



IMPROVEMENT OF LEGISLATION ON FOREIGN INVESTMENT IN VIET NAM TO MEET REQUIREMENT OF REGIONAL AND INTERNATIONAL INTEGRATION.

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1. Building a law on investment commonly applied for local and foreign investment (FI).

1.1. From charter on FI to Law on investment commonly applied for local and FI activities.

Like other countries with different development level in ASEAN, Viet Nam conducts incentive policy for FI to attract capital, modern technology, state of the art management experience to explore and effectively use local resources to serve industrialization, modernization and economic development. For that Viet Nam actively improves investment environment, firstly to improve legal framework for investment activities.

Innovation in Viet Nam has been started in 1986 by Communist Party of Viet Nam. FI legislation in Viet Nam has been improving in this process. Coming out of FI Charter promulgated by Circular No 115/CP dated April 18,1977 of Government has been considered as mile stone of forming institution on FI in Viet Nam. The act is one of steps to standardize foreign policy of Viet Nam Communist Party after the war that is open to the world, including ASEAN. FI Charter came out in the circumstances when Viet Nam started construction and recovering economy. For that, FI charter has been used only for few FI projects, typically for Gas and oil Joint Venture between Viet Nam and former Soviet Union.

In the middle of 70 last century the social - economic crises requested the Party and State to find out new development policy. Many bad experiences happened and crises were more heavy. Therefore State of Viet Nam has to conduct “ Doi moi”-Innovation Policy.Open door policy has been standardized quickly by promulgation of Law on Foreign Investment in Viet Nam in 1987 replacing the FI Charter. The Coming out of Law on FI created high legal basics for attracting FI capital to Viet Nam. Before promulgating the Law on Investment in 2005 commonly used for both local and foreign investment, the Law on FI 1987 has been amended, added 4 time in 1990,1992, 1996, 2000 by the National Assembly (N.A.) The changes for very short time of the Law showed the determination of State of Viet Nam to “open door” and its effort to harmonize legislation, to meet



international legal standards; in the other hand to make sure the need of FI and improvement of investment environment.

Before 2005 in Viet Nam existed 2 Laws on investment which were Law on FI and Incentive Law for local investment. Therefore, in this period of time there was not common legal base for investment activities. FI and local enterprises operated in different legal base. The legal discrimination by ownership form of enterprises has seen clearly in the legal system of enterprises: Enterprises Law for local private companies, State run enterprise's Law, Cooperative Law and Law on FI. In the free market economy it is not acceptable, especially at that time Viet Nam participated in Asean Investment Agreement AIA and under negotiation to join WTO. Therefore not only legislation on enterprise but also legislation for investment have to be reformed by direction to create a common legal framework, unified and equal to use for all forms of enterprises of all economic sector without discrimination by ownership. The Law on investment 2005 came out in this circumstance applied for both local and foreign investment.

1.2. Progress of Law on Investment 2005.

In process of drafting Law on Investment 2005 there were not only consensus but also objection. Few representatives of FI considered that if the draft will be approved by Session 8

N.A. XI it would make negative impact on investment environment in Viet Nam. Other scientist did not agree to issue one more Law on investment while already exists Law on FI. Contrarily, most of comments agreed to evaluate the progress of Law on Investment 2005. Thinking way of legislation people is to eliminate discrimination, respect the right of free business, innovation of government function by direction to limit intervention of government agencies to decision of investors. In stead of that government should focus on guidance, encourage, support investor. The Law on investment promulgated in 2005 creates a unified legal environment, no discrimination among investment activities. It is in line with NT(Nation treatment) principle stated in para. 1b, Article 7 of AIA. Some incentive given to local investor or to FI only, now it is applied for all investors. The Law also allocated more to local authorities and have significant administrative reform toward investment. Some barriers such as requirement of legal capital or of localization ratio etc. have been eliminated. FI also enjoy expansion of investment scale by using new form of contract such as BOT, BCC, BTO, BT or buying stock or enterprises etc(Article 21). The Law also affirms protection of state in case nationalization etc. Concerning dispute solving, the Law recognizes the right of FI to bring the case to solve in foreign organization and arbitration. So, current law on



investment is family with investment legislation of many Asean countries. Like other Asean countries, the result of improvement of investment legislation in Viet Nam leading to create a common legal framework, adjusting local investment and FI activities together with process of improvement of local legal system.

Different points of Vietnam investment legislation compared to other Asean countries are the form of investment, prohibit investment fields. Besides, NT principle in Viet Nam Investment Law also creates different aspects compared to other Asean countries.

2. Participation in and signing investment agreement with countries in side and out side Asean.

Viet Nam has signed many agreements on incentive and protection of investment with 51 countries and territories, including Asean countries such as with Singapore (1992), Malaysia(1992),Thailand (1991), Indonesia (1991) and in 1998 with 8 Asean countries Viet Nam signed AIA (Asean Investment Agreement).

3. Results of improvement of investment environment and the situation on conduct foreign investment legislation in Viet Nam.

