still have effect. For example, Decree 63/1998/NĐ-CP expired and was replaced by the Ordinance on Foreign Currencies Management No. 28/2005/PL-UBTVQH11. However, four licenses based on the Decree as well as Circular 01/1999/TT-NHNN instructing its implementation were still applicable (until the end of December 2006 when the new Decree of 160/2006/NĐ-CP elaborating the Ordinance is promulgated). The "Certification of business conditions for domestic oil and petrol trading" based its legislative justification on Decree 11/1999/NĐ-CP dated 3rd March 1999 which was replaced by Decree 59/2006/NĐ-CP stipulating the implementation of the Commercial Law, regarding prohibited, limited and conditional business sectors.

3. NECESSITY OF BUSINESS LICENSES

The necessity for business licenses (as a tool for state management of business activities) is assessed using the following criteria:

Firstly, the goals of licensing must be clear, comprehensive and feasible.

Secondly, the business license should only be used to meet the required goals in the absence of other management tools or if it is the most efficient and least costly to implement (including the costs incurred by state institutions to maintain the licensing system and the costs incurred by business entities or individuals to comply with the conditions).

This study has shown that the goals of business licenses are unclear. There is a confusion between conceptions of the "managed subject" - business entities managed by licenses - and the "managed object" - business activities in almost all existing business licenses. In other cases, licenses' goals are defined in general terms as a statement rather than a regulatory document or legislative conception.⁸

Since the goals of using licenses are not adequately or appropriately identified, it is difficult to identify the public benefits that should be protected by business licenses⁹.

8. For example, Article 1 Decree 11/2006/ND-CP stipulates that "Cultural activities and business activities on cultural services must serve the cause of constructing an advanced culture with national identity, educating a healthy life style, good manner in behavior, inheriting and promoting fine traditions of charity, sentimental attachment, fine habits and customs, increasing knowledge and sense of aesthetics, enriching people's spiritual life, preventing infiltration and eliminating evil harmful cultural materials, thereby contributing to country overall social-economic development"

9. Many argue that following public benefits should be protected: (i) national security, (ii) public order, (iii) public health, (iv) environment, (v) community safety. Therefore, business activities that may harm such those benefits should be supervised strictly.

As the goal to safeguard society is rarely or inadequately identified there can be undesirable consequences:

- License regimes tend to protect minority groups in society (particularly people with the authority to issue licenses and people already possessing licenses). In such cases, licenses can hinder rather than promote overall social economic development.
- Redundancy and overlap of management tools. There are cases in which many state management bodies issue the same license for the same applicants and the same activities. Redundancy and overlap is a prevailing problem in the current licenses system. For example, a retail petrol agent is requested to apply for many licenses, including the "Certificate of full satisfaction of petrol and oil trade conditions" and the "Certificate of security and safety qualification". The former certifies the possession of an adequate number of sub-certifications and other conditions set out for petrol and oil trading activities (for more details see Appendix 2). Similarly, a duty free shop must apply for "Certification of full satisfaction of all conditions for duty free business" (issued by the Ministry of Trade) and the "License for foreign currency receiving and delivery services" issued by the State Bank of Vietnam. As a shop that sells goods to foreigners already has the right to accept and receive money (even cash foreign currencies) a further license is not necessary.
- Licenses are promulgated without any intention of good-will and do not make any contribution to public welfare. For example, the "License for operating in the printing and publishing sector", is intended to monitor the content of publications to ensure their compliance with existing regulations. However, the conditions that have to be met to receive the license (including proficiency and experience of managers and technical specification of printing equipments) do not cover the content of publications which is covered by the publication license (a tool to control the publications' contents).
- Discrepancy between provisions in the regulatory text and Laws and Ordinances, Decrees and Circulars or Decisions. For example, Article 15, Item (d) in the Advertisement Ordinance stipulates that "Advertisements on computer information networks, billboards, signboards, panels, placards, screens at public places, illuminating objects, aerial objects, water objects, transport means and/or other moving objects require an advertising permit granted by competent State management bodies in charge of culture and

information". However, Item (d) Article 8 Part II of the Circular 43/2003/TT-BVHTT stipulates that: "Advertisements on billboards, signboards, panels, placards, screens at public places, illuminating objects, aerial objects, water objects, moving objects and similar means in whatsoever materials such as wood, plastic, glass, cloth and others when placed or attached, hung on a means of transport must comply with Advertisement Planning and require the advertising permits". The Circular extends the means of advertisement requiring a license (by adding the words "and similar means") and stipulating compliance with Advertisement Planning. What's more, in order to manage the advertising activities of medicines, Joint Circular 01/2004/TTLT-BVHTT-BYT has upgraded "notification" prescribed in the Advertisement Ordinance and Decree 24/2003/NĐ-CP to "registration" requiring application dossiers and registration procedures which are more complicated than the original license.

In summary, insufficient or non-identification of social benefits as management goals is one of many flaws in the existing business licensing system. This can be attributed to the fact that license requirements do not originate in scientific studies and accumulated historical experience but from subjective perceptions¹⁰ during the drafting stage of each license.

4. SUFFICIENCY OF REGULATORY LICENSES

A regulation is considered adequate if it covers at least ten of the areas presented in Part I above. This study has shown that current licenses in Vietnam are not fully comprehensive. Missing components include criteria, conditions for granting licenses, procedures and processes for granting licenses, circumstances in which the licenses are revoked, legislative consequences in such circumstances, the enforcement regime, complaints, appeals and court proceedings.

In general, the existing regulatory framework does not comply with international norms and standards and there are cases where the license contents omit many of the required areas¹¹.

¹⁰. It is argued that the abuse of licenses as a sectoral management tool has been to protect a particular sector.

¹¹. For example, regarding the permits for duplicating relics, antiques and/or national treasures, the Law of Cultural Heritage stipulates that it is compulsory to obtain a license from competent state agencies in charge of Culture and Information. Based on that, Decree 92/2002/ND-CP (Article 27) has elaborated that "(t)he Culture and Information Minister shall grant permits for duplicating relics, antiques and/or national treasures belonging to the national museums or specialized museums. The directors of the provincial/municipal Culture and Information Services shall grant permits for duplicating relics, antiques and/or national treasures belonging to the provincial-level museums or under private ownership". There is no more guidance than that expressed in this quote.

Appendix 1 shows that the initial review finds no licenses with a sound and adequate legal foundation and justification¹².

5. COMPREHENSIVENESS AND JUSTIFICATION

This study shows that the biggest flaw of the existing regulatory framework of business licensing is a "lack of comprehension", "lack of detail" and "unsuitability". This section will present the major flaws, associated problems and the adverse impacts of licenses.

a) Regulations concerning license applicants and license targeted activities are not defined clearly or in detail

Many business licensing regulations are too general and do not clearly specify the targeted business activities. This leads to inconsistent identification of license applicants with the following consequences:

- The regulation of a single license may result in a need for multiple licenses. For example, Article 15, Item (d) in the Advertisement Ordinance stipulates that "Advertisements on computer information networks, billboards, signboards, panels, placards, screens at public places, illuminating objects, aerial objects, water objects, transport means and/or other moving objects require advertising permits granted by competent State management bodies in charge of culture and information".

Advertising therefore requires the involvement of two groups of stake holders. The first group (the subjects) include: (i) the suppliers of advertisement services, (ii) the clients for advertisement services, (iii) the owners of advertisement means. The second group (the objects) includes those involved in: (i) advertisement activities, (ii) advertised products and services and (iii) facilities utilized for advertising purposes. The fact that there is no clear distinction between the two groups results in the need for several different licenses: licenses for advertisement services suppliers, licenses for the producers of advertised products and services (the clients), and licenses for owners of advertisement facilities. The licenses bear the same name, "License of advertisement activities", but the necessary application dossiers, procedures and required conditions are very different. As a result, advertisement activities require applications for three separate licenses.

- Businesses may not be aware that their operations are illegitimate as they do not realize the number of required licenses, the type of licenses, where

¹². In reality, every license is granted to a specific business activity or business entity. However, the provisions laid out for in regulatory texts are too general and are not comprehensive.

to apply for a license and the name of the competent state management bodies responsible for issuing the license.

- A reduction in the effectiveness of state management because of inconsistencies over which state agencies should issue licenses for which business activities. For example, any business providing internet-based services requires a license as an Online Service Provider (OSP)¹³. However, services with internet-based applications are wide ranging and include online games, online commercial transactions, dictionary reference, news, and weather forecasts. A single license for every type of service with internet applications regardless of subsistence, scale and impact is not only unnecessary but also increases social costs and reduces state management effectiveness.

b) Conditions and criteria for licensing are not clear or comprehensive

The basic criteria for evaluating a license is the nature of the state's intervention and the influence on private business activities. As long as public welfare is protected intervention should not go beyond the "necessary limit". International experiences suggest that the problem can be solved with consultation between stake holders affected by provisions in the licensing regulation.

Licensing conditions directly affect the level of transparency, convenience of the license, application dossiers, procedures and the assessment process. Licensing conditions influence the attitude and behavior of the competent officers as well as applicants during the licensing process. If the stipulated conditions are clear, comprehensive and foreseeable then licensing institutions and their officers have little opportunity or room to abuse their power. On the other hand, if stipulated conditions are reasonable the license will not become an entry barrier limiting the freedom of firms and other business entities to undertake business.

A review of existing regulations on the conditions and criteria for licensing produced the following findings:

- There are three groups of conditions: (i) conditions for business activities to take place; (ii) conditions for those undertaking business activities; and (iii) conditions for the products and services of business activities. The first group was influential in almost all reviewed licenses. The other two groups played a supplementary role in some licenses only. The more conditions that are

13. Already, there is a discrepancy in licensing for online game services between the Ministry of Postal and Telecommunication and the Provincial Authority of Postal and Telecommunication in Ho Chi Minh City

applied the more difficult and troublesome it is to grant a license. The "License for advertisements" is a good illustration.

- One set of conditions for business activities covers business location, facilities and equipment and the business plan. The conditions include:

(i) Suitability with relevant plans;

(ii) Possessing suitable facilities and equipment;

(ii) Having a professional, competent and sufficiently experienced management team;

(iv) Having a feasible business plan.

The conditions are too general, subjective and are not comprehensive.

An illustration is the license for an "employment intermediary agent". Article 12, Decree 192/2005/NĐ-CP stipulates the conditions for the license for an employment matching service, which include: (i) having a suitable and convenient location, a stable office and sufficient area for operations and transactions. If the office is leased the leasing contract must be for at least 36 months; (ii) having a separate room for each of the following: consultants, briefing and introduction to the labor supply service as well as having room for computers containing market information, telephones and a fax and archives of relevant labor market materials as well as other facilities required for customers; (iii) a deposit of at least 300 million VND in a trusted account so as to cover any losses or to pay compensations occurred during operation; (iv) have at least five staff with college degrees in one of following disciplines: economics, law and foreign languages. All staff should also have a clean personal history record, no previous convictions and a good manner.

These conditions lack clarity. For example, the definition of a head office; the terms 'stable', 'convenient' and 'well-equipped'; the reason why staff require a degree in economics, law or a foreign language; which foreign language is required. The requirement for separate rooms for each activity is an unreasonable intervention into the business autonomy of enterprises. The requirement for a deposit of 300 million VND carries no clear justification and raises the costs of doing business.

Other shortcomings include:

- The requirements do not directly relate to the public benefits the licenses are supposed to protect. For instance, the security insurance requirements necessary for an engraved seal cover fire prevention, fire fighting, and sanitation but not seal faking or fraud in the seal engraving process.