After 20 year since coming out of Law on Foreign Investment in Viet Nam, the country reached important achievement. In the period 1988 – 2008 Viet Nam attracted 10. 105 projects with total legal investment capital 53. 607 mill. USD, total registered capital 159. 764 mill. USD. The record was 21,300 mill. USD (registered capital) in 2007 . In 9 months of 2009 there were 536 new projects with 7,670 mill.USD, equivalent to 21% of the same period in 2008.

Concerning Investment in Asean, up to the end of 2008, Malaysia leaded with 311 projects, 3,824 mill. USD charter capital and 17,897 mill. USD of registered capital(RC). Singapore: 674 projects 16,531 mill.USD registered capital(RC). Thailand: 198 projects, 5,676 mill.USD . Brunei D. : 79 projects; 4,664 mill. USD (RC). Indonesia :21 projects;0,187 mill.USD (RC). Lao: 8 projects; 48 mill.USD; The Phillipine: 40 projects; 0,295 mill. USD and Cambodia : 7 projects; 6 mill.USD. In the list of 84 foreign countries investing in Viet Nam, some Asean countries are in high position, for example: Malaysia: 3; Singapore:5; Thailand: 9 etc.

The impacts of the Law on various fields of social – economic life are as follows:

Economic field:

FI gradually becomes important capital resource adding to the fund for social-economic development, for developing industry and creating jobs for people. FI contributes



to transfer modern technology to Viet Nam and creation of important economic branch such as IT, gas and oil, chemical and mechanical industry, electronics, informatics, automobile and motorcycles industries etc. Linkage among FI and local enterprises helps Viet Nam Enterprises to get management experience, change technology and increase competitiveness in local and international market. Contribution of FI enterprises to state budget is increasing. Only 2 years (2006 and 2007) FI enterprises contributed more than 3 bill. USD, equivalent to 2 times of period 1996-2000. FI also contribute to export revenue higher than the average.

Social field:

Up to now FI created job for 1.2 millions persons. Their operations attract indirect labors 2 or 3 times higher of direct labors. Level of management, working discipline, understanding science and technology... of local labors is better by accessing FI enterprises. Part of citizens enjoy better income and living standards, therefore GDP per capita also increases.

Executing Law on Investment and bilateral and multilateral commitments speed up process of reform and opening economy. It helps to change the thinking, habit, measures, capability of government management. On the side of state, commitments of state for equal legal treatment toward investors of economic sectors, including foreign one, on protection the right asset ownership, invested capital, income and other legal benefit of investors, on the recognition of long time existence of investment activities as well as commitment for conducting international treaties relating to investment which Viet Nam has taken part in ...are legal assurances to create trust of foreign investor. Improvement of investment legislation to meet requirement of regional and foreign integration contribute to change of legal system in Viet Nam by direction of complexity, equality, transparent, public and efficiency.

Besides positive impacts, FI also creates social economic problems to be solved. Unreasonable allocation of job structure, investment locations of FI create different social economic conditions among cities and countryside, close and remote areas etc. For the mountain, remote area the Law on investment regulates incentives for investors, Government and local authorities also improve investment environment but not so big number of investors have interests. There is similar situation for industrial branches. FI only want to invest in industries having high profit and lower risk, in the other there is no interest.

Regarding technology and technology transfer. Although technology used in FI industries is higher than current local one, but its level is equal only to Asean countries.

Still not so big number of multinational corporations with high tech capacity invest in Viet Nam. In technology transfer, the price of transferred technology is always higher than that is in market. Some of FI even export to Viet Nam the used or low quality, backward equipment which was not used in other countries.

Labor dispute and strikes in FI zones have increasing tendency that showed the benefit confrontation between FI and local labor.

Concerning environment, most of FI enterprises very well observe Vietnamese environment standards even better than local ones. But few of FI seriously violated standards, typical case was VEDAN in 2008.

4. Some of disadvantage of Law on investment 2005 and directions for amendment

Although there were good results as above stated, however foreign investment legislation in Viet Nam in general and Investment Law 2005 in particular still have various content to be amended or added.

- 4.2. To make sure terminology “foreign capital’s enterprise”
 - 4.3. To replace the name “Giay chung nhan dau tu” (Investment Recognition Certificate) with “Giay chung nhan dang ky dau tu”(Investment registration Certificate)
 - 4.4. To eliminate investment procedure and issuance of Investment Registration Certificate for local investor.
 - 4.5. To simplify investment procedure.
 - 4.6. Option of investor for project attracting many between investors
- Beside that there are tens of issues and contents to be amended and added.

5. Conclusion:

- Operation of FI should be adjusted by a system of legal normative acts having high legal effects (under form of Law). Legal normative acts should be in conformity with international practice and commitments, assuring transparent, public, unified character and equal treatment between local and foreign investors through policy and investment procedure .

- Besides Law on investment there is a need to add investment policy and improve legal framework for foreign investment in parallel with improvement of the whole legal system.

- Amendment of legislation system is a way to attract FI.

- Improvement of legislation for attracting FI is necessary but without effective legal execution mechanism the effort for improvement will not meet target.



- Determination and capability of local authority to solve problems of institution, policy plus level of professional knowledge, responsibility and serving behavior of local carders toward FI are factors to secure investment environment to be healthy and attracting.