■ Requirements for the same license are inconsistently stipulated in different legal documents in terms of both quantity and specification. Requirements in circulars, decisions of ministries are stricter and more difficult to enforce. The license for an advertisement business is a typical example (see Appendix 3).

Example 1: A number of licenses are required for cigarette wholesale trading or being a cigarette wholesale trading agent. Item 2, Article 17 of Decree 76 stipulates that the "requirements to license cigarette wholesale trading or be an agent of cigarette wholesale trading" are as follows:

- a) Being an enterprise registered for trading cigarette products;
- b) Having a stable business location with a clear residential address;
- c) Meet the requirements for sanitary environment and fire prevention.

Item 2, section III of circular 30/1999/TT-BTM stipulates the following licensing requirements:

- Having a business registration certificate which covers the sale of cigarettes;
- Having a stable business location with a clear residential address;
- Having a cigarette distribution system;
- Ensuring requirements on sanitary environment and fire prevention.

The circular added one more requirement for a 'cigarette distribution system'.

Example 2: Article 18 of Decree 111/2005/NĐ-CP stipulates registration for importing publications. Importers are required to register a list of publications with the Publishing Management Department following Form 3 in the Appendix attached to the decision. Circular 48/2006/TT-BVHTT then changed register to 'approval' and added the following requirements:

- A list of the different types of publications (for example, books, newspapers, magazines, pictures, photographs or calendars) being imported.
- For audio-visual products produced on any material the registration file requires:
 - A registration form for checking and approving content of the work;

- Documents verifying copyright and the legal source of the work (documents required for verification purposes written in foreign languages must be translated into Vietnamese prior to submission to authorized bodies for approval);
- A sample of the work subject to request for content (foreign languages must be translated into Vietnamese prior to submission to authorized bodies for approval).
- Applications for non-cinema audio-visual products (produced on all materials) require:
 - A request form for checking and approving the content of the product;
 - Documents verifying copyright and the legal source of the product;
 - A sample of the product subject to request for content (foreign languages must be translated into Vietnamese prior to submission to authorized bodies for approval).

Example 3: License requirements for printing publications. Article 31 of the Publishing Law stipulates the need for "facilities to print publications"¹⁴. Article 14 of Decree 111/2005/NĐ-CP guiding the Publishing Law is more specific, specifying a "line of printing facilities and post-printing processing". Circular 30/2006/TT-BVHTT guiding Decree 111/2005/NĐ-CP required the licensed printing establishment to have the following facilities: (i) a printer; (ii) a cropping machine; (iii) a folding machine; and (iv) a book-binding machine.

- Some requirements are impossible. For instance, the requirement to "install programs and technical methods to prevent users from lodging onto black websites". There is currently no such technical method to meet that requirement. Another example is the requirement to have "operational experience" which sets barriers to market entry¹⁵.
- Requirements often refer to the required experience of organizations and individuals. This is discriminatory and a 'technical barrier' to entry, protecting the market for existing individuals and enterprises.

¹⁴ Item 1 article 13 of Publishing Law stipulates that:

1. Operation licensing requirement for printing publications comprises:

a) Director or owner of printing establishment is a Vietnamese resident, has a permanent residence book in Vietnam, has professional competence in printing and meets other requirements as stipulated by laws;

b) Having a production location and facilities for printing publications;

c) Ensure requirements on security;

d) Suitability with the development planning of publication printing.

¹⁵ Requirements for operating postal delivery services also mention "having at least five years work experience in the field of telecommunications or delivery" - point c item 2 article 21 of Decree 157/2004/ND-CP and many other similar situations.

c. Implications of the current situation

The consequences of the current flawed business licensing requirements are a number of unexpected impacts on state agencies, enterprises and society:

- Issuing and requesting a license is overly complicated and imposes costs on people, enterprises and state agencies;
- Those granting licenses can abuse their authority by imposing costs on people and enterprises, contributing to incidence of corruption among government bodies and divisions within government bodies with direct licensing authority.
- The promotion of inequality in business opportunities for people and enterprises. Those who are familiar with the process of applying for a license are more likely to receive a license than those who are not.
- The efficient allocation of resources via market mechanisms is constrained. Many licenses are legally unworkable and others are barriers to socio-economic development.

d. Licensing application file

Licensing application files are closely related to licensing conditions. The licensing application file is the written expression of the licensing requirements. If the licensing requirements are unclear, vague, opaque or unpredictable then the licensing application file will contain similar characteristics.

Our review of the requirements for licensing files, steps and procedures reveals the following considerable issues:

- For the majority of licenses most of the documents and papers required in the licensing application file are not yet standardized in terms of form and content and do not consistently follow the standard form as regulated. In addition, elements of the file have not been prescribed clearly and consistently, particularly the number of required papers and specified papers. As a result, licensing bodies or direct licensors often require applicants to submit other papers according to their own assessment and subjective ideas.

- The definition of 'valid file' is widely used, yet there is no consistent instruction on how to compile a valid file. Coupled with the non-standardization of the form and content of required papers the determination of a 'valid file' is arbitrary and subjective. Only the registrars can 'know' and decide on the validity of the application file, and this 'decision' is most often a 'final decision'. This is an area requiring particular attention as all licenses are dated from receipt of a 'valid' file.
- In order to complete one licensing application file, applicants must go through many state bodies at different levels (ward, commune, district, province, city and even central level) to obtain the licenses necessary to compile an application file. Legislation related to business licenses does not stipulate the steps, procedures and requirements or prescribe rights of appeal in the event the application is rejected on the basis of these steps. In many cases this process is more costly and time consuming than getting the 'principal' license.

Example 1: Decision 07/2005/QĐ-BGTVT stipulates the file required to open a river-crossing station should contain the following:

- Request form for an operation license for a river-crossing station, certified by the People's Committee of the commune/ward for the proposed station;
- Official letter from the in-land waterway management division certifying the station's location and ensuring all requirements stipulated in Section 1 Part II;
- Technical specifications of the station follow the correct technical standards if the station also has a ferry.

The regulations do not specify what must be certified by the People's Committee of the commune/ward or the steps, procedures and criteria for the certification. Likewise, it is not clear which division of the inland waterway management division should provide a certified official letter or what the required procedures are.

Example 2: Decision 205/1998/QĐ-TTg stipulates the application file for ensuring fulfillment of the business requirements for a duty-free shop, of which one is the "official approval letter on the location of the duty-free shop"¹⁶. The approval criteria, steps and procedures are not mentioned.

¹⁶ After that, circular 21/1998/TT-BTM provided further guidance by specifying that the approval letter is obtained from the General Custom Department.

In a number of cases the license application file consists of sub-files that are unnecessary, unrelated to the licensing requirements or unreasonable. The approval decision on technology transfer contract is one example.

In conclusion, in most cases the requirements for the compilation of a license application file are unclear. In a few cases, many of the papers required are other 'licenses'. Moreover, relevant legal documents do not contain the required content of the files. Applicants are thus unsure if their prepared file is complete and legally valid according to requirements of direct licensing bodies. The preparation of application files is therefore difficult, time-consuming and costly and it often takes months to complete a file.

e. Licensing steps

- There are no specified regulations about where to submit or receive a file, particularly for licenses that ministries or ministry level agencies have the authority to issue. In fact, applicants (direct applicants or authorized consultants) have to directly submit files to the authorized licensing agencies.
- There is no clarity on when to date the beginning of the licensing process. The starting point is defined from the receipt of a 'valid file', but there is no unified definition of a 'valid file'.
- There is no defined time limit for the period registrars require applicants to supplement or amend their file or any direction as to the number of times registrars can ask for changes to be made. Consequently, registrars can ask for one or two supplements and amendments at the 'last minute' of the regulated licensing period. Registrars can therefore arbitrarily extend the time required for licensing without violating the law.
- In a number of cases there is no required confirmation of the receipt of a file, leaving applicants no legal basis to appeal or petition against authorized agencies that have violated regulations which concern the time required for licensing.
- For licenses that require the involvement of several agencies or divisions within one agency the procedures of the 'internal' process are normally not regulated. Applicants don't know where their file is, who is processing it, and how long it might take, as well as the principles or ways to gather 'ideas' for

making a decision. In such cases, the time required for licensing often exceeds the regulated time.

- Most licenses still lack regulations on the content that should be publicized. Information on the legal basis, licensing requirements, files, licensing steps and procedures, valid period of licenses, steps, procedures and requirements for license extension and so on are either not yet publicized or not fully publicized. According to the feedback of many enterprises only direct licensors can provide answers to (or dare to answer) questions on the required content and only their answers are considered 'reliable'. In another words, only these people know if the file is "complete", "correct", "legal" or "reasonable" according to the laws.

g. Time required for licensing

Our review revealed that in almost all cases laws stipulate the time required for licensing (often seven days, ten days, 15 days, 30 days or even 60 days¹⁷) from the receipt of a valid file.

However, surveys show that the time taken to obtain a license includes the time to prepare an application file as well as the period in which the valid file is processed. According to current regulations, file preparation for particularly those that require input such as "certification", "approval", "giving opinions", "examining", "appraisal" from different agencies may last for months or even years. The time taken also depends on the will of licensors rather than regulations. As a consequence the time required for licensing first-time applicants or applicants who are not familiar with the application procedure may last longer¹⁸.

h. About the term and scope of validity of the license and the extension of the validity of the license

Most licenses provide the term of validity but the term has no scientific and practical justification. The scope of license validity is also unreasonable. A license issued in accordance with a common standard should be of equal validity throughout the country. The certificate for a private medical examination and treatment is an

¹⁷. Some believe the period of 60 days is too long.

¹⁸. Our review team surveyed enterprises having troubles in license application. Among them, one enterprise has applied for license for mineral water exploitation since 2003 and till 2006 still not yet had it, they even have no ideas when the license might be granted for them, reasons for being rejected whereas they have spent up to Vietnamese dong billion for the application. Other enterprise applied for license for flagstone exploitation for 4 years but did not get it.

example. The Certificate issued by the Minister of Health is valid throughout the country, but a license issued by the Director of a provincial department of health is only valid within the province in which it is issued. This is typical of other certificates in the medical industry.

A review of the license extension shows that most fixed term licenses have unclear regulations concerning the legal documents, procedures and conditions for extension. The extension, if it is necessary, is not automatically granted but is obtained following application procedures¹⁹, usually with the same application dossiers, procedures and conditions as the initial application. However, as applicants are more experienced and have normally established good relationships with the licensing bodies when obtaining the first license, applications for extension are usually easier and less costly than the first time.

i) Organisations granted with the authority to issue license

Among the reviewed licenses, there are 155 licenses issued only by a central authority, 56 licenses issued only by a provincial authority (provincial department or people's committee), 69 licenses issued by both central and provincial authorities, and seven licenses for which the issuer is not clearly identified.²⁰ Among licenses issued by the central authorities the ministries issuing most of licenses are: the State Bank of Vietnam (22), the Ministry of Finance (22), the Ministry of Culture and Information (18), the Ministry of Post and Telecommunication (20)²¹, the Ministry of Science and Technology (13) and the Ministry of Agriculture and Rural Department (8).

Applications for licenses issued by the central authorities are more complicated and costly than at the provincial level. The application would be more cumbersome, costly and lengthy if the license granted at the central level is processed by the provincial people's committee.²²

In some provinces where the Task Force interviewed, people said that application procedures for licenses issued by the local authorities are usually more convenient and strict than the licenses issued by the central authorities.

¹⁹ For some licenses, it is clearly stated that an extension will not be applied and a new license is requested upon the expiration of the first license.

²⁰ If the applicants are organisations or individuals managed by the central authority, the ministry will grant a license; in case the applicants are managed at provincial level, the provincial departments will grant the license.

²¹ All licenses applied in the post and telecommunication industry are issued by central authorities: Ministry or central general departments.

²² For example: license to survey, investigate and explore minerals.

In general, the reasoning behind the delegation and allocation of licensing tasks between the ministries and people's committees is unclear. Some ministries have not delegated the issuance and management of to-be-licensed business activities, but still directly issue many licenses. Where ministries provide the regulations for licenses and directly issue the licenses they are in both the governors and practitioners position, lessening the effectiveness of the by-license state management, creating failure in setting the supervisory mechanism over licensing authorities, as well as creating unfair relationships between issuers and issued parties. In such a situation there is a high possibility of corruption and abuse of power.



Observations and Recommendations

1. SOME OBSERVATIONS

After 20 years of renovation the institutions of a market economy have been gradually established and improved in Vietnam. The establishment, development and improvement of the legal system has contributed to these achievements. A system of legal regulations for business licensing is an integral part of the whole legal system. It is the system of business licensing which becomes an important tool of state management, and whose usage effectively replaces the administrative commands that used to govern business activities and the whole society. In this way the licensing system has contributed to the establishment and improvement of market economy in Vietnam.

However, the licensing system and individual licenses still have a number of weakness and disadvantages:

- Licensing regulation is still scattered. Regulations governing one license are scattered among different legal documents, among which the most important contents are usually found in the legal documents issued by the ministries or ministerial authorities.
- There is insufficient legal, scientific or practical basis for the licenses. Licensing

conditions are mostly regulated by the ministries or ministerial authorities. There is no specific or reasonable judgment as to the public interest the license proposes to protect and why the license is the best way to achieve this goal.

- Most licenses do not address the ten areas listed in Part I and so do not meet the norms of international practice.
- The contents of regulations, especially those related to conditions and criteria, dossiers and procedures for the first license as well as extensions and renewals are not clear, transparent or predictable.
- The delegation of state management and licensing authority is not reasonable. In many instances ministries are both "governors and practitioners".
- For all licenses, there are no practical regulations for appeal or complaint in the event that license issuers break the laws or behave in a manner contrary to the lawful interests of applicants.

The above are key reasons the current licensing system creates a non-favorable environment for businesses operating in license-governed sectors, reducing the attractiveness and competitiveness of the business environment in the following ways:

a. Citizens and enterprises (the applicants) face the following problems:

It is difficult and costly to get a license, increasing "entry costs" for businesses in license-required sectors, as well as raising more general business costs.

Applicants do not properly understand what is "right", "enough" or "appropriate" and therefore, cannot predict if they will be granted a license. Instead enterprises manage to "worm" through legal regulations by: (i) continuing to do business without a license (this is illegal, so they tend to do informal business)²³ (ii) submitting the application dossier only for formality without satisfying the legal requirements; (iii) abandoning the business idea. In some cases enterprises are not aware that licenses are required, do not apply and so unintentionally break the law.

It is easier and less costly for applicants with personal relationships with license issuers or who are experienced in licensing procedures to obtain licenses. In other cases licenses are used to establish and maintain monopolies by barring potential new entrants.

²³ In practice, some individuals and entities doing business in license-required sectors have not applied for licenses and have no licenses.

b. For state management authorities

- Unclear, unreasonable and unpredictable regulations make licensing activities of state authorities difficult and costly in terms of finance and human resources.
- Unclear, unreasonable and unspecific regulations encourage authorities directly involved in granting licenses to seek the opinions of other authorities or act according to their own interpretation of the legal regulations. In both instances there is the possibility of abuse of power, or troublesome and unreasonable intervention into business operations (including corruption and bribes). State authorities are also able to unreasonably (but legally) intervene in enterprise operations.
- Licensing and the use of licenses are not only used as a state management tool but for personal advantage.²⁴ This reduces the validity and effectiveness of licenses intended as a tool of state management and increases associated social costs.
- The weak and low quality system of licensing regulations is a major obstacle to administrative reform, especially the reform of administrative procedures between government and enterprises.

Furthermore, the number of new business license regulations and the number of applied business licenses has increased rapidly without corresponding tools to efficiently manage the process. Therefore, the issues discussed in this report are in danger of increasing in both scale and scope. This is a major concern for the business community and other relevant parties.

2. REASONS

There are three major reasons for the low quality of the current system of legal regulations:

First is methodology. Specifically, (i) there is no common scientific and legal approach toward a "license"; (ii) there is no common standard for the form and content of license regulations; (iii) there is no common understanding of the public interest state management of licenses should be seeking to protect.

Secondly, during the development of legal regulations the role and impact (especially, potential negative impacts) of licenses as a tool of state management

²⁴ In some cases, the process of applying for a license and granting a license resembles less compliance with legal regulations and more a market transaction.

and in the development of a better business environment have not been properly considered. Therefore, insufficient attention has been paid to the establishment of an efficient and reasonable license system and its role in improving the business environment and the efficiency of the economy and enterprises.²⁵

Thirdly, consequences of the above two reasons are: (i) a lack of efficient and effective monitoring mechanisms and institutions for drafting and issuing legal regulations on business licenses; (ii) regulations on business licenses (as conditions of conditional business lines) are continuously issued without competence; (iii) there is no monitoring mechanism or institution to review and, if necessary, amend or improve the quality of licenses and licensing regulations; (iv) as regulations on business licenses are drafted and issued without a rational scientific or practical basis there is always the possibility that the licenses serve the interests of particular groups.

3. RECOMMENDATIONS

The Task Force would like to propose some solutions to improve the quality of legal regulations on business licenses. The recommendations are classified into two groups. The first group includes ways to improve the current system of legal regulations on business licenses. The second group includes solutions to sustain the results achieved after the implementation of the first group's solutions.

a) Remove and amend licenses

Remove 33 licenses and replace 9 licenses with other forms of management, such as "notification" or other business conditions. The licenses should be removed because:

- They have no legal basis and are contrary to the regulations on competence of issuing business licenses in the Law on Enterprises and Law on Investment; or the legal documents serving as legal basis for the licenses have expired or been replaced;
- The licenses are no longer necessary as the licenses overlap with other licenses or are only "branches- license" in "tree-license".²⁶

²⁵ OECD members and other countries have considered the reform of licensing system and regulations on licenses as a central point of institutional reform and business environment improvement.

²⁶ For example, the approval of the State bank to allow credit institution to provide factoring services. The Credit institution is licensed to provide credit services, and factoring is only one of the credit services. Therefore, the Task Force considers "this approval" as "branch license" of the "establishment and operation license of the credit institution".

b. Recommendation to amend the remaining 250 licenses.

Specific amendments include the following:

- Identify the business activities that are governed by the licenses, and the scope of the licenses;
- Overcome inconsistencies between laws, ordinances, decrees and implementing decrees, and ministerial decisions for relevant business licenses;
- Eliminate conditions and documents that are unnecessary, redundant or not compatible with those in laws, ordinances or decrees;
- Provide specific and appropriate details on the requirements for all business licenses so that the requirements can be quantified, understood, explained and unanimously applied. Licenses must be reasonable and should protect society's interests.
- With regard to the application for licenses:
 - Specify the number of licenses and standardize the format and content of the application forms;
 - Clearly define the concept of "legitimate application", in terms of format and content;
 - Eliminate or reduce the requirement to "acknowledge", "certify", "accept", "agree", "answer in writing", etc in the application forms. If it is necessary it is important to state clearly what is required and the legal consequences of refusal to meet those requirements.
- Ensure that procedures for issuing licenses are specific and transparent, especially:
 - Shorten the waiting period;
 - Ensure the waiting period is consistent once the application is received²⁷;
 - Specify the deadline to supplement or amend the application form and stipulate that only one request for supplements or amendments can be made. If there is no request for change after the deadline, the application is considered legitimate by law;

27. This has been stimulated and implemented in the Enterprise Law (clause 3 article 12, Enterprise Law, 10/1999/QH, and clause 2 article 15, Enterprise Law, 60/2005/QH). In fact it has made a significant contribution since the year 2000 by reducing the waiting period for business licenses and reducing the time and costs of market entry for businesses. Up until now, this is one of the few regulations that meet the suggested approach on the specific length of time for an administrative activity.

- Specify where the application form can be submitted at any time during working hours²⁸;
 - If multiple agencies are involved in the process of verifying the license, the format, content, timeline and requirements must be specified for each agency. If there is no verification after the deadline, the agencies are considered to have a consensus on that license.
- If the license has an expiry date, extension conditions should be automatic if all conditions have been followed during the validity period of the license.
- The agency in charge of issuing licenses should decentralize the power to issue licenses and monitor implementation to provincial People's Committees. Ministries should only issue or otherwise be directly involved in licenses for businesses or sectors which are related to macroeconomic policies or national security.
- Complete what is missing in each type of regulations and procedures for business licenses, especially complaint procedures.

b) Institutions and implementation:

- Relevant ministries should consider and use the results from the analysis and evaluation of the Task Force²⁹. At the same time, in collaboration with the Task Force for the Enterprise and Investment Law, the Ministry of Justice and the Office of the Government will amend regulations on business licensing under their authority. The amendments must be completed by December 31, 2007.
- The drafting of amended regulations on business licensing must include objective, fair and transparent consultation with all concerned parties, especially business associations and businesses that are directly affected by particular licenses.
- The Task Force will continue to monitor and reinforce the amendment of regulations on business licensing as recommended in point b above, ensuring that compatible regulations are amended by the deadline and are of the highest quality.

²⁸ Applications for many licenses can only be received on certain working days in the week and even only at certain times (morning or afternoon, for example).

²⁹ On November 15, 2006, Letter 1877/TTg-CCHC on the implementation of Directive 32/2006/CT-TTg, the Prime Minister requested "Ministers, Chairmen of Provincial People's Committees, to directly lead the examination and evaluation of administrative procedures under their authority, including licenses and regulations required for business activities."

At the same time, it is important to establish an authority capable and responsible for regulatory reform³⁰ to maintain the success of license reform, and to expand reform to other types of regulation on other business activities and businesses.

Solutions need to take into consideration recommendations of the Ministry of Planning and Investment in its draft decree on Governance for Business licenses, submitted to the Prime Minister in 2006.

³⁰. The English terminology is "regulatory reform". In the OECD there's a Department of Regulatory Reform, and in every OECD country there is a body specialized in regulatory reform. For more than 30 years, they have considered regulatory reform, especially procedural and license reform, the heart of improving the competitiveness of the national business environment. Australia, Ireland, Korea and Singapore have had outstanding success in regulatory reform, leading to economic growth and stability.

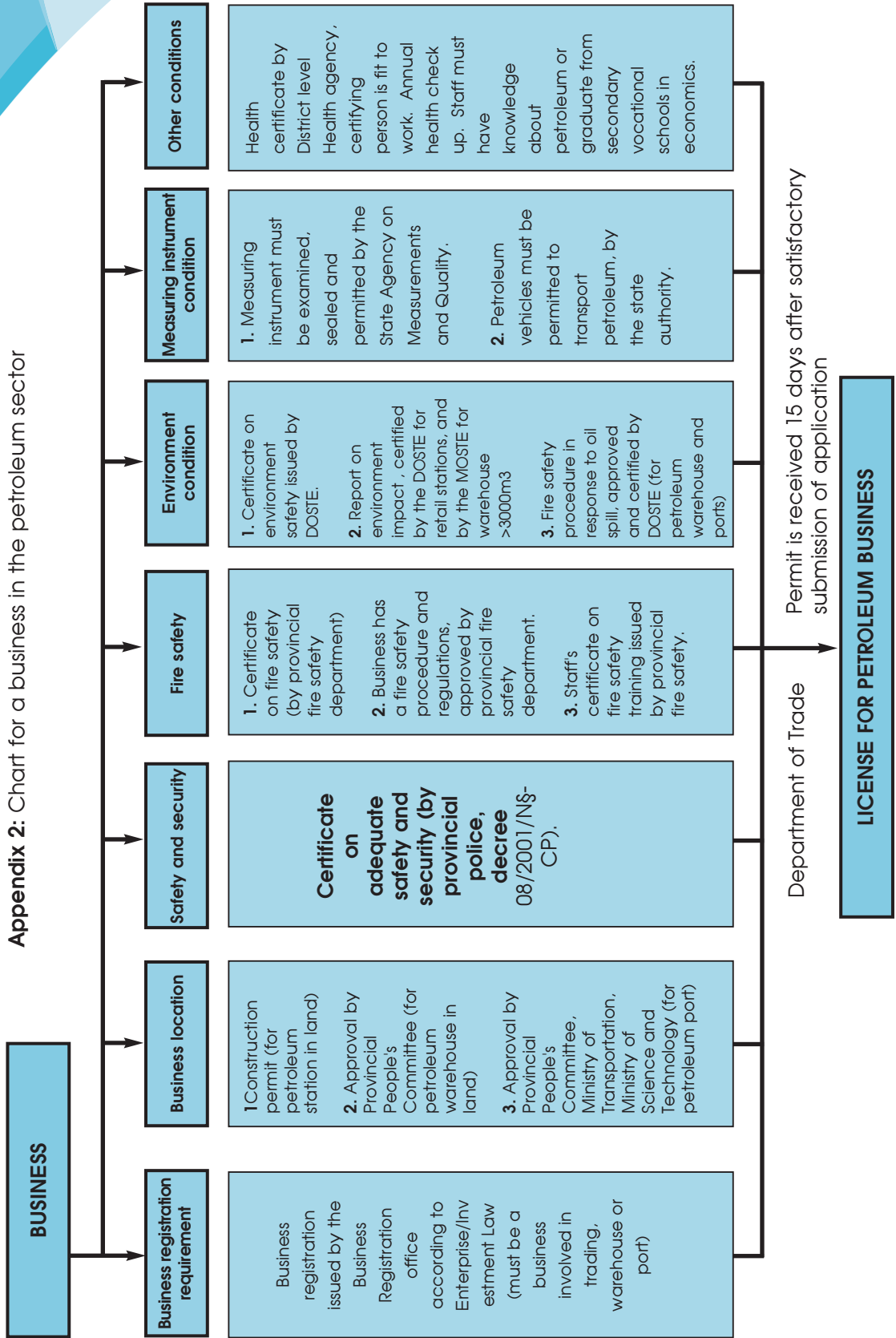


Phụ lục

Appendix 1. Evaluation of licenses

No	Sector	Total	Legitimacy	Purpose	Activity	Applicant	Licensing agency	Initial licensing				Renewal, extension, amendment					Withdrawal			Appeal procedure		
								Application	Criteria	Procedures	Waiting time	License validity	Competent agency	Occurrence	Application	Procedures	Waiting time	Validity of renewal	Competent agency		Occurrence	Procedure
1	Post and Telecommunication		18	0	18	18	19	18	4	3	16	13	13	13	13	3	10	7	3	5	0	0
2	Public Security		16	0	15	13	13	13	13	15	13	6	4	4	4	4	3	3	9	7	8	0
3	Industry		7	1	7	7	7	7	6	4	7	6	0	3	3	3	0	2	1	4	1	0
4	Tourism		10	10	10	10	10	8	9	7	5	7	4	5	3	3	3	3	2	3	2	3
5	Transportation		13	0	15	15	15	15	9	4	13	7	2	4	3	1	3	1	0	4	0	0
6	Education		4	0	4	4	4	4	4	3	2	1	0	0	0	0	0	0	3	3	0	0
7	Science-Technology		15	0	15	15	15	14	12	13	11	10	7	7	7	0	0	1	0	8	0	0
8	Labor - Invalids and Social Affairs		6	0	7	7	7	6	5	2	5	4	1	1	1	1	1	1	0	1	0	0
9	Banking		27	0	35	36	36	33	29	5	30	13	2	2	0	0	0	2	0	14	0	0
10	Agriculture and rural development		15	0	16	16	16	14	11	3	10	8	6	6	6	2	4	3	5	6	2	2
11	Finance		15	0	25	25	25	18	23	4	17	9	5	6	1	0	1	3	6	15	0	0
12	Natural Resources - Environment		16	0	17	17	17	16	4	7	16	11	6	8	4	0	0	6	0	9	0	0
13	Aquaculture		9	0	9	9	9	6	4	1	6	3	4	4	0	2	0	1	1	1	0	0
14	Trade		11	0	12	12	12	12	12	8	11	4	2	2	0	0	2	0	1	1	0	0
15	Justice		10	0	12	12	12	12	11	3	11	5	1	1	0	0	0	0	0	1	0	0
16	Culture - Information		28	7	38	37	37	33	15	5	34	8	6	6	0	1	2	0	2	3	0	0
17	Construction		4	2	4	4	4	4	3	1	4	1	2	2	0	2	0	1	1	1	1	0
18	Health		13	10	20	20	20	18	20	12	16	15	7	11	10	0	5	4	10	15	5	0
19	Custom		0	0	4	4	4	2	4	3	2	2	1	2	1	1	1	1	2	3	0	0
	Total	289	237	30	283	283	282	253	198	103	229	133	73	87	62	19	39	38	49	107	22	4
	% Satisfactory		82	10	98	98	98	88	69	36	79	46	25	30	21	7	13	13	17	37	21	1

Appendix 2: Chart for a business in the petroleum sector

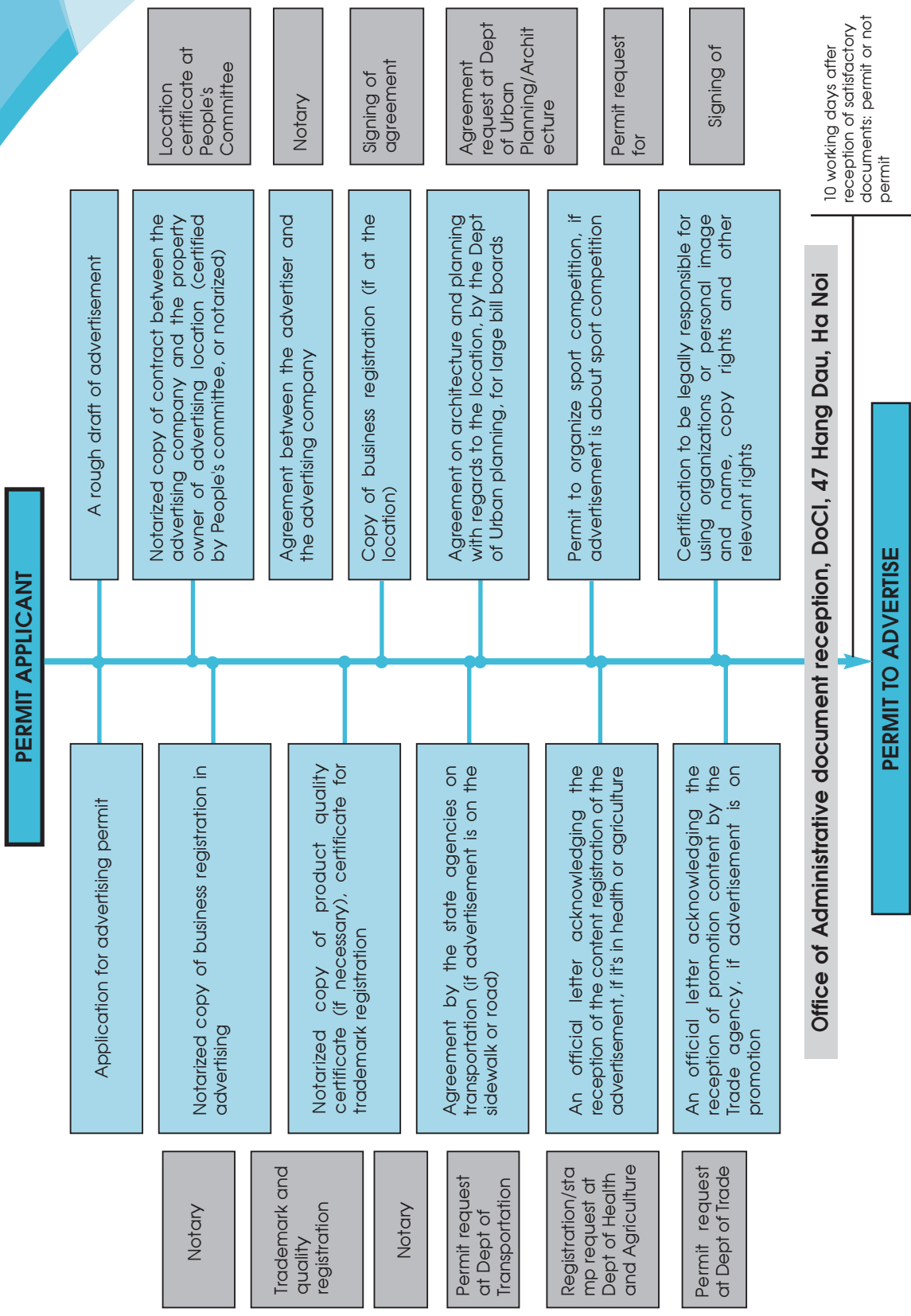


Appendix 3: Procedures for a permit in advertising boards³¹

Comments on procedures for permits in advertising boards in Hanoi (after consultation with the Vietnam Advertisement Association and several advertising companies)

- There is an umbrella permit, under which there are many other types of permit.
- There are many procedures for permit, approval, agreement which do not specify the required documents, expenses, time or the authoritative body.
- Some procedures are only to inform (for example health or agriculture product introduction...), but in fact if the government agencies do not reply businesses are not permitted to sell. The informing procedure is not consistent and sometimes businesses have to inform the Provincial department and sometimes the Ministry.
- Appropriate documents must be submitted for advertising locations. However most land or houses do not have a Land use Rights certificate. In Hanoi the local People's Committee has to certify, but according to the Law, the People's Committee does not have the authority to certify land. This is Hanoi's own regulation, contradicting the Ordinance on Advertisement, but it is still imposed.
- There are several unreasonable requirements such as a notarized copy of the contract between the advertising company and the property owner of the advertising location. This is a private business transaction which should not be relevant.
- The shortest time in which a business can receive a permit is three months. Hanoi has a "one-stop" council which is supposed to meet (notary, construction, urban planning), but the council has never met.
- Procedures are cumbersome. Copies of the same advertisement - for example, each of the 200 advertisement boards - has to be approved by the local People's committee.
- The Culture Department says the maximum wait time is ten days, however the smaller sub-permits do not specify the duration. Thus there is a never-ending wait time.
- Too many authorities have the right to inspect and question the businesses. Businesses feel that they are subject to inspection and punishment by anyone (police, culture police, People's Committee).
- Corruption is popular (99 percent). Each region has its own rules.
- Rigid requirements from the government, for example the use of the word "Festival", or "Beers" must be converted to Vietnamese.- Inefficiency. Many businesses start before acquiring the permit. One hundred and forty-five out of 225 large bill boards in Hanoi do not have permits. It's cheaper for businesses to pay the fine, rather than going through all the steps to get the permits.

³¹. Source: www.hanoi.gov.vn



10 working days after reception of satisfactory documents: permit or not permit



MPI



Ủy nhiệm thực hiện bởi

